

# MINUTES

## OF THE ORDINARY MEETING OF COUNCIL

*File No. 100/09*



held on Wednesday, 25 November 2009

The meeting commenced at 3.31 pm.



## MINUTES OF THE ORDINARY MEETING OF COUNCIL

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

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**COMMENCING AT:** 3.31 pm

**PRESENT:** Clr T D Gair (Mayor) in the Chair  
Clr G McLaughlin (Deputy Mayor)  
Clr J G Arkwright  
Clr J R Clark  
Clr K Halstead  
Clr J Mauger (arrived at 3.33 pm)  
Clr D Stranger  
Clr P B Tuddenham  
Clr L A C Whipper

**IN ATTENDANCE:** Acting General Manager Mr Scott Lee  
Director Corporate Services Mr Barry Paull  
Director Infrastructure Services Mr Michael Brearley  
Manager Administration & Library  
Services Mr Peter Nelson  
Administration Officer Ms Liz Johnson

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### OPENING OF MEETING AND ACKNOWLEDGEMENT OF COUNTRY

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1826/4

The Mayor Clr T D Gair opened the meeting and acknowledged country:

*"We acknowledge the Traditional Owners and Custodians of this Land and we pay respect to the past and present Elders of the Country we are meeting on today."*

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### PRAYER

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100/1

Pastor David Holt of One Life Church Moss Vale led the meeting in prayer.

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### APOLOGY

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*There were no apologies at this meeting.*

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### CONFIRMATION OF MINUTES

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MINUTES OF THE ORDINARY MEETING OF COUNCIL HELD ON WEDNESDAY,  
11 NOVEMBER 2009

100/1

**MN 483/09**

**MOTION** moved by *Clr D Stranger* and seconded by *Clr G McLaughlin*:

**THAT** the minutes of the Ordinary Meeting of Council held on Wednesday, 11 November 2009 MN 470/09 to MN 482/09 inclusive, copies of which were forwarded to Councillors, be adopted as a correct record of the proceedings of the meeting.

**PASSED**

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### BUSINESS ARISING

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Clr D Stranger asked for an update of the motion from the last Council Meeting held on Wednesday, 11 November 2009 in relation to the planning issue for affordable housing in Moss Vale (MN 478/09).

The Acting General Manager, Mr Scott Lee, advised that Council's submission on the proposal has been drafted and forwarded to the relevant consultant and acknowledgement has been received. He advised that the letters seeking assistance for the deputation to the Minister for Housing have also been drafted.

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### ADDITIONAL ITEM ARISING FROM MEETING OF WEDNESDAY, 11 NOVEMBER 2009

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Clr K Halstead referred to comments that were allegedly made at the Meeting held on Wednesday, 11 November 2009. He made the following statement:

"I am concerned that statements have been made about me which are directed at damaging my reputation. I am supposed to have made a statement about a member or employee of Council at the Council Meeting held on November 11. I deny this. If there is any complaint about my conduct, put it in writing being careful not to defame me. Once the specific allegations are brought to my notice, I will consider them and will respond in due course."

The Mayor Clr T D Gair advised that the matter had been clarified by Clr Halstead, and that the remarks that Clr Halstead has supposedly made have been either misinterpreted or not made, as he understands it.

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**DECLARATIONS OF INTEREST**

101/3

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*There were no declarations of interest at this meeting.*

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**OPEN COUNCIL**

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**MN 484/09**

107/10

**MOTION** moved by Clr J R Clark and seconded by Clr K Halstead:

**THAT** Council moves into Open Council to discuss various matters listed in the Agenda with Clr Larry Whipper in the Chair.

**PASSED**

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**OPEN COUNCIL**

**ENVIRONMENT & PLANNING DIVISION**

**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.

**OC 191/09**

The Committee on a **MOTION** moved by Clr P B Tuddenham and seconded by Clr J G Arkwright **RECOMMENDED:**

**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.**

**PASSED**

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**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.

**OC 192/09**

The Committee on a **MOTION** moved by Clr J R Clark and seconded by Clr D Stranger **RECOMMENDED:**

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

**PASSED**

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### REPORT OF DIRECTOR ENVIRONMENT & PLANNING

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#### **Matters Arising from Land Use Applications Received by Council**

1. ITEM 1 – AMENITIES BUILDING, ETC, CHRIST CHURCH BONG BONG, LOT 1 DP 1125578, ARGYLE STREET, MOSS VALE LUA09/1038

Clr J G Arkwright asked for further information in relation to this item and asked if the Bong Bong Church is a Heritage Listed Building.

Council's Development & Building Services Manager, Mr Les Pawlak, advised that the building is not shown as a heritage item in the current LEP.

Clr J R Clark asked if some information could be provided in the Weekly Circular confirming that there are no heritage issues on the Christ Church Bong Bong application.

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2. ITEM 4 – BOUNDARY ADJUSTMENT OLD SOUTH ROAD AND DIAMOND FIELDS ROAD, MITTAGONG – "TARLINGTON" OLD SOUTH ROAD, MITTAGONG LUA09/1043

Clr P B Tuddenham asked about the extent of the boundary adjustment for this item and asked for further information to be provided in the Weekly Circular.

Council's Development & Building Services Manager, Mr Les Pawlak, advised that this proposal is for 2 x 40 ha lots and there is some concern as one of the lots encroaches across a road. He advised that he will provide information in the Weekly Circular.

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3. ITEM 7 – CONVERT RESIDENTIAL PREMISES TO BUSINESS – FARM OFFICE WITH ANCILLARY FACILITIES, LOT 10 DP 1113828, BELLS HILL ROAD, ROBERTSON LUA09/1040

Clr L A C Whipper asked for information on Item 7 to be placed in the Weekly Circular.

Council's Development & Building Services Manager, Mr Les Pawlak, advised that Council is awaiting further information from the applicant on this development, but he will provide information in the Weekly Circular when it is available.

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4. ITEM 9 – INDOOR TENPIN BOWLING CENTRE, MITTAGONG HOMEMAKER CENTRE, 205 OLD HUME HIGHWAY, MITTAGONG LUA09/1055

Clr J R Clark asked if further information on this item could be placed in the Weekly Circular.

Council's Development & Building Services Manager, Mr Les Pawlak, advised that this development has been approved on the basis of a change of use from one type of recreation facility, that had been previously approved, to another one. He advised that the development fully complies with all Council requirements in relation to carparking, disabled access, etc, and that he will provide further information in the Weekly Circular.

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**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.

Council's Development & Building Services Manager, Mr Les Pawlak, addressed Council on this matter.

**OC 193/09**

The Committee on a **MOTION** moved by Clr K Halstead and seconded by Clr P B Tuddenham **RECOMMENDED:**

***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.***

**PASSED**

In accordance with the Local Government Act (section 375A – Recording of voting on planning matters) Council must record the Councillor's vote in relation to this matter.

<b>Councillor</b>	<b>For</b>	<b>Against</b>
Clr T D Gair	x	
Clr G McLaughlin	x	
Clr J G Arkwright	x	
Clr J R Clark	x	
Clr K Halstead	x	
Clr J Mauger	x	
Clr D Stranger	x	
Clr P B Tuddenham	x	
Clr L A C Whipper	x	



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**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.

Council's Development & Building Services Manager, Mr Les Pawlak, addressed Council on this matter.

**OC 194/09**

The Committee on a **MOTION** moved by Clr T D Gair and seconded by Clr J G Arkwright **RECOMMENDED:**

**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.**

**PASSED**

In accordance with the Local Government Act (section 375A – Recording of voting on planning matters) Council must record the Councillor's vote in relation to this matter.

<b>Councillor</b>	<b>For</b>	<b>Against</b>
Clr T D Gair	x	
Clr G McLaughlin	x	
Clr J G Arkwright	x	
Clr J R Clark	x	
Clr K Halstead		x
Clr J Mauger		x
Clr D Stranger	x	
Clr P B Tuddenham	x	
Clr L A C Whipper		x



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**o-EP5 Subdivision of 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.

Council's Development & Building Services Manager, Mr Les Pawlak, addressed Council on this matter.

**OC 195/09**

The Committee on a **MOTION** moved by Clr G McLaughlin and seconded by Clr T D Gair **RECOMMENDED:**

**THAT 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.**

**PASSED**

In accordance with the Local Government Act (section 375A – Recording of voting on planning matters) Council must record the Councillor's vote in relation to this matter.

<b>Councillor</b>	<b>For</b>	<b>Against</b>
Clr T D Gair	x	
Clr G McLaughlin	x	
Clr J G Arkwright	x	
Clr J R Clark	x	
Clr K Halstead	x	
Clr J Mauger	x	
Clr D Stranger	x	
Clr P B Tuddenham	x	
Clr L A C Whipper	x	



**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**

REF: DBSM

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.

Council's Development & Building Services Manager, Mr Les Pawlak, addressed Council on this matter.

**OC 196/09**

The Committee on a **MOTION** moved by Cllr K Halstead and seconded by Cllr P B Tuddenham **RECOMMENDED:**

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

**PASSED**

In accordance with the Local Government Act (section 375A – Recording of voting on planning matters) Council must record the Councillor's vote in relation to this matter.

<b>Councillor</b>	<b>For</b>	<b>Against</b>
Clr T D Gair	x	
Clr G McLaughlin	x	
Clr J G Arkwright	x	
Clr J R Clark	x	
Clr K Halstead	x	
Clr J Mauger	x	
Clr D Stranger	x	
Clr P B Tuddenham	x	
Clr L A C Whipper	x	

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**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.

Council's Development & Building Services Manager, Mr Les Pawlak, addressed Council on this matter.

**OC 197/09**

The Committee on a **MOTION** moved by Clr P B Tuddenham and seconded by Clr T D Gair **RECOMMENDED:**

**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.

**PASSED**

In accordance with the Local Government Act (section 375A – Recording of voting on planning matters) Council must record the Councillor's vote in relation to this matter.

<b>Councillor</b>	<b>For</b>	<b>Against</b>
Clr T D Gair	x	
Clr G McLaughlin	x	
Clr J G Arkwright	x	
Clr J R Clark	x	
Clr K Halstead	x	
Clr J Mauger	x	
Clr D Stranger	x	
Clr P B Tuddenham	x	
Clr L A C Whipper	x	



**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.

**OC 198/09**

The Committee on a **MOTION** moved by Clr G McLaughlin and seconded by Clr J R Clark  
**RECOMMENDED:**

***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 March 2010 in accordance with the Environmental Planning and Assessment Regulations.***

**PASSED**

In accordance with the Local Government Act (section 375A – Recording of voting on planning matters) Council must record the Councillor's vote in relation to this matter.

<b>Councillor</b>	<b>For</b>	<b>Against</b>
Clr T D Gair	x	
Clr G McLaughlin	x	
Clr J G Arkwright	x	
Clr J R Clark	x	
Clr K Halstead	x	
Clr J Mauger	x	
Clr D Stranger	x	
Clr P B Tuddenham	x	
Clr L A C Whipper	x	



**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').

**OC 199/09**

The Committee on a **MOTION** moved by Clr K Halstead and seconded by Clr J Mauger  
**RECOMMENDED:**

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.**

**PASSED**

In accordance with the Local Government Act (section 375A – Recording of voting on planning matters) Council must record the Councillor's vote in relation to this matter.

<b>Councillor</b>	<b>For</b>	<b>Against</b>
Clr T D Gair	x	
Clr G McLaughlin	x	
Clr J G Arkwright	x	
Clr J R Clark	x	
Clr K Halstead	x	
Clr J Mauger	x	
Clr D Stranger	x	
Clr P B Tuddenham	x	
Clr L A C Whipper	x	

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**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.

**OC 200/09**

The Committee on a **MOTION** moved by Clr J R Clark and seconded by Clr T D Gair  
**RECOMMENDED:**

1. **THAT Council adopts Draft Amendment G of Development Control Plan 12 – Car-Parking, Loading, Unloading and Manoeuvring Development Control Plan as follows:**

**Section 1.5 Definition (additions)**

- ***Shop (LEP 2009) means retail premises that sell groceries, personal care products, clothing, music, homewares, stationery, electrical goods or other items of general merchandise, and may include a neighbourhood shop but does not include food and drink premises or restricted premises. This definition encompasses premises known as supermarkets, convenience stores, general stores, discount department stores and the like. For the purpose of calculating car parking requirements, the following sub-categories of the standard definition of a shop shall be used:***

***Small Shop means a shop that has a Gross Floor Area up to and including 150m<sup>2</sup> AND will be serviced only by a Small Rigid Vehicle (up to 6.4 metres in length as defined by Australian Standard AS 2890.2) AND will have a maximum delivery frequency of 2 times per week.***

***Medium Shop means a shop that has a Gross Floor Area of 151m<sup>2</sup> to 1000m<sup>2</sup> AND will be serviced only by either a Small Rigid Vehicle (up to 6.4 metres in length as defined by Australian Standard AS 2890.2) OR by a Service Vehicle (up to 8.8 metres in length as defined by Austroads 2008) AND will have a maximum delivery frequency of 2 times per week.***

***Large Shop means a shop that has a Gross Floor Area of more than 1001m<sup>2</sup> OR any shop that will be serviced by either a Heavy Rigid Vehicle (up to 12.5 metres in length as defined by Austroads 2008) OR a single articulated vehicle (up to 19 metres in length as defined by Austroads 2008) OR with a delivery frequency of more than 2 times per week.***

***Note: Any small or medium shop that does not satisfy all of the stated criteria defaults to the next larger category.***

**Section 4.1 Off Street Loading and Unloading Facilities (Additions)**

*Shops with a gross leaseable floor area of less than 1,000 square metres (ie either a small or medium shop) must either provide a loading facility on site to accommodate a Service Vehicle (up to 8.8 metres in length as defined by Austroads 2008), or Single Unit Vehicle (12.5 metres in length as defined by Austroads 2008) as the minimum standard or may be permitted to utilise a loading zone if it is within 100 metres as measured along the travel path. Consideration of servicing of the development by vehicles equal to larger than a Service Vehicle (8.8 metres in length as defined by Austroads 2008) may be considered as the appropriate design vehicle subject to the approval of supporting evidence by Council's Director Environment and Planning. No use of the loading zone will be permitted where deliveries will require the use of fork lifts, or other mechanically assisted lifting devices on the footpath or crossing a public road or footpath. Council will require a positive covenant to be placed on the title of the land giving Council the power to release, vary or modify the restriction to enforce the requirements of this clause.*

*Shops with a gross leaseable floor area of 1,001 square metres or greater shall provide a loading facility to accommodate a Single Articulated Vehicle (19.0 metres in length as defined by Austroads 2008) as the minimum standard. No use of the development will be permitted where deliveries of a vehicle larger than that of what the development was designed for will be permitted. Council will require a positive covenant to be placed on the title of the land giving Council the power to release, vary or modify the restriction to enforce the requirements of this clause.*

**Appendix 1 – Schedule of Required Car Parking Spaces (Additions)**

USE	CAR PARKING SPACES
<b>Business Uses</b>	
<b>Office, Commercial</b>	<ul style="list-style-type: none"> <li>• 1 space per 30 m<sup>2</sup> of gross leaseable floor area for buildings of single storey.</li> <li>• For buildings greater than one storey in height the disaggregated method for car park calculation (Section 5 RTA Guide for Traffic Generating Developments) may be considered.</li> </ul>
<b>Shop:</b> <ul style="list-style-type: none"> <li>• Small or Medium Shop</li> <li>• Large Shop</li> </ul> See Section 1.5 for definition	1 space per 30m <sup>2</sup> of Gross Floor Area  1 space per 20m <sup>2</sup> of Gross Floor Area



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**REPORT OF DIRECTOR ENVIRONMENT & PLANNING**

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2. ***THAT the amended Development Control Plan 12 Amendment G be implemented in accordance with the Environmental Planning and Assessment Regulations 2000.***

**PASSED**

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.....Cont'd

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.***

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### REPORT OF DIRECTOR CORPORATE SERVICES

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.....Cont'd

*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.

**PASSED**

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### 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.

The Director Corporate Services, Mr Barry Paull, addressed Council on this matter.

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*The Committee on a **MOTION** moved by Clr P B Tuddenham and seconded by Clr D Stranger **RECOMMENDED**:*

1. THAT the report/advice from Mr Mark Leeming be acknowledged.
2. THAT Council note that the building on Alexandra Square, formerly occupied by the Mittagong Bowling & Recreation Club, is not required to be demolished as per Clause 4.
3. THAT Council note the types of usage available for the building as per Clauses 43, 44 and 45 which relate to recreation use.
4. THAT the Alexandra Square Working Group/Committee be re-formed, consisting of:  
  
Councillors (x2)  
General Manager  
Director Corporate Services  
Community Representatives (call for expressions of interest)  
  
AND THAT the Working Group come back with a recommended Management Structure and recommended usages.
5. THAT Council not consider the demolition of the building in any future budget deliberations.

Clr K Halstead foreshadowed a Further Amendment.

.....Cont'd

.....Cont'd

**OC 202/09**

**AMENDMENT** moved by Clr T D Gair and seconded by Clr J G Arkwright **RECOMMENDED:**

**THAT** the advice from Mr Mark Leeming SC be received and noted and Council's position remain as determined on Wednesday, 10 June 2009 (MN 231/09).

**PASSED**

Councillor	For	Against
Clr T D Gair	x	
Clr G McLaughlin	x	
Clr J G Arkwright	x	
Clr J R Clark	x	
Clr K Halstead	x	
Clr J Mauger		x
Clr D Stranger		x
Clr P B Tuddenham		x
Clr L A C Whipper	x	

**FURTHER AMENDMENT** moved by Clr K Halstead and seconded by Clr P B Tuddenham:

1. **THAT** Council note the contents of the legal opinion provided by Mr Mark Leeming, SC and re-affirm its position in that Alexandra Square be utilised for "Recreation" purposes in accordance with the Deed of Trust.
2. **THAT** the existing building not be demolished.
3. **THAT** a Committee of Council be formed which consists of Councillors only (with consultation with Community groups as required) to consider the future use of the building for "legitimate" recreational purposes.

Clr L A C Whipper, from the Chair, ruled that he would not accept the Further Amendment as it closely resembled the Motion.

***AMENDMENT BECAME THE MOTION***

***MOTION PASSED***

Councillor	For	Against
Clr T D Gair	x	
Clr G McLaughlin	x	
Clr J G Arkwright	x	
Clr J R Clark	x	
Clr K Halstead		x
Clr J Mauger		x
Clr D Stranger		x
Clr P B Tuddenham		x
Clr L A C Whipper	x	



**MINUTES OF 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**

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**CHAIRPERSON**

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At this juncture, the time being 5.03 pm, the Mayor, Clr T D Gair, resumed the Chair to conduct the remainder of Council Business.

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<b>o-CS3 Investments as at 31 October 2009</b>
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REF: FSM	2104
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Submitting details of Council's Investments as at 31 October 2009.

The Director Corporate Services, Mr Barry Paull, addressed Council on this matter.

***MN 485/09***

***MOTION moved by Clr J G Arkwright and seconded by Clr J R Clark:***

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

***PASSED***

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## MINUTES OF 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

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<b>o-CS4</b>	<b>Council's Procedures for Managing Consumption of Alcohol at Community Halls Managed By 355 Volunteer Committees</b>
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REF:	DCS, MALS
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107/1
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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.

The Director Corporate Services, Mr Barry Paull, addressed Council on this matter.

**MN 486/09**

**MOTION** moved by Clr P B Tuddenham and seconded by Clr L A C Whipper:

**THAT** in relation to Council's Procedures for Managing consumption of alcohol at community halls managed by 355 Volunteer Committees, Council:

- (a) ***continues to revise its policies and procedures in conjunction with current legislation and Council policies and procedures;***
- (b) ***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;***
- (c) ***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.***

**PASSED**

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<b>o-CS5</b>	<b>Jurd Park Management Committee Constitution</b>
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REF: DCS, MALS	6534/2.2
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Reporting on the review of the Jurd Park Management Committee Constitution.

**MN 487/09**

**MOTION** moved by Clr J R Clark and seconded by Clr L A C Whipper:

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.**

**PASSED**

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<b>o-CS6</b>	<b>Committee Appointments and Resignations</b>
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REF:	DCS	107/1
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Reporting on Management Committee Appointments and Resignations.

**MN 488/09**

**MOTION** moved by Clr J R Clark and seconded by Clr G McLaughlin:

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 Mr 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.*

**PASSED**

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**INFRASTRUCTURE SERVICES DIVISION**

**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.

The Director Infrastructure Services, Mr Michael Brearley, addressed Council on this matter.

***MN 489/09***

***MOTION moved by Clr P B Tuddenham and seconded by Clr L A C Whipper:***

1. ***THAT Council negotiates with Federal Government to allow completion of Stage 2 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 \$44,500 in the 2010/2011 Management Plan to fund the budget shortfall AND THAT should the RTA grant application be unsuccessful, that Council allocates \$119,500 in the 2010/2011 Management Plan.***
3. ***THAT in future years Council apply for funding to complete Stage 3 of the project.***

***PASSED***

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**SUPPLEMENTARY REPORT OF INFRASTRUCTURE SERVICES**

<b>o-IS2</b>	<b>Plant and Equipment Hire Tender</b>
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REF:	DIS	6330/10.6
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Reporting on tenders for Plant & Equipment Hire.

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**MATTER OF URGENCY**

1. PLANT AND EQUIPMENT HIRE TENDER 6330/10.6

Clr D Stranger requested that the matter of Plant and Equipment Hire Tender, be treated as a matter of urgency.

***MN 490/09***

***MOTION moved by Clr D Stranger and seconded by Clr G McLaughlin:***

***THAT the Supplementary Report in relation to Plant and Equipment Hire Tender be considered as a matter of urgency.***

***PASSED***

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The Mayor ruled that this is a matter of urgency.

The Director Infrastructure Services, Mr Michael Brearley, addressed Council on this matter.

***MN 491/09***

***MOTION moved by Clr D Stranger and seconded by Clr G McLaughlin:***

- THAT Council decline to accept any of the Plant and Equipment Hire tenders (Tender 12/10) under the provisions of Local Government (General) Regulation 2005 – Regulation 178 (1)(b) for the reason that a larger pool of applicants will be achieved by inviting fresh tenders.***
- THAT Council invite fresh tenders closing on Tuesday, 22 December 2009 for Plant and Equipment Hire for 2010 under the provisions of Local Government (General) Regulation 2005 – Regulation 178 (3)(b).***
- THAT Council write to all existing contractors providing Plant and Equipment Hire services to Council, advising them of the current tender process.***

***PASSED***



**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.

The Acting General Manager, Mr Scott Lee, addressed Council on this matter.

***MN 492/09***

***MOTION moved by Cllr J R Clark and seconded by Cllr L A C Whipper:***

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

***PASSED***

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## MINUTES OF THE ORDINARY MEETING OF COUNCIL

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

### QUESTIONS FROM THE PUBLIC

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#### QUESTIONS FROM THE PUBLIC

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1. SERVICE STATION AND CARWASH DEVELOPMENT, LOT 1 DP 531671, 609  
ARGYLE STREET, MOSS VALE LUA09/0227

Mr Geoff Hosey advised by he was representing Mrs Elayne Skipworth (the owner of the adjoining property on the eastern side) and referred to a letter to Council dated 7 April 2009 which referred to eight (8) issues, some of which have been addressed. He referred to page 9 of the report on today's Agenda in relation to this matter noting that the information in relation to 607 Argyle Street is not correct, as the downstairs area is still in use and the upstairs 4 bedroom flat has just been vacated with a new tenant being sought. Mr Hosey stated that the letter dated 7 April 2009 was a letter of objection to the proposal.

Mr Hosey asked:

- (i) Why his questions had not been fully answered?
- (ii) What is the distance from the building to the retaining wall on the eastern side?
- (iii) What does Australian Standard 1940 refer to with regard to the storage of explosive products within close proximity of houses?

The Acting General Manager, Mr Scott Lee, advised that the appropriate way to proceed, given that this item was dealt with by Council earlier in the meeting, would be that he (Mr Lee) and Council's Development & Building Services Manager, Mr Les Pawlak, would meet with Mr Hosey to go through the issues he had raised. Mr Lee advised that the resolution of Council required conditions of consent to be imposed to his satisfaction and if any of the issues raised by Mr Hosey necessitate appropriate conditions, then those conditions can be addressed.

Council's Development & Building Services Manager, Mr Les Pawlak, advised in relation to Mr Hosey's second question, that if the wall is a fire-rated wall it can be on the boundary, otherwise it has to be 3 metres off the boundary.

The Mayor Clr T D Gair advised that a time for a meeting between Mr Hosey, the Acting General Manager and the Development & Building Services Manager will be arranged at a mutually convenient time.

2. MOSS VALE ENTERPRISE ZONE – BERRIMA ROAD STREETSCAPE SCHEME  
5602/14

Mrs Jan Hainke asked how many plant nurseries and suppliers have supplied trees for use in public places and roadsides during the past five (5) years and how are these nurseries and suppliers selected?

The Director Infrastructure Services, Mr Michael Brearley, advised that this matter will be taken on notice and a reply provided to Mrs Hainke.

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## MINUTES OF THE ORDINARY MEETING OF COUNCIL

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

### QUESTIONS FROM THE PUBLIC

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3. BOWRAL COUNTRY GOLF CLUB LEASE

6612/1.1, PN215900

Mr Ian Scandrett asked:

- (i) If the Mayor had read the original lease, the date it was to take effect, the date it was signed and when did the tenant sign it?

The Mayor Clr T D Gair advised that he read the lease but probably not in a thorough and analytical manner as a lawyer would read it. The Mayor advised he was unsure what date the lease was signed but he would check the records on that.

- (ii) What did the original lease state in relation to rates charges?

The Mayor Clr T D Gair advised that this question will be taken on notice.

- (iii) When and how did the tenant give notice of his rates dispute?

The Mayor Clr T D Gair advised that the dispute was discussed by Councillors at Information Sessions on two (2) occasions and Council negotiated and reached a compromise with the lessee.

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4. COUNCIL'S WEEKLY CIRCULAR

100/8

Mr Ian Scandrett referred to the Weekly Circular and asked it was going to be made available on the web as he understood that it was to be.

The Acting General Manager, Mr Scott Lee, advised that this matter had been dealt with previously by Council and it had been explained that the Weekly Circular was produced not as a confidential document but as a document for distribution to the Councillors.

The Mayor Clr T D Gair advised that there is a procedure in place and that Council is following that procedure. He advised that the Weekly Circular is a conduit between Councillors and Council staff and is not a public document as such.

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## MINUTES OF THE ORDINARY MEETING OF COUNCIL

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

### QUESTIONS FROM THE PUBLIC

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5. COUNCIL'S AUDITOR

2102/2

Mr Mac Cott advised that in the past Auditor Webster presented his annual audit report to either an Ordinary Meeting of Council or a meeting at which all Councillors and members of the public were present. He asked if this practice has been discontinued by the current Council and Finance Committee and will the former practice be re-instated?

Clr J G Arkwright advised that there is no reason why the auditor's report cannot be presented at a meeting which is open to the public.

The Director Corporate Services, Mr Barry Paull, advised that the auditor's written report is a public document and is put on exhibition for a period of time before Council adopts it, so it is available for access to the public.

The Mayor advised that the practice of the auditor reporting to the open Council will be re-instated.

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6. INDOOR TENPIN BOWLING CENTRE, MITTAGONG HOMEMAKER CENTRE,  
205 OLD HUME HIGHWAY, MITTAGONG

LUA09/1055

Mr Terry Oakes-Ash referred to item 9 on the List of Land use Applications Received by Council on the today's Agenda, which has been processed under delegated authority, and asked if a proper briefing can be provided for the press of the plan of the fit-out proposal, as the document does not say how many lanes are proposed and other details of the development, as the community is not aware of how the project is going to proceed.

The Mayor Clr T D Gair advised that he would suggest to Council staff that they approach the applicant to see if it is possible to put out a media release, so there may be feedback from the public.

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## MINUTES OF THE ORDINARY MEETING OF COUNCIL

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

### NOTICE OF MOTION

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### NOTICE OF MOTION

<b>o-NM1</b>	<b>18/2009 – Notice of Motion – Council Investments</b>
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REF:	DCS
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100/4, 2104
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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.

**MOTION** moved by Clr K Halstead and seconded by Clr J Mauger:

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.

**LOST**

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**COMMITTEE REPORTS TABLED**

<b>c-CR1</b>	<b>Management and Advisory Committee Reports</b>
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REF: DCS	107/1
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Submitting minutes of two (2) Committee meetings that will be tabled for information.

***MN 493/09***

***MOTION moved by Clr J R Clark and seconded by Clr L A C Whipper:***

***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.***

***PASSED***

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## MINUTES OF THE ORDINARY MEETING OF COUNCIL

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

### COMMITTEE REPORTS

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#### COMMITTEE REPORTS ATTACHED

<b>c-CR2</b>	<b>Finance Committee</b>
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REF:	DCS
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107/21
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Submitting minutes of the Finance Committee held on Wednesday 18 November 2009.

***MN 494/09***

***MOTION moved by Clr J G Arkwright and seconded by Clr L A C Whipper:***

***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.***

***PASSED***

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## MINUTES OF THE ORDINARY MEETING OF COUNCIL

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

### COMMITTEE REPORTS

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#### GENERAL BUSINESS

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1. ST PAUL'S INTERNATIONAL COLLEGE MOSS VALE PN15554100

Clr K Halstead referred to the development many years ago by St Paul's International College in Waite Street, Moss Vale and advised that his recollection was that footpath landscaping along Waite Street was one of the conditions of consent, as he noticed that landscaping had not been carried out. Clr Halstead asked if there was a landscaping condition included in the most recent approval.

The Mayor Clr T D Gair advised that information will be provided in the Weekly Circular.

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2. PROPOSED HILL TOP MOTO CROSS LUA09/0696

Clr J G Arkwright asked if the "sound trial" to be held at the site of this proposed development at 10.30 am on Friday, 4 December 2009, followed by a public forum, has been arranged. If so, Clr Arkwright asked if that time and date can be altered so that the majority of the residents can attend as most adults are either working or sleeping due to shiftwork.

The Acting General Manager, Mr Scott Lee, advised that a suitable date and time is still to be organised and as no notification has yet gone out, there is now an opportunity to make those arrangements.

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3. COMPANION ANIMALS ACT 5500/4

Clr J G Arkwright referred to a letter from the Member for Goulburn, Ms Pru Goward, MP, dated 18 November 2009, dealing with the Companion Animals Act and more specifically the matter of domestic cats, noting there have been complaints about domestic cats killing wildlife.

The Acting General Manager, Mr Scott Lee, advised that the letter from Ms Goward has been received and that there are regulations around the Companion Animals Act which make the option put forward in the letter difficult to carry out.

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4. BEATRICE STREET (CROSSING LEOPOLD STREET), MITTAGONG  
RD3114, 8101

Clr J G Arkwright asked if cleaning of leaves from gutters and drains in these streets could be arranged to avoid flooding during heavy rain.

The Director Infrastructure Services, Mr Michael Brearley, advised that the request will be carried out.

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## MINUTES OF THE ORDINARY MEETING OF COUNCIL

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

### COMMITTEE REPORTS

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5. PLAN OF MANAGEMENT FOR BERRIMA CAMPING GROUND 6526/15.1

Clr D Stranger asked at what stage the implementation of the Plan of Management for the Berrima Camping Ground is at.

The Director Infrastructure Services advised that as this matter involves cross-divisions of Council, a meeting had been held by the Parks & Property Manager and the Environment & Health Manager to arrive at a strategy for implementation of the Plan of Management and it will be moved on early in 2010.

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6. WEEKLY CIRCULAR 100/8

Clr J Mauger referred to his request at the last Council Meeting and asked if he could have assurance that the Weekly Circular/Corporate Diary was not a confidential document and that he could show it to any member of the public.

The Mayor Clr T D Gair advised that was correct.

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7. LEASE OF THE COUNTRY GOLF CLUB BOWRAL 6612/1.1, PN215900

Clr J Mauger referred to his request for information, which had been denied. He stated that he had sent a fax clearly worded requesting copies of the letters of dispute under Clause 27, together with last year's rate notice. He noted that he had been requested by the Mayor and Acting General Manager to attend a meeting but it is difficult for him to attend a meeting when he does not have the requested material.

The Mayor Clr T D Gair advised that Council has resolved to go forward with the amended lease, it has been signed, it has been delivered and it has been acted upon. He advised that it was a resolution of the full Council and every Councillor had the right during the discussion and debate to make a point, and asked why Clr Mauger was pursuing this matter.

Clr Mauger advised that he was one of the three Councillors who dissented against the resolution.

The Mayor advised that the issues raised by Clr Mauger should be dealt with at a meeting between himself (the Mayor), Clr Mauger, the General Manager, the Director Corporate Services and the Property Officer, in an endeavour to resolve his questions.

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8. ROUNDAABOUTS 7451

Clr G McLaughlin referred to the roundabout at the corner of Moss Vale Road and Funston Street, Bowral and the recently constructed roundabout at Taylor Avenue, Berrima, and asked if some small shrubbery can be placed in the roundabouts.

The Mayor Clr T D Gair advised that this matter will be taken on notice.

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## MINUTES OF THE ORDINARY MEETING OF COUNCIL

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

### COMMITTEE REPORTS

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9. ROAD REFLECTORS FOR FIRE AND WATER HYDRANTS AT BUNDANOON  
7799/6, 6430/14

Clr J R Clark asked if there was a policy or guidelines for the placement of the blue and green reflectors used to identify water and fire hydrants as many of these reflectors were affixed to the road surface off-centre to the middle of the road, which created confusion to vehicles travelling on the roads at night.

The Director Infrastructure Services, Mr Michael Brearley, advised that a lot of this work is done by volunteers who Council is grateful for, but at the same time consistency needs to be maintained, so a Standard will be developed and all the work done to that Standard. He advised that the reflectors will be replaced and rectified.

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10. PROPOSED HILL TOP MOTO CROSS LUA09/0696

Clr L A C Whipper referred to the brief meeting that was held earlier today and asked if it was possible for an extension of time to be granted for submissions and also to reiterate the date and time for the public meeting. Clr Whipper asked if it was possible for the meeting to be held on a weekend so as to facilitate attendance at the meeting by Councillors and local residents, as the community wished to be involved in the planning process.

The Mayor Clr T D Gair advised that he did not want to pre-empt any decision of Council but questioned the need for a public meeting.

Clr J G Arkwright advised that perhaps instead of a public meeting it just could be the attendance by Council's officers so that residents could ask questions.

The Mayor suggested that it should be a public Information Session as opposed to a public meeting and not a protest meeting, to be held at 6.00 pm on Tuesday 8 December or Thursday 10 December 2009 and that Councillors who are available, and wish to, can attend the public Information Session.

The Acting General Manager, Mr Scott Lee, advised that confirmation of the extension of time for submissions can be dealt with at the time that the Information Session is scheduled. He advised that the availability of a venue for the two proposed dates for the Information Session will need to be investigated.

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## MINUTES OF THE ORDINARY MEETING OF COUNCIL

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

### COMMITTEE REPORTS

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11. PLAN OF MANAGEMENT FOR BERRIMA CAMPING GROUND 6526/15.1

Clr L A C Whipper advised that he understood that the Plan of Management had been adopted and asked what was the delay in opening the facility to the public.

The Director Infrastructure Services, Mr Michael Brearley, advised that as this matter is cross-divisional within Council, and the Rangers have a large input, there are matters that need to be implemented in terms of managing the area as a camping area, such as the collecting of fees, compliance, and so on.

Clr Whipper asked for further information to be brought forward, as soon as possible, as there is an expectation in the community that they have been waiting long enough.

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12. SHOOTING GALLERY AT HILL TOP LUA07/1364, PN1580700

Clr P B Tuddenham asked for an up-date in relation to this matter.

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13. PROPOSED HILL TOP MOTO CROSS LUA09/0696

Clr P B Tuddenham referred to the meeting that was held today with residents of Hill Top and advised that he was not aware of this meeting until yesterday. Clr Tuddenham asked that if meetings are going to be held and Councillors are invited, could they be advised of the meetings and then they can make a decision of whether they attend or not.

The Mayor Clr T D Gair advised that there is protocol that has to be followed for Councillors in attending meetings where Council staff are involved, so that in future for meetings where staff are involved and Councillors wish to attend, then all Councillors have to be told so that they can make a decision about whether they attend and have an input at the meeting. He advised that he has asked the Acting General Manager to re-visit this matter to try and set a policy or acknowledgement for Councillors about how these issues are dealt with.

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14. WASTE LEVIES 7502/6

The Mayor Clr T D Gair advised that no response was received by Council from the Minister in relation to waste levies, but the seven (7) Councils at the Southern Group of Councils backed the idea, and a meeting has been arranged with Mr Matt Brown, MP, the Member for Kiama, next Tuesday morning at 9.00 am. The Mayor advised that he and the Resource Recovery Manager would be attending the meeting, together with the General Manager from Shoalhaven and the Mayor of Kiama, who is the Chair of the Southern Group of Councils. The Mayor noted that it is unlikely that Council will get a reduction in the levies but may get some money refunded.

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## MINUTES OF THE ORDINARY MEETING OF COUNCIL

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale  
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### COMMITTEE REPORTS

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15. LEASE OF THE COUNTRY GOLF CLUB BOWRAL 6612/1.1, PN215900

Clr K Halstead advised that in February 2009, following his request, he was supplied with a copy of the Lease for the Bowral Country Golf Club. He stated that the copy he received purported to be the 'final' signed version but subsequently he was shown a copy of the signed Lease by Clr Mauger which was dated 21 April 2009 (or thereabouts). He advised that the copy he received in February was undated and unsigned but asked about the difference in the dates of the document.

The Mayor Clr T D Gair advised that this matter will be taken on notice but he wished to have this matter "put to bed".

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## MINUTES OF 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

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#### CORPORATE SERVICES DIVISION

c-CS1	Closed Council	107/9
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To consider moving into Closed Council.

At this juncture, the time being 6.58 pm, pursuant to section 10A(4), the Mayor offered the opportunity to members of the public to make representations to Council as to whether any items of the Closed Council should not be considered in Closed Council.

This information would, if disclosed, prejudice the maintenance of the law, AND THAT the press and public be excluded from Closed Council as it is the opinion of the General Manager that publication of the proceedings would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted.

No objections were received from the members of the public.

.....Cont'd



.....Cont'd

**MN 495/09**

**MOTION** moved by Clr L A C Whipper and seconded by Clr J R Clark:

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.

**PASSED**

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## MINUTES OF THE ORDINARY MEETING OF COUNCIL

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

### CLOSED COUNCIL

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#### CLOSED COUNCIL

#### Report of Environment & Planning

<b>c-EP1</b>	<b>Church Street, Burrawang – Encroachment onto Privately Owned Land</b>
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REF:	DEP	LUA2006/0029
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#### 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.

The Acting General Manager, Mr Scott Lee, addressed Council on this matter.

*The Committee on a **MOTION** moved by Cllr J G Arkwright and seconded by Cllr D Stranger*  
**RECOMMENDED:**

***THAT subject to further confirmation by survey and title search of the encroachment of part of Church Road onto the adjoining privately owned land, authority be delegated to the General Manager to negotiate the acquisition of the land onto which part of Church Street, Burrawang encroaches, namely part Lot 1 DP 1114042 AND THAT the General Manager be authorised to conduct negotiations with the property owner, as discussed at the meeting, to finalise the matter.***

**PASSED**

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## MINUTES OF THE ORDINARY MEETING OF COUNCIL

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

### CLOSED COUNCIL

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#### **c-EP2      Legal Advice Relating to Levying of a Fee for Water Extraction**

REF:	DEP	5458/2, 5605
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Reporting on previous concerns expressed by Councillors relating to the ability of Council to levy fees or charges for the commercial extraction of water within the Shire and Legal advice now received.

#### 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.

The Committee on a **MOTION** moved by Clr P B Tuddenham and seconded by Clr L A C Whipper **RECOMMENDED**:

1. **THAT with any proposed development for Commercial Water Extraction, Extractive Industry or a mine, Council indicate it requires appropriate means to be included with the application for the upgrading and or ongoing maintenance of local roads that will be used for the transport of materials, preferably through the mechanism of a Voluntary Planning Agreement.**
2. **THAT a separate report be submitted to Council if any formal advice is received from the Department of Local Government that a review of Chapter 15 of the Local Government Act 1993 is being undertaken.**

**PASSED**

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## MINUTES OF THE ORDINARY MEETING OF COUNCIL

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

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### OPEN COUNCIL

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107/10

**MN 496/09**

**MOTION** moved by Clr G McLaughlin and seconded by Clr L A C Whipper:

**THAT** Council moves back into Open Council.

**PASSED**

No members of the public were present in the Chamber.

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### ADOPTION OF CLOSED COUNCIL

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107/9

**MN 497/09**

**MOTION** moved by Clr G McLaughlin and seconded by Clr L A C Whipper:

**THAT** the recommendations of the Closed Council held on Wednesday, 25 November 2009 (Items c-EP1 to c-EP2) be adopted.

**PASSED**

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### ADOPTION OF OPEN COUNCIL

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107/10

**MN 498/09**

**MOTION** moved by Clr G McLaughlin seconded by Clr L A C Whipper:

**THAT** the recommendations of the Open Council held on Wednesday, 25 November 2009 being OC 191/09 to OC 202/09, be adopted.

**PASSED**

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## MINUTES OF THE ORDINARY MEETING OF COUNCIL

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

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### THERE BEING NO FURTHER BUSINESS, THE MEETING CLOSED AT 7.20 PM

In accordance with the provisions of Section 375(2) of the Local Government Act, these Minutes of the Ordinary Council Meeting held Wednesday, 9 December 2009 numbered M/N 483/09 to M/N 498/09, were signed by me hereunder at the Council Meeting held on Wednesday, 9 December 2009.

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CHAIRMAN

READ AND CONFIRMED ON WEDNESDAY, 9 DECEMBER 2009

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CHAIRMAN

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PUBLIC OFFICER