

# MINUTES

## OF THE ORDINARY MEETING OF COUNCIL

*File No. 100/11*



held on Wednesday, 23 November 2011

The meeting commenced at 3.30 pm.



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**MINUTES OF THE ORDINARY MEETING OF COUNCIL**  
held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale  
on Wednesday, 23 November 2011  
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**MINUTES OF THE ORDINARY MEETING OF COUNCIL**  
held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale  
on Wednesday, 23 November 2011  
**OPENING, PRAYER AND ACKNOWLEDGEMENT OF COUNTRY**

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**COMMENCING AT:** 3.30 pm

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

**IN ATTENDANCE:** General Manager Mr Jason Gordon (arrived at 3.37 pm)  
Director Corporate Services Mr Barry Paull  
Director Environment & Planning Mr Scott Lee  
Director Infrastructure Services Mr Michael Brearley  
Acting Manager Governance Mrs Sharon Hauptberger  
P/A to the Mayor Ms Liz Johnson

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**OPENING OF MEETING AND  
ACKNOWLEDGEMENT OF COUNTRY**

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1826/4

The Acting Mayor Clr L A C Whipper opened the meeting and advised that the General Manager will be arriving a few minutes late and sitting in the Chair until the General Manager's arrival will be the Director Corporate Services, Mr Barry Paull.

The Acting Mayor Clr L A C Whipper undertook Acknowledgement of Country.

Clr L A C Whipper:

*"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

The meeting was led in prayer by Pastor Ian Salmond of Fresh Hope Church of Christ.

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**APOLOGY**

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**M/N 416/11**

PERS

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

**THAT** the apology of Clr K Halstead be accepted and leave of absence granted.

**PASSED**

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**CONFIRMATION OF MINUTES – ORDINARY MEETING OF TUESDAY, 8 NOVEMBER  
2011**

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100/1

MINUTES OF THE ORDINARY MEETING OF COUNCIL HELD ON TUESDAY,  
8 NOVEMBER 2011

**MN 417/11**

**MOTION** moved by Clr T D Gair and seconded by Clr J R Clark:

**THAT** the minutes of the Ordinary Meeting of Council held on Tuesday, 8 November 2011 MN 405/11 to MN 413/11, copies of which were forwarded to Councillors, be adopted as a correct record of the proceedings of the meetings.

**PASSED**

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**BUSINESS ARISING**

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There was no business arising from the Minutes of the Meeting held on Tuesday, 8 November 2011.

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At this juncture, the time being 3.37 pm, the General Manager joined the Meeting.



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**CONFIRMATION OF MINUTES – EXTRAORDINARY MEETING OF WEDNESDAY, 16  
NOVEMBER 2011**

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100/1

MINUTES OF THE EXTRAORDINARY MEETING OF COUNCIL HELD ON WEDNESDAY,  
16 NOVEMBER 2011

**MN 418/11**

**MOTION** moved by Clr J R Clark and seconded by Clr P B Tuddenham:

***THAT the minutes of the Extraordinary Meeting of Council held on Wednesday, 16 November 2011 MN 414/11 to MN 415/11 inclusive, copies of which were forwarded to Councillors, be adopted as a correct record of the proceedings of the meetings.***

**PASSED**

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**BUSINESS ARISING**

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Clr T D Gair advised that he would like it recorded that he did not partake in the debate and refrained from voting on the matter.

The Director Corporate Services advised that it is not possible to abstain and remain in the Chamber and in that case it would be taken that the Councillor had voted against the motion. He advised that it could not be recorded in the Minutes that Clr Gair did not participate in discussion and did not vote on the matter because he did not declare a non-pecuniary interest of a not substantial nature or a substantial nature, so in those two instances he would have either remained in the Chamber and voted or removed himself from the Chamber and that is what would be recorded in the Minutes. The Director Corporate Services advised that the fact that Clr Gair remained in the Chamber and did not declare a pecuniary interest, and whilst he did not vote, it would be taken as a vote against the motion.

Clr J Mauger requested a ruling on whether his dissenting vote could be recorded against the motion, as during the course of the voting the Acting Mayor named those who voted in favour of the motion and also named Clr Mauger as voting against the motion. Clr Mauger noted that the protocol was that he should have requested that his name be recorded against the motion but he expected that once his name was noted by the Chairperson that either it would have been recorded as his vote against it or the Chairperson would have asked whether he wanted his vote recorded against it. He advised that he certainly wanted to have his name recorded against the motion.

.....Cont'd



## MINUTES OF THE ORDINARY MEETING OF COUNCIL

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale  
on Wednesday, 23 November 2011

### CONFIRMATION OF MINUTES - WEDNESDAY, 16 NOVEMBER 2011

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.....Cont'd

The Director Corporate Services advised that unless a "show of hands" is called and the names are formally recorded or unless a Councillor specifically asks for their name to be recorded against a particular matter, it would not normally be recorded. He advised that the exception would be in relation to planning matters where Council is obligated to record the votes for and against and those particular items are identified in the Agenda. The Director Corporate Services advised that if Clr Mauger believes he did indicate that he wanted his vote specifically recorded against the matter, then that would be a correction to the Minutes.

Clr Mauger advised that he was pleased with that but stated that it was noted in the media and he is sure it is recorded on Council's recording system.

The Acting Mayor Clr L A C Whipper advised that in relation to the resolution of the Extraordinary Meeting held on Wednesday, 16 November 2011, advice had been received that corrections are required to be made to the resolution. Clr Whipper advised that the following Motion Arising would be put for consideration:

- “1. THAT in relation to matter c-GM1 considered during the Extraordinary Meeting of Council on 16 November 2011, Councillor Jim Mauger be found to have breached Council's Code of Conduct in accordance with the findings of Sole Conduct Reviewer Esther McKay as expressed in her reports dated 25 August 2011 and 24 October 2011, in that he:
  - (a) Breached Council's policy relating to payment of expenses to the Mayor and Councillors, file 101/5, in respect of his claim for travel expenses related to a visit to Lachlan Shire for an Election dinner in October 2008.
  - (b) Breached Council's policy relating to interaction with staff file 101/13, in respect of contact with staff concerning:
    - i. Construction of the Robertson Cycleway/Footpath;
    - ii. Roadworks on Mauger's Road, Robertson;
    - iii. Roadworks on Illawarra Highway, Robertson;
    - iv. Stormwater and drainage works on Fountaindale Road, Robertson.
  - (c) Breached section 6.3 of the Code of Conduct in referring to Councillor Duncan Gair as a "maggot" during a dinner at Dormie House on 22 July 2009.
  - (d) Breached sections 6.1(a), 6.1(c) and 8.8 of the Code of Conduct by booking Council's Theatre for the purpose of a public meeting held by the "We Still Care" group, and in doing so, failing to provide appropriate risk management measures and attend to payment for the same.
2. THAT Councillor Jim Mauger be required to apologise to Councillor Duncan Gair for calling him a "maggot" during a dinner at Dormie House on 22 July 2009.”

Clr T D Gair left the Chamber at 3.45 pm.

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## MINUTES OF THE ORDINARY MEETING OF COUNCIL

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale  
on Wednesday, 23 November 2011

### CONFIRMATION OF MINUTES - WEDNESDAY, 16 NOVEMBER 2011

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.....Cont'd

Clr P B Tuddenham expressed his concern as the wording of the Motion Arising was substantially different to the Motion that he had moved at the Extraordinary Meeting on Wednesday, 16 November 2011, and requested the opportunity to consider the matter further after seeing a copy of the report of the Independent Reviewer.

The Acting Mayor Clr L A C Whipper requested that consideration of the matter be deferred until later in the Meeting.

**MN 419/11**

**MOTION ARISING** moved by Clr P B Tuddenham and seconded by Clr D Stranger:

**THAT** consideration of the Motion Arising from the Minutes of the Extraordinary Meeting of Council held on Wednesday, 16 November 2011, be deferred until later in the meeting (refer page 18).

**PASSED**

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At this juncture Clr T D Gair rejoined the Meeting.



## MINUTES OF THE ORDINARY MEETING OF COUNCIL

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale  
on Wednesday, 23 November 2011

### DECLARATIONS OF INTEREST AND OPEN COUNCIL

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#### DECLARATIONS OF INTEREST

101/3

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Clr G McLaughlin declared a significant pecuniary interest in Item v-EP1 – Major Project for the Continued Operations of the Berrima Colliery at Medway - as he is employed by Boral at Berrima. He stated that he would leave the Chamber when this matter was discussed, take no part in the debate and refrain from voting thereon.

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Clr L A C Whipper declared a less than significant non-pecuniary interest in Item o-EP3 - s96 Application to Modify “Wandevan” Subdivision, Lot 112 DP 616941, Southey Street, Mittagong – as this matter requires Sydney Catchment Authority (SCA) compliance, but as a member of the SCA Board he is not involved in development assessments. He stated that he would remain in the chamber when this matter was discussed, take part in the debate and vote thereon.

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Clr L A C Whipper declared a less than significant non-pecuniary interest in Item o-EP6 - Robertson Sewage Treatment Plant and Sheepwash Road Storage Dam for Effluent Irrigation System at Lot 1 DP 1077348 Kangaloon Road, Robertson and Lots 11 & 13 DP 790615, Sheepwash Road, Glenquarry – as this matter requires Sydney Catchment Authority (SCA) compliance, but as a member of the SCA Board he is not involved in development assessments. He stated that he would remain in the chamber when this matter was discussed, take part in the debate and vote thereon.

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#### OPEN COUNCIL

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107/11

**MN 420/11**

**MOTION** moved by *Clr J G Arkwright* and seconded by *Clr P B Tuddenham*:

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

**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, 23 November 2011

### REPORT OF DIRECTOR ENVIRONMENT & PLANNING

#### VISITOR ITEM

#### v-EP1 Major Project for the Continued Operations of the Berrima Colliery at Medway

Reference: 5305/3  
Responsible Officer: Director Environment and Planning

The purpose of this report is to provide an update on progress of the Major Project under Part 3A of the Environmental Planning and Assessment Act 1979, for the continued operations at Berrima Colliery, Medway, for Boral Cement Limited.

**Interest:** Clr G McLaughlin declared a significant pecuniary interest in this matter as he is employed by Boral at Berrima. He left the Chamber, took no part in the debate and refrained from voting on the matter.

Mr Joshua Cook representing the Residents of Medway and Surrounding Properties addressed Council on behalf of the objectors.

The Director Environment & Planning addressed Council on this matter.

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The Committee on a **MOTION** moved by Clr L A C Whipper and seconded by Clr J R Clark  
**RECOMMENDED:**

1. THAT Council not oppose the continued operations of the Berrima Colliery at Medway at a production level to meet the demands of local and domestic customers using the historical averages of 220,000 tonnes per annum, on the condition that Medway Road is upgraded and a maintenance levy paid to Council as follows:

#### **Stage 1 - Medway Village**

A detailed pavement investigation should be undertaken by the applicant prior to undertaking the widening and AC overlay. This investigation should determine the suitability or otherwise of the existing pavement proposed to be overlaid. If the investigations determine the existing pavement is not suitable, options for an additional granular overlay/in-situ pavement stabilisation/thicker AC overlay should be investigated. Appropriate works arising from these investigations to be completed within 12 months of project approval. These works to be carried out by Council at Boral's expense.

.....Cont'd



## MINUTES OF THE ORDINARY MEETING OF COUNCIL

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale  
on Wednesday, 23 November 2011

### REPORT OF DIRECTOR ENVIRONMENT & PLANNING

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.....Cont'd

#### **Stage 2 - Medway Road Rural Section**

Pavement investigations should be undertaken along the road to determine the remaining life of the road pavement with this work to be completed within 12 months of the project approval. Prior to commencing shoulder widening, investigations should be undertaken on the previous road "widening" to ensure the viability of this work. In order to minimise risks to the public associated with ongoing shoulder failure, widening works along the rural sections of Medway Road should be completed within 24 months of the project approval. AUSTROAD "BAR" and "BAL" treatments to driveways as well as treatment to 20 metres of Liebman Road will be part of this work. These works to be carried out by Council at Boral's expense.

#### **Maintenance Levy**

A maintenance levy of 8 cents per tonne per kilometre to be paid immediately from project approval to be utilised by Council for maintenance of Medway Road. The levy should be indexed in accordance with the PPI Division E, Class 3101 Road and Bridge Construction, which is a better guide to the costs of road works than relying on the standard CPI.

#### **Pavement Condition Report**

At the end of the 7th year following project approval, the proponent must undertake a detailed pavement investigation of Medway Road to determine the residual life of the pavement. Where significant changes have occurred from the original investigation and insufficient maintenance levies have been received from the proponent to carry out necessary maintenance work, then the proponent shall be required to supplement the cost of the works noting that Council will also have to contribute to the cost of the work at a pro-rata rate based on base-line traffic volumes.

2. THAT Council in its submission to the DoPI request that should any development consent be granted for extraction rates greater than 220,000 tonnes per annum, whether for the export of coal or the formalisation of the continued domestic operations, that Boral be required to immediately construct a haul bypass road of Medway Village on an alignment to be determined through consultation with the Council and Residents of Medway and Surrounding Properties group.
3. THAT Council not support the export of coal as proposed in this Development Application AND THAT the Department of Planning and Infrastructure (DoPI) be advised that this component of the current application and the Berrima Cement Works modification application reference DA No 401-11-2002-I MOD 6 should form a separate Development Application.
4. THAT Council in its submission to the DoPI requests that the Berrima Colliery and Boral Cement be required to operate within legislative and accepted industrial limits to reduce the impacts of noise, dust and water quality for local residents and the environment AND THAT the DoPI demands that all loads leaving the mine and stockpiling areas be covered.

.....Cont'd



## MINUTES OF THE ORDINARY MEETING OF COUNCIL

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale  
on Wednesday, 23 November 2011

### REPORT OF DIRECTOR ENVIRONMENT & PLANNING

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.....Cont'd

5. **THAT** Council requests that noise generating activities such as loading and hauling which are carried out in close proximity to existing residences be restricted to working hours typical of comparative operations such as 7.00am to 6.00pm Monday to Friday and 7.00am to 1.00pm Saturdays AND THAT no loading and haulage to occur on Sundays or Public Holidays. Note: these restrictions to apply to activities on the colliery site such as crushing and all activities at Loch Catherine.
6. **THAT** Council make a submission in accordance with the content of this report and final resolutions of Council to the NSW DoPI as its response to the public exhibition of the development application, reference no MP 10\_0172."
7. **THAT** Council raise concern to the DoPI about the adequacy of the current process and the proposed eight year consent period, in particular the uncertainty that this creates in the local community.

#### **OC 248/11**

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

1. **THAT Council not oppose the continued operations of the Berrima Colliery at Medway at a production level not exceeding 460,000 tonnes per annum based only on the condition that the upgrading of Medway Road and the payment of a maintenance levy be imposed as follows:**

#### **Stage 1 - Medway Village**

***A detailed pavement investigation should be undertaken by the applicant prior to undertaking the widening and AC overlay. This investigation should determine the suitability or otherwise of the existing pavement proposed to be overlaid. If the investigations determine the existing pavement is not suitable, options for an additional granular overlay/in-situ pavement stabilisation/thicker AC overlay should be investigated. Appropriate works arising from these investigations to be completed within 12 months of project approval (investigations to be included within 3 months of approval). These works to be carried out by Council at Boral's expense.***

#### **Stage 2 - Medway Road Rural Section**

***Pavement investigations should be undertaken along the road to determine the remaining life of the road pavement with this work to be completed within 12 months of the project approval. Prior to commencing shoulder widening, investigations should be undertaken on the previous road "widening" to ensure the viability of this work. In order to minimise risks to the public associated with ongoing shoulder failure, widening works along the rural sections of Medway Road should be completed within 24 months of the project approval. AUSTROAD "BAR" and "BAL" treatments to driveways as well as treatment to 20 metres of Liebman Road will be part of this work. These works to be carried out by Council at Boral's expense.***

.....Cont'd



.....Cont'd

**Maintenance Levy**

***A maintenance levy of 8 cents per tonne per kilometre to be paid immediately from project approval to be utilised by Council for maintenance of Medway Road.***

***The levy should be indexed in accordance with the PPI Division E, Class 3101 Road and Bridge Construction, which is a better guide to the costs of road works than relying on the standard CPI.***

**Pavement Condition Report**

***At the end of the 7th year following project approval, the proponent must undertake a detailed pavement investigation of Medway Road to determine the residual life of the pavement. Where significant changes have occurred from the original investigation and insufficient maintenance levies have been received from the proponent to carry out necessary maintenance work, then the proponent shall be required to supplement the cost of the works noting that Council will also have to contribute to the cost of the work at a pro-rata rate based on base-line traffic volumes.***

2. ***THAT the Department of Planning and Infrastructure (DoPI) be advised that the export of coal component of the current application and the Berrima Cement Works modification application reference DA No 401-11-2002-I MOD 6 should form a separate development application.***
3. ***THAT Council in its submission to the DoPI request that should any further development consent be granted after this eight year approval, whether for the export of coal or the formalisation of the continued domestic operations that Boral be required to construct a haul bypass road of Medway Village AND THAT the applicant be required to enter into a Voluntarily Planning Agreement to upgrade and maintain the remaining section of Medway Road to be used by heavy vehicles.***
4. ***THAT Council in its submission to the DoPI requests that the Berrima Colliery and Boral Cement be required to operate within legislative and accepted industrial limits to reduce the impacts of noise, dust and water quality for local residents and the environment AND THAT the DoPI demands that all loads leaving the mine and stockpiling areas be covered.***
5. ***THAT Council requests that noise generating activities such as loading and hauling which are carried out in close proximity to existing residences be restricted to working hours typical of comparative operations such as 7.00am to 6.00pm Monday to Friday and 7.00am to 1.00pm Saturdays AND THAT no loading and haulage to occur on Sundays or Public Holidays.***
6. ***THAT Council make a submission in accordance with the content of this report and final resolutions of Council to the NSW DoPI as its response to the public exhibition of the development application, reference no MP 10\_0172."***
7. ***THAT Council makes representations to the DoPI in relation to Council's submission and including the community's concerns.***

.....Cont'd

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.....Cont'd

**PASSED**

**VOTING ON THE AMENDMENT**

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

**AMENDMENT BECAME THE MOTION**

**MOTION PASSED**

**VOTING ON THE MOTION**

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

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At this juncture Clr G McLaughlin rejoined the Meeting.



**v-EP2 Development Application Seeking Consent to Construct a Single Storey Dwelling, Lot 22 DP 861846, No 105 Merrigang Street, Bowral**

Reference: LUA11/0709  
Responsible Officer: Manager Environmental Assessment

Council has received a combined Development Application/Construction Certificate for a single storey dwelling at the subject premises.

The purpose of this report is to present to Council the development application for determination by Council.

Ms Gail McGuinness, an objector, addressed Council on this matter.

The Director Environment & Planning addressed Council on this matter.

**OC 249/11**

The Committee on a **MOTION** moved by Cllr L A C Whipper and seconded by Cllr J Mauger  
**RECOMMENDED:**

**THAT development application LUA11/0709 for a single storey dwelling at Lot 22 DP 936600 No 105 Merrigang Street, Bowral be deferred, pending an inspection by Councillors of the property AND THAT the report be referred to the next Ordinary Meeting of Council to be held on Wednesday, 14 December 2011.**

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



**SUSPENSION OF STANDING ORDERS**

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**SUSPENSION OF STANDING ORDERS**

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5614

Clr J G Arkwright requested that standing orders be suspended to allow Item o-EP10 - Regional Development Australia Fund - to be heard at this juncture of the meeting.

**OC 250/11**

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

**THAT standing orders be suspended to allow Item o-EP10 - Regional Development Australia Fund to be considered.**

**PASSED**

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**OPEN COUNCIL**

**ENVIRONMENT & PLANNING DIVISION**

**o-EP10 Regional Development Australia Fund**

Reference: 5614  
Responsible Officer: Director Environment and Planning

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This report is to seek Council endorsement to lodge an Expression of Interest for funding under Round 2 of the Federal Government's Regional Development Australia Fund.

The Director Environment & Planning addressed Council on this matter.

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

1. THAT Council determine the Bowral Memorial Hall project as the project to submit the necessary Expression of Interest for Round 2 of the Regional Development Australia Fund.
2. THAT Council support Challenge Southern Highlands in its Expression of Interest for the Housing for People with a Disability project at Cook and Anne Streets, Mittagong.
3. THAT as part of Local and Regional Action Plans associated with the NSW 2021 plan, Council promote the Moss Vale pool, the Bowral Memorial Hall, the Moss Vale Enterprise zone and the Challenge Southern Highlands housing for people with a disability project, as priorities for the Shire.

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*The Committee on an **AMENDMENT** moved by Clr L A C Whipper and seconded by Clr J Mauger **RECOMMENDED**:*

1. THAT Council determine the Moss Vale Aquatic Centre project as the project to submit the necessary Expression of Interest for Round 2 of the Regional Development Australia Fund.
2. THAT Council support Challenge Southern Highlands in its Expression of Interest for the Housing for People with a Disability project at Cook and Anne Streets, Mittagong.
3. THAT as part of Local and Regional Action Plans associated with the NSW 2021 plan, Council promote the Moss Vale pool, the Bowral Memorial Hall, the Moss Vale Enterprise zone and the Challenge Southern Highlands housing for people with a disability project, as priorities for the Shire.

.....Cont'd



**MINUTES OF THE ORDINARY MEETING OF COUNCIL**  
held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale  
on Wednesday, 23 November 2011  
**REPORT OF DIRECTOR ENVIRONMENT & PLANNING**

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.....Cont'd

**On being put to the Meeting voting on the Amendment was tied at four (4) votes all, and therefore the matter was deferred to the full Council Meeting with the Acting Mayor in the Chair (refer MN 422/11).**

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Clr P B Tuddenham left the Chamber at 5.35 pm.

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**CHAIRPERSON**

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At this juncture, the time being 5.35 pm, the Acting Mayor, Clr L A C Whipper, resumed the Chair to conduct the remainder of Council Business.

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## MINUTES OF THE ORDINARY MEETING OF COUNCIL

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale  
on Wednesday, 23 November 2011

### QUESTIONS FROM THE PUBLIC

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#### QUESTIONS FROM THE PUBLIC

1. ITEM v-EP2 - DEVELOPMENT APPLICATION SEEKING CONSENT TO CONSTRUCT A SINGLE STOREY DWELLING, LOT 22 DP 861846, NO 105 MERRIGANG STREET, BOWRAL LUA11/0709

Mr Leng Chong asked what was the purpose of the deferment of this matter.

The Acting Mayor advised that the deferment is to enable Councillors to inspect the property prior to making a decision, and the report will be referred back to the next Ordinary Meeting of the Council on Wednesday, 14 December 2011 and that Mr Chong will have the opportunity of addressing Council at that Meeting.

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At this juncture Cllr P B Tuddenham rejoined the meeting.



## MINUTES OF THE ORDINARY MEETING OF COUNCIL

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale  
on Wednesday, 23 November 2011

### CONFIRMATION OF MINUTES – WEDNESDAY 16 NOVEMBER 2011

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### CONFIRMATION OF MINUTES – EXTRAORDINARY MEETING OF WEDNESDAY, 16 NOVEMBER 2011 (CONT FROM PAGE 4)

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100/1

#### MINUTES OF THE EXTRAORDINARY MEETING OF COUNCIL HELD ON WEDNESDAY, 16 NOVEMBER 2011

Clr T D Gair left the Chamber.

The Director Corporate Services advised that Clr P B Tuddenham had been provided with a copy of the report of the Independent Reviewer that he had requested earlier in the Meeting.

Clr P B Tuddenham requested point (b) of the proposed Motion Arising be amended to read “Breached Council’s policy relating to interaction with staff file 101/13, in respect of contact with staff”, which was agreed to by the mover and seconder of the Motion Arising.

**MN 421/11**

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

1. **THAT** in relation to matter c-GM1 considered during the Extraordinary Meeting of Council on 16 November 2011, Councillor Jim Mauger be found to have breached Council’s Code of Conduct in accordance with the findings of Sole Conduct Reviewer Esther McKay as expressed in her reports dated 25 August 2011 and 24 October 2011, in that he:
  - (a) Breached Council’s policy relating to payment of expenses to the Mayor and Councillors, file 101/5, in respect of his claim for travel expenses related to a visit to Lachlan Shire for an Election dinner in October 2008.
  - (b) Breached Council’s policy relating to interaction with staff file 101/13, in respect of contact with staff.
  - (c) Breached section 6.3 of the Code of Conduct in referring to Councillor Duncan Gair as a “maggot” during a dinner at Dormie House on 22 July 2009.
  - (d) Breached sections 6.1(a), 6.1(c) and 8.8 of the Code of Conduct by booking Council’s Theatre for the purpose of a public meeting held by the “We Still Care” group, and in doing so, failing to provide appropriate risk management measures and attend to payment for the same.
2. **THAT** Councillor Jim Mauger be required to apologise to Councillor Duncan Gair for calling him a “maggot” during a dinner at Dormie House on 22 July 2009.

**PASSED**

Dissenting vote: Clr J Mauger requested that his dissenting vote be recorded in respect of this motion.

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At this juncture Clr T D Gair rejoined the meeting.

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**OPEN COUNCIL (CONT)**

**ENVIRONMENT & PLANNING DIVISION (CONT)**

**o-EP10 Regional Development Australia Fund**

Reference: 5614  
Responsible Officer: Director Environment and Planning

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The matter is again resubmitted for further consideration by Council.

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**MOTION** moved by Clr J G Arkwright and seconded by Clr G McLaughlin:

1. **THAT** Council determine the Bowral Memorial Hall project as the project to submit the necessary Expression of Interest for Round 2 of the Regional Development Australia Fund.
2. **THAT** Council support Challenge Southern Highlands in its Expression of Interest for the Housing for People with a Disability project at Cook and Anne Streets, Mittagong.
3. **THAT** as part of Local and Regional Action Plans associated with the NSW 2021 plan, Council promote the Moss Vale pool, the Bowral Memorial Hall, the Moss Vale Enterprise zone and the Challenge Southern Highlands housing for people with a disability project, as priorities for the Shire.

**MN 422/11**

**AMENDMENT** moved by Clr L A C Whipper and seconded by Clr J Mauger:

1. **THAT** Council determine the Moss Vale Aquatic Centre project as the project to submit the necessary Expression of Interest for Round 2 of the Regional Development Australia Fund.
2. **THAT** Council support Challenge Southern Highlands in its Expression of Interest for the Housing for People with a Disability project at Cook and Anne Streets, Mittagong.
3. **THAT** as part of Local and Regional Action Plans associated with the NSW 2021 plan, Council promote the Moss Vale pool, the Bowral Memorial Hall, the Moss Vale Enterprise zone and the Challenge Southern Highlands housing for people with a disability project, as priorities for the Shire.

**On being put to the Meeting voting was tied at four (4) votes all and the Acting Mayor exercised his casting vote in favour of the Amendment.**

**AMENDMENT BECAME THE MOTION**

**PASSED**

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

Reference: 5302  
Responsible Officer: Manager Environmental Assessment

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Submitting list of development consents executed under delegated authority of the Director of Environment and Planning between 2 November 2011 to 14 November 2011.

**MN 423/11**

**MOTION** moved by Clr T D Gair and seconded by Clr P B Tuddenham:

**THAT the information relating to Development Consents Determined Nos 1 – 3 under Delegated Authority be received and noted.**

**PASSED**

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**o-EP2 List of Land Use Applications Received by Council**

Reference: 5302  
Responsible Officer: Manager Environmental Assessment

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Submitting list of development applications which have been received between 2 November 2011 and 14 November 2011, some of which will be dealt with under delegated authority of the Director of Environment and Planning.

**MN 424/11**

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

**THAT the information regarding the List of Land Use Applications Nos 1 – 3 received by Council be received and noted.**

**PASSED**

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At this juncture, the time being 5.47 pm, Clr J G Arkwright retired from the Meeting.

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**o-EP3 s96 Application to Modify "Wandevan" Subdivision, Lot 112 DP 616941, Southey Street, Mittagong**

Reference: LUA09/1008.02  
Responsible Officer: Manager Environmental Assessment

A s96 application has been received seeking modifications to the "Wandevan" subdivision.

**Interest:** Clr L A C Whipper declared a less than significant non-pecuniary interest in this matter, as the matter requires Sydney Catchment Authority (SCA) compliance, but as a member of the SCA Board he is not involved in development assessments. He remained in the Chamber, took part in the debate and voted on the matter.

**MN 425/11**

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

1. **THAT** in relation to LUA2009/1008.02:
  - (i) **Council approve the separation of OSD infrastructure from proposed Lot 4 into a separate lot which is to be dedicated to Council and noting that this dedication is on the condition that the infrastructure is to be constructed at the expense of the developer.**
  - (ii) **Council limit the dwellings on the smaller (Lots 10 – 17 which are only 600 – 668m<sup>2</sup> in area) to 200m<sup>2</sup> as currently applies but to allow the total floor space on the larger lots (proposed Lots 1 – 7 which are 801m<sup>2</sup> – 1077m<sup>2</sup> in area) to be increased to 300m<sup>2</sup>.**
2. **THAT** the General Manager be delegated authority to determine the s96 modification for Wandevan, LUA2009/1008.02, as per recommendations 1(a) and 1(b) above, and subject to the concurrence of the Sydney Catchment Authority.

**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 J G Arkwright	Absent	
Clr J R Clark		x
Clr T D Gair	x	
Clr K Halstead	Absent	
Clr G McLaughlin	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, 23 November 2011  
**REPORT OF DIRECTOR ENVIRONMENT & PLANNING**

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**o-EP4 Proposed Two (2) Lot Subdivision at Lot 3 DP882209, No 16 Cliff Street, Bowral**

Reference: LUA11/0304  
Responsible Officer: Manager Environmental Assessment

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Council is in receipt of a Development Application to subdivide the above property into two (2) residential lots. The application is reported to Council due to a proposed variation to the minimum required lot size.

The Director Environment & Planning addressed Council on this matter.

***MN 426/11***

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

***THAT LUA2011/0304 for the subdivision of Lot 3, DP 882209 No. 16 Cliff Street, Bowral into two (2) lots be approved in accordance with the conditions contained within the draft consent in Attachment 5 to this report.***

***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 J G Arkwright	Absent	
Clr J R Clark	x	
Clr T D Gair	x	
Clr K Halstead	Absent	
Clr G McLaughlin	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 Use of the Lifestyle Centre as a Recreation Facility (Indoor) Annesley Retirement Village Lot 1 DP 1097251 Westwood Drive, Bowral**

Reference: LUA10/0915  
Responsible Manager: Manager Environmental Assessment

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This report assesses the current operation of non-residential activities at Annesley Retirement Village.

The Director Environment & Planning addressed Council on this matter.

**MN 427/11**

**MOTION** moved by Clr T D Gair and seconded by Clr D Stranger:

**THAT** development application LUA 2010/0915 for an indoor recreation facility on Lot 1 DP 1097251 be approved with the following specific conditions:

(i) **Compliance**

*Development is to take place in accordance with the approved plans and documentation submitted with the application and subject to the conditions below, to ensure the development is consistent with Council's consent.*

*In this regard usage of the pool, gym, café, health & beauty studio and hairdresser shall be restricted to:*

- Residents of Annesley Retirement Complex;
- Residents of other Retirement Complexes;
- Friends / relatives of residents of Annesley;
- Over 55's from the broader community; and
- Those referred by medical practitioners for the purpose of rehabilitation or ongoing health issues.

(ii) **Street Car Parking in Westwood Drive**

*The existing parking of vehicles on the street shall be improved to provide most efficient use of the available kerb side lane. Essentially parking bays shall be designed in accordance with the following requirements:*

- (a) *Parallel parking areas shall be line marked along Westwood Drive. The typical dimensions, width limitations, and layout of parking bays shall be designed in accordance with AS 2890.5.*
- (b) *All parking bays shall be clearly line marked using reflective paint. Line marking shall be carried out in accordance with AS 1742.11.*

.....Cont'd

.....Cont'd

- (c) ***The layout for parallel parking must be designed to ensure compliance with the Australian Road Rules Act 2008, specifically the design shall ensure a driver cannot stop on a road within 10 metres from the nearest point of an intersecting road at an intersection.***
- (d) ***The car park line marking shall be designed to allow unobstructed access by vehicles or pedestrians to or from all existing driveways, including access driveway to the development. A minimum of 2m clearance shall be provided at either side of all driveways and the clearance area appropriately marked.***
- (e) ***Maintenance of all line marking shall be carried out by the applicant on a regular basis to ensure compliance with the above requirements.***
- (f) ***Signage to be installed at Wheen Close stating "Wheen Close resident parking only".***

(iii) **Plans**

***Plans depicting required works shall be submitted within one (1) month of this consent and to the satisfaction of Council's Development Engineer and line marking work associated with this condition shall be completed within two (2) months of this consent and be supervised by Council's Development Engineer.***

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



**o-EP6 Robertson Sewage Treatment Plant and Sheepwash Road Storage Dam for Effluent Irrigation System at Lot 1 DP 1077348 Kangaloon Road, Robertson and Lots 11 & 13 DP 790615, Sheepwash Road, Glenquarry**

Reference: LUA11/0876  
Responsible Officer: Manager Environmental Assessment

This report is about a Development Application (DA) for the proposed sewerage scheme for Robertson, comprising Robertson Sewage Treatment Plant (the Robertson STP) and Sheepwash Road storage dam for effluent irrigation system. This DA is presented to full Council for determination at the request of the elected Councillors.

**Interest:** Clr L A C Whipper declared a less than significant non-pecuniary interest in this matter, as the matter requires Sydney Catchment Authority (SCA) compliance, but as a member of the SCA Board he is not involved in development assessments. He remained in the Chamber, took part in the debate and voted on the matter.

**Interest:** Clr J Mauger declared a pecuniary interest in this matter as he is the owner/part owner of land within the village of Robertson. He left the Chamber, took no part in the debate and refrained from voting on the matter.

**MN 428/11**

**MOTION** moved by Clr T D Gair and seconded by Clr P B Tuddenham:

- THAT authority be delegated to the General Manager to issue development consent for development application LUA11/0876 for Robertson sewage treatment plant and Sheepwash Road storage dam for effluent irrigation system at Lot 1 DP 1077348 Kangaloon Road, Robertson and Lots 11 & 13 DP 790615, Sheepwash Road, Glenquarry after receipt of correspondence from the Office of Environment and Heritage.**
- THAT those who made submissions in relation to LUA11/0876 be advised of Council's 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 J G Arkwright	Absent	
Clr J R Clark	x	
Clr T D Gair	x	
Clr K Halstead	Absent	
Clr G McLaughlin	x	
Clr J Mauger	Absent	
Clr D Stranger	x	
Clr P B Tuddenham	x	
Clr L A C Whipper	x	

At this juncture, Clr J Mauger rejoined the Meeting.

**o-EP7 Draft Amendment to the Berrima Village Development Control Plan to Include Controls for Footpath Merchandise Displays**

Reference: 5700/14  
Responsible Officer: Manager Strategic and Community Development

The purpose of this report is to seek a resolution from Council to place on public exhibition a draft amendment to the Berrima DCP to include controls for Footpath Merchandise Displays.

**MN 429/11**

**MOTION** moved by Clr G McLaughlin and seconded by Clr P B Tuddenham:

1. **THAT** Council resolve to place the draft amendments to the Berrima Development Control Plan to include controls for Footpath Merchandise Displays, as described in Attachment 1 to this report, on public exhibition for a period of 28 days.
2. **THAT** the results of the public exhibition of the amended Berrima Development Control Plan be reported to Council at the earliest opportunity.

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



**o-EP8 Appointments and Resignations of 355 Management Committee Members**

Reference: 7224/1, 7215/1  
Responsible Officer: Manager Strategic & Community Development

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To report on the appointments and resignations of 355 Management Committee Members.

**MN 430/11**

**MOTION** moved by Clr D Stranger and seconded by Clr J R Clark:

1. **THAT Council appoints Ms Elisha Hill and Ms Jo Pulley to Yerrinbool Hall Management Committee AND THAT Ms Hill and Ms Pulley be notified of Council's determination.**
2. **THAT Council accepts with regret the resignation of Ms Marbecc Webb from the Hill Top Community Centre Management Committee AND THAT Ms Webb be notified of Council's determination.**
3. **THAT Yerrinbool Hall Management Committee and Hill Top Community Centre Management Committee be notified of Council's determination.**

**PASSED**

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**o-EP9 Use of East Bowral Remaining Section 94 Funds Resulting from Community Survey**

Reference: 5701/4  
 Responsible Officer: Manager Strategic and Community Development

The purpose of this report is to discuss the results from the East Bowral Community Survey on the expenditure of remaining Section 94 Funds. It is recommended that the projects listed in the report be scheduled to commence and the funds expended within the 2012/13 and 2013/14 financial years.

**Interest:** Clr G McLaughlin declared a pecuniary interest in this matter as he owns a property in this part of Bowral. He left the Chamber, took no part in the debate and refrained from voting on the matter.

**Interest:** Mr Barry Paull declared a less than significant pecuniary interest in this matter as he owns a property in East Bowral. He left the Chamber and had no involvement in the matter.

**MN 431/11**

**MOTION** moved by *Clr D Stranger* and seconded by *Clr P B Tuddenham*:

1. **THAT** the following list of projects be included in Council's 2012/13 and 2013/14 works programs:

<i>Final Works List</i>		
<b>Project No.</b>	<b>EAST BOWRAL SECTION 94 PROJECTS</b>	<b>Cost</b>
16	<i>Shared pathway adjacent to the David Wood Playing Fields.</i>	\$90,000.00
8	<i>Shared pathway from Emily Circuit to playing fields</i>	\$120,000.00
9	<i>Rehabilitation of road pavement on roundabout at Boardman and Rowland Rds</i>	\$36,652.91
4	<i>Beautification of waterways/drainage lands</i>	\$30,000.00
1	<i>Recreation Slab – full size basket ball court</i>	\$150,000.00
3	<i>Street tree planting (Mansfield Farm Precinct 2)</i>	\$30,000.00
14	<i>Shared pathway along the reserve between King Ranch Dr and Lavis Rd</i>	\$22,000.00
17	<i>Footpath from King Ranch Dr to No 34 Boardman Rd</i>	\$22,000.00
11	<i>David Wood Playing Fields Improvements</i>	\$50,000.00
5	<i>Construction of Botanic Gardens entrance</i>	\$100,000.00
2	<i>Tree Planting along Kangaloon Rd</i>	\$50,000.00
<b>TOTAL</b>		<b>\$700,652.91</b>

.....Cont'd



**MINUTES OF THE ORDINARY MEETING OF COUNCIL**  
held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale  
on Wednesday, 23 November 2011  
**REPORT OF DIRECTOR ENVIRONMENT & PLANNING**

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.....Cont'd

2. **THAT \$50,000.00 be allocated from the Shirewide component of the Section 94 Plan for Open Space and Recreational Facilities for improvements to the David Wood Playing Fields.**
3. **THAT the East Bowral residents be informed of Council's decision and thanked for their participation in the Community Consultation Process.**
4. **THAT Council staff be congratulated on the preparation of the report.**

**PASSED**

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**o-EP10 Regional Development Australia Fund**

Reference: 5614  
Responsible Officer: Director Environment and Planning

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*This matter was dealt with earlier in the Meeting (refer MN 422/11).*

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**o-EP11 Legal Issues**

Reference: 107/22, 502/71, 502  
Responsible Officer: Environmental Assessment Unit Leader

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**Interest:** Mr Jason Gordon declared a less than significant non-pecuniary interest in this matter as a person mentioned in the report has done work for him and is known to him. He remained in the Chamber, and took no part in discussions on the matter.

The Legal Issues report contains information on:

1. New legal cases received
2. Ongoing legal cases
3. Other matters

***MN 432/11***

***MOTION*** moved by Clr J R Clark and seconded by Clr P B Tuddenham:

***THAT*** the Legal Issues Report – Item cc-GM2 – be considered in Closed Committee (refer also CC 39/11 on page 43).

***PASSED***

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**CORPORATE SERVICES DIVISION**

**o-CS1 Investments as at 31 October 2011**

Reference: 2104  
Responsible Officer: Manager Financial Services

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Submitting details of Council's Investments as at 31 October 2011.

The Director Corporate Services addressed Council on this matter.

***MN 433/11***

***MOTION moved by Clr T D Gair and seconded by Clr P B Tuddenham:***

***THAT the information on Council's Investments as at 31 October 2011 be received and noted.***

***PASSED***

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**o-CS2 Request for Donation from Moss Vale and District A H & I Society Inc**

Reference: 2155/1, 6601/1  
Responsible Officer: Manager Governance

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Reporting on a request for a donation from Council by the Moss Vale and District A H & I Society Inc to sponsor the 2012 Moss Vale Show.

***MN 434/11***

***MOTION moved by Clr D Stranger and seconded by Clr T D Gair:***

- THAT Council donates \$3,000 from its Contingency Vote towards the "Champion Sponsorship" for the 2012 Annual Moss Vale Show subject to receipt of an annual business plan to Council from the Moss Vale and District A H & I Society.***
- THAT the Moss Vale and District A H & I Society be advised of Council's decision.***

***PASSED***

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**o-CS4 Agreement for Bowral Bowling Club Greens on Council Land (No Street Number) Lot B Deposited Plan 160166 Merrigang Street, Bowral known as “Venables Park”**

Reference: PN935400, 6527/24  
Responsible Manager: Manager Governance

---

To formalise an agreement between Council and the Bowral Bowling Club for the use of the bowling club greens on Council land.

**MN 436/11**

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

1. **THAT the proposed twenty one (21) year Lease to Bowral Bowling Club of part of (No Street Number) Lot B Deposited Plan 160166 Merrigang Street, Bowral known as “Venables Park” be publicly exhibited for a period of not less than twenty eight (28) days AND THAT the annual rental be \$1 per annum if demanded.**
2. **THAT a further Report be forwarded to a future Ordinary Meeting of Council advising on the outcome of the public exhibition and submissions received.**

**PASSED**

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**o-CS5 Postponed Rates Write-Off**

Reference: 2200/6  
Responsible Officer: Manager Financial Services

---

Submitting a report for the abandonment of postponed rates as required under Section 595(1) of the *Local Government Act 1993*.

**MN 437/11**

**MOTION** moved by Clr T D Gair and seconded by Clr P B Tuddenham:

**THAT Council in accordance with Section 595(1) of the Local Government Act 1993 write-off the postponed rates and associated extra charges as per Attachment 1 of the report for the value of \$16,239.52.**

**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, 23 November 2011  
**REPORT OF DIRECTOR CORPORATE SERVICES**

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**o-CS6 Briefing on Current Status of Lehman Brothers Australia Legal Matter**

Reference: 107/9, 2104, 2125/1, 2100  
Responsible Officer: Director Corporate Services

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**MN 438/11**

**MOTION** moved by Clr T D Gair and seconded by Clr P B Tuddenham:

**THAT** the Briefing on Current Status of Lehman Brothers Australia Legal Matter - Item cc-GM1 be considered in Closed Committee (refer also CC 38/11 on page 42).

**PASSED**

Dissenting vote: Clr J Mauger requested that his dissenting vote be recorded in respect of this motion.

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**INFRASTRUCTURE SERVICES DIVISION**

**o-IS1 Resource-Sharing Proposal For Emergency Management Committee**

Reference: 6310/1  
Responsible Officer: Director Infrastructure Services

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The purpose of this report is to seek Council's support to the Local Emergency Management Committee (LEMC) in developing a resource sharing agreement for emergency management between Wollondilly, Campbelltown, Camden and Wingecarribee Councils.

The Director Infrastructure Services addressed Council on this matter.

***MN 439/11***

***MOTION moved by Clr G McLaughlin and seconded by Clr T D Gair:***

***THAT Council supports the Local Emergency Management Committee Chairman in pursuing arrangements for a resource-sharing agreement for emergency management between Wollondilly, Campbelltown, Camden and Wingecarribee Councils.***

***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, 23 November 2011

**NOTICE OF MOTION**

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**COUNCIL MATTERS**

**NOTICE OF MOTION**

**c-NM1 16/2011 – Notice of Motion – Road Naming, Bullio**

Reference: 100/4, 7810/12  
Responsible Officer: Manager Strategic & Community Development

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Clr L A C Whipper advised that he has received further information in relation to the matter and was withdrawing his Notice of Motion.

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**COMMITTEE REPORTS ATTACHED**

**c-CR1 Minutes of the Economic Development & Tourism Advisory Committee**

Reference: 107/24  
Responsible Officer: Economic Development Coordinator

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Submitting minutes of the Economic Development & Tourism Advisory Committee held on Wednesday, 26 October 2011.

The General Manager addressed Council in relation to the Berrima Gaol and advised of the current situation with regard thereto.

***MN 440/11***

***MOTION moved by Clr P B Tuddenham and seconded by Clr G McLaughlin:***

***THAT recommendation No ED 27//11 as detailed in the minutes of the Economic Development & Tourism Advisory Committee held on Wednesday, 26 October 2011 be adopted.***

***PASSED***

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**c-CR2 Minutes of the Internal Audit Committee**

Reference: 107/34  
Responsible Officer: Director Corporate Services

---

Submitting minutes of the Internal Audit Committee held on Monday, 7 November 2011.

***MN 441/11***

***MOTION moved by Clr G McLaughlin and seconded by Clr T D Gair:***

***THAT the recommendations Nos IAC 11/11 to IAC 15/11 as detailed in the minutes of the Internal Audit Committee held on Monday, 7 November 2011 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, 23 November 2011

**COMMITTEE REPORTS**

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**c-CR3 Minutes of the Environment & Sustainability Committee**

Reference: 107/25  
Responsible Officer: Manager Environment & Sustainability

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Submitting minutes of the Environment & Sustainability Committee held on Wednesday, 19 October 2011.

***MN 442/11***

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

***THAT the recommendations as detailed in the minutes of the Environment & Sustainability Committee held on Wednesday, 19 October 2011 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, 23 November 2011

### GENERAL BUSINESS

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#### GENERAL BUSINESS

1. REMOVAL OF TREES OUTSIDE THE MITTAGONG POLICE STATION 7813

Clr P B Tuddenham referred to the trees that were recently removed from outside the Police Station at Mittagong and asked if some replanting can take place at this area.

The Acting Mayor Clr L A C Whipper advised that this question will be taken on notice.

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2. OPERATION OF THE MOSS VALE SMALL BORE RIFLE CLUB AT BERRIMA 6613

Clr D Stranger referred to a letter he had received from a constituent in relation to the Small Bore Rifle Club at Berrima relating to an approval which was given in 2002 to allow the use of the site for a six month trial, and he asked for information in relation to the matter via the Weekly Circular. Clr Stranger tabled a copy of the letter.

The Director Environment & Planning advised that investigations are being conducted into this matter and he will provide further information to Councillors.

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3. EXTRAORDINARY MEETING OF COUNCIL HELD ON WEDNESDAY,  
16 NOVEMBER 2011 800/2

Clr J Mauger advised that he had asked a question of the General Manager at the Extraordinary Meeting on 16 November 2011 whether the evidence given to Esther McKay, the Sole Reviewer, was given under sworn oath.

The General Manager advised that he does not recall Clr Mauger asking this question, but when the matter was handed to the Independent Reviewer she conducted the interviews, so the question needs to be directed to the Independent Reviewer. He advised that he is happy to ask the Independent Reviewer what the process of each of the interviews was and whether the statements were taken under oath, but it was his opinion that that would not be the case. The General Manager advised that Council would need to ask for clarification, but that needed to be done officially.

Clr Mauger asked if the question can be asked of what the process was for those giving evidence to the Code of Conduct Reviewer, and whether it was given under oath.

The Acting Mayor Clr L A C Whipper advised that the process will be clarified.

The General Manager advised Clr Mauger would need a Notice of Motion to request a report from the Independent Reviewer on how statements were taken from people interviewed and that staff would provide assistance with this if he required it.

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**MINUTES OF THE ORDINARY MEETING OF COUNCIL**

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale  
on Wednesday, 23 November 2011

**CLOSED COUNCIL**

**CLOSED COUNCIL**

**GENERAL MANAGER**

**cc-GM Closed Council**

Reference: 107/9  
Responsible Officer: General Manager

To consider moving into Closed Council.

At this juncture, the time being 6.40 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.

**MN 443/11**

**MOTION** moved by Clr T D Gair and seconded by Clr G McLaughlin:

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 reports:

**cc-GM1 BRIEFING ON CURRENT STATUS OF LEHMAN BROTHERS  
AUSTRALIA LEGAL MATTER 107/9, 2104**

**Relevant Legal Provisions**

***This report is placed in Closed Committee under clause 10A(2)(g) of the Local Government Act 1993 as it contains advice concerning litigation.***

**Brief Description**

***Considering an update on the current status of Lehman Brothers Australia legal matter.***

**Public Interest**

***It would on balance be contrary to the public interest to consider this information in Open Council because it contains information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.***

.....Cont'd



**MINUTES OF THE ORDINARY MEETING OF COUNCIL**

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale  
on Wednesday, 23 November 2011

**CLOSED COUNCIL**

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.....Cont'd

**cc-GM2 LEGAL ISSUES**

**107/22**

**Relevant Legal Provisions**

*This report is referred to Closed Committee under Clause 10A (2)(a) and Clause 10A 2(g) of the Local Government Act, 1993, as it contains personnel matters concerning particular individuals and 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 legal issues arising in the past month.*

**Public Interest**

*It would on balance be contrary to the public interest to consider this information in Open Council because it contains personnel matters concerning particular individuals and 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, 23 November 2011

**CLOSED COUNCIL**

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**CLOSED COUNCIL**

**cc-GM1 Briefing on Current Status of Lehman Brothers Australia Legal Matter**

Reference: 2104  
Responsible Officer: Director Corporate Services

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The Director Corporate Services addressed Council on this matter.

**CC 38/11**

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

1. ***THAT Council authorise expenditure up to \$20,000 to seek further advice in regard to potential courses of action against insurers in relation to losses of Lehman Brothers Australia.***
2. ***THAT Council agree to sign an amended Group Member Acknowledgement Warranty document that Council will not seek to pursue damages against the insurers in the United States of America.***

**PASSED**

*Dissenting vote: Clr J Mauget requested that his dissenting vote be recorded in respect of this motion.*

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**MINUTES OF THE ORDINARY MEETING OF COUNCIL**

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale  
on Wednesday, 23 November 2011

**CLOSED COUNCIL**

**cc-GM2 Legal Issues**

Reference: 107/22  
Responsible Officer: Director Corporate Services

The Director Environment & Planning addressed Council on this matter.

**CC 39/11**

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

1. **THAT information relating to ongoing legal cases is noted.**
2. **THAT in the matter of unauthorised earthworks and tree removal at Lots 11 and 12 DP 1010798 Range Road, Mittagong, Council await the expiration of the Notice of Intention period, being 17 November 2011 and then, if still considered appropriate, request a development application be lodged within fourteen (14) days of this date for the continued use of the works on both properties.**
3. **THAT in relation to the matter of Berrima Diesel Lots 8-17 DP 758098 Old Hume Highway, Berrima the item to be the subject of a report to Council when legal advice is available on the issues raised in the letter from KQ Lawyers dated 21 October 2011.**
4. **THAT in relation to the unauthorised tree removal and fencing at Lot 1 DP 1114521 Old Hume Highway, Berrima, Council with hold the service of orders pending the lodgement of two Development Applications for i) a dwelling house and ii) continued usage of existing fencing on the property.**
5. **THAT the Environmental Assessment compliance register and Ranger Court register is noted.**

**PASSED**



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**COUNCIL**

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107/10

**MN 444/11**

**MOTION** moved by Clr T D Gair and seconded by Clr G McLaughlin:

**THAT Council moves from Closed Council into 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 445/11**

**MOTION** moved by Clr T D Gair and seconded by Clr G McLaughlin:

**THAT the recommendations of the Closed Council held on Wednesday, 23 November 2011 being CC 38/11 to CC 39/11 be adopted.**

**PASSED**

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**ADOPTION OF OPEN COUNCIL**

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107/10

**MN 446/11**

**MOTION** moved by Clr T D Gair seconded by Clr G McLaughlin:

**THAT the recommendations of the Open Council held on Wednesday, 23 November 2011 being OC 248/11 to OC 250/11, 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, 23 November 2011

**CLOSURE OF MEETING**

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THERE BEING NO FURTHER BUSINESS, THE MEETING CLOSED AT 7.10 PM

In accordance with the provisions of Section 375(2) of the Local Government Act, these Minutes of the Ordinary Council Meeting held Wednesday, 23 November 2011 numbered M/N 416/11 to M/N 446/11, were signed by me hereunder at the Council Meeting held on Wednesday, 14 December 2011.

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CHAIRMAN

READ AND CONFIRMED ON WEDNESDAY, 14 DECEMBER 2011

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CHAIRMAN

\_\_\_\_\_  
PUBLIC OFFICER