

MINUTES OF ORDINARY MEETING OF COUNCIL HELD ON TUESDAY, 12 MAY 2009

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

Staff Present: Acting General Manager (Michael Miocic)
Director Corporate (John Clark)
Acting Director Development & Regulation (Corrie Swanepoel)
Director Operations (Greg Piconi)
Director Strategy & Environment (Andrew Watson)
Manager Corporate Planning & Sustainability (Peter Davies)
Director Community (Janice Bevan)
Minutes Secretary (Christina Randall-Smith)

The Meeting commenced at 7.03pm

The Mayor offered the Prayer

78

APOLOGIES

File: S02194

Councillor Rakesh Duncombe tendered an apology for non-attendance [illness] and requested leave of absence.

NOTE: The General Manager, John McKee, tendered apologies for non-attendance.

Resolved:

(Moved: Councillors Anderson/Hall)

That the apology by Councillor R Duncombe for non-attendance be accepted and leave of absence be granted.

CARRIED UNANIMOUSLY

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.

Councillor Cheryl Szatow declared a significant non-pecuniary interest to Item PT.2 - Marian Street Footpath Pavement Upgrading - (Three Hundred & Ten [310] Signatures) (signed the Petition).

Councillor Jennifer Anderson declared a less than significant non-pecuniary interest to Item NM.2 - Proposed Open Space Acquisition - Wahroonga (had received a statement of support from the owner of "The Briars").

79 CONFIRMATION OF REPORTS TO BE CONSIDERED IN CLOSED MEETING

File: S02499

Resolved:

(Moved: Councillors Cross/Keays)

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 Staff Matter - General Manager's Performance Review

GB.6 **175 Rosedale Road, St Ives - Proposed Assignment of Lease -**
Attachment 2 to Report - Financial Statement.

CARRIED UNANIMOUSLY

ADDRESS THE COUNCIL

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

G Rousseau
B Watson
H Loughnan

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 Item: **Refer PT.1 - Lindfield Library Relocation - (Twenty-five [25] Signatures)**

Refer GB.1 - Council Committees - Memorandum & Attachments from Director Strategy & Environment dated 11 May 2009 regarding an amended Planning Committee Charter & corrections to the Sustainability table.

Refer GB.2 - Budget Review 2008 to 2009 - 3rd Quarter Review as at March 2009 - Memorandum by Director Strategy & Environment dated 11 May 2009 regarding a proposed additional recommendation in relation to a recent grant from the NSW Rural Fire service & its impact on Project No PJ00342 Golden Jubilee Fire Trail.

Councillors Information: **Investment** - Memorandum by Director Corporate dated 5 May 2008 in response to a Question Without Notice raised by Councillor Tony Hall at the Ordinary Meeting of Council held 7 April 2009.

Political Donation Disclosures in DA Lodgements - Memorandum & attachments by Acting Director Development & Regulation (Corrie Swanepoel) dated 6 May 2009 in response to a Question Without Notice raised by Councillor Tony Hall at the General Committee held 24 March 2009.

Formation of a Municipal Brass Band & JJC Bradfield Museum - Memorandum by Director Community dated 7 May 2009 in response to two (2) Questions Without Notice raised by Councillor Tony Hall at the Ordinary Meeting of Council held 2 September 2008.

Special Rate Variation - Community Consultation - Update - Memorandum by Director Strategy & Environment dated 11 May 2009 in relation to the exhibition of the draft Management Plan 2009 to 2012 & advising of a household survey with specific regards to the Special Rate Variation.

Correspondence received from Department of Planning - Memorandum by Director Strategy & Environment dated 11 May 2009 in relation to Council's application for exemption from the Development Contributions threshold.

CONFIRMATION OF MINUTES80 **Minutes of Ordinary Meeting of Council**

File: S02131

Meeting held 7 April 2009
Minutes numbered 62 to 77

Resolved:

(Moved: Councillors Keays/Cross)

That Minutes numbered 62 to 77 circulated to Councillors were taken as read and confirmed as an accurate record of the proceedings of the Meeting.

CARRIED UNANIMOUSLY

MINUTES FROM THE MAYOR81 **Festival on the Green**

File: CY00137

This year's Festival on the Green – held on Sunday, the 3rd of May – was an outstanding success with an estimated 10,000 people enjoying a great day's entertainment in beautiful autumn weather.

It was clearly the most successful festival we have had in the six years the event has been running.

Last year, Council listened to community feedback and moved the festival forward a month, from June to May, so everyone could enjoy warmer temperatures and get the most out of this community celebration.

This decision was well and truly vindicated by the great weather and the largest attendance the festival has so far attracted.

It was a great array of entertainment and attractions - everything from aerial theatre, school bands, dance groups, dog obedience and agility demonstrations to wine tasting and wonderful arts, crafts and food stalls.

The festival is a real community event – with more than 350 performers from over 15 local schools and community groups providing a wide variety of entertainment throughout the day.

Festival on the Green was born in 2003 when Council sought feedback from residents who wanted a community celebration where families, community groups and individuals could come together and share in our great local culture.

I'm sure all Councillors are thrilled with the way this event has grown since then to become a major highlight on Ku-ring-gai's local community calendar.

There is an enormous amount of behind-the-scenes planning work that goes into creating a successful community event.

On behalf of Council, I would like to publicly acknowledge the great work done by staff in the Community department who helped make the festival such a success – in particular Leisure and Cultural Development Manager, Juan Perez, Arts Cultural Officer, Michelle Davis and Events Assistant, Sarah Sugar.

I also thank the festival's sponsors who provide vital support for the event. These are major sponsors: LSV Productions, corporate sponsors St Ives Shopping Village, North Shore Times and Hornsby Advocate and event partner Century 21 Cordeau Marshall.

In particular, Craig Marshall from Century 21 Cordeau Marshall has been a great supporter of the festival as well as many local community charities. He is a wonderful example of a local business owner who really puts something back into the community he serves.

Mr Marshall's great community service was recognised by Council in 2006 when he won an Outstanding Service to the Community award.

This is a man who didn't stop his community work once he received recognition but he continues to turn up with his tent and staff conducting children's activities at community events all over Ku-ring-gai.

I also thank:

- Ku-ring-gai State Emergency Service for their great traffic management;
- St John's Ambulance for their first aid services;
- Ku-ring-gai Local Area Command Police;
- The Northern Suburbs Dog Training Club; and
- Schools, community groups, sporting and environmental groups and local businesses who have joined in the Festival.

So many people have helped make the 2009 Festival on the Green a great success – and I seek Councillors' support for acknowledging their contributions.

Resolved:

That Council formally acknowledges the efforts of staff, sponsors and community organisations in contributing to the success of this year's Festival on the Green.

CARRIED UNANIMOUSLY

PETITIONS**82 Lindfield Library Relocation - (Twenty-Five [25] Signatures)**

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File: FY00190

"We, the undersigned, are most concerned that there is a threat to the location of Lindfield Library and believe it should be retained at its present site and are prepared to assist with a Petition to Parliament."

Resolved:

(Moved: Councillors Anderson/Keays)

That the Petition be received and referred to the appropriate officer of Council for attention.

CARRIED UNANIMOUSLY

**Councillor Szatow declared a significant non-pecuniary interest
in respect of the following item - PT.2 - Marian Street Footpath
Pavement Upgrading -
(Three Hundred & Ten [310] Signatures)
and withdrew from the Chamber taking no part
in discussion and voting on the item**

83 Marian Street Footpath Pavement Upgrading - (Three Hundred & Ten [310] Signatures)

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File: 88/05752/01

The following Petition was presented by Councillor Cheryl Szatow:

"We, the undersigned, do urgently request the Ku-ring-gai Council, as part of its current Capital Works Program, to give urgent attention to the unsafe and dangerous condition of the footpath pavement on the north side of Marian Street, extending from the traffic lights on the Pacific Highway to the shops opposite the Marian Street Theatre.

Council should be aware that the south side of Marian Street, which is rarely used by pedestrians to access Killara Railway Station is fully paved; while both sides of Lorne Avenue and Stanhope Road - other access routes to/from the Pacific Highway to Killara Railway Station are fully paved on both sides of the street; whereas Marian Street; the major pedestrian thoroughfare is not fully paved on both sides of the street.

Over the years the bitumen surface on the north side of Marian Street has been patched to effect repairs and is now in an extremely rough and unsafe condition; with the result that many pedestrians use the roadway rather than the Marian Street footpath.

Council should also note the following:

- Pedestrian usage is high as this is the main access from the western side of the Pacific Highway to the Railway Station, the shopping precinct, the Marian Street Theatre and Selkirk Park;
- Street lighting is poor; and
- Commuting traffic to/from the Culworth Avenue Car Park and the Railway Station make it dangerous to walk on the street and to cross the street, particularly at night-time."

Resolved:

(Moved: Councillors Keays/Cross)

That the Petition be received and referred to the appropriate officer of Council for attention.

CARRIED UNANIMOUSLY

Councillor Szatow returned

GENERAL BUSINESS

84

Protected Disclosures Act - Internal Reporting Policy

File: S04255

To review the Internal Reporting Policy for Protected Disclosures.

Resolved:

(Moved: Councillors Cross/Keays)

That the revised Internal Reporting Policy – Protected Disclosures be adopted.

CARRIED UNANIMOUSLY

85 **175 Rosedale Road, St Ives - Proposed Assignment of Lease**

File: S07252

For Council to consider a request from the Lessee of Council property at 175 Rosedale Road, St Ives, trading as Rosedale Cottage Restaurant to the assignment of the lease.

Resolved:

(Moved: Councillors Hall/Hardwick)

- A. That Council approve the assignment of the Lease over 175 Rosedale Road, St Ives from Marta Duncan and Gian-Franco Guerra to Sous le Soleil Pty Ltd on the same terms and conditions as the existing lease.
- B. That the Mayor and General Manager be authorised to execute all documents associated with the lease assignment.
- C. That Council authorise the affixing of the Common Seal of Council to lease assignment documents.

CARRIED UNANIMOUSLY

86 **2 Alder Drive, St Ives - Connection to Council Drainage Easement**

File: DA391/08

To consider a request by the owner of 2 Alder Drive, St Ives, to alter the terms of the Council drainage easement over downstream properties to permit discharge into a Council pipeline.

Resolved:

(Moved: Councillors Hall/Hardwick)

- A. That Council grants approval to alter the terms of the Council easement created by DP 227543 burdening 21 Palm Street (by extinguishment of the existing and creation of a new easement if necessary), and approval to the creation of an easement over the Council stormwater drainage pipe within 56 Kitchener Street. The terms of both new easements are to benefit both Council and the surrounding lands.
- B. That authority be given to affix the Common Seal of the Council to the appropriate instrument for the extinguishment, amendment, alteration or creation of the drainage easements as necessary.

- C. That all costs associated with the extinguishment, amendment, alteration or creation of the drainage easements be borne by the applicant.

CARRIED UNANIMOUSLY

MOTIONS OF WHICH DUE NOTICE HAS BEEN GIVEN

*Standing Orders were suspended to deal with the
NM.1 - Proposed Masterplan of the Gordon Council Chambers
after a Motion moved by Councillors Anderson & Cross
was CARRIED UNANIMOUSLY*

87 Proposed Masterplan of the Gordon Council Chambers

Files: S05930, S06523

The following member of the public addressed Council:

H Willis

Notice of Motion from Councillor Tony Hall dated 22 April 2009

I move:

1. "That in view of the downturn in the economy of this Country, the parlous position of local government infrastructure financing as a result, and the likely rejection of the Council's request to the Planning Minister's Contributions Review Panel for exemption from Section 94E, set out in the NSW Planning Minister's Order of 23 January 2009, that the former Council's grandiose scheme to Masterplan the Council Chambers' Precinct Gordon, under its Resolution of 29 April 2008 (Minute No129/08) be immediately reviewed in the light of the serious financial implications presented by Council staff to an informal Councillor confidential planning forum on 21 April 2009.
2. If this new financial plan is found to be too expensive, that the proposed Masterplan be abandoned forthwith, notwithstanding the Ku-ring-gai Planning Panel has accepted the same Masterplan concept already of council-owned lands, into its draft Ku-ring-gai Town Centre's Local Environment Plan, exhibited recently and awaiting its recommendation to submit to the Minister for Planning for adoption in May 2009.
3. The General Manager be authorised to seek a legal opinion into the veracity of the abovementioned actions by the Ku-ring-gai Planning Panel in the matter.
4. The Minister for Planning and Ku-ring-gai Planning Panel be so advised."

Resolved:

(Moved: Councillors Hall/Hardwick)

That the above Notice of Motion as printed be adopted.

For the Resolution: Councillors Hall & Hardwick

Against the Resolution: The Mayor, Councillor E Malicki, Councillors Holland, Keays, Szatow, Anderson & Cross

The Notice of Motion was declared LOST**GENERAL BUSINESS (cont)****88 Council Committees**

File: S06952

To amend the structure of the Planning and Heritage Reference Committee; put forward nominations for community representatives and seek Chairs and Deputy Chairs for the Sustainability, Heritage, Open Space and Community Reference Committees.

Resolved:

(Moved: Councillors Keays/Szatow)

- A. That Council rescind Resolution C of the Council meeting of 24 February 2009 (Minute Number 48) as related to the charter for the Reference Committees.
- B. That Council adopt the amended Reference Committee Guidelines and Charters.
- C. That a Heritage Committee be constituted under section 355 of the *Local Government Act, 1993*.
- D. That Council, in accordance with Clause 260 of *Local Government (General) Regulation 2005*, establish a Planning Committee and that this be established with the functions set out in the draft Charter.

For the Resolution: The Mayor, Councillor E Malicki, Councillors Holland, Keays, Szatow, Anderson & Cross

Against the Resolution: Councillors Hall & Hardwick

**Council adjourned for 5 minutes
after a Motion moved by Councillors Cross & Keays was CARRIED
and the Chairperson ruled accordingly**

*The following Notice of Rescission was dealt with
after a Motion moved by Councillors Keays & Szatow
to have the matter dealt with at the meeting was
CARRIED and the Chairperson ruled Urgency*

*For the Urgency: The Mayor, Councillor E Malicki, Councillors
Holland, Keays, Szatow, Anderson, Hardwick &
Cross*

Against the Urgency: Councillor Hall

**Notice of Rescission from Councillors Jennifer Anderson, Cheryl Szatow &
Elise Keays dated 12 May 2009**

*We, the undersigned Councillors hereby seek to rescind the following resolution of
Council at its meeting of 12 May 2009 being -*

"B. That Council adopt the amended Reference Committee Guidelines & Charters."

Resolved:

(Moved: Councillors Keays/Szatow)

That the above Notice of Rescission, as printed, be adopted.

*For the Resolution: The Mayor, Councillor E Malicki, Councillors
Holland, Keays, Szatow, Anderson, Hardwick &
Cross*

Against the Resolution: Councillor Hall

(Moved: Councillors Anderson/Cross)

- B. 1. That Council adopt the Reference Guidelines and Charter for the Heritage Committee as amended to include membership of three community representatives, at least one being a Ku-ring-gai resident; and
2. That Council adopt the amended Reference Guidelines and Charters for Sustainability, Open Space and Community Committees, as amended.

*For the Resolution: The Mayor, Councillor E Malicki, Councillors Holland,
Keays, Szatow, Anderson, Hardwick & Cross*

Against the Resolution: Councillor Hall

(Moved: Councillors Keays/Szatow)

- E. That Council resolve to appoint the nominations identified in the Summary section of the report to the following Reference Committees: Community and Open Space & that the list of nominations for the Sustainability Reference Committee be shortened to exclude Dr Z Edwards & J Harwood & the list of nominations for the Heritage Reference Committee be enlarged to include Dr Z Edwards, J Martens & I Stutchbury.
- F. That all successful nominees be advised of their appointment.
- G. That nominees not selected for the committees be advised of Council's decision and thanked for their interest.

*For the Resolution: The Mayor, Councillor E Malicki, Councillors
Holland, Keays, Szatow, Anderson, Hardwick and
Cross*

Against the Resolution: Councillor Hall

*That Part E of the above Resolution was CARRIED as an Amendment to the
Original Motion. The Original Motion was:*

(Moved: Councillors Keays/Szatow)

- E. That Council resolve to appoint the nominations identified in the Summary
section of the report to the following Reference Committees:
Sustainability, Heritage, Community and Open Space.*

- H. That the following Councillors be elected to the Sustainability, Heritage, Community & Open Space Reference Committees:

Sustainability Reference Committee

(Moved: Mayor, Councillor E Malicki/Councillor Cross)

Chairperson: Councillor Steven Holland

(Moved: Councillors Keays/Szatow)

Deputy Chairperson: Mayor, Councillor Elaine Malicki

Heritage Reference Committee

(Moved: Councillors Keays/Cross)

Chairperson: Councillor Jennifer Anderson

[Moved: Councillors Anderson/Keays]

Deputy Chairperson - Councillor Cheryl Szatow

Community Reference Committee

[Moved: Councillors Holland/Szatow]

Chairperson: Mayor, Councillor Elaine Malicki

[Moved: Councillors Keays/Cross]

Deputy Chairperson: Councillor Cheryl Szatow

Open Space Reference Committee

[Moved: Councillors Cross/Szatow]

Chairperson: Councillor Elise Keays

[Moved: Mayor, Councillor E Malicki/Councillor Cross]

Deputy Chairperson: Councillor Steven Holland

[Moved: Councillors Hall/Hardwick]

Deputy Chairperson: Councillor Tony Hall

Councillor Steven Holland - 4 votes

Councillor Tony Hall - 4 votes

The vote of "show of hands" resulted in 4 votes each being received by Councillors Holland & Hall.

Councillor Hall's name was drawn by ballot.

Councillor Hall was duly elected as Deputy Chairperson of the Open Space Reference Committee.

CARRIED UNANIMOUSLY

89 **Budget Review 2008 to 2009 - 3rd Quarter Review as at March 2009**

File: S06351

To present to Council the quarterly financial review for the 3rd quarter ended 31 March 2009.

Resolved:

(Moved: Councillors Hall/Hardwick)

- A. That Council adopt the budget adjustments contained in the report.
- B. That the Restricted Assets Report Forecast to 30 June 2009 as at 31 March 2009, as shown in Attachment B to the report, be noted.
- C. That the reserve movements contained in the report be approved.
- D. That Council allocate the grant from the NSW Rural Fire Service of \$90,000 to the Golden Jubilee Fire Trail Project to the 2008/09 Capital Works budget to fund the stabilisation of the fire trail around Golden Jubilee Oval.

CARRIED UNANIMOUSLY

90 **3rd Quarter Management Plan - Update**

File: FY00019

To report to Council on progress made toward achieving Key Performance Indicators as contained in Council's 2008-2012 Management Plan.

*During debate on this Item,
Councillor Hall was called to Order
for the second time*

Resolved:

(Moved: Councillor Cross/Mayor, Councillor E Malicki)

- A. That the report on the progress of the Key Performance Indicators contained in the 2008-2012 Management Plan for the 3rd quarter of the Plan be received and noted.
- B. That the Key Performance Indicators related to community satisfaction be deferred to the 2009/10 financial year.

CARRIED UNANIMOUSLY

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

(Moved: Councillors Hall/Hardwick)

- A. That the report on the progress of the Key Performance Indicators contained in the 2008-2012 Management Plan for the 3rd quarter of the Plan be received and noted.*
- B. That the Key Performance Indicators related to community satisfaction be deferred to the 2009/10 financial year.*
- C. That a status report be brought forward on under-performing investments.*

91 **Analysis of Land & Environment Court Costs, 3rd Quarter, 2008 to 2009**

File: S02466

To report legal costs in relation to planning matters in the Land & Environment Court for the quarter ended March 2009.

Resolved:

(Moved: Councillors Hall/Hardwick)

That the analysis of Land & Environment Court costs for the third quarter ended March 2009 be received and noted.

CARRIED UNANIMOUSLY

92 **Proposed Open Space Acquisition - Wahroonga**

File: S07257

Notice of Motion from Councillor Jennifer Anderson dated 4 May 2009

I move:

- "A. That the General Manager obtain an independent valuation from a registered valuer for 12 Woonona Avenue, Wahroonga.
- B. That the General Manager prepare a further report on funding sources that may be utilised to assist Council in acquisition of the property, including sources not yet explored, such as, but not limited to, Heritage Council grants.

- C. That the General Manager consider and assess potential leasing opportunities during any period of time necessary to fully fund works to create a park/community garden on the site and throughout design, demolition and construction phases.
- D. That the General Manager seek comments from Council's Heritage Advisor to be included in the further report to Council."

During debate on the above Item, Councillor Hall
was called to Order for a third time

*Standing Orders were suspended to deal with a Motion
moved by the Mayor, Councillor Elaine Malicki
that Councillor Hall be excluded from the Meeting*

*For the Motion: The Mayor, Councillor E Malicki, Councillors
Holland, Keays, Szatow, Anderson & Cross*

Against the Motion: Councillors Hall & Hardwick

The Mayor asked Councillor Hall to leave the Meeting

Councillor Hall left the Meeting at 9.45pm

Resolved:

(Moved: Councillors Anderson/Cross)

That the above Notice of Motion as printed be adopted.

*For the Resolution: Councillors Holland, Keays, Szatow, Anderson,
Hardwick & Cross*

Against the Resolution: The Mayor, Councillor E Malicki

***Council resolved itself into Closed Meeting
with the Press & Public Excluded
after a Motion moved by Councillors Anderson & Cross
was CARRIED UNANIMOUSLY***

93

Staff Matter - General Manager's Performance Review

File: S03655

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)(a) of the Act, and should be dealt with in a part of the meeting closed to the press and public.

Section 10A(2)(a) of the Act permits the meeting to be closed to the public for business relating to personnel matters concerning particular individuals (other than Councillors).

Report by the Mayor, Councillor E Malicki dated 30 April 2009.

Resolved:

(Moved: Mayor, Councillor E Malicki/Councillor Hardwick)

Council resolved in regard to the General Manager's Performance Review in the terms discussed.

CARRIED UNANIMOUSLY by those present

To Open Council

The Acting General Manager adverted to the consideration of the matter referred to in Minute numbered 93, and to the resolution contained in such Minute.

The Meeting closed at 10.20pm

The Minutes of the Ordinary Meeting of Council held on 12 May 2009 (Pages 1 - 17) were confirmed as a full and accurate record of proceedings on 9 June 2009.

General Manager

Mayor / Chairperson