

MINUTES OF ORDINARY MEETING OF COUNCIL HELD ON TUESDAY, 11 MAY 2010

Present: The Mayor, Councillor I Cross (Chairperson) (Wahroonga Ward)
Councillors S Holland & E Malicki (Comenarra Ward)
Councillors E Keays & C Szatow (Gordon Ward)
Councillors J Anderson & R Duncombe (Roseville Ward)
Councillors T Hall & C Hardwick (St Ives Ward)
Councillor D McDonald (Wahroonga Ward)

Staff Present: General Manager (John McKee)
Director Corporate (John Clark)
Director Development & Regulation (Michael Miocic)
Director Operations (Greg Piconi)
Director Strategy & Environment (Andrew Watson)
Manager Corporate Planning & Sustainability (Peter Davies)
Director Community (Janice Bevan)
Senior Governance Officer (Geoff O'Rourke)
Director Operations PA (Judy Edwards)

The Meeting commenced at 7.02pm

The Mayor offered the Prayer

DECLARATIONS OF INTEREST

The Mayor adverted to the necessity for Councillors and staff to declare a Pecuniary Interest/Conflict of Interest in any item on the Business Paper.

No Interest was declared.

115 CONFIRMATION OF REPORTS TO BE CONSIDERED IN CLOSED MEETING

File: S02499

Resolved:

(Moved: Councillors Keays/Szatow)

That in accordance with the provisions of Section 10 of the Local Government Act 1993, all officers' reports be released to the press and public, with the exception of:

- C.1 **Open Space Acquisition Strategy - Identification of Potential Sites for Acquisition by Council - Killara**

C.2 Proposal to Acquire Open Space - Lindfield**CARRIED UNANIMOUSLY****ADDRESS THE COUNCIL**

The following members of the public addressed Council on items not on the Agenda:

M Smith
K Piper
G Matthews

DOCUMENTS CIRCULATED TO COUNCILLORS

The Mayor adverted to the documents circulated in the Councillors' papers and advised that the following matters would be dealt with at the appropriate time during the meeting:

Late Items: **Minutes from the Mayor - Refer MM.1 - Ian and Michele Martin**

Refer GB.2 - Temporary Licence Agreement - Afghan Nomadic Carpets - Memorandum by Director Community dated 7 May 2010 advising that the report be withdrawn to allow for further information, relevant to the report, to be obtained by Staff.

Confidential Late Agenda Information: **Refer GB.8 - Acceptance of Tender T19/2010 St Ives Vegetation Landfill Leachate Reuse and Water Management Project** - Memorandum by Director Strategy & Environment dated 10 May 2010 advising of a change to Recommendation A of the report along with confidential attachments relating to the report.

Councillors Information: **Wahroonga Station Trees** - Memorandum by Director Operations dated 4 May 2010 in answer to a Question Without Notice raised by Councillor Duncan McDonald at the Ordinary Meeting of Council held 20 April 2010.

RailCorp Land - What Plant Species will be planted between Culworth Avenue and Powell Street Railway Land, Killara - Memorandum by Director Operations dated 22 April 2010 in answer to a Question Without Notice raised by Councillor Cheryl Szatow at the Ordinary Meeting of Council held 20 April 2010.

Council Resolution, Minute No 313/09 - Delegation of Authority to Staff to Adopt the Contributions Plan 2009 - Memorandum by the General Manager dated 4 May 2010 in answer to a Question Without Notice raised by Councillor Tony Hall at the Ordinary Meeting of Council held 20 April 2010.

Maintenance of Stormwater Drains in Residential Areas -
Memorandum by Director Operations dated 4 May 2010 in answer to
a Question Without Notice raised by Councillor Tony Hall at the
Ordinary Meeting of Council held 27 April 2010.

CONFIRMATION OF MINUTES

116 **Minutes of Ordinary Meeting of Council**

File: S02131

Meeting held 27 April 2010
Minutes numbered 99 to 114

Resolved:

(Moved: Councillors Keays/Anderson)

That Minutes numbered 99 to 114 circulated to Councillors were taken as read and confirmed as an accurate record of the proceedings of the Meeting.

CARRIED UNANIMOUSLY

MINUTES FROM THE MAYOR

117 **Ian and Michele Martin**

File: S04813

This Mayoral Minute is to formally acknowledge the valuable contribution Ian and Michele Martin have made to the Ku-ring-gai community as lessees of West Pymble Pool since 1982.

The Martins have decided not to renew their lease which expired at the end of April and I take this opportunity to publicly thank them for providing first-rate and professional management of the facility over the past 28 years.

As lessees, the Martins were responsible for day-to-day operations including cleaning and maintaining the pools, running the kiosk, employing lifeguards and co-ordinating the "learn to swim" programs.

Ian and Michele have become very familiar faces in the Ku-ring-gai community through this very long and distinguished tenure at the Pool.

All the feedback Council has received on their management – from the public, swimming clubs, schools and community groups – has always been positive.

From Council's perspective, it has been an absolute pleasure to work with them over almost three decades. They have always taken a proactive approach to all aspects of managing the Pool and maintained a positive and constructive working relationship with Council staff.

It will be very difficult to replace their skill, knowledge and experience.

On behalf of everyone at Council, I would like to congratulate the Martins on their outstanding service and wish them well in their future endeavours.

Resolved:

- A. That Council formally acknowledge the excellent contribution the Martins have made to the Ku-ring-gai community over 28 years as lessees of West Pymble Pool.
- B. That the Mayor write to the Martins to express Council's gratitude and wish them well in the future.
- C. That a small reception be held for Ian and Michelle Martin at West Pymble Pool or another suitable venue. The invitees and organisation should be at the discretion of the Mayor but should include where possible long term and regular users of the Pool.

CARRIED UNANIMOUSLY

GENERAL BUSINESS

118 **Code of Meeting Practice**

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File: S02211

To recommend the adoption of the Code of Meeting Practice.

Resolved:

(Moved: Councillors Holland/Malicki)

That the Code of Meeting Practice be adopted.

CARRIED UNANIMOUSLY

119 Accreditation of Council Certifiers

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File: S07162

To delegate to the General Manager, the authority to make recommendation on behalf of Council, to the Building Professionals Board, in respect of applications for accrediting building inspectors employed by Council.

Resolved:

(Moved: Councillors Holland/Hardwick)

That Council confer delegation of authority upon the General Manager in respect of assessing and endorsing individual applications from building inspectors employed by Ku-ring-gai Council for accreditation by the Building Professionals Board as Council Certifiers.

CARRIED UNANIMOUSLY

120 Heritage Reference Committee - Notes of Meeting held 15 March 2010

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File: S07620

To advise Council of the notes of the Heritage Reference Committee meeting held 15 March 2010.

Resolved:

(Moved: Councillors Holland/Anderson)

That Council receive and note the Heritage Reference Committee meeting notes of 15 March 2010.

CARRIED UNANIMOUSLY

121 Networks Alliance Request for Short-Term Licence

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File: S02776/2

To seek Council's approval for a short term licence to Networks Alliance over a portion of Council bushland known as St Andrews Forest Reserve, Killara.

Resolved:

(Moved: Councillors Holland/Malicki)

- A. That Council approves a six (6) month licence (with a monthly holdover clause) over a portion of St Andrews Forest Reserve, Lot 25 DP 12853 [AKA portion of 82A Spencer Road, Killara, to Networks Alliance.
- B. That Public notification of the licence agreement is undertaken in accordance with Section 47A *Local Government Act, 1993*.
- C. That Council authorises the Mayor and General Manager to execute all documentation associated with the licence.
- D. That Council authorises the affixing of the Common Seal of Council to the licence documentation.
- E. That the land must be restored as nearly as possible to the condition that it was in at the time the licence is granted at the expense of Networks Alliance.

*For the Resolution: The Mayor, Councillor I Cross, Councillors
Holland, Malicki, Anderson, Duncombe, Hardwick
& McDonald*

Against the Resolution: Councillors Keays, Szatow & Hall

*Standing Orders were suspended to deal with
GB.6 - St Ives Village Green Landscape Masterplan first
after a Motion moved by Councillors Anderson & Szatow
was CARRIED UNANIMOUSLY*

122

St Ives Village Green Landscape Masterplan

File: S07533

The following member of the public addressed Council:

C Berlioz

To seek Council's adoption of the amended draft St Ives Village Green Landscape Masterplan.

Resolved:

(Moved: Councillors Hall/Malicki)

- A. That Council adopt the amended draft St Ives Village Green Landscape Masterplan as outlined in this report and as depicted in Attachment A of the report.
- B. That Council thank all individuals, clubs and stakeholders who participated in the consultation process and inform them that the St Ives Village Green

Landscape Masterplan has been formally adopted and is available for viewing on Council's website.

- C. That a draft plan of management for St Ives Village Green be prepared based on the adopted landscape masterplan for consideration by Council.
- D. That Council proceed with the staged implementation of the adopted landscape masterplan including the relocation of the Scout and Guide activities as identified in the masterplan to facilitate development of the proposed Youth Precinct including the BMX-Skatepark facility.
- E. That all funding carried over from 2008/09 and funding currently available in the 2009/10 Capital Works Budget be carried over to 2010/11 to enable design and construction of the Youth Precinct including the BMX-skatepark and other high priority items in the masterplan.

For the Resolution: *The Mayor, Councillor I Cross, Councillors Holland, Malicki, Keays, Szatow, Anderson, Duncombe, Hall & McDonald*

Against the Resolution: *Councillor Hardwick*

123

Expressions of Interest - Old School Building, 799 Pacific Highway, Gordon

File: S07857

To provide recommendations to Council for the future use of 2 rooms in the Old School Building, 799 Pacific Highway, Gordon.

Resolved:

(Moved: Councillors Duncombe/Malicki)

- A. That the Ku-ring-gai Council Youth Services (KCYS) be relocated to the existing Gordon Library meeting rooms for a trial period of 6 months.
- B. That 3 new community meeting rooms be established in the former youth services and training room area for a trial period of 6 months.
- C. That the new arrangement in A and B be reviewed by Council staff after an operational period of 6 months and Council be advised of recommendations from the review for the future use of the facility.
- D. That Council explore possible options for the expenditure of s94 funds for youth services.

For the Resolution: *The Mayor, Councillor I Cross, Councillors Holland, Malicki, Duncombe, Hall & McDonald*

Against the Resolution: *Councillors Keays, Szatow, Anderson & Hardwick*

*The above Resolution was CARRIED as an Amendment to the Original Motion.
The Original Motion was:*

(Moved: Councillors Anderson/Szatow)

- A. Two new community meeting rooms be established in the former training rooms, in addition to the existing two Gordon Library meeting rooms, to make a total of four meeting rooms available for community hire.*
- B. Ku-ring-gai Council Youth Services remain in its current space.*
- C. A briefing be arranged to discuss with councillors possible options for the expenditure of s94 funds for youth services.*
- D. A report be provided to Council on options to alleviate study space shortages in Council libraries.*

124

Proposed Park at Lot 1 Water Street, Wahroonga

File: S06476

To clarify Council's obligations for the proposed park at Lot 1 Water Street, Wahroonga under the NSW Threatened Species Conservation Act 1995 and the Federal Environmental Protection and Biodiversity Conservation Act 1999, and seek Council approval for the newly acquired land to be used as a local park for the benefit of the community.

Resolved:

(Moved: Councillors Hall/Anderson)

That the matter stand deferred for a further report on funding information on the two proposals for the site, being a bushland reserve or a park.

*For the Resolution: The Mayor, Councillor I Cross, Councillors
Holland, Keays, Szatow, Anderson, Duncombe,
Hall & Hardwick*

Against the Resolution: Councillors Malicki & McDonald

*The above Resolution was CARRIED as an Amendment to the Original Motion &
a LOST Amendment. The Original Motion was:*

(Moved: Councillors Malicki/Hardwick)

- A. That the site be rehabilitated as a bushland reserve in recognition of its significance as a remnant Blue Gum High Forest community and one that is contiguous with Council's Turiban Reserve.*

- B. That the site be classified as a Bushland Reserve and its management be undertaken in accordance with the Bushland Plan of Management and supported by a site specific rehabilitation plan for the first five (5) years.*
- C. That funding for the rehabilitation and costs in relation to its purchase and subsequent design for a park shall be subject to a future report to Council. This would investigate alternative funding and include but not be limited to offsetting and development agreements.*
- D. That the Park should be named Badu Park, accordingly Council shall apply to the Geographical Names Board for this approval.*
- E. That interpretive material on Badu Park and surrounding Blue Gum High Forest be included in Council's educational material.*

The LOST Amendment was:

(Moved: Councillors Hall/Duncombe)

- A. That Council adopt the draft concept design plans and commence embellishment of the park as soon as practicable.*
- B. That Council fund this project in part using the remaining funds in the S94 development contributions plan and seek to identify the additional funding needed for construction as part of the budget review process following public exhibition of the Management Plan.*
- C. That the Parks Generic Plan of Management be amended to include the park.*
- D. That Council apply to the Geographical Names Board to call the new park Badu Park.*

125

Acceptance of Tender T19/2010 St Ives Vegetation Landfill Leachate Reuse and Water Management Project

File: S08108

To report on the results of the public tender for the construction of a leachate treatment and reuse system at the decommissioned St Ives vegetation landfill site, and to seek Council's approval to accept the preferred tender subject to passing a financial assessment.

Resolved:

(Moved: Councillors Hall/Hardwick)

That the matter be dealt with in Confidential Session later in the meeting.

CARRIED UNANIMOUSLY

126 **Pathway Naming 'Montys Walk', St Ives**

File: S03211

Ward: St Ives

To report on the naming of an unnamed pathway in St Ives running between Mona Vale Road and Gowrie Place to 'Montys Walk'.

Resolved:

(Moved: Councillors Anderson/Hall)

That the matter be deferred for reference to the Heritage Committee for further analysis concerning the history of the site.

For the Resolution: The Mayor, Councillor I Cross, Councillors Holland, Keays, Szatow, Anderson, Duncombe, Hall & McDonald

Against the Resolution: Councillors Malicki & Hardwick

*The above Resolution was CARRIED as an Amendment to the Original Motion.
The Original Motion was:*

(Moved: Councillors Hardwick/Malicki)

- A. That Council accept the name 'Montys Walk' for the unnamed pathway running between Gowrie Close and Mona Vale Road, St Ives.*
- B. That a notice of the new street name be published in a local newspaper and the NSW Government Gazette.*
- C. That Council informs Australia Post, the Registrar General, Surveyor General, The Geographical Names Board, NSW Ambulance Service, NSW Fire Brigades, NSW Rural Fire Service, NSW Police Force, State Emergency Services and NSW Volunteer Rescue Association Incorporated of the new name.*

Temporary Licence Agreement - Afghan Nomadic Carpets

File: B00355-10

The above item was withdrawn from the Agenda by the Director Community by memorandum dated 7 May 2010 to allow for further information, relevant to the report, to be obtained by Staff.

*The following item was dealt with
after a Motion moved by Councillors Hall & Duncombe
to have the matter dealt with was CARRIED UNANIMOUSLY
& the Mayor ruled Urgency*

*Council resolved itself into Closed Meeting
with the Press and Public Excluded to deal with the following item
after a Motion moved by Councillors Hall & Duncombe
was CARRIED UNANIMOUSLY*

BUSINESS WITHOUT NOTICE - SUBJECT TO CLAUSE 241 OF GENERAL REGULATIONS

- 127 **1574 to 1578 Pacific Highway, Wahroonga - Seniors Living Development
DA0652/07 - Land & Environment Court Proceedings No 10352 of 2008 - The
Council ats De Stoop**

File: S06605

The Mayor, Councillor Ian Cross informed Council of the Land & Environment Court's Decision to approve the development at 1574 to 1578 Pacific Highway, Wahroonga - DA0652/07.

In accordance with the *Local Government Act 1993* and the *Local Government (General) Regulation 2005*, in the opinion of the General Manager, the following business is of a kind as referred to in section 10A(2)(g) of the Act, and should be dealt with in a part of the meeting closed to the public.

Section 10A(2)(g) of the Act permits the meeting to be closed to the public for business relating to advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

This matter is classified confidential under section 10A(2)(g) because it contains advice concerning a legal matter that:

- (a) is a substantial issue relating to a matter in which the Council is involved
- (b) is clearly identified in the advice, and
- (c) is fully discussed in that advice.

It is not in the public interest to release details of the legal advice as it would prejudice Council's position in court proceedings.

That Council consider the possibility of an appeal in relation to the Land & Environment Court Decision approving the development at 1574 to 1578 Pacific Highway, Wahroonga (De Stoop v Ku-ring-gai Council) and the discussion be undertaken in confidential session to assess Senior Counsel's advice regarded as privileged under Section 10 of the Local Government Act 1993.

Resolved:

(Moved: Councillors Malicki/Hall)

That Council proceed against the judgement of Commissioner Murrell in Land & Environment Court Proceeding No 10352 of 2008 regarding 1574 to 1578 Pacific Highway, Wahroonga.

CARRIED UNANIMOUSLY

To Open Council

The General Manager adverted to the consideration of the matter referred to in the Minute numbered 127, and to the resolution contained in such Minute.

QUESTIONS WITHOUT NOTICE

128 **Minute No 313/09 - Confirmation of Voting**

File: S06785

Question Without Notice from Councillor T Hall

I refer to the General Manager's memo of 4 May 2010 (file S06785) tabled in Council tonight and ask why did he mislead the voting of Minute No 313/09 which showed I dissented.

Would the General Manager issue a further memo correcting this memo of 4 May 2010 please?

Answer by the General Manager

I am happy to check that.

129 **St Ives Showground Consultative Committee**

File: S02673/2

Question Without Notice from Councillor T Hall

I refer to the staff reply to my Question of 27 April 2010, yet to be tabled, that according to a legal advice given on 18 June 2009 that the SISCO is now defunct and its functions were not taken over by the Council's Open Space Reference Committee.

Is it true the legal advice omitted to confirm that this Showground Committee was appointed not under Clause 260 or Section 355 of the Local Government Act 1993 but by the Minister for Lands under the Crown Lands Act 1989 in September 1999?

Would the General Manager confirm this please?

Answer by the Mayor

It will be taken on notice.

*Council resolved itself into Closed Meeting
with the Press and Public Excluded to deal with the following items:*

130 **Acceptance of Tender T19/2010 St Ives Vegetation Landfill Leachate Reuse and Water Management Project**

File: S08108

In accordance with the *Local Government Act 1993* and the *Local Government (General) Regulation 2005*, in the opinion of the General Manager, the following business is of a kind as referred to in section 10A(2)(d) of the Act, and should be dealt with in a part of the meeting closed to the public.

Section 10A(2)(d) of the Act permits the meeting to be closed to the public for business relating to commercial information of a confidential nature that would, if disclosed:

- (i) prejudice the commercial position of the person who supplied it, or
- (ii) confer a commercial advantage on a competitor of Council, or
- (iii) reveal a trade secret.

This matter is classified confidential under section 10A(2)(d)(i) because it deals with tenders. Tender details, should they be revealed, may result in commercial disadvantage to parties involved in the tender process. Some information provided to Council by tenderers is provided on the basis that Council will treat it as commercial in confidence.

It is not in the public interest to reveal details of these tenders or the assessment process. Tenderers have provided sensitive information about their operations in the confidence that their details will not be made public by Council. The practice of publication of sensitive information provided by tenderers could result in the withholding of such information by tenderers and reduction in the provision of information relevant to Council's decision.

To report on the results of the public tender for the construction of a leachate treatment and reuse system at the decommissioned St Ives vegetation landfill site, and to seek Council's approval to accept the preferred tender subject to passing a financial assessment.

Resolved:

(Moved: Councillors Hall/Anderson)

That the matter stand deferred to obtain written confirmation from Henry & Hymas Pty Ltd within seven (7) days that the said guarantee will cover the entire financial worth of the project.

For the Resolution: *The Mayor, Councillor I Cross, Councillors Holland, Keays, Szatow, Anderson, Duncombe, Hall, Hardwick and McDonald*

Against the Resolution: *Councillor Malicki*

During debate on the above item, a Motion was moved by Councillors Malicki & Duncombe that Councillor Hall had committed an Act of Disorder.

The Mayor put the Motion to the vote:

For the Motion: *Councillors Holland, Malicki, Keays, Duncombe & McDonald*

Against the Motion: *The Mayor, Councillor I Cross, Councillors Szatow, Anderson, Hall & Hardwick*

*The voting being EQUAL, the Mayor exercised his Casting Vote
AGAINST the Motion*

*No decision was taken in respect of the above matter as
the Motion when put to the vote was LOST*

131

Open Space Acquisition Strategy - Identification of Potential Sites for Acquisition by Council - Killara

File: S04601

In accordance with the *Local Government Act 1993* and the *Local Government (General) Regulation 2005*, in the opinion of the General Manager, this item contains information that is of a kind referred to in section 10(A) 2(c) of the Act, and should be dealt with in a part of the meeting closed to the media and public.

Section 10(A) 2(c) of the Act permits the meeting to be closed to the public for business relating to:

- (c) Information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.

It is not in the public interest to release this information as it would prejudice Council's ability to acquire property on appropriate terms and conditions.

Report by Director Strategy & Environment dated 30 April 2010.

Resolved:

(Moved: Councillors Szatow/McDonald)

That Council adopt Option K2a as the preferred location for a new park in Killara and proceed in the manner outlined within the report.

*For the Resolution: The Mayor, Councillor I Cross, Councillors
Holland, Malicki, Keays, Szatow, Anderson,
Duncombe & McDonald*

Against the Resolution: Councillors Hall & Hardwick

The above Resolution was subject to an Amendment which was LOST. The Lost Amendment was:

(Moved: Councillors Hall/Hardwick)

That the matter stand deferred until LEP is gazetted.

132

Proposal to Acquire Open Space - Lindfield

File: S07275

In accordance with the *Local Government Act 1993* and the *Local Government (General) Regulation 2005*, in the opinion of the General Manager, the following business is of a kind as referred to in section 10A(2)(c) of the Act, and was dealt with in a part of the meeting closed to the public.

Section 10A(2)(c) of the Act permits the meeting to be closed to the public in respect of information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.

This matter is classified confidential because it deals with the proposed acquisition of property.

It is not in the public interest to release this information as it would prejudice Council's ability to acquire this and other property on appropriate terms and conditions.

Report by Director Strategy & Environment dated 27 April 2010.

Resolved:

(Moved: Councillors Malicki/Keays)

That Council resolve to proceed in the manner outlined in the report.

*For the Resolution: The Mayor, Councillor I Cross, Councillors
Holland, Malicki, Keays, Duncombe & McDonald*

Against the Resolution: Councillors Szatow, Anderson, Hall & Hardwick

*The above Resolution was CARRIED as an Amendment to the Original Motion.
The Original Motion was:*

(Moved: Councillors Anderson/Hall)

That the matter stand deferred until the LEP is gazetted.

To Open Council

The General Manager adverted to the consideration of the matters referred to in the Minutes numbered 130 to 132, and to resolutions contained in such Minutes.

NOTE:

The General Manager informed Council that a Notice of Rescission had been received in relation to GB.1 - Expressions of Interest - Old School Building, 799 Pacific Highway, Gordon.

The Meeting closed at 10.49pm

The Minutes of the Ordinary Meeting of Council held on 11 May 2010 (Pages 1 - 17) were confirmed as a full and accurate record of proceedings on 25 May 2010.

General Manager

Mayor / Chairperson