

File No. 100/09
Our Ref: EAJ

20 November 2009

Dear Councillor

You are kindly requested to attend an **ORDINARY COUNCIL MEETING** of Wingecarribee Shire Council to be held in the Council Chambers, Elizabeth Street, Moss Vale on **Wednesday, 25 November 2009** commencing at **3.30pm**.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Scott Lee', is centered on a light gray rectangular background.

Scott Lee
Acting General Manager

3.30pm	Council Meeting begins
5.30pm	Questions from the Public
6.30pm	Closed Council

B U S I N E S S

1. OPENING OF THE MEETING
2. PRAYER – PASTOR DAVID HOLD, ONE LIFE CHURCH MOSS VALE
3. PUBLIC FORUM
4. APOLOGIES
5. ADOPTION OF MINUTES OF ORDINARY MEETING HELD ON 11 NOVEMBER 2009
6. BUSINESS ARISING FROM THE MINUTES
7. DECLARATIONS OF INTEREST
8. MAYORAL MINUTE (*if any*)
9. OPEN COUNCIL CHAIRED BY CLR LARRY WHIPPER
 - Visitor Matters
 - Environment and Planning
 - Corporate Services
 - Infrastructure Services
10. COUNCIL MATTERS
 - General Manager
 - Corporate Services
11. NOTICES OF MOTION
12. DELEGATES REPORTS
13. PETITIONS
14. QUESTIONS FROM THE PUBLIC
15. CORRESPONDENCE FOR ATTENTION
16. QUESTIONS WITH NOTICE
17. COMMITTEE REPORTS (*Tabled*)
18. COMMITTEE REPORTS (*Attached*)
19. GENERAL BUSINESS
20. CLOSED COUNCIL

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Our Mission, Our Vision, Our Values

OUR MISSION

To augment the economic, environmental and social quality of life in the Wingecarribee Shire by serving the community well

OUR VISION

Enhance transparency and accountability in all decision making processes and outcomes

Gain the trust and confidence of our community by keeping our communities informed and respect their input

Enhance the services and civic and natural assets of the Shire for this and future generations

Promote a live locally, work locally sustainability focus

Support and encourage the Shire's tourism industry and character

OUR VALUES

Trust and integrity

Respect and responsibility

Communication

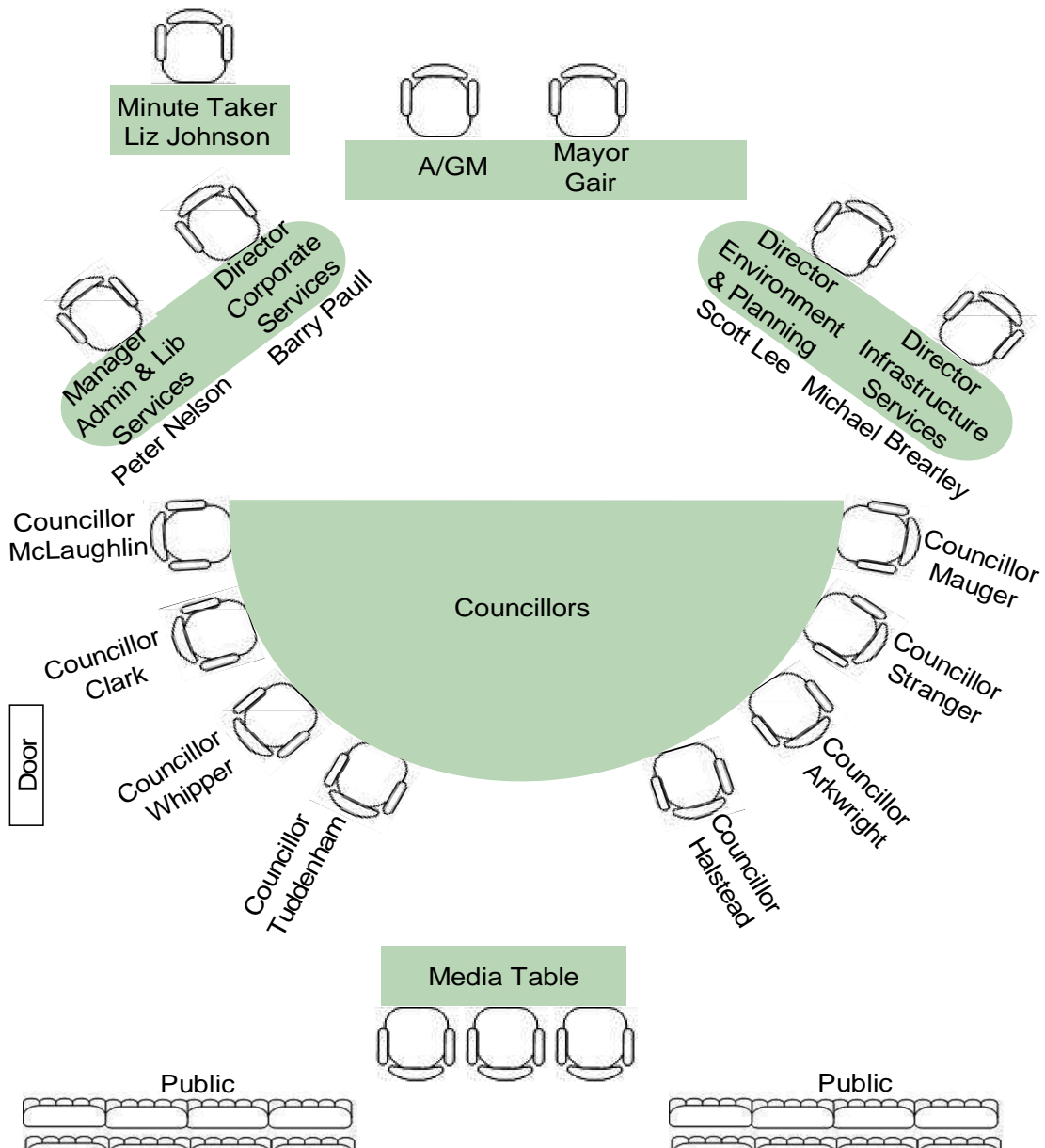
Service quality

WSC Council Chambers

Recording of Ordinary Meeting of Council

As authorised by the Local Government Act 1993, Wingecarribee Shire Council records the proceedings of the Ordinary Meeting of Council to ensure accurate transcription of resolutions.

No member of the public is to use any electronic, visual or vocal recording device or instrument to record the proceedings of Council without prior permission of the Council.





AGENDA FOR THE ORDINARY MEETING OF COUNCIL
held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 25 November 2009

DECLARATIONS OF INTEREST

DECLARATION OF INTEREST

101/3

Councillors are requested to declare any Pecuniary or Non Pecuniary Interests for items on the agenda.



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 25 November 2009

REPORT OF DIRECTOR ENVIRONMENT & PLANNING

OPEN COUNCIL

ENVIRONMENT & PLANNING DIVISION

Governance and Accountability

o-EP1 Development Consents Determined by way of Approval under Delegated Authority

REF: DBSM

5302

Submitting list of development consents executed under delegated authority of the Director of Environment and Planning between 5 November 2009 and 11 November 2009.

RECOMMENDATION

THAT the information relating to Development Consent Nos 1 to 7 (Approved) and Consent Nos 1 to 3 (Refused) under Delegated Authority be received and noted.

Development Applications (DAs) Determined by way of Approval 5/11/2009 to 17/11/2009

This list excludes all applications dealing with single residence dwellings and ancillary residential development, new dwellings or additions, garages and less than 2 lot subdivisions

Table One by way of APPROVAL

	Date Finalised	Property Address and Property Legal Desc	Appl/Poc ID	Description
1	6/11/2009	Trelm Argyle Street, Moss Vale Lot 1 DP 620618 Lot 2 DP 620618	LUA09/0329	3 Lot Subdivision (Residential Allotments)
2	13/11/2009	Highlands Golf Club, Old Hume Hwy, Mittagong Lot 2 DP 101415, Part Lot 161 DP 751267, Lot 1 DP 101415	LUA07/0227	Construct New Golf Hole & Mounds
3	6/11/2009	Corbett Gardens, 21 Merrigang Street, Bowral Lot 1 DP 150769, Lot 2 DP 150769, Lot 9 Sec 2 DP 111234 and 2 more	LUA07/0702	Erection of Steel Fence
4	6/11/2009	Eridge Park Road Reserve, Moss Vale Road, Burradoo Lot 5 DP 1087928 Lot 1 DP 239706	LUA09/0830	Storage Shed
5	10/11/2009	Public Reserve, Oxley's Hill Road, Bowral Lot 10 DP 701530	LUA09/0720	Communication Tower



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REPORT OF DIRECTOR ENVIRONMENT & PLANNING

6	16/11/2009	Wombeyan Caves Road, High Range Lot 127 DP 751275	LUA09/0833	Section 96 - DA315/95 Continued operation of sand and shale quarry.
7	10/11/2009	4/30 Old Hume Hwy, Berrima Lot 4 SP 75992	LUA09/0575	Transfer existing liquor licence for local wine sales from Lot 3 to front room Lot 4

Table Two by way of REFUSAL

	Date Finalised	Property Address & Property Legal Desc	Appl/Proc ID	Description
1	13/11/2009	579 Argyle Street, Moss Vale Lot 12 DP 828018	LUA07/1441	2 x Lot Subdivision
2	5/11/2009	Retford Farm, Old South Road, Bowral Lot 1 DP 860647 Lot 20 DP 1001806	LUA09/0534	Boundary Adjustment
3	12/11/2009	29B Birriga Avenue, Bundanoon Lot 19 DP 1038828	LUA09/1029	CDC Dwelling



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 25 November 2009

REPORT OF DIRECTOR ENVIRONMENT & PLANNING

o-EP2 List Of Land Use Applications Received By Council

REF: DBSM

5302

Submitting list of development applications which have been received between 5 November 2009 and 17 November 2009, some of which will be dealt with under delegated authority of the Director of Environment & Planning.

RECOMMENDATION

THAT the information regarding the List of Land Use Applications Nos 1 to 9 received by Council be received and noted.

	Date Created	App/Proc ID	Property Address Property Legal Description	Description	Council	Delegation
1	11/11/2009	LUA09/1038	Christ Church Bong Bong Argyle street, Moss Vale Lot 1 DP 1125578	Amenities Building- replacement of weatherboard WC with new brick unisex amenity containing WC and hand basin for Anglican Church Property Trust – Church is a historical building.		✓
2	13/11/2009	LUA09/1045	Jamar Old Hume Hwy , Berrima Lot 2 DP 584423	Cellar Door & Winery – erection of new winery building, cellar door and & refreshment room.		✓
3	10/11/2009	LUA09/1031	79 Main Street, Mittagong Lot 1 DP 524097	Change of Use from Interior Design Shop to Pizza Restaurant – The Wild Pizza Pit will be relocating from 12 Bowral Rd to 79 Main St.		✓
4	12/11/2009	LUA09/1043	Tarlington Old South Road, Mittagong Part Lot 5 DP 714156 Lot 1 DP 378531	Boundary Adjustment Old South Road and Diamond Fields Road Mittagong		✓
5	5/11/2009	LUA09/1015	Lot 32 Kangaloon Road Bowral Lot 32 DP 835701	Boundary Adjustment 34C Kangaloon Rd Bowral		✓
6	6/11/2009	LUA09/1021	21-41 Sutton St, Berrima Lot 1 Sec 10 DP 758098 Lot 2 Sec 10 DP 758098 Lot 3 Sec 10 DP 758098 and 8 more	Staged Approval for a Dwelling House - Stage 1 Approval of Building Envelope		✓
7	12/11/2009	LUA09/1040	Bells Hill Road, Robertson Lot 10 DP 1113828	Convert Residential Premises To Business – Farm Office with ancillary facilities		✓
8	9/11/2009	LUA09/1028	Oxley Drive, Mittagong Lot 1 & 2 DP 1022930	Boundary adjustment Yammatree, Oxley Drive Mittagong		✓
9	18/11/2009	LUA09/1055	Mittagong Homemaker Centre 205 Old Hume Hwy Mittagong	Proposed Indoor Tenpin Bowling Centre		✓



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REPORT OF DIRECTOR ENVIRONMENT & PLANNING

o-EP3 Service Station and Carwash Development Lot 1 DP531671 Argyle Street Moss Vale

REF: DBSM

LUA09/0227

Reporting on LUA 09/0227 which seeks development consent for the demolition of an existing service station, and the erection of a new service station with carwash facilities at Lot 1 DP 531671, 609 Argyle Street, Moss Vale.

REPORT

LUA 09/0227 seeks development consent for the demolition of an existing service station, and the erection of a new service station with carwash facilities at Lot 1 DP 531671, 609 Argyle Street, Moss Vale.

1. DESCRIPTION OF PROPOSED DEVELOPMENT

Lot 1 DP 531671 609 Argyle Street Moss Vale is located on the north eastern corner of Argyle Street and Willow Drive, Moss Vale, is 3996 sqm in area, and currently contains the vacated Mobil Service Station building (see **Attachment 1**: Location Plan). To the north of the site is a residential dwelling house, and to the east of the site is a recently vacated mixed use building, which contained a ground level kitchen business and upper level residential accommodation. The site has two existing driveway accesses to Argyle Street, and one existing access to Willow Drive. The northern and western boundaries of the site are lined with *Cyprinus Torulosa*.

While the site is currently zoned 3(b) Special Business under Wingecarribee Local Environmental Plan 1989 ('WLEP 1989'), the site and the surrounding block bounded by Argyle, Yarrowa, Mann and Willow Streets is proposed to be rezoned Medium Density Residential R3 under the exhibited Draft Wingecarribee Local Environmental Plan 2009 ('Draft WLEP 2009'). Therefore the site is within a precinct which is intended to undergo a transition, and this is a key consideration in the assessment of the application.

The proposed development (see **Attachment 2**: Site Plan) comprises:

- Demolition of the existing service station building and erection of a new service station / carwash building, containing 152 sqm service station shop area, 3 wash bay carwash and 3 vacuum bays with proposed hours of operation being 7am to 10 pm Monday to Saturday, and 8am to 10pm Sundays and Public Holidays
- Erection of two freestanding 4.5 metre high pylon signs fronting Argyle Street
- 7 space car park area
- Retention of two existing driveway accesses to Argyle Street, and removal of existing driveway access to Willow Drive
- Excavation of the site to the eastern boundary, and removal of a eucalypt and pine tree
- Removal of approximately two thirds of the length of *Cyprinus Torulosa* from the western boundary of the site

The acoustic report received in October 2009 recommends a 3 metre high sound barrier wall or fence along the northern boundary of the site, and a 2 metre high sound barrier wall or fence along the western boundary of the site to satisfy residential noise amenity criteria. The appearance of this is discussed in sections 6 (c) of this report.

2. STATUTORY CONSIDERATIONS

- Wingecarribee Local Environmental Plan 1989: The site is currently zoned 3(b) Special Business under WLEP 1989. Automotive businesses, including a service station are permissible within the 3(b) Special Business zone, subject to the consent of Council.
- Exhibited Draft Local Environmental Plan 2009 ('Draft LEP 2009'): Under the exhibited Draft LEP 2009, the site and the surrounding block bounded by Argyle, Yarrowa, Mann and Willow Streets is proposed to be rezoned Medium Density Residential R3, where service stations are not listed as a prohibited use, and are therefore permissible with the consent of Council.

An objective of the proposed Medium Density Residential R3 zone is to provide a variety of housing types within a medium density residential environment. The rezoning of this whole block to Medium Density Residential R3 is deliberate - this whole block is close to the town centre, and a medium density residential zone better utilises the existing urban area, reducing the demand to sprawl the residential area of Moss Vale into the Environment Protection zones surrounding the town.

Therefore while service stations are permissible with consent within the proposed Medium Density Residential R3 zone, care needs to be taken that the proposed service station / carwash use will not erode the medium density residential development opportunity for the whole of the block, and will not create amenity problems for future adjoining medium density residential development.

3. REFERRALS TO STATE GOVERNMENT AUTHORITIES

a) Sydney Catchment Authority

The application was referred to the Sydney Catchment Authority ('SCA') for comment. After submission of additional detail by the applicant to the SCA, the SCA raises no objection, subject to 15 conditions of consent addressing issues such as treatment of contaminated runoff, gross pollutant traps, water reuse, rainwater tanks, emergency liquid spills, and erosion and sediment control measures.

b) Roads and Traffic Authority

The Roads and Traffic Authority ('RTA') raised concerns regarding queuing space, particularly that vehicles queuing for the car wash would have the potential to block vehicle access to the service station, which could cause queuing problems to Argyle Street. Amended plans have been submitted, which have addressed the RTA's concerns. The RTA has commented in June 2009 that "the amended layout does not appear to have the potential to create queuing of vehicles onto Argyle St" and therefore raises no objection.

4. Public Consultation

In accordance with Council's notification policy, the proposed development was notified to more than 20 surrounding properties. Four submissions were received, raising the following issues:

- No objection to proposed development, however compared to the previous garage operation on site, the proposal involves significant changes including increased hours of operation, expanded use of site closer to adjoining northern dwelling house, and orientation of building so that it is more open to the adjoining northern dwelling house

Comment: Refer to Sections 6(a) and 6(c) of this report.

- Increased traffic and hours of operation will affect residential amenity and devalue property

Comment: There is no evidence that the proposed development will either increase or decrease the value of surrounding properties. Traffic and hours of operation are discussed in Section 6(a) of this report.

- Rezone opposite properties in Argyle Street for commercial purposes. Development should not be approved unless adjoining land is zoned to permit fast food outlets, motorised business and bulky goods

Comment: This request for rezoning is not consistent with the exhibited Draft LEP 2009, where the commercially zoned land in Argyle Street Moss Vale ceases at the Moss Vale Holden site.

- Trees to be removed on eastern boundary could affect foundations of adjoining eastern building. Retaining wall with engineering specifications should be built along eastern boundary

Comment: The concerns raised regarding proposed excavation of the eastern portion of the site, and the removal of a eucalypt and pine tree on the eastern boundary of the site affecting the foundations of the building on the adjoining eastern site can be addressed by condition of consent, should the application be approved, requiring submission of a structural report at the applicant's expense examining the adjoining eastern building prior to commencement of works, and again after completion of works.

- Request removal of pine trees at northern boundary, and replacement with soundproof solid 3 metre high fence

Comment: The applicant agrees to the provision of a 3 metre high acoustic fence near the northern boundary, however this should be sited so that the line of Torulosas along the northern boundary can be retained.

- Concern about explosion risks, and distances to dwellings

Comment: Service Stations must comply with Australian Standard 1940 : Storage and Handling of Flammable and Combustible Liquids. This can be reinforced by condition of consent.



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REPORT OF DIRECTOR ENVIRONMENT & PLANNING

Waste bin storage could attract vermin

Comment: Waste bin storage could attract vermin, however frequent garbage collection as proposed by the applicant should minimise this problem.

- Question the use of the land marked “Future Development” on the plans

Comment: Refer to Section 6(d) of this report.

5. **INTERNAL STAFF COMMENTS**

a) Building Surveyor's Comment

Council's Building Surveyors raise no objection to the proposed development, subject to standard conditions of consent.

b) Environment and Health Officer's Comment

The acoustic report submitted in October 2009 has been reviewed by Council's Environment and Health Officer, who advises that the noise controls to the proposed activity can achieve adequate attenuation of noise to meet the noise objectives for the area, and suggests conditions requiring that:

- Noise from the activity must not exceed the noise criteria identified in the acoustic report that was submitted with the application
- The activity shall incorporate the noise attenuation measures specified in the Acoustic report submitted with the application (these include sound barrier walls, auto wash self closing door, vacuum cleaners to be equipped with acoustic silencers or enclosures, air conditioning units to be placed western elevation of the service station shop, not on the roof, car wash plant room to be masonry construction, car wash and service station not to operate outside the hours of 7 am to 10 pm Monday to Saturday, and 8 am to 10 pm Sundays and Public Holidays, and no deliveries or use of mechanical plant to occur outside these hours of operation)
- A further acoustic assessment is to be completed prior to the installation of noise generating and attenuating equipment and submitted to the satisfaction of Council prior to release of occupation certificate. This noise assessment is to take account of the equipment being installed on the premises, and ensure that the noise criteria identified in the initial acoustic report are met.

Contamination remediation works to bring the site to a commercial standard are underway at the site. Conditions of consent have been provided from Council's Environment and Health Officer re-enforcing when the contamination remediation must be completed – these conditions can be imposed should the application be approved.

c) Engineer's Comments

The proposed development is considered acceptable to Council's Development Engineer, subject to standard conditions of consent.

6. DISCUSSION OF MAJOR ISSUES ARISING

While the site is currently zoned 3(b) Special Business under WLEP 1989, the site and the surrounding block bounded by Argyle, Yarrowa, Mann and Willow Streets is proposed to be rezoned Medium Density Residential R3 under the exhibited Draft WLEP 2009. Therefore the site is within a precinct which is intended to undergo a transition to medium density residential uses, and the impacts of the proposed service station and carwash upon the existing adjoining residential area and the future medium density residential area (including hours of operation, noise, signage, lighting, proposed built form and landscaping) are key considerations in the assessment of the application.

a) Hours of Operation and Noise

The application originally sought approval for 24 hour operation. In response to concerns raised about adjoining residential amenity, the applicant has reduced proposed hours of operation to 7 am to 10 pm Monday to Saturday, and 8am to 10pm Sundays and Public Holidays. These reduced proposed hours are considered acceptable, subject to the recommendations of the acoustic report being adhered to. The recommendations of the acoustic report can be reinforced by condition of consent, as discussed in Section 6(c) of this report.

b) Signage and Lighting

Proposed signage complies with the numerical requirements of Council's Sign Code DCP33. The proposed illuminated signage comprises two 4.5 metre high freestanding signs, and three illuminated signs attached to the fascia of the proposed building. Illumination of the signage is proposed to finish at 10 pm 7 days. This is consistent with other commercial premises in Moss Vale, and a reasonable compromise between the commercial and residential land uses. A condition of consent should be imposed requiring that the lighting from the service station not cause light spillage problems to nearby residential properties, and that lighting attached to the building be directed downwards to minimise light spill.

c) Proposed Built Form and Landscaping

The length of Cypressus Torulosa along the western boundary of the site is a visually prominent "entry feature" to the residential area accessed via Willow Drive. The proposed development seeks approval to remove approximately two thirds of the length of Cypressus Torulosa from the western boundary of the site, to be replaced with a proposed 1.5 metre wide landscape strip and 2 metre high sound barrier wall / fence setback 1.5 metres from the western boundary of the site.

To soften the appearance of the development and the 2 metre high sound barrier wall / fence when viewed from Willow Drive, a solid screen of landscaping similar to the existing cypresses should be provided within the landscape strip. This solid screen of landscaping will screen the proposed 2 metre high sound barrier wall / fence which can be setback 1.5 metres from the western boundary of the site. Plantings should be a minimum 5 metres mature height to screen the proposed buildings when viewed from Willow Drive. A conifer species (which has less invasive roots) can be accommodated within this 1.5 metre width landscape strip. Underground root barriers can be incorporated at construction stage to further protect the proposed building. This can be addressed by condition of consent.



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REPORT OF DIRECTOR ENVIRONMENT & PLANNING

This species and height of landscaping should also be required immediately adjoining the western, southern and eastern sides of the Plant Room and Vacuum Bay areas, as this will soften the appearance of these areas, without restricting sightlines. This can also be required by condition of consent.

The southern elevation of the proposed service station building facing Argyle Street is a blank masonry wall, with no windows or glazing. To soften the appearance of this southern elevation, additional landscaping can be provided within the front 7 metre setback area (between the proposed pylon sign and the southern elevation) to replace approximately 18 square metres of proposed hardstand area. This landscaped area between the proposed pylon sign and the southern elevation can contain 5 metre minimum mature height plantings, similar to that required along the western boundary, without affecting sight lines for vehicles exiting the site, and without restricting the visibility of the 4.5 metre high pylon sign. This landscaping would screen any opportunities for signage on the southern façade of the building, but this is more than compensated for by the two 4.5 metre high pylon signs and signage on the large forecourt canopy which covers the bowser fillpoint area. This would provide additional consistency in plantings across the site, while also improving the appearance of the development to Argyle Street. This additional planting can be required by a condition of consent.

The proposed built form is typical functional “service station” in its design and the proposed 7 metre setback to Argyle Street and the 1.5 metre setback to Willow Drive is considered acceptable. To require architectural embellishments to “improve” its appearance is considered unnecessary. However, increased landscaping as discussed above, and the replacement of proposed painted concrete blocks with a painted rendered exterior are considered appropriate and practical improvements, which can be required by conditions of consent.

d) Future Development

The rear third of the 3,996 m² site is shown on the proposed development site plan as “Future Development”. No details of “future development” have been provided with this application, therefore a condition of consent should be imposed requiring that any future development of the site is subject to separate development application and assessment by Council.

MANAGEMENT PLAN ISSUES OR IMPLICATIONS
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N/A

POLICY IMPLICATIONS

N/A

BUDGET IMPLICATIONS

N/A

ECOLOGICAL SUSTAINABLE DEVELOPMENT ISSUES

(i) Environmental Factors

Contamination remediation works to bring the site to a commercial standard are underway at the site. Conditions of consent have been provided from Council's Environment and Health Officer re-enforcing when the contamination remediation must be completed – these conditions can be imposed should the application be approved.

(ii) Social Factors

N/A

(iii) Economic Factors

The provision of a second service station in Moss Vale will provide increased competition, however it should be noted that this is not a matter for consideration under Section 79C of the Environmental Planning and Assessment Act 1979.

7. CONCLUSION

The proposed application is considered acceptable in terms of S79C EPA Act 1979, subject to appropriate conditions of consent including:

- SCA's15 conditions of consent addressing issues such as treatment of contaminated runoff, gross pollutant traps, water reuse, rainwater tanks, emergency liquid spills, and erosion and sediment control measures;
- Condition requiring submission of a structural report at the applicant's expense examining the adjoining eastern building prior to commencement of works, and again after completion of works;
- The siting of the 3 metre high acoustic fence near the northern boundary, so that the line of Torulosas along the northern boundary can be retained;
- Compliance with Australian Standard 1940 : Storage and Handling of Flammable and Combustible Liquids;
- Noise from the activity must not exceed the noise criteria identified in the acoustic report that was submitted with the application;
- The activity shall incorporate the noise attenuation measures specified in the Acoustic report submitted with the application (these include sound barrier walls, auto wash self closing door, vacuum cleaners to be equipped with acoustic silencers or enclosures, air conditioning units to be placed western elevation of the service station shop, not on the roof, car wash plant room to be masonry construction, car wash and service station not to operate outside the hours of 7 am to 10 pm Monday to Saturday, and 8 am to 10 pm Sundays and Public Holidays, and no deliveries or use of mechanical plant to occur outside these hours of operation);
- A further acoustic assessment is to be completed prior to the installation of noise generating and attenuating equipment and submitted to the satisfaction of Council prior to release of occupation certificate. This noise assessment is to take account of the equipment being installed on the premises, and ensure that the noise criteria identified in the initial acoustic report are met;
- Lighting from the service station not cause light spillage problems to nearby residential properties, and that lighting attached to the building be directed downwards to minimise light spill;



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- Solid screen of landscaping minimum 5 metres mature height along the western boundary to screen the proposed 2 metre high sound barrier wall / fence and screen the proposed buildings when viewed from Willow Drive and immediately adjoining the western, southern and eastern sides of the Plant Room and Vacuum Bay areas and additional landscaping within the front 7 metre setback area (between the proposed pylon sign and the southern elevation) to replace approximately 18 square metres of proposed hardstand area;
- Provision of root barriers to protect proposed buildings;
- Replacement of proposed painted concrete blocks with a painted rendered exterior; and
- Any future development of the site is subject to separate development application and assessment by Council.

ATTACHMENTS

There are two (2) attachments to this report which have been circulated separately:

1. Location Plan
2. Site Plan

RECOMMENDATION

THAT LUA 09/0227 for the demolition of the existing service station, and the erection of a new service station with car wash facilities at Lot 1 DP 531671, 609 Argyle Street, Moss Vale be approved subject to appropriate conditions to the satisfaction of the Director Environment & Planning.

(Voting on the Motion)



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REPORT OF DIRECTOR ENVIRONMENT & PLANNING

Environmental Sustainability

o-EP4 Proposed Section 96 Modification to 2 Storey Motel at Boronia Street, Bowral

REF: DBSM

LUA05/1340

Reporting on proposed S96 modification at existing 2 storey motel and Clubhouse at Lots 3 and 4 DP238798, Boronia Street, Bowral.

REPORT

1. BACKGROUND

LUA05/1340 for a 2 storey 85 room motel and extensions to existing clubhouse at Lots 3 and 4 DP238798, Boronia Street, Bowral was considered by Council and the Works and Planning Committee at their meetings of 1 and 8 March 2006.

Development consent for the proposed development was granted 16 March 2006, containing 53 conditions of consent, including conditions addressing golf ball fencing, indemnity insurance for Council, noise, lighting, site consolidation, drainage, boundary fencing / landscaping and Sydney Catchment Authority and Rural Fire Service conditions.

In November 2008 Council considered a modification which reduced the height of the motel development from 3 storeys to 2 storeys, modified the proposed footprint of the building, reduced on site carparking from 157 to 153 spaces, and reduced proposed accommodation rooms from 85 to 81.

The motel building contains the same uses as previously approved, including day spa, hair, beauty and massage facilities.

2. SECTION 96 MODIFICATION

Council is in receipt of a further modification the content of which is reproduced below:

Ground & First Floor Hotel Room plans, elevations and sections – Drawings 3, 4, 8, 14 & 16

- *Enclosure of the deck to the north of the Pool area. This has an impact on adjoining properties as the deck previously shown was intended to have a 1.8m wall surrounding it. We have simply “extended” this 1.8m wall to fully enclose the deck area.*
- *Reconfiguration of internal planning.*

Basement Club Plan – Drawing 7

- *Reconfiguration of internal planning.*
- *Extension of the Pro Shop “underneath” the ground floor club over.*
- *Addition of miscellaneous Store Rooms under the previously approved ground floor areas.*

Ground Floor Club – Drawing 5

- *Reconfiguration of internal planning.*
- *Deletion of external Lounge/Dining deck on the eastern (golf course) side of the building.*
- *Enclosure of part of the previously approved external colonnade area on the western (carpark) side.*
- *Removal of the roof over the south eastern Lounge Terrace area.*

First Floor Club – Drawing 6

- *Removal of 5 hotel rooms*
- *Reconfiguration of internal planning.*

We have also included the various sections, elevations and roof plan for the club that reflects the above changes.

Carparking Areas & Landscaping Drawing – Drawings 26, 27 & 28

- *Minor adjustments to carparking to improve landscaping areas.*

The plans relating to the modification are reproduced in **Attachment 1**.

3. THE SITE

The site (Lots 3 & 4 DP 238798) is approximately 2.56 hectares in area, and is located to the north east of Boronia Street and west of the Bowral Country golf course land (see **Attachment 1**).

The site contains the Bowral Country clubhouse, carpark and putting green. The site is accessed via a right carriageway over SP 49542, with an entry at the corner of Boronia Street approximately 150 metres north of the Boronia Street / Centennial Road intersection.

4. REFERRALS TO STATE GOVERNMENT AGENCIES

As the proposed modifications relate to internal changes the Rural Fire Service and the Sydney Catchment Authority have not been consulted.

With the previous modifications, both agencies had no further requirements as those changes did not substantially alter the building.

5. PUBLIC CONSULTATION

Neighbours have not been notified as the proposed modifications will not alter the exterior of the building.



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6. INTERNAL STAFF COMMENTS

The modification has no engineering implications, and Councils Building Assessor makes the following comments:

“The BCA requirements have been addressed with regard to egress, fire ratings and fire fighting provisions in the building. The original consent and the plans submitted cover these requirements.

A new water main has been provided to the site from an adjacent water main, which has enhanced the water pressure and availability of water to not only this building, but to the adjoining properties as well. An easement has been created through the subject property to allow passage of the new water main.

Condition 5 of the consent relating to golf ball fencing, should be removed as this requirement has been addressed in a detailed submission and with realignment of the holes in the vicinity of the hotel and clubhouse to eliminate the need for golfers to drive the ball in this area.”

7. CONCLUSION

The proposed modification is considered acceptable in terms of Section 79C of the Environmental Planning and Assessment Act 1979 and approval is recommended.

The existing conditions of development consent do need to be amended to reflect comments regarding Condition 5.

MANAGEMENT PLAN ISSUES OR IMPLICATIONS
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Nil

POLICY IMPLICATIONS

Nil

BUDGET IMPLICATIONS

Nil

ECOLOGICAL SUSTAINABLE DEVELOPMENT ISSUES

(i) Environmental Factors

Nil

(ii) Social Factors

Nil

(iii) Economic Factors

Nil



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ATTACHMENTS

There are no attachments to this report. However, a set of plans depicting the internal modifications will be available for Councillors' perusal in the Councillors' Room prior to the meeting. Interested members of the public may also view the plans at the Customer Services Counter at the Civic Centre, Moss Vale.

RECOMMENDATION

THAT the application to modify development consent LUA2005/1340 for a 2 storey motel on Lots 3 and 4 DP 238798, Boronia Street, Bowral, be approved subject to the appropriate conditions of consent to the satisfaction of the Director, Environment and Planning.

(Voting on the Motion)



Environmental Sustainability

o-EP5 Subdivision Lots 1 and 2 DP1022930, Oxley Drive Mittagong

REF: DBSM

LUA09/1028

Reporting on the subdivision of Lots 1 and 2, DP1022930, Oxley Drive Mittagong. The application is accompanied by a SEPP1 Objection.

REPORT

The application involves the subdivision of two lots to create:

- Lot 1, which would have an area of 4,940m², and contain the existing dwelling-house; and
- Lot 2, which would be vacant and have an area of 3,570 m².

The existing lots are:

- Lot 1 DP 1022930, with an area of 5,633 m² and the existing dwelling-house; and
- Lot 2 DP 1022930, a vacant area of 2,887 m².

Attachment 1 shows the proposed subdivision layout. **Attachment 2** shows the proposed layout with the locations of a new garage on Lot 1, and a new dwelling-house and garage on the vacant Lot 2 which are the subject of separate development application currently being assessed (LUA2009/1025 and LUA2009/1026).

The application was lodged as a “boundary adjustment” but it is a subdivision because two new lots are being created.

STATUTORY

The site is currently zoned Residential 2(a1) in Wingecarribee Local Environmental Plan 1989 (‘WLEP 1989’), and clause 17(2)(a) provides for a minimum lot size of 4000 m².

The prime objective of this zone is to retain and provide a low density residential character in an environmentally sensitive area.

The application is accompanied by a written objection under SEPP1 which seeks a departure from this development standard.

The objection is reproduced in Attachment 3.

DRAFT WINGECARRIBEE LOCAL ENVIRONMENTAL PLAN 2009

The draft plan proposes that the subject site be zoned R5 – Large Lot Residential and the same subdivision standard would apply.



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REFERRALS TO COUNCIL COMMITTEES

The application was not referred to any Council Committees.

GOVERNMENT AGENCIES

The application does not require referral to Government Agencies.

PUBLIC CONSULTATION

The application was not notified as the proponent owns the surrounding land.

The placement of a dwelling on the proposed lot will not have any amenity/visual impacts on adjoining properties due to the flat topography.

INTERNAL STAFF COMMENTS

Access from Oxley Drive is already in place and therefore there are no engineering issues.

PLANNING ISSUES

As no legal mechanism exists under the WLEP 1989 for the creation of an allotment under 4,000 m², the application triggers the need for a SEPP1 Objection.

While the departure from the development standard is greater than 10%, the concurrence of the Director General, Department of Planning, is not required and the application can be determined by Council.

It is noted that the acquisition of land from the properties for road widening has totalled about 275 m² and this is a relevant consideration in the extent of the departure sought from the development standard.

SEPP 1 OBJECTION

In order to assess the submitted SEPP1 Objection, Council's SEPP1 Objection Fact Sheet calls for the following threefold test:

- i.
 - Is the standard a development standard?
 - Is the objection well founded?
 - Is granting consent consistent with the aims of SEPP1?
 - ii. Additionally, the applicant needs to understand the planning objectives of the locality and the planning objective behind the development standard.
 - iii. The applicant must demonstrate why a particular standard is unreasonable and unnecessary.
 - iv. Establishing the fact that a development will not have any adverse environmental consequences does not necessarily determine that a standard is unreasonable or unnecessary.
-



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- v. Establishing the fact that existing development in an area generally does not comply with a development standard does not mean that the standard is unreasonable or unnecessary when applied to future development.
- vi. If a departure from a standard is likely to lead to similar departures from the standard for future development in the locality, the result will likely undermine the planning objectives for the locality. In this case, the development should be refused.

The principle arguments in supporting the SEPP1 Objection are that the new lot will offer:

- A house site which does not involve significant impacts on the existing landscape;
- New boundaries respect existing vegetation hence the irregular boundary; and
- Proposed Lot 2 achieves an area closer to the 4,000 m² standard than an existing lot (ie 3,570 m² v 2,887 m²).

The application is consistent with the purpose of the standard in that no new entitlements are being created, and the application will not undermine the planning objectives through similar proposals, as the circumstances giving rise to the application are unique for the site, that is an existing entitlement is being shifted and enlarged to facilitate a more appropriate development site on the vacant lot.

MANAGEMENT PLAN ISSUES OR IMPLICATIONS
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Nil.

POLICY IMPLICATIONS

Nil.

BUDGET IMPLICATIONS

Nil.

ECOLOGICAL SUSTAINABLE DEVELOPMENT ISSUES

(i) Environmental Factors

The erection of a dwelling-house on proposed Lot 2 is unlikely to have any adverse environmental impact.

(ii) Social Factors

There is unlikely to be any adverse social impact as the number of dwellings in this locality would not change.

(iii) Economic Factors

It is unlikely that the proposal would have any adverse economic impact.



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CONCLUSION

In considering the SEPP1 application, Council needs to consider the principles outlined earlier in the report.

The application has addressed the underlying planning objections of the Zone, in that:

- a) No additional entitlements are created; and
- b) The subdivision is unlikely to result in adverse environmental consequences, and indeed the proposal will facilitate the retention of existing vegetation.

The proposed subdivision is more consistent with the objectives of the zone because it would result in lots with areas that are more typical of the zone than currently exists, and increasing the area of an existing smaller lot from 2,887 m² to 3,570 m² will facilitate a better outcome by at least enabling a more appropriate dwelling location on Lot 2.

This outcome would not be achievable under the current lot configuration.

ATTACHMENTS

There are three (3) attachments to this report which have been circulated separately:

1. Proposed layout
2. Proposed layout with proposed buildings
3. SEPP No. 1 objection

RECOMMENDATION

THAT development application LUA 2009/1028 for the subdivision of Lots 1 and 2 DP 1022930 Oxley Drive, Mittagong be approved subject to standard conditions to the satisfaction of the Director Environment and Planning.

(Voting on the Motion)



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REPORT OF DIRECTOR ENVIRONMENT & PLANNING

Environmental Sustainability

o-EP6	Demolition of Garage and Construction of New Garage/Store and Entry Gates, St Thomas Aquinas Presbytery, Lots 1, 2 & 3 DP9661, Bendooley Street, Bowral
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REF:	DBSM
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LUA09/0955

Reporting on a development application seeking development consent for the demolition of a garage and construction of a new garage/store and entry gates

REPORT

1. **BACKGROUND**

Council received an application seeking development consent for the demolition of a garage and construction of a new garage/store and entry gates at the subject premises known as the Saint Thomas Aquinas Presbytery.

The site is identified as being in the existing Bowral Heritage Conservation Area and it was resolved by Council at its meeting of 28 October 2009 that the application be referred to Council for determination.

2. **DESCRIPTION OF PROPOSED DEVELOPMENT**

The proposed development comprises the following works:

- Demolition of an existing brick and tiled roof garage/store room that has shown signs of deterioration through cracking in the external brickwork and is no longer large enough to serve the needs of the occupants. The existing building is constructed of identical external materials to the presbytery.
- Construction of a new garage/storeroom that is proposed to be sited over the existing structure and a detached metal garden type shed. The proposal is to clad the new building in bricks and tiles that match the existing presbytery. The building will be 95 m² in floor area, 4.7 m in overall height to ridge, and contain a WC and wash sink to assist when the Church is conducting markets or having yard works carried out. (see attached plans and elevations)
- Construction of automatic electric metal gates across the driveway at its boundary to Bundaroo Street. The gates are proposed at 1.8 m high which is comparable to the height of the adjoining hedges.

3. **STATUTORY CONSIDERATIONS**

Wingecarribee Local Environmental Plan 1989 (LEP)

The subject site is zoned 2(a) residential and the subject proposal is permissible with Council consent.



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Subject to the Local Environmental Plan ('LEP') and associated maps the site is identified as being part of the Bendooley Street Heritage Site and Bowral Heritage Conservation Area. In this regard the matter was referred to Council's Heritage working group and to Council's Senior Planner for comment on the proposals effects on the heritage value of the site, the buildings, and other sites in the vicinity.

4. REFERRAL TO COUNCIL COMMITTEES

In accordance with Council's policy the proposal was referred to Council's Heritage Working Group for comment. No comments were received.

5. INTERNAL STAFF COMMENTS

It was considered by Planning and Building Surveying staff that the application be deferred, seeking amendment and clarification on the following matters:

- The submission of an appropriate heritage impact statement in compliance with the requirements of the LEP. The heritage impact statement has been lodged and considered satisfactory by Council's staff.
- Replacement of the proposed roller doors with a more suitable design. This has been amended on the plans and considered as satisfactory.
- Insurance that the proposed external materials will match the existing materials of the existing garage and presbytery. It has been confirmed on the plans and in discussion with the applicant and builder.
- Specification for the effective management of roof waters. This has been included on the plans and considered as satisfactory.
- Amended plans detailing the potential for the relocation of internal household drainage. This has now been included on the plans.

6. CONCLUSION

After a full assessment of the proposal and subsequent amendments and addition information it is considered that the proposal satisfies the requirements of the LEP, and it is considered that the works will not cause any significant loss of heritage or decrease the heritage value of the site and the rest of the heritage conservation area.

MANAGEMENT PLAN ISSUES OR IMPLICATIONS
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Nil

POLICY IMPLICATIONS

Nil

BUDGET IMPLICATIONS

Nil



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ECOLOGICAL SUSTAINABLE DEVELOPMENT ISSUES

(i) Environmental Factors

Nil

(ii) Social Factors

Nil

(iii) Economic Factors

Nil

ATTACHMENTS

There is one attachment to this report which has been circulated separately:

1. Site and Floor Plans

RECOMMENDATION

THAT LUA 09/0955 for the demolition of an existing garage and the construction of a new garage and store at St Thomas Aquinas Presbytery, Lots 1, 2 and 3 DP 9661, LUA 2009/0955 Bendooley Street, be approved subject to standard conditions of consent relating to residential development.

(Voting on the Motion)



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REPORT OF DIRECTOR ENVIRONMENT & PLANNING

o-EP7 Moss Vale Enterprise Zone - Berrima Road Streetscape Scheme

REF: DBSM

5602/14

Reporting on a proposed scheme for street tree planting and front setback landscaping in the Moss Vale Enterprise Zone along Berrima Road, from Gibbons Road to Brookdale Road, and on a proposed entry statement.

REPORT

Council will be aware that a number of new developments are underway within the Moss Vale Enterprise Zone along Berrima Road between Lytton/Gibbons Roads and Brookdale Road (See **Attachment 1**). These include two (2) industrial subdivisions, which are currently being completed and the construction of industrial units along Berrima Road and in Dairy Close.

With this onset of development, local Landscape Architects, Chris and Charlotte Webb were commissioned to prepare a concept streetscape scheme for the section of Berrima Road to Brookdale Road to:

- create an attractive industrial environment to encourage further development;
- improve the entry into the Moss Vale Township along a Main Road; and
- provide guidance to developers for street tree planting as well as landscaping within the frontages of their properties.

The project also include a design for an entry sign, which would initially be constructed in the splayed corners at the Lytton/Gibbons Roads intersection with Berrima Road, and possibly at other key locations within the Enterprise Zone.

The following extract is from the project report:

AIM

The aim of the Moss Vale Enterprise Zone Streetscape project is to enhance and beautify the western entrance to the township of Moss Vale. The project will also provide an attractive environment for this Moss Vale light industrial area by reducing the visual impact of the built environment on the streetscape.

The Streetscape design provides a thematic scheme for Berrima Road, with defined characters for each of the existing and proposed side roads. The streetscape project extends on either side of Berrima Road from Gibbons and Lytton Road to Brookdale Road and the Moss Vale Saleyards.

STREETSCAPE

1. **Berrima Road** – The entire streetscape from Lytton/Gibbons Road intersection to Brookdale Road is planted with spring flowering, autumn colouring pears, crab apples and plums. The southern side is planted to narrow growing upright pears, characteristic of the streetscapes throughout Moss Vale including Argyle Street (main street). The northern side is planted to small growing crab apples suitable near the

power lines which extend from Lytton Road to Brookdale Rd. Purple foliated flowering plums are planted at each intersection to indicate the secondary roads. A 2.4 metre wide pedestrian path is also proposed to run along the northern side of Berrima Road.

2. **Lytton Road** – The western side of Lytton Road is closely planted with Claret Ash to reduce the visual impact of the light industrial area and provide a sense of separation between the residential and industrial zones.
3. **Gibbons Road** – The western side of Gibbons Road is planted to an avenue of golden ash to compliment the existing English Oaks along the new subdivision to the east. The Ash are well spaced between the existing street lights, and set back from the road verge to allow for a future pedestrian path.
4. **New Road** (currently unnamed) – Flowering cherries are planted evenly on either side of the new road between each entrance drive.
5. **Old Dairy Close** – The entire street is planted to purple foliated pink flowering plums suitable for planting under the multitude of powerlines along this road. The existing Ash planted along the western side under the powerlines should be replaced with the same plums to reduce future maintenance of trees growing through powerlines.
6. **Future By-pass** (adjacent to the Cemetery) – the entrance to the future bypass is denoted with the setback planting of small growing flowering plums, typical of each intersection planting along Berrima Road.

SIGNAGE

The proposed industrial-style sign is designed to reflect the industrial heritage of Berrima Road. The sign is constructed from concrete and rust finished corten steel. A stencil relief of the Moss Vale Waratah logo is laser cut into the steel. Signs are proposed to be placed at the intersection of Lytton/Gibbon Roads and Brookdale Road.

The report in full is included in **Attachment 2**, and this includes a planting schedule for the footpath reserves, and creates a distinction between the Main Road streetscape, and that of the “side” roads, such as Dairy Close. Also included are planting guidelines for the 3 metre landscape corridors usually required within properties along road frontages.

It is noted that the Concept Plan also provides for a possible path/cycleway within the wider footpath reserve on the north eastern side of Berrima Road.

The overall Concept Plan, from Lytton/Gibbons Roads to Brookdale Road, is included in **Attachment 3**, while **Attachments 4** and **5** are closer views.

Attachment 6 shows the proposed entry sign.

Full size colour copies of these plans will be provided to Councillors separately.



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MANAGEMENT PLAN ISSUES OR IMPLICATIONS

Nil

POLICY IMPLICATIONS

Council could adopt a streetscape scheme as its Policy for street and landscape planting, and for entry signage, for the Enterprise Zone.

BUDGET IMPLICATIONS

It is not expected that the proposed scheme would have any significant budgetary implications to Council.

Council may wish to undertake some works, such as the entry sign(s), and costings for these would be included in a further report to Council early next year.

ECOLOGICAL SUSTAINABLE DEVELOPMENT ISSUES

(i) Environmental Factors

It is considered that an overall streetscape scheme would be an attractive feature of the Enterprise Zone and significantly improve the visual environment.

(ii) Social Factors

It is considered that an attractive work environment has social benefits.

(iii) Economic Factors

The early implementation of a streetscape scheme and entry sign to identify the Enterprise Zone may encourage further development there.

CONCLUSION

The purpose of this report is to suggest to Council that, with development beginning to occur on Berrima Road, it is appropriate for an overall streetscape scheme to be put in place, and the reasons for this have been described elsewhere in this report.

If Council agrees with this notion, and with the Concept Plan which has been prepared as a first step, the next stage would be consultation with the various external interested parties, such as Chambers of Commerce and Industry and the Roads & Traffic Authority ('RTA'), as well as internally within Council.

Following this, and early next year, a further report would be presented to Council for its consideration of a final Concept Plan.

This report would also include costings for some of the works that Council itself may wish to undertake such as, for example, the entry sign(s).



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ATTACHMENTS

There are six (6) attachments to this report which have been circulated separately:

1. Locality map
2. Project report with planting schedule and guidelines
3. Overall concept plan
4. Concept plan – southern section
5. Concept plan – northern section
6. Proposed entry sign

RECOMMENDATION

THAT the Director Environment and Planning undertake consultation with the various interested stakeholders in respect of the draft Concept Plan for the Berrima Road streetscape as described in the report AND THAT following consultation, a further report be presented to Council early in 2010.

(Voting on the Motion)



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REPORT OF DIRECTOR ENVIRONMENT & PLANNING

Environmental Sustainability

o-EP8 Draft DCP for Berrima Village

REF: SPM

5700/14

The purpose of this report is to present to Council a Draft Development Control Plan ('DCP') for Berrima Village for endorsement to be placed on public exhibition for comment.

REPORT

1. BACKGROUND

Under the provisions of the Environmental Planning and Assessment Act 1979, only one development control plan made by the same relevant planning authority may apply in respect of the same land. In other words ALL planning controls and regulations, other than those in the Local Environmental Plan ('LEP'), applicable to a parcel of land must be contained in a single document. The interpretation of this provision could mean a single DCP for the whole of the Shire or a suite of Development Control Plans ('DCPs') applying to individual or groups of Towns or Villages, particular zoned land, precincts or specific sites.

At present Council has in excess of 60 separate DCPs with a variety of applications including town areas (e.g. Historic Berrima), control based (e.g. Parking Controls), or land use based (e.g. Residential Development).

Due to the variety in the Shire's Towns and Villages, it is considered desirable to have a suite of DCPs relating to either individual towns and villages, or a group thereof which have similar characteristics. Strategic Planning staff have prepared or are in the process of preparing and/or exhibiting DCPs for all the villages and towns of the Wingecarribee Shire as well as the rural spaces between.

2. DRAFT BERRIMA DCP

Although Berrima is one of many towns/villages in the Wingecarribee Shire with a strong heritage character, it is unique in that it is still readily identifiable as a Georgian Village with few detracting elements, particularly in the core village area along the central spine of the Old Hume Highway. It is a village of high heritage integrity and value to both the Wingecarribee Shire and New South Wales.

The Berrima Village is a Conservation Area under the Wingecarribee Local Environmental Plan 1989 ('WLEP 1989') and is carried through under the Draft Wingecarribee Local Environmental Plan 2009 ('DWLEP 2009'). Under DWLEP 2009 and in addition to the existing Heritage Conservation Area, there is now a Landscape Conservation Area which covers the visual catchment area surrounding the village. The village and its surrounds contain many individual heritage items. It is also noted that the Berrima Village is already covered by an existing Development Control Plan, *Wingecarribee Development Control Plan NO 14 – Historic Berrima*.

In this heritage context, the preparation of the new Draft Berrima DCP (attached) was approached somewhat differently to the preparation of the other DCPs. Given the dominant



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Georgian character and heritage significance of the Berrima village, many of the development guidelines and controls apply to all land within the village. To ensure that new development and alterations and additions in the village are sympathetic to heritage character and values, the DCP is descriptive of the characterising elements of Georgian period building and development, and prescriptive in its controls to ensure that heritage values of the village are retained and enhanced.

The Berrima DCP applies to all land within the Berrima Heritage Conservation Area with the addition of an area of Large Lot Residential (R5) and Public Recreation (RE1) zoned land north of Apple Street. This means that there are some significant areas of Environmental Management (E3) Environmental Living (E4) and Environmental Conservation (E2) zoned land included within the DCP. This differs from the other towns and villages DCPs which apply mainly to residential and commercial zoned land. Controls relevant to the remainder of the Berrima Landscape Conservation Area will be contained within the Rural Lands DCP to be considered at a later date.

3. SUMMARY OF THE DRAFT DCP

The main features of the draft DCP include:

- the Plan will apply to all land located within the Berrima heritage conservation area as well as an area of Large Lot Residential (R5) and Public Recreation (RE1) zoned land north of Apple Street. The DCP includes residential, business, environmental and public zoned land.
- Part A of the Plan applies to all land and includes provisions relating the statutory provisions of the DCP, Heritage Principles, Landscaping, Ecologically Sustainable Development, Flooding, Bushfire Hazard and Tree Preservation provisions.
- Part B of the plan covers controls relating to development on Business-zoned land.
- Part C of the Plan covers controls relating to development on Residential-zoned land.

4. CONSULTATION ALREADY UNDERTAKEN

The process of preparing a new DCP for Berrima commenced with an initial Workshop held in Berrima on 1 December 2008. The Workshop was attended by over 25 participants representing all active groups in Berrima. The workshop focused on identifying the good aspects and weak points of the existing DCP 14 that needed further attention.

The new Draft Berrima DCP has also had significant input by Council's Heritage Adviser who in doing so has met and received feedback from committee members of the Berrima Residents Association. Council staff have also had informal discussions with the Berrima Residents Association on the content of the proposed new Draft DCP.

MANAGEMENT PLAN ISSUES OR IMPLICATIONS
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The preparation of new Development Control Plans is consistent with the Council's Management Plan.



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POLICY IMPLICATIONS

The Development Control Plan once adopted will, in association with DWLEP 2009, become the primary planning controls for development within Berrima Village.

BUDGET IMPLICATIONS

The Development Control Plan has been prepared by Council's Strategic Planning Branch with significant input from Council's Heritage Adviser as well as members of the Berrima community. In addition to the Heritage Adviser's time, there will be some expenses in the public consultation process.

ECOLOGICAL SUSTAINABLE DEVELOPMENT ISSUES

(i) Environmental Factors

The controls contained within the Berrima Village DCP will ensure that the historic character of the village will be retained whilst at the same time ensuring that new development embraces the principles of sustainable development.

(ii) Social Factors

The controls within the Berrima Village DCP will provide opportunities for residential development which is in keeping with the character of the village. The business zoned area will also provide opportunities for employment from within the town itself as well as from within the Shire.

(iii) Economic Factors

The commercial area of the town has been recognised and zoned to ensure an appropriate clustering of business thus contributing to the ongoing viability of the town for residents as well as visitors.

ATTACHMENTS

There is one (1) attachment to this report, which has been circulated separately:

1. Draft Berrima Village DCP

5. CONCLUSION

The Draft Berrima Village DCP will provide all the necessary controls for development within the village with due consideration to the character of the area and its high heritage values.

The exhibition of the Draft DCP will be advertised in the local newspaper. A public information session will be held and meeting arranged with the Berrima Residents' Association, Berrima Town Life Group and Berrima Business Houses.

In line with recent decisions by Council on the exhibition period for other DCPs, the DCP will be exhibited until the end of February 2010.



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RECOMMENDATION

THAT the draft Wingecarribee Development Control Plan for Berrima Village be endorsed for the purpose of public exhibition AND THAT the required public exhibition be undertaken to the end of February 2010 in accordance with the Environmental Planning and Assessment Regulations.

(Voting on the Motion)



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REPORT OF DIRECTOR ENVIRONMENT & PLANNING

Environmental Sustainability

o-EP9 Draft LEP 133 – Removal of Seniors Living from LEP 1989

REF: SPM

5800/19

To report on the public exhibition of draft Local Environmental Plan 133 'draft LEP 133').

REPORT

Local Environmental Plan Amendment 125 to Wingecarribee Local Environmental Plan ('WLEP') (Renwick - gazetted 20 July 2007), resulted in the inclusion of *seniors housing* within the WLEP dictionary and, consequently, *seniors housing* became permissible with consent in zones 1(a) (Rural "A"), 1(b) (Rural "B"), 1(c) (Rural (Smallholdings), 2(c) (Village or Township) and 3(a) (Business). *Seniors housing* remains prohibited in all other zones.

At its meeting on 8 July 2009, Council resolved to adopt draft LEP 133, as prepared, and to seek permission from the Department of Planning to proceed with the adopted draft. On 14 September, 2009, the Director-General of the Department of Planning gave Council permission to proceed with the draft LEP.

Public exhibition of the draft LEP commenced on Wednesday 21 October 2009 and finished on Tuesday 3 November 2009. The exhibition was notified in the Southern Highland News of Wednesday 21 October and on Council's website on its 'What's On Exhibition' page for the duration of the exhibition. Exhibition material was available on Council's website as well as at Council's Customer Service Counter and at the Moss Vale and Bowral Libraries for the duration of the exhibition. One submission was received, supporting the draft LEP.

MANAGEMENT PLAN ISSUES OR IMPLICATIONS

The draft amendment to Wingecarribee Local Environmental Plan 1989 ('WLEP 1989') is consistent with the Council's Management Plan.

POLICY IMPLICATIONS

The proposed amendment will preserve the WLEP 1989's stated objectives without affecting permitted land uses on the Renwick site. Council's policy in relation to seniors housing is reflected accurately in the provisions of the Draft Wingecarribee Local Environmental Plan 2009 ('DWLEP 2009').

BUDGET IMPLICATIONS

Due to the unintended consequences of the Renwick LEP, the current provisions of the WLEP 1989 permits *Seniors Housing*, with consent, in several zones where such development would be contrary to the objectives of those zones. This has already resulted in one application for such development which has been refused. Should there be further applications, Council may find it necessary to defend its position in the Land and Environment Court, with associated cost implications.



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 25 November 2009

REPORT OF DIRECTOR ENVIRONMENT & PLANNING

ECOLOGICAL SUSTAINABLE DEVELOPMENT ISSUES

(i) *Environmental Factors*

The current provisions of the WLEP 1989 have the potential to undermine the stated objectives of some of the zones. The draft amendment will remove this potential conflict.

(ii) *Social Factors*

The affected zones are often poorly located with regard to the provision of social and medical facilities and services for seniors housing.

(iii) *Economic Factors*

The restriction of *seniors housing* development to the Renwick site ensures that such development can be adequately and efficiently serviced.

CONCLUSION

The public exhibition of the draft LEP did not generate any objections.

ATTACHMENTS

There is one (1) attachment to this report:

1. The Planning proposal as exhibited.

RECOMMENDATION

1. THAT Council adopt the Planning proposal as exhibited in accordance with the 'Guide to Preparing a Local Environmental Plan' issued by the Department of Planning.
 2. THAT Council resolve to submit the Planning Proposal to the Department of Planning requesting Parliamentary Counsel draft the Local Environmental Plan Instrument.
 3. THAT Council advise the submission maker of its decision.
-

(Voting on the Motion)



ATTACHMENT 1

Planning Proposal

LOCAL GOVERNMENT AREA: WINGECARRIBEE SHIRE COUNCIL

ADDRESS OF LAND (if applicable): SHIRE-WIDE

PART 1 - OBJECTIVES OR INTENDED OUTCOMES OF LEP:

To only permit seniors housing within the 3(a) zone of the Renwick Release Area under Wingecarribee LEP 1989.

PART 2 – EXPLANATION OF PROVISIONS

Removal of 'seniors housing' from clause 5 (Definitions), and

Insertion after subclause (i) of Clause 38L Neighbourhood Place, the following sub-clause:

- (ii) For the purpose of this Clause, **seniors housing** means residential accommodation that consists of:
 - a residential care facility, or
 - a hostel, or
 - a group of self-contained dwellings, or
 - a combination of these,and that is, or is intended to be, used permanently for:
 - seniors or people who have a disability, or
 - people who live in the same household with seniors or people who have a disability, or
 - staff employed to assist in the administration of the residential accommodation or in the provision of services to persons living in the accommodation, but does not include a hospital.

PART 3 - JUSTIFICATION

Section A – Need for the Planning Proposal

1. Is the planning proposal the result of any strategic study or report?	No. It is result of a previous drafting error in the preparation of a LEP amendment which subsequently altered the intention of LEP 1989 Amendment No 125 which was meant to only apply the provisions of Seniors Housing in the Renwick Urban Release Development Area. By the inclusion of the definition within Clause 5 of the Plan, Seniors Housing became a land use activity under the provisions of the land use tables. As a result, Seniors Housing became a permissible development within the rural areas as well
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	<p>as other zones which were never intended.</p> <p>Council has since received and refused a development application for Seniors Living on rural zoned land as a result.</p>
2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?	Yes.
3. Will the net community benefit outweigh the cost of implementing and administering the planning proposal?	Yes. The current situation permits seniors housing, with consent, in rural zones where such development was not intended and is not considered appropriate.

Section B – Relationship to strategic planning framework

4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (included draft strategies)?	Yes. Seniors Housing will remain permissible in appropriate locations in accordance with the provisions of the SEPP (Housing for Seniors or People with a Disability) 2004.
5. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?	Yes, the Wingecarribee Our Future Strategic Plan, 2002 never intended for Seniors Housing to become permissible in rural locations.
6. Is the planning proposal consistent with applicable state environmental planning policies?	Yes. The Seniors SEPP applies only to land that is, or is adjacent to land zoned primarily for urban purposes. The current provision within the Wingecarribee LEP 1989 permit seniors housing on rural zoned land which is not consistent with the SEPP. Seniors Housing will remain permissible in urban areas in accordance with the SEPP.
7. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?	Yes.

Section C – Environmental, social and economic impact

8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?	No, the proposal seeks to protect rural areas from such impacts.
9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?	No.
10. How has the planning proposal adequately addressed any social and economic effects?	Yes. The opportunity which exists to allow seniors housing development in rural areas would lead to exceptional isolation of residents from critical social services and commercial needs.

Section D – State and Commonwealth interests

11. Is there adequate public infrastructure for the planning proposal?	The planning proposal seeks to remove the potential for seniors housing development in locations where there is inadequate infrastructure and which would then extend Government's ability to fund.
12. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?	No public authorities have been consulted.

PART 4 – COMMUNITY CONSULTATION

The planning proposal would be placed on public exhibition for a period of 28 days and identified stakeholders would be notified.



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 25 November 2009

REPORT OF DIRECTOR ENVIRONMENT & PLANNING

Environmental Sustainability

o-EP10 Draft Amendment to Development Control Plan No.12 – Off-Street Parking, Loading and Access Code

REF: SPM

5700/12

The purpose of this report is to advise the outcome of the exhibition of Draft Amendment G to Development Control Plan No 12 ('DCP 12') – Off-Street Parking, Loading and Access Code.

REPORT

1. BACKGROUND

Council resolved on the 26 August 2009, to exhibit an amendment to DCP 12 in accordance with the provisions of the Environmental Planning and Assessment Regulations 2000 (the Regulations), following identification of inadequacies of the current provisions of the DCP in relation to the definition of shops and the provisions of loading facilities.

Council has previously been advised the details of the proposed amendment on 26 August 2009 when considering a development application for the fitout of a shop at *The Intersection*. The proposed amendment provides definitions for a Small, Medium and Large Shop and provides revised car parking and loading requirements for each.

The following sections of DCP 12 have been revised.

1.5 - Definitions

4.1 - Off-Street Loading and Unloading Facilities

Appendix 1 – Schedule of Required Car Parking Spaces

For the purpose of the exhibition, the proposed amendments were highlighted and any provisions to be removed struck through.

Should Council resolve to adopt the recommended amendments as proposed, the highlighted provisions will revert to their standard font and the struck through provisions deleted.

The intention of proposed DCP 12 Amendment G is to provide incremental criteria that can be applied to shop type developments. Previously there were no scaling considerations. That is a shop whether a small convenience store or the development of a large franchise chain had the same criteria applied. The proposed amendments allow stores to provide a satisfactory level of service to both the outlet and the surrounding locality dependent on the scale of development and the size of the subject site on which they are to be located.



2. EXHIBITION

Amendment G was exhibited between 16 September and 14 October 2009.

A notice was placed on Council's page of the Southern Highlands News on 16 September 2009 advising of the proposed amendment and the exhibition period. The relevant documents were also placed on the '*What's on Exhibition*' page of Council's website.

As a result of the exhibition no submissions were received.

3. CONCLUSION

The proposed amendment, shown in the attachment, will provide Development Assessment staff in Council with incremental criteria for the assessment of development applications for shops. These criteria seek to address inadequacies in the consideration criteria applied to different scales of retail establishments and provide applicants with clear criteria guidelines as to what Council considers acceptable.

It is recommended that Draft Amendment G be adopted and changes required of the DCP be implemented in accordance with the provisions of the Regulations.

MANAGEMENT PLAN ISSUES OR IMPLICATIONS

The preparation of the Draft Development Control Plan is consistent with Council's Management Plan

POLICY IMPLICATIONS

The proposed amendment will become the primary planning control for Off-Street Loading, Access and Manoeuvring areas within the Shire.

It is intended that this amendment is transposed into the suite of new DCPs being prepared in response to the pending publication of the Draft Local Environmental Plan 2009 ('DLEP 2009').

BUDGET IMPLICATIONS

Nil.

ECOLOGICAL SUSTAINABLE DEVELOPMENT ISSUES

(i) Environmental Factors

The proposed amendment within the amended DCP 12 will ensure that the character and operational efficiency of stores will be improved.

(ii) Social Factors

The amend controls within the DCP will ensure development is in keeping with the locality while providing an acceptable level of service to the store operators.

(iii) Economic Factors

The proposed amendments will provide for a service delivery and access commensurate with the scale of the development.

ATTACHMENTS

There is one (1) attachment to this report being the Sections of the DCP 12 to be amended which has been circulated separately

RECOMMENDATION

1. THAT Council adopts Draft Amendment G of Development Control Plan 12 – Car-Parking, Loading, Unloading and Manoeuvring Development Control Plan circulated to Councillors under separate cover.
 2. THAT the amended Development Control Plan 12 Amendment G be implemented in accordance with the Environmental Planning and Assessment Regulations 2000.
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(Voting on the Motion)



Scott Lee
Director Environment & Planning

20 November 2009



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 25 November 2009

REPORT OF DIRECTOR CORPORATE SERVICES

CORPORATE SERVICES DIVISION

Governance & Management

o-CS1	Review of Councillors' Payment of Expenses and Provision of Facilities to the Mayor and Councillors
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REF.	MALS	101/5
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Submitting Councils *Payment of Expenses and Provision of Facilities to the Mayor and Councillors* policy for review in accordance with the provision of Section 252 of the Local Government Act, 1993.

REPORT

BACKGROUND

The current provisions of the *Payment of Expenses and Provision of Facilities to the Mayor and Councillors* policy were discussed with Councillors at an information session on Wednesday 11 November 2009.

After considering advice from Council Officers and noting the amended Department of Local Government Guidelines for the payment of expenses and provision of facilities for Mayors and Councillors in New South Wales, issued in October 2009, a number of amendments to the policy are submitted for consideration.

DEPARTMENT OF LOCAL GOVERNMENT GUIDELINES

The revised Guidelines are based on the findings of a review of council policies on councillor expenses and facilities conducted in 2007, as well as feedback from councils and are provided in Local Government Circular 09/36.

Revisions include:

1. Addition that councillor expenses may not be used to support attendance by councillors at political fund-raising functions
2. Addition to and consolidation of the legal expenses provisions, including reference to matters before a council's Conduct Review Committee/Reviewer.
3. Addition that councils should establish and document an appropriate process to resolve any disputes that arise about expenses and facilities
4. Addition that gifts and benefits given by councillors should be of token value and in accordance with a policy developed by the council.
5. Addition to training and development expenses provisions
6. Clarification on the need for limits for all expenses
7. Clarification that policies should disallow general expense allowances and private benefit from expenses and facilities (unless incidental or reimbursement mechanism in place)
8. Clarification of processes for approval, reconciliation and reimbursement of expenses



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

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REPORT OF DIRECTOR CORPORATE SERVICES

9. Clarification that councillor annual fees do not fall within the scope of councillor expenses and facilities policies
10. Clarification that adopted expenses and facilities policies apply to Administrators of councils
11. Updates to legislative provisions and references
12. Restructuring of information and format to make the Guidelines easier to follow

PROPOSED AMENDMENTS

1.1 General Provisions

- (c) All claims for reimbursement must be made on the prescribed form and must be sufficiently detailed and/or accompanied by appropriate documentary evidence, if available, and should be made within one month from the date of the expense being incurred. Claims submitted more than three (3) months from the date of expenditure will not be accepted.
- (i) Note: In accordance with the provisions of Clause 403 of the Local Government (General) Regulation, it is highlighted that Council DOES NOT provide for a "General Expense" allowance for Councillors in any form.

1.2.3 Travel

(i) Travel by Vehicle

- (a) Where a Councillor uses a private vehicle, the Councillor shall be reimbursed on a per kilometre basis at the rate of \$0.64 cents for vehicles with an engine capacity less than 2.5L and \$0.73 cents per kilometre for vehicles with an engine capacity greater than 2.5L. Wherever possible to minimise such costs Councillors may use Council vehicles and share with other Councillors and staff where appropriate.

Note: Car Allowance (costs per km) is based on payments made to staff under the provisions of Clause 13(iii) of the Local Government (State) Award 2007.

2.1 General Provisions

Council facilities and equipment should only be used by Councillors in the performance of the functions of a Councillor and in the manner prescribed and authorised by Council. Whilst it is acknowledged that some private benefit may accrue to Councillors from the provision of facilities, with incidental use of council equipment, the benefit to be obtained should be of nominal value only.

2.2.9 Reimbursement of Expenses on Private Phones

Alternatively, should a Councillor not utilise a Council provided mobile telephone and utilise their private mobile telephones, then a Councillor can claim based on actual use, up to the amount of \$100 per month towards the expense and be reimbursed that amount (documentary evidence is to be provided).

5 Legal Expenses and Obligations

Legal expenses for a Councillor may be either paid or reimbursed by the Council only if the matter is authorized by the Local Government Act 1993 either expressly or because it is supplemental or incidental or consequential upon the exercise of its functions.

Council may therefore indemnify or reimburse the reasonable expenses of:

- (a) A Councillor defending an action arising from the performance in good faith of a function under the Local government Act (Section 731) ; or
- (b) A Councillor defending an action in defamation provided the statements complained of were made in good faith in the course of exercising a function under the Act; or
- (c) A Councillor for proceedings before the Local government Pecuniary Interest and Disciplinary Tribunal or investigative body and where the finding is substantially favourable to the Councillor.

Council may also reimburse reasonable expenses of legal costs for an inquiry, investigation or hearing into a Councillor's conduct by an appropriate investigative or review body including:

- i) Local Government Pecuniary Interest and Disciplinary Tribunal
- ii) Independent Commission Against Corruption
- iii) Office of the NSW Ombudsman
- iv) Division of Local Government, Department of Premier and Cabinet
- v) NSW Police Force
- vi) Director of Public Prosecutions
- vii) Council's Conduct Review Committee/Reviewer

This is provided that the subject of the inquiry, investigation or hearing arises from the performance in good faith of a Councillor's functions under the Act and the matter before the investigative or review body has proceeded past any initial assessment phase to a formal investigation or review. In the case of a conduct complaint made against a Councillor, legal costs may only be made available where a matter has been referred by the general manager to a conduct reviewer/conduct review committee to make formal enquiries into that matter in accordance with the procedures in the Model Code of Conduct. In the case of a pecuniary interest or misbehaviour matter legal costs may only be made available where a formal investigation has been commenced by the Division of Local Government.

In addition, legal costs may 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 had occurred may not necessarily be considered a substantially unfavourable outcome.



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Authorisation of the payment or reimbursement of legal expenses for a Councillor will be subject to approval by Council, following consideration of the relevant matters, including this policy, via a report to open Council.

Council will not indemnify or reimburse the legal expenses of Councillor arising merely from something that a Councillor has done during his or her term in office.

Council will not meet the costs of an action in defamation taken by a Councillor as a plaintiff in any circumstances.

Council will not meet the costs of a Councillor seeking advice in respect of possible defamation or in seeking a non-litigious remedy for possible defamation.

DEVELOPMENT AND ADOPTION OF THE POLICY

In accordance with Section 253 of the Local Government Act, 1993, Councils must give public notice of its intention to adopt or amend a Councillor expenses and facilities policy and allow at least 28 days for public submissions.

Councils must consider any submissions received and make any appropriate changes to the policy. Councils do not need to give public notice of a proposed amendment to the policy, if the amendment is not substantial.

Within 28 days of adopting or amending the policy, the policy and details of submissions must be forwarded to the Deputy Director General (Local Government), Division of Local Government, Department of Premier and Cabinet.

Councils must submit their current, adopted policies to the Division by 30 November each year.

MANAGEMENT PLAN ISSUES OR IMPLICATIONS

Nil

POLICY IMPLICATIONS

The Policy was adopted by Council on Wednesday 10 June 2009 and is again submitted to Council for review and adoption prior to being forwarded to the Department of Local Government for its information and record.

BUDGET IMPLICATIONS

Council has sufficient funds allocated in Councillors expenses to cater for this policy and the proposed changes are considered minimal and do not affect the budget provisions in the 2009/2010 budget.

ECOLOGICAL SUSTAINABLE DEVELOPMENT ISSUES

(i) Environmental Factors

Nil

(ii) Social Factors

It is prudent that Councillors be reimbursed for expenses and provided with facilities to allow them to participate and conduct council business on behalf of the local community.

(iii) Economic Factors

Funds paid to Councillors are running expenses for the provision of work/attendance in conducting their functions and such funds would possibly be expended back into the local economy.

CONCLUSION

In considering any proposed amendments to Council's *Payment of Expenses and Provision of Facilities to the Mayor and Councillors Policy*, Section 23A of the Local Government Act provides that "A Council must take relevant guidelines issued under this section into consideration before exercising any of its functions".

Accordingly, the proposed amendments to Council's policy have been developed after consideration of the *Guidelines for the Payment of Expenses and Provision of Facilities for Mayors and Councillors in NSW* issued by the Department of Local Government on 7 October 2009.

The substance of the proposed amendments to the following clauses are considered "not substantial":

- Legislative Provisions
- Payment of Expenses (1.1) General Provisions (c) and (i)
- (2.1) General Provisions
- (2.2.9) Reimbursement of Expenses on Private Phones

The following proposed changes are however considered to be substantial in nature and should therefore be advertised for 28 days seeking comment from the public via public submissions, prior to being formally considered by Council:

- (1.2.3) Travel (i)(a) Travel by Vehicle
- (5) Legal Expenses and Obligations

It is proposed therefore that the "non substantial" amendments be endorsed in a revised policy and that the amended policy be forwarded to the Department of Local Government in accordance with Section 252 of the Local Government Act.

It is also proposed that the "substantial" amendments be included in a further revised "Draft Policy" and that public notice be provided allowing 28 days for public submissions on the additional proposed amendments to the policy, and that this further amended policy be considered at a future meeting of Council.



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REPORT OF DIRECTOR CORPORATE SERVICES

ATTACHMENTS

There are two (2) attachments to the report distributed under separate cover.

1. Amended *Payment of Expenses and Provision of Facilities to the Mayor and Councillors* Policy with “**non substantial**” amendments highlighted in green.
2. Amended *Payment of Expenses and Provision of Facilities to the Mayor and Councillors* Policy with ‘**substantial**’ amendments highlighted in yellow for public submission.

RECOMMENDATION

1. THAT Council amend its Policy for the Payment of Expenses and Provision of Facilities to the Mayor and Councillors as follows:
 - 1.2 General Provisions**
 - (c) *All claims for reimbursement must be made on the prescribed form and must be sufficiently detailed and/or accompanied by appropriate documentary evidence, if available, and should be made within one month from the date of the expense being incurred. Claims submitted more than three (3) months from the date of expenditure will not be accepted.*
 - (i) *Note: In accordance with the provisions of Clause 403 of the Local Government (General) Regulation, it is highlighted that Council DOES NOT provide for a “General Expense” allowance for Councillors in any form.*
 - 2.1 General Provisions**

Council facilities and equipment should only be used by Councillors in the performance of the functions of a Councillor and in the manner prescribed and authorised by Council. Whilst it is acknowledged that some private benefit may accrue to Councillors from the provision of facilities, with incidental use of council equipment, the benefit to be obtained should be of nominal value only.
 - 2.2.9 Reimbursement of Expenses on Private Phones**

Alternatively, should a Councillor not utilise a Council provided mobile telephone and utilise their private mobile telephones, then a Councillor can claim based on actual use, up to the amount of \$100 per month towards the expense and be reimbursed that amount (documentary evidence is to be provided).
2. THAT the Policy as amended be submitted to the Department of Local Government as per the requirements of Section 252 of the Local Government Act 1993.
3. THAT the following proposed ‘substantial’ amendments be included in a ‘further revised policy’ and that public notice be given, providing a 28 days period seeking submissions on the proposed substantial amendments to the Payments of Expenses and Provision of Facilities to the Mayor and Councillors’ Policy:

1.2.3 Travel

(i) **Travel by Vehicle**

- (a) *Where a Councillor uses a private vehicle, the Councillor shall be reimbursed on a per kilometre basis at the rate of \$0.64 cents for vehicles with an engine capacity less than 2.5L and \$0.73 cents per kilometre for vehicles with an engine capacity greater than 2.5L. Wherever possible to minimise such costs Councillors may use Council vehicles and share with other Councillors and staff where appropriate.*

Note: Car Allowance (costs per km) is based on payments made to staff under the provisions of Clause 13(iii) of the Local Government (State) Award 2007.

5 Legal Expenses and Obligations

Council may also reimburse reasonable expenses of legal costs for an inquiry, investigation or hearing into a Councillor's conduct by an appropriate investigative or review body including:

- (i) *Local Government Pecuniary Interest and Disciplinary Tribunal*
- (ii) *Independent Commission Against Corruption*
- (iii) *Office of the NSW Ombudsman*
- (iv) *Division of Local Government, Department of Premier and Cabinet*
- (v) *NSW Police Force*
- (vi) *Director of Public Prosecutions*
- (vii) *Council's Conduct Review Committee/Reviewer*

This is provided that the subject of the inquiry, investigation or hearing arises from the performance in good faith of a Councillor's functions under the Act and the matter before the investigative or review body has proceeded past any initial assessment phase to a formal investigation or review. In the case of a conduct complaint made against a Councillor, legal costs may only be made available where a matter has been referred by the general manager to a conduct reviewer/conduct review committee to make formal enquiries into that matter in accordance with the procedures in the Model Code of Conduct. In the case of a pecuniary interest or misbehaviour matter legal costs may only be made available where a formal investigation has been commenced by the Division of Local Government.

In addition, legal costs may 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 had occurred may not necessarily be considered a substantially unfavourable outcome.

Authorisation of the payment or reimbursement of legal expenses for a Councillor will be subject to approval by Council, following consideration of the relevant matters, including this policy, via a report to open Council.

4. **THAT** after the closure of the exhibition period a further report be brought before Council to consider any submissions received and the further amendments to the Policy.
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AGENDA FOR THE ORDINARY MEETING OF COUNCIL

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 25 November 2009

REPORT OF DIRECTOR CORPORATE SERVICES

o-CS2 Alexandra Square, Mittagong

REF: DCS

6606/3

Reporting on further legal advice received regarding the Deed of Trust for Alexandra Square, Mittagong.

REPORT

BACKGROUND

This matter has been the subject of a number of reports over a period of years, with the most recent report presented to Council on 10 June 2009 (see copy of report - Attachment 1).

At the Ordinary meeting of Council on 10 June 2009, Council resolved as follows:

- “1. THAT in relation to Alexandra Square Council maintain the Deed of Trust.
2. THAT Council confirm its intention to demolish the old Mittagong Bowling Club building and associated structures (excluding the historical rotunda and greenkeepers shed).
3. THAT a detailed project plan be developed for the demolition of the old Mittagong Bowling Club building and for the regeneration of the site as a public park.
4. THAT the detailed project plan and costings be included for consideration in the 2010/11 Management Plan and Budget for funding.”

After considerable ongoing debate in the community regarding the future of the Alexandra Square site, a Mayoral Minute was tabled by Councillor Gair, at the Ordinary meeting of Council on Wednesday 12 August 2009.

Council subsequently resolved as follows:

- “1. THAT Council seek further advice from its legal advisers following receipt of the opinion provided by Francis Douglas QC and Kevin Connor QC for the Stop Environmental Vandalism Committee AND THAT Councillors be provided with a copy of the legal advice.
2. THAT included in the questions to be addressed by Council’s legal adviser, the following question be addressed:
 - (i) Did the decision made by the Attorney General predicate Council’s position to develop and then sell the site?
3. THAT prior to obtaining legal advice, the Mayor and Director Corporate Services meet with the Stop Environmental Vandalism Committee to formulate the questions to be addressed by Council’s legal advisers.



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REPORT OF DIRECTOR CORPORATE SERVICES

4. *THAT following receipt of the legal advice the matter be referred to the Attorney General for comment.*

FURTHER LEGAL ADVICE – MR MARK LEEMING SC

In accordance with Council's resolution of August 12, 2009, the Mayor and the Director Corporate Services met with representatives of the *Stop Environmental Vandalism Committee* to discuss the proposed questions to be put to Mr Leeming for further advice. An information session was then conducted with Councillors to discuss and confirm the final wording of the proposed questions.

Council's solicitor Mr Bohdan Bilinsky was subsequently instructed to brief senior counsel, Mr Mark Leeming, to provide a response to the following questions:

- “1. *Clear advice on what types of activities are permissible to be conducted on a “Public Recreation Reserve” as defined under the Deed of Trust for Alexandra Square.*
2. *Further, what activities, if any, would be permissible to be conducted within the former Mittagong Bowling Club building which currently occupies the Alexandra Square site.*

Specifically, Council would seek advice as to whether activities that would fall into the category of ‘community based’ activities such as the following would be permissible under the Deed of Trust.

- a) *Community Centre providing space for administration and operation of community based services such as family support, community transport, children services, indigenous welfare etc.*
- b) *Community based organisations with a recreation focus such as sporting clubs or recreational hobbies.*
- c) *Activities with a focus on arts or cultural activities such as a gallery, museum, studio or theatre space.*“

CONSIDERATION OF ADVICE RECEIVED

Council received a 21-page written advice on this matter from Mr Leeming SC, on Thursday 29 September 2009 (see Attachment 2 - copy of advice) which was discussed at an information session with Councillors on Wednesday 21 October 2009.

Council's advising solicitor on this matter, Mr Bohdan Bilinsky, was in attendance at the information session and provided Council with a written *Brief Chronology on Legal Opinions Relating to Alexandra Square, Mittagong*, (see Attachment 3 – copy of Brief Chronology) and also answered questions relating to Mr Leeming's advice.

CONCLUSION

Following ongoing public interest in relation to the Alexandra Square precinct, and in particular, the future of the former Mittagong Bowling Club building, Council has sought further advice to clarify options available to Council, whilst maintaining the integrity of the trust deed.

The advice received confirms that there are some potential uses for the former bowling club building which could comply with the terms of the trust, although it is apparent that the potential uses are very limited and do not align with the majority of submissions received from the community.

Mr Leeming's response to the definitive questions raised is as follows: -

40. *Questions I have been asked. In light of the foregoing, I now turn to the precise questions I have been asked:*
 1. Advice on what types of broad activities are permissible to be conducted on a "public Recreation Reserve" as defined under the Deed of Trust for Alexandra Square.

41. *As this question acknowledges, it is not possible in the abstract to give precise advice as to what activities fall within, or without, the meaning of the words and the law of charities, and what follows by way of summary is to be read in light of the principles reproduced above. I think however that the following broad considerations ought to assist.*
 - (a) *First, viewed as a matter of substance, the land is required to be made available to all members of the community. To give exclusive occupation for any extended period of time to a club or association which reserves to itself the right to exclude members would fall outside the "public" element of the trust. That said, I do not think that that disentitles Council from permitting its use on limited occasions for private groups (just as for example a private organisation may hire a public hall for a special event).*
 - (b) *Secondly, viewed as a matter of substance, the land should be used for something which amounts to "recreation". That is a term descriptive of a wide range of activities whose metes and bounds cannot readily be stated. However, at a level of generality, what is recreational is apt to exclude what is educational, what is work-related, and what is religious.*
 - (c) *Thirdly, the critical question is not whether indirectly there may be some recreational aspect to the activities taking place on the land. The question is whether those activities themselves, viewed as a matter of substance, are recreational. It is necessary to take a practical approach. For example, I do not think that leasing the hall to a local church on terms that it only be used for the purposes of choir practice would fall within its terms, even if it were established that some of the choristers had no religious involvement and participated only because they enjoyed recreation choral singing.*
 - (d) *Fourthly, and obviously, there may be questions of degree involved in many particular proposed uses of the land held on trust.*

- (e) *Fifthly, it is in my opinion always appropriate to bear in mind that what Council is required to do as trustee is to administer a trust for a “public recreation reserve”. It is the words in 1885 of the settlor which impose obligations upon Council, and to rely upon glosses on those words from sources other than the Declaration of Trust leads to a risk that Council will misapprehend its legal obligations.*
2. Definitive advice as to whether the former Mittagong Bowling Club building is permitted on the site, and if its presence is in breach of the Deed of Trust, how is it in breach of the Trust.
42. *The question for me is not whether it was lawful in the past to construct the building for the purpose of a bowling club. That has happened, and there is a building which now as a matter of law is part of the land held on trust by the Council. The question for me is whether it is lawful for the Council as trustee to permit the existing building, occupying part of the trust property, to remain. The answer to that question is that I think it is lawful, so long as Council’s use of the building satisfies the obligations imposed by the 1885 declaration of trust. I note that that accords with the views expressed by my instructing solicitor (p4 of his advice of 24 October 2006) and by Messrs Douglas QC and Connor SC (para 15).*
3. Assuming the building is not in breach of the Trust, what activities (if any) would be permissible to be conducted within the former Mittagong Bowling Club building which currently occupies the Alexandra Square site, and in particular whether the following categories of the “community based” activities would be permissible within the former Mittagong Bowling Club premises under the Deed of Trust:
- (a) Community Centre providing space for administration and operation of community based services such as family support, community transport, children services, indigenous welfare etc.
- (b) Community based organisation with a recreation focus such as sporting clubs and recreational hobbies.
- (c) Activities with a focus on arts or cultural activities such as a gallery, museum, studio or theatre space.
- (d) Activities with an education or vocational training focus such as “University of the Third Age” etc.
43. *I repeat my caution about providing definitive advice about lawfulness of activities which are described only at a level of generality. That said, I find it difficult to see how a community centre which provides family support, community transport, children’s services and indigenous welfare would fall within “public recreation”. Obviously those goals are charitable in the legal sense (as well as laudable). Obviously the “public” element is satisfied. However, while I can see there is a scope for saying that using the building to provide ancillary services for community transport will enhance recreation of community members (they may be assisted in getting from their homes to places of recreation) and likewise there may be other indirect recreational aspects of this proposal, such uses strike me as outside the notion of public recreation (either in 1885 or for that matter today).*
-



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44. *Likewise, I have difficulty with the proposition that a use of the premises for education or vocational training would fall within "public recreation". If the land had been conveyed for the purposes of education and advancement of the people of Mittagong, that would be a valid charitable trust which would authorise such activities. I acknowledge that there is no clear-cut dividing line between what is educational and what is recreational (consider for example a facility to teach woodturning). But at least if the primary goal is to provide an education or vocational qualification to participants, those uses would not to my mind readily fall within the notion of "recreation".*
45. *In contrast, if the premises were made available to be used from time to time for community organisations whose purpose was indubitably recreational (such as a sporting club or for that matter a bird appreciation society), then in my view that would be authorised by the words of the declaration of trust. Further, such a use would in my opinion comply with the law of charity: see the reasoning in Monds v Stackhouse (1948) 77 CLR 232 reproduced above. Similarly and for the same reasons, I think that a gallery, museum, studio or theatre space would fall within the words of the declaration and the legal conception of trust.*

In layman's terms the advice suggests that the former Mittagong Bowling Club building could be used as a facility similar in character and purpose as the Mittagong Recreation Centre, or Mittagong Playhouse, where "public recreation" activities are conducted on an ad hoc basis.

This matter is now submitted for Council's further consideration.

ATTACHMENTS

There are three (3) attachments to this report being:

1. Copy of Council report dated 10 June 2009.
2. Copy of advice received from Mr Leeming SC.
3. Copy of *Brief Chronology on Legal Opinions Relating to Alexandra Square, Mittagong* from Bohdan Bilinsky & Co Solicitors.

All attachments are distributed under separate cover.

RECOMMENDATION

THAT the advice from Mr Mark Leeming SC be received and noted.



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REPORT OF DIRECTOR CORPORATE SERVICES

o-CS3 Investments as at 31 October 2009

REF: FSM

2104

Submitting details of Council's Investments as at 31 October 2009.

REPORT

A list of Council's investments as at 31st October 2009 has been included on **Attachment 1** for information. All Investments have been made in accordance with the Local Government Act, the Regulations and Council's Investment Policy.

It should be noted that the investments have been listed at their face value and also an estimated market value. This market value has been provided to Council by the ANZ Bank as Council's Safe Custody nominee. The ANZ has advised that these values are based on a forecast model and information from a number of market providers and participants. As stated these figures are only estimates which may not necessarily reflect the potential "realisable value" or the actual value if the CDO's were sold in the current market conditions.

Market value is typically a combination of interest rates, credit quality and liquidity. It can be clearly seen that the current values have been severely impacted by the current credit crisis, world recession and lack of available markets.

Unfortunately at the time of compiling this agenda, the ANZ Bank has been unable to provide Council with market values as at 31 October. Consequently the market values shown in this report are values as at 30 September.

Interest received from investments totalled \$501,691.62 as at 31st October 2009.

ATTACHMENTS

There is one (1) attachment to the report being the list of cash and investments held by Council as at 31 October 2009.

RECOMMENDATION

THAT the information on Council's Investments as at 31 October 2009 be received and noted.



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ATTACHMENT 1

<u>INVESTMENT RECONCILIATION AS AT 31 October 2009</u>				
Bank	Arranger	Face Value	Market Value	Total
<u>Floating Rate Notes</u>				
Adelaide Bank FR Sub Debt		3,500,000.00	3,163,260.62	
Bank of Qld Sub Debt		7,000,000.00	6,914,494.65	
Elders Rural Bank Sub Debt		500,000.00	477,846.30	
Elders Rural Bank Sub Debt		1,000,000.00	940,476.99	
Elders Rural Bank Sub Debt		500,000.00	469,398.08	
HSBC FRN		6,500,000.00	6,184,718.86	
Royal Bank Scotland		2,000,000.00	1,468,583.01	
Elders Rural Bank		1,000,000.00	850,102.05	
Westpac		500,000.00	500,042.61	
St George		1,000,000.00	970,890.48	
<u>Property Note</u>				
Lehman		560,000.00	-	
<u>Floating Rate & Property Notes</u>		24,060,000.00	21,939,813.65	
<u>CDO's</u>				
Aphex Glenelg (NR)	Nomura International Pl	2,250,000.00	297,432.52	
Corsair Kakadu (NR)	JP Morgan Aust Ltd	1,500,000.00	469,131.16	
Corsair Torquay (CCC-)	JP Morgan Aust Ltd	2,500,000.00	315,785.96	
Helium Esperance (CCC-)	Merrill Lynch Int	2,000,000.00	498,653.42	
Helium Scarborough (CCC-)	Merrill Lynch Int	2,700,000.00	171,666.74	
Magnolia Flinders (NR)	Credit Suisse	5,100,000.00	3,739,714.73	
Omega Henley (NR)	BNP Paribas	2,000,000.00	1,156,789.94	
Starts Blue Gum (NR)	HSBC Bank	1,050,000.00	12,102.80	
Cypress Tree Lawson (A-)	Calyon	1,000,000.00	904,800.00	
MAS6-7 Parkes (NR)	Morgan Stanley	2,000,000.00	191,026.03	
Bishopgate Wentworth (AA)	Calyon	500,000.00	463,700.00	
Zircon Coolangatta (NR)	Lehman Bros	2,000,000.00	-	
Saphir Endeavour (NR)	Lehman Bros	140,000.00	-	
Beryl (NR)	Lehman Bros	4,000,000.00	-	
Zircon Merimbula (NR)	Lehman Bros	500,000.00	-	
<u>Total CDO's</u>		29,240,000.00	8,220,803.30	
<u>Total Securities Face Value</u>				53,300,000.00
NAB Term Deposit		2,000,000.00		2,000,000.00
Macquarie Cash Management Trust		36,828.24		36,828.24
<u>Short Term</u>				
NAB		10,800,000.00		10,800,000.00
				66,136,828.24



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REPORT OF DIRECTOR CORPORATE SERVICES

o-CS4 Council's Procedures for Managing Consumption of Alcohol at Community Halls Managed By 355 Volunteer Committees

REF: DCS, MALS

107/1

Council received a complaint on 14 September 2009 regarding the responsible service of alcohol at one of its community halls. The purpose of this report is to outline the procedures and policies that Council has in place to manage the consumption of alcohol at its community halls and seeks Council's concurrence to retain or amend its existing policies and procedures.

REPORT

BACKGROUND

Council has fourteen (14) community halls managed by Volunteer Management Committees in accordance with Section 355 of the Local Government Act 1993.

The majority of our halls are used by regular hirers for meetings, health and fitness classes, adult education classes, sport, interest groups, amateur and commercial theatrical groups, concerts and playgroups. The facilities are occasionally hired for family functions such as private parties, weddings and funerals.

Over the past ten (10) years Council has received one (1) written complaint about the consumption of alcohol and unruly behaviour at one of the community halls.

USER AGREEMENT FOR COUNCIL FACILITIES

Council has developed and revised its User Agreement for Council Facilities incorporating information set out under the previous and current Liquor Act 2007 and the Liquor Regulation 2008.

Detailed below are the relevant items that pertain to this matter that are included on the User Agreement for Council Facilities:

1. Information on top of the front page of the User Agreement for Council Facilities:

"Applications for hire must be made by persons over 18 years of age."

"You must notify the Police for parties such as 18 and 21 birthdays and follow the instructions in the Police Information Pack, Hosting a Party."

(This Information is given out by the booking officers of our facilities to potential hirers)

2. On top of the back page of the User Agreement for Council Facilities:

Additional Information Required

Will alcohol be for sale during the function?

YES / NO

If YES, have you obtained the appropriate Liquor Licences? YES / Number:.... / NO



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Please refer to clause 10 of the Conditions of Hire that relates to the Sale of Alcohol

3. Standard Conditions of hire for Halls & Community Facilities

Clause 10

"Hirers must ensure they obtain the necessary permits for their activities eg; Liquor Licence and for their own protection ensure that:

- a) You familiarise yourself with the Harm Minimisation and Responsible Service of Alcohol clauses covered by the Liquor Act 2007 and the Liquor Regulation 2008. It is an offence for alcohol to be served to minors (people under 18 years of age). Please refer to the NSW Office of Liquor, Gaming and Racing for more information.*
- b) If alcohol is being sold at an event (this includes a free drink with an entry fee or fee for a meal that includes alcohol) you must have a Function Licence. Please contact your local Court House for details.*
- c) Any additional services or contractors engaged by them (the hirer) must have appropriate public liability insurance cover (minimum of \$10 million dollars) and a function licence if required.*
- d) Council must be informed of any event in which additional services, entertainment etc will be conducted at a Council facility. The hirer must contact Council if in any doubt as to the requirements."*

Clause 11

It is the responsibility of the hirer/user to ensure that all persons participating in the activity conduct the activity in an appropriate and responsible manner in accordance with any rules governing the activity and do not create a health or safety risk to themselves or other persons using or visiting the facility."

Under the Liquor Act 2007 and the Liquor Regulation 2008 persons hiring a community facility are allowed to provide alcohol at a function or allow BYO without having to obtain a liquor licence.

ORIENTATION AND TRAINING FOR COMMITTEE MEMBERS

Over the past nine (9) years Council has run a number of orientation and training programs for its volunteer committee members to ensure that the committees have a good working knowledge of Council's policies and procedures and legislation that impacts on the management of our community facilities and the role of our volunteers.

ATTENDANCE AT MANAGEMENT COMMITTEE MEETINGS

Administration staff regularly attend management committee meetings to ensure that the committees have a good working knowledge of Council's Policies and procedures.

POLICY IMPLICATIONS

Council has developed its policies and procedures for the hire of its halls and community facilities in conjunction with Government Legislation and Council Policy and Procedures and through orientation and training of its volunteers aims to attain a high level of compliance from its volunteers and user groups of its facilities.



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CONCLUSION

It is suggested that Council adhere to the following practices:

1. THAT Council continues to revise its policies and procedures in conjunction with current legislation and Council policies and procedures.
2. THAT Council continues to orientate and provide training for its volunteers so that we maintain a high level of compliance from its volunteers and user groups of its facilities.
3. THAT our staff and volunteers continue to liaise with the local police re notification of functions at our facilities and to obtain the most up to date information relating to Hosting a Party.

ATTACHMENTS

A copy of *User Agreement for Council Facilities* has been circulated under separate cover

RECOMMENDATION

1. THAT Council continues to revise its policies and procedures in conjunction with current legislation and Council policies and procedures.
 2. THAT Council continues to orientate and train its volunteers so as to maintain a high level of compliance from volunteers and user groups of Council's facilities.
 3. THAT Council staff and volunteers continue to liaise with the local police regarding notification of functions at Council facilities and to obtain the most up to date information relating to Hosting a Party.
-



o-CS5 Jurd Park Management Committee Constitution

REF. DCS, MAS

7216/1

Reporting on the review of the Jurd Park Management Committee Constitution.

REPORT

BACKGROUND

At the Council Meeting held on 8 April 2009 Council adopted the changes to the generic Management Committee Constitution.

Council resolved that each 355 Management Committee be forwarded a copy of the updated generic constitution and be requested to undertake a review of its objectives, membership and quorum.

CHANGES TO THE CONSTITUTION

The Jurd Park Management Committee at its meeting on 18 August 2009 reviewed its constitution and resolved to accept Council's generic constitution (8 April 2009) and incorporate the following changes to its Constitution:

A) *Item 2.1 To maximise the use of the Jurd Park Amenities and Council Grounds (hereinafter referred to as the "Facility") for the benefit of the community in accordance with this Constitution and Instrument of Delegation and Council's stated policies.*

B) *Item 3.3 1 Committee Membership was changed from The Management Committee will comprise such number as Council deems appropriate, and include representatives of locals and other groups*

to

The Committee will comprise up to seven (7) members including representatives of user groups of the facility and community representatives.

C) *Item 3.3.14 Quorum*

That the Quorum be changed from the majority of members (that is half the membership plus one) will comprise a quorum

to

*A majority of **appointed** members (that is half the membership plus one) will comprise a quorum.*

COMMITTEE RECOMMENDATIONS:

1. THAT Council adopts the Jurd Park Management Committee Constitution incorporating Council's generic constitution adopted on 8 April 2009 and the following changes.

A) 2.1 To maximise the use of the Jurd Park Amenities and Council Grounds (hereinafter referred to as the "Facility") for the benefit of the community in



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accordance with this Constitution and Instrument of Delegation and Council's stated policies.

- B) 3.3.1 The Committee will comprise up to seven (7) members including representatives of user groups of the facility and community representatives.
- C) 3.3.14 A majority of **appointed** members (that is half the membership plus one) will comprise a quorum.

MANAGEMENT PLAN ISSUES OR IMPLICATIONS

Nil

POLICY IMPLICATIONS

Nil

BUDGET IMPLICATIONS

Nil

ECOLOGICAL SUSTAINABLE DEVELOPMENT ISSUES

ATTACHMENTS

Copy of Draft Jurd Park Management Committee Constitution is distributed under separate cover.

RECOMMENDATION

1. THAT Council adopts the Jurd Park Management Committee Constitution incorporating Council's generic constitution adopted on 8 April 2009 and the following changes to the Membership and Quorum.
 - A) 2.1 To maximise the use of the Jurd Park Amenities and Council Grounds (hereinafter referred to as the "Facility") for the benefit of the community in accordance with this Constitution and Instrument of Delegation and Council's stated policies.
 - B) 3.3.1 The Committee will comprise up to seven (7) members including representatives of user groups of the facility and community representatives.
 - C) 3.3.14 A majority of appointed members (that is half the membership plus one) will comprise a quorum.
 2. THAT the Jurd Park Management Committee be notified of Council's determination.
-



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o-CS6 Committee Appointments and Resignations

Reporting on Management Committee Appointments and Resignations.

1. Mittagong Community Centre Management Committee File No: 7215/1

The Mittagong Community Centre Management Committee has received notification that May Morris has been nominated to the Committee.

Committee Recommendations

THAT Council appoints May Morris to the Mittagong Community Centre Management Committee and that Ms Morris be notified of Council's determination.

2. Exeter Park Management Committee File No: 6536/1.1

The Exeter Park Management Committee at its meeting on 9 November 2009 received the nomination of Malcolm Murray to the Committee.

Committee Recommendations

THAT Council appoints Malcolm Murray to the Exeter Park Management Committee and that Malcolm Murray be notified of Council's determination.

MANAGEMENT PLAN ISSUES OR IMPLICATIONS

N/A

POLICY IMPLICATIONS

N/A

BUDGET IMPLICATIONS

Nil

ATTACHMENTS

There are no attachments to this report.

RECOMMENDATION

1. THAT May Morris be appointed to the Mittagong Community Centre Management Committee AND THAT Ms Morris be notified of Council's determination.
2. THAT Malcolm Murray be appointed to the Exeter Park Management Committee AND THAT Malcolm Murray be notified of Council's determination.
3. THAT the Mittagong Community Centre Management Committee and the Exeter Park Management Committee be notified of Council's determination.



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REPORT OF DIRECTOR CORPORATE SERVICES

Barry D Paull

Barry Paull
Director Corporate Services

20 November 2009



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REPORT OF DIRECTOR INFRASTRUCTURE SERVICES

INFRASTRUCTURE SERVICES DIVISION

Lifestyle and Community

o-IS1 Robertson Shared Path – Funding Options for Stages 2 and 3

REF: DPM

6690/15

Reporting on Grant applications and funding of the Stages 2 and 3 of the Illawarra Highway, Robertson Shared Path.

REPORT

Councillors will recall details of a Councillor Information Session held on 9 September 2009, when options for the planning of the future off-road shared path, on-road cycle lane, traffic management scheme and rail pedestrian crossing projects were discussed. Since that time, Council staff have been notified of their success in their grant application under the Federal Government Job Fund - National Bike Path Projects, to fund Stages 2 & 3 of the Robertson Shared Path.

Attached is a copy of the grant offer and a plan showing the stages of this project. Council is required to accept the grant within eight weeks from receipt of the grant offer (23 October 2009).

A total of \$237,000 has been offered as part of the economic stimulus package subject to several grant conditions being met. The total cost of Stage 2 & 3 is estimated at \$520,000.

To help meet this budget shortfall, Council has also applied to the Roads & Traffic Authority (RTA) for monetary assistance. The RTA has indicated that the project may be eligible for 25% funding subject to other competing grant applications from neighbouring Councils in the 2010/11 financial year.

Project	Estimated Cost	Federal Funding	Possible RTA funding	Possible Shortfall to be funded by Council	If RTA funding not successful
Stage 2	\$300,000	\$180,500	\$75,000	\$44,500	\$119,500
Stage 3	\$220,000	\$56,500	\$55,000	\$108,500	\$163,500
Total Stages 2 & 3	\$520,000	\$237,000	\$130,000	\$153,000	\$283,000

At the Councillor Information Session, the majority of Councillors in attendance indicated that the shared path should include Stage 2 only ie; end the shared path at the Old Cheese Factory. However, the federal funds were applied for prior to the Information Session.

A condition of the grant fund is that grant funds be expended by 30 June 2010. The Federal Government would prefer that construction of the entire project (ie Stages 2 & 3) be completed by that time however they have indicated there may be an opportunity to negotiate within the funding agreement to expend the Federal Government funding component by 30 June 2010 and spend Councils component within the 2010/11 financial year.



To date Council has not been awarded grant funding from the RTA, nor has Council identified a funding source to meet the budget shortfall.

It should be noted that there is NO GUARANTEE that the RTA will provide grant funds next financial year. In addition, the Federal Government has advised that:

“National Bike Path funding would be reliant on confirmation of all partnership funding, which is included as the first project Funding Agreement milestone, which needs to be met, prior to the release of any funding. No NBPP funding can be released until evidence has been provided that all partner funding has been confirmed”.

To address the funding shortfall, Council could apply to the Federal Government for an extension of time to complete works. However, there are two possible outcomes:

Outcome 1 – Council required to complete entire project this financial year

Council needs to fund the shortfall of \$153,000 plus the lost opportunity of RTA grant funds of \$130,000 ie; a total of **\$283,000**

There is an opportunity to fund the \$283,000 by deferring IRS expenditure from several programs eg:

Possible projects:	Budget	Recommended Priority R&T Ranking (1-7, 1 being first priority to postpone)
Footpath Renewal Program:		
• Waite Street, Moss Vale	\$16,000	1
• Merrigang Street, Bowral	\$72,000	2
• Bundaroo Street, Bowral	\$86,400	7
Kerb & Gutter Renewal Program	\$87,000	3
Bridge Renewal Program:		
• Woodlands Creek Bridge	\$200,000	6
Seal of Approval program:		
• Jellore Street, Berrima	\$48,300	5
• Beresford Street, Balaclava	\$42,900	4
TOTAL	\$465,000	

Whilst staff do not favour the deferral of important maintenance work, these projects can be reconsidered in the 2009/10 IRS budget.



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Outcome 2 – Council allowed to complete the project early next Financial year 2010/11

Under this option, Council may be successful in attracting RTA grant funding in which case Council needs to fund the shortfall of only \$153,000. This shortfall could be funded from the 2010/2011 budget.

Should Council be unsuccessful in attracting RTA funding then Council could fund the \$283,000 shortfall from the 2010/2011 budget.

However, given that Council has already received funding for Stage 1 of the shared path project and given that the project has a high profile and has attracted some federal funding, Council has a stronger than normal chance in being awarded RTA funding.

Comment from Strategic Planner regarding Section 94 Funding Availability

Councils existing Section 94 plan does not identify the Robertson shared path for part funding. As such Section 94 - Recreation funds are not available for this project. Further, there is no new development in the eastern area of Robertson to derive a nexus and to raise developer contributions.

Any existing Section 94 funds have been earmarked for Hampden Park. As there is little opportunity for future subdivision potential within Robertson it is unlikely that reasonable income from Section 94 - Recreation would be realised. As such, there are no plans to include this project (Robertson Shared Path) nor the extension of the Caalong Street path in a revised Developer Contributions Plan.

BUDGET IMPLICATIONS

The funds required to match this grant have not been allocated in the 2009/10 budget. This report presents a number of options to fund the shortfall in order to meet the conditions of the grant offer and to complete this project.

ATTACHMENTS

1. Robertson Pathway Staging Plan
2. Federal Government Letter of Funding Offer

.....Cont'd



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.....Cont'd

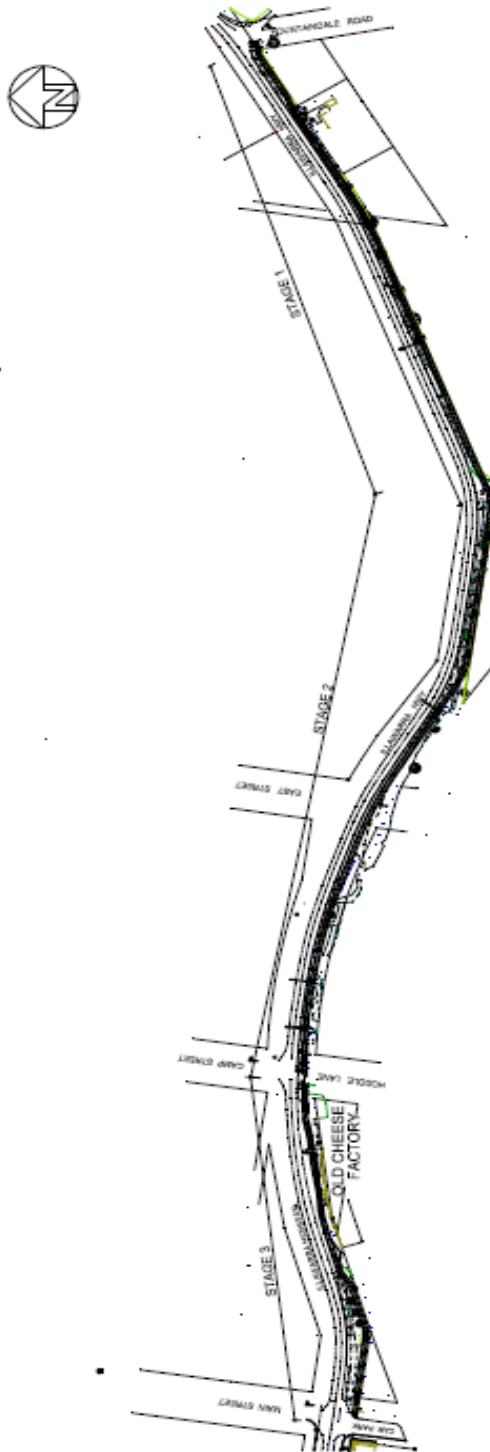
RECOMMENDATION

1. THAT Council negotiates with Federal Government to allow completion of Stage 2 and 3 of the Illawarra Highway, Robertson Shared Path early in the 2010 / 2011 financial year AND THAT should the Federal Government require the entire project completed by 30 June 2010, Council agree to defer the identified projects within this report and re-consider them for funding in the 2010/2011 IRS budget.
 2. THAT subject to a successful Roads & Traffic Authority ('RTA') grant application, Council allocates \$153,000 in the 2010/2011 Management Plan to fund the budget shortfall AND THAT should the RTA grant application be unsuccessful, that Council allocates \$283,000 in the 2010/2011 Management Plan.
-

M J Brearley
Director Infrastructure Services

20 November 2009

ATTACHMENT 1





Australian Government

**Department of Infrastructure, Transport,
Regional Development and Local Government**

File Reference: 09/8133

Mr Frank Perger
Traffic Engineer
Wingecarribee Shire Council
PO Box 141
MOSS VALE NSW 2577

COPY SENT

WINGECARRIBEE SHIRE COUNCIL	
Classification:	MAILS
Doc. No.	6690/15
Date:	29 OCT 2009
Perger	✓
m Roebuck	✓

Dear Mr Perger

**RE: JOBS FUND - NATIONAL BIKE PATH PROJECTS - NBP179
ILLAWARRA HIGHWAY, ROBERTSON CYCLEWAY**

On behalf of the Minister for Infrastructure, Transport, Regional Development and Local Government, the Hon Anthony Albanese MP, I am pleased to advise you that your project has been approved funding up to \$237,000 (GST exclusive) under the Jobs Fund - National Bike Path Projects to be negotiated with the Wingecarribee Shire Council for the Illawarra Highway, Robertson Cycleway project.

Provision of funding is dependent on the preparation and execution by both parties of a Funding Agreement [contract] that sets out the terms and conditions under which the funding is provided, and the settling of other details, including:

- the provision of final design plans; and
- the confirmation of the final project Budget.

You must enter a Funding Agreement within eight weeks of the project being approved otherwise the offer of funding will be reviewed and may be withdrawn.

You will shortly be contacted by an officer from the Australian Government Department of Infrastructure, Transport, Regional Development and Local Government (the Department) to discuss the Funding Agreement.

No financial commitments should be entered into based on this offer of funding from the Australian Government until the Funding Agreement is fully executed. You should also be aware that work commenced on your project without a properly executed Funding Agreement will be at your own risk.

The funding amount is provided on the basis that it does not attract GST as the payment will be made by one government-related entity to another government-related entity. This circumstance is specifically covered by an appropriation under



REPORT OF DIRECTOR INFRASTRUCTURE SERVICES

Australian law and falls within the terms of Australian Tax Office (ATO) ruling GSTR 2006/11. You may wish to seek guidance from the ATO or your tax advisor on the impact of National Bike Path Projects funding on your organisation's taxation liabilities.

Should you wish to conduct a project launch at the conclusion of the project, or at another suitable time, please liaise with Sharon Burrell, on 02 6274 7946, to arrange a suitable date. Closer to the planning phase of any launch you may wish to hold, you should provide three possible launch dates and at least four weeks notice to the Department to make the appropriate arrangements for representatives attending the launch.

Congratulations on your successful application. I wish you every success with the project.

Yours sincerely

Richard Wood
General Manager
Regional Development Programs Branch

23 OCT 2009



REPORT OF THE GENERAL MANAGER

COUNCIL MATTERS

GENERAL MANAGER'S REPORTS

c-GM1 General Manager's Quarterly Report

REF: GM

506/1

Submitting the General Manager's Quarterly Report to 30 September 2009.

ATTACHMENTS

The General Manager's Quarterly Report has been circulated under separate cover.

RECOMMENDATION

THAT the information in respect of the General Manager's Quarterly Report to 30 September 2009 be received and noted.



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on Wednesday, 25 November 2009

NOTICES OF MOTION

NOTICES OF MOTION

o-NM1 18/2009 – Notice of Motion – Council Investments

Clr Ken Halstead has given notice that it his intention to move the following Notice of Motion at the Ordinary Meeting of Council on Wednesday 25 November 2009:

1. THAT the Mayor bring forward a detailed report on the processes followed by the former Council through its Finance Sub-Committee, whereby it invested in CDO's through Grange Securities, which resulted in a substantial loss of Shire ratepayer's funds.

RECOMMENDATION

SUBMITTED FOR DETERMINATION



COMMITTEE REPORTS

COMMITTEE REPORTS

COMMITTEE REPORTS TABLED

c-CR1 Management and Advisory Committee Reports

REF: DCS 107/1

Submitting minutes of two (2) Committee meetings that will be tabled for information.

REPORT

1. Hill Top Community Centres Management Committee held on Thursday 15 October 2009.
2. Jurd Park Management Committee held on Tuesday 18 August 2009.

ATTACHMENTS

There are no attachments to this report.

RECOMMENDATION

THAT the information contained in the following Committee Reports be noted:

1. Hill Top Community Centres Management Committee held on Thursday 15 October 2009.
 2. Jurd Park Management Committee held on Tuesday 18 August 2009.
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AGENDA FOR THE ORDINARY MEETING OF COUNCIL

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 25 November 2009

COMMITTEE REPORTS

COMMITTEE REPORTS ATTACHED

c-CR2 Finance Committee (*Refer Minutes page 76*)

Submitting minutes of the Finance Committee held on Wednesday 18 November 2009.

ATTACHMENTS

One attachment being the minutes of the Finance Committee meeting held on Wednesday 18 November 2009.

RECOMMENDATION

THAT the recommendations FC 09/09 – FC 10/09 as detailed in the minutes of the Finance Committee meeting held on Wednesday 18 November 2009 be adopted.



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

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COMMITTEE REPORTS

Attachment 1

MINUTES FINANCE COMMITTEE HELD ON WEDNESDAY 18 NOVEMBER 2009

PRESENT: Clr J Arkwright (Chair), Clr J Clark, Clr D Gair, Clr K Halstead,
Clr G McLaughlin, Clr J Mauger, Clr D Stranger, Clr P Tuddenham,
Clr L Whipper

IN ATTENDANCE: Acting General Manager, Director Corporate Services, Director
Infrastructure Services, Financial Services Manager, Management
Accountant, Secretary Directory Corporate Services (minute taker)
Mr Philip Webster (Council's external auditor)

PRESENTATION

Council's external auditor, Mr Philip Webster, provided comment on Council's end of year 2008/09 audit report.

FC 9/09

The Committee on a **MOTION** moved by Clr Arkwright and seconded by Clr Stranger
RECOMMENDED:

1. **THAT** the external auditors report be received and noted.

PASSED

Mr Webster left the meeting.

OPEN REPORTS

CORPORATE SERVICES DIVISION

F-CS1	Budget Review to 30 September 2009
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REF:	FSM	2120/2010, 107/21
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Submitting a report on the Budget Review as at 30 September 2009.



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

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COMMITTEE REPORTS

FC 10/09

The Committee on a **MOTION** moved by Clr Halstead and seconded by Clr Stranger
RECOMMENDED:

1. **THAT** the General Fund Budget adjustments as listed on Attachment 5 be adopted.
2. **THAT** the General Manager be requested to implement urgent strategies in consultation with the Resource Recovery Centre Advisory Board to ensure the Waste Budget is balanced by 30 June 2010.

PASSED

GENERAL BUSINESS

No other business.

Meeting closed at 4:10pm



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 25 November 2009

CLOSED COUNCIL

CLOSED COUNCIL

CORPORATE SERVICES DIVISION

c-CS1 Closed Council

REF. DCS

107/9

To consider moving into Closed Council

REPORT

The following confidential report has been distributed separately:

c-EP1 CHURCH STREET, BURRAWANG – ENCROACHMENT ONTO PRIVATELY OWNED LAND LUA2006/0029

c-EP2 LEGAL ADVICE RELATING TO LEVYING OF A FEE FOR WATER EXTRACTION 5458/2, 5605

STATUTORY

Section 10A of the Local Government Act 1993, empowers Council and Committees of which all the members are Councillors to close a part of a meeting in certain circumstances in accordance with the requirements of the Act, and relevant Regulations and Guidelines.

Subject to the provisions of Section 10 of the Act, so much of a meeting may be closed as comprises certain information as outlined in Section 10A(2).

However, the Act also contains the following provisions qualifying the use of Section 10A(2).

Section 10B

1. *[Time spent closed to be minimised] A meeting is not to remain closed during the discussion of anything referred to in section 10A(2):*
 - a. *Except for so much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security, and*
 - b. *If the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret-unless the council or committee concerned is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest.*
2. *[Qualification of 10A(2)(g)] A meeting is not to be closed during the receipt and consideration of information or advice referred to in section 10A(2)(g) unless the advice concerns legal matters that:*
 - a. *are substantial issues relating to a matter in which the council or committee is involved, and*
 - b. *are clearly identified in the advice, and*



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CLOSED COUNCIL

- d. *are fully discussed in that advice.*
3. *[Qualification of 10A(3)] If a meeting is closed during the discussion of a motion to close another part of the meeting to the public (as referred to in section 10A(3)), the consideration of the motion must not include any consideration of the matter or information to be discussed in that other part of the meeting (other than consideration of whether the matter concerned is a matter referred to in section 10A(2)).*
4. *[Irrelevant matters] For the purpose of determining whether the discussion of a matter in an open meeting would be contrary to the public interest, it is irrelevant that:*
- a. *a person may misinterpret or misunderstand the discussion, or*
 - b. *the discussion of the matter may:*
 - (i) *cause embarrassment to the council or committee concerned, or to Councillors or to employees of the council, or*
 - (ii) *cause a loss of confidence in the council or committee.*

Attention is also drawn to provisions contained in Part 7 of Council's Code of Meeting Practice.

DIRECTOR GENERAL'S GUIDELINES

The Director General of the Department of Local Government has issued guidelines concerning the use of Section 10 of the Act. A copy of the Director General's guidelines has been sent to all Councillors. Section 10B(5) of the Act requires that council have regard to these guidelines when considering resolving into Closed Session.

.....Cont'd



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 25 November 2009

CLOSED COUNCIL

.....Cont'd

RECOMMENDATION

1. THAT Council moves into Closed Council in accordance with the requirements of Section 10 of the *Local Government Act 1993* as addressed below to consider the following report:

c-EP1 CHURCH STREET, BURRAWANG – ENCROACHMENT ONTO PRIVATELY OWNED LAND LUA2006/0029

Relevant Legal Provisions

This report is referred to Closed Committee under Clause 10A(d) of the Local Government Act 1993 as it contains advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege.

Brief Description

Reporting on the proposed acquisition of part of Church Street, Burrawang, which encroaches onto adjoining privately owned land.

Public Interest

It would on balance be contrary to the public interest to consider this information in Open Council because it contains advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege.

c-EP2 LEGAL ADVICE RELATING TO LEVYING OF A FEE FOR WATER EXTRACTION 5458/2, 5605

Relevant Legal Provisions

This report is referred to Closed Committee under Clause 10A (2)(g) of the Local Government Act, 1993, as it contains advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege.

Brief Description

Reporting on the issue of commercial water extraction within the Shire.

Public Interest

It would on balance be contrary to the public interest to consider this information in Open Council because it contains advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege.

2. THAT the minutes of the Closed Council part of the meeting (being the Council's resolution) be made public.



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CLOSED COUNCIL

A handwritten signature in black ink, appearing to read "S. Lee", is centered on a light-colored background.

Scott Lee
Acting General Manager

20 November 2009