

## MINUTES OF ORDINARY MEETING OF COUNCIL HELD ON TUESDAY, 23 FEBRUARY 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 Urban & Heritage Planning (Antony Fabbro)  
Director Community (Janice Bevan)  
Corporate Lawyer (Jamie Taylor)  
Senior Governance Officer (Geoff O'Rourke)  
Director Strategy & Environment's PA (Kim Thomas)

*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.

### 25 CONFIRMATION OF REPORTS TO BE CONSIDERED IN CLOSED MEETING

File: S02499

#### **Resolved:**

(Moved: Councillors Hall/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:

**Refer GB.14 Tender - Stormwater Pollution Devices** - Confidential Attachment to Report

**CARRIED UNANIMOUSLY**

## **PRESENTATION OF CHEQUES**

The Mayor, Councillor Ian Cross, presented cheques for the Small Grants Scheme.

## **ADDRESS THE COUNCIL**

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

D Pelser  
N Lush  
S Sehgal  
M O'Rourke  
T O'Rourke  
L Abbott  
G Abbott  
K Shanker  
Y Jayawardena  
P Somaiya  
D Chau  
C Lush  
V Lovlin

## **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 GB.9 - Application for a New Facilities Special Variation** - Memorandum from Director Corporate dated 19 February 2010 advising that the Section of the Local Government Act 1993 mentioned in Recommendation A was incorrect. It should read Section 508(2) of the Local Government Act 1993.

**Councillor Hall withdrew**

**CONFIRMATION OF MINUTES****26 Minutes of Ordinary Meeting of Council**

File: S02131

Meeting held 2 February 2010  
Minutes numbered 1 to 24

**Resolved:**

(Moved: Councillors Keays/McDonald)

That Minutes numbered 1 to 24 circulated to Councillors were taken as read and confirmed as an accurate record of the proceedings of the Meeting.

**CARRIED UNANIMOUSLY by those present**

**Councillor McDonald withdrew**

**Councillor Hall returned**

**27 Minutes of Extraordinary Meeting of Council**

File: S02131

Meeting held 11 February 2010  
Minutes numbered EMC1 to EMC2

**Resolved:**

(Moved: Councillors Malicki/Duncombe)

That Minutes numbered EMC1 to EMC2 circulated to Councillors were taken as read and confirmed as an accurate record of the proceedings of the Meeting.

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

*Against the Resolution:              Councillor Hall*

**PETITIONS**

- 28 **Essex Street Easement - Concern by Residents regarding Interference with Water Flow due to Development at 33 Essex Street, Killara - (Nineteen [19] Signatures)**

File: PCDC0138/09

**The following Petition was presented by Councillor Cheryl Szatow:**

"We, the undersigned, would like to voice our concerns about the plan to interfere with the flow of water down the Essex Street easement due to development that is set to take place at number 33 Essex Street.

We request that Ku-ring-gai Council carefully consider the implications of allowing any building to take place over the easement.

We ask that Ku-ring-gai Council ensure that any plans to funnel the easement are either rejected, or should they go ahead, we request that the plans take into consideration the flow of rainwater that passes through the easement during times of heavy rain."

**Resolved:**

(Moved: Councillors Szatow/Keays)

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

**CARRIED UNANIMOUSLY by those present**

**Councillor McDonald returned**

**GENERAL BUSINESS**

- 29 **Investment Report as at 31 December 2009**

File: S05273

To present to Council investment allocations and returns on investments for December 2009.

**Resolved:**

(Moved: Councillors Szatow/Duncombe)

- A. That the summary of investments and performance for December 2009 be received and noted.
- B. That the Certificate of the Responsible Accounting Officer be noted and the report adopted.

**CARRIED UNANIMOUSLY**

30 **Investment Report as at 31 January 2010**

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File: S05273

To present to Council investment allocations and returns on investments for January 2010.

**Resolved:**

(Moved: Councillors Szatow/Duncombe)

- A. That the summary of investments and performance for January 2010 be received and noted.
- B. That the Certificate of the Responsible Accounting Officer be noted and the report adopted.

**CARRIED UNANIMOUSLY**

*Standing Orders were suspended to deal with items where there are speakers then NM.2 - B2 Lands at South Turramurra which was moved by Councillors Malicki & Duncombe*

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

*Against the Motion: Councillor Hall*

31 **Policy for the Management of Community and Recreation Land and Facilities**

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File: S07308

**The following member of the public addressed Council:**

**P Lewis**

To present the Policy for the Management of Community and Recreation Land and Facilities to Council for adoption.

**Resolved:**

(Moved: Councillors Keays/Szatow)

- A. That Council adopt the Policy for the Management of Community and Recreation Land and Facilities.
- B. That the proposed new administration fees and charges associated with the policy be placed on public exhibition for 28 days.

**CARRIED UNANIMOUSLY**

**MOTIONS OF WHICH DUE NOTICE HAS BEEN GIVEN**

32 **Reclassification of Land - Cowan Road, St Ives and Ray Street, Turramurra Car Parks**

File: S07629

**The following members of the public addressed Council:**

**P Moate  
A Carroll  
C Berlioz  
D Warner  
M Ratcliffe  
N Cronin**

**Notice of Rescission from Councillors Elaine Malicki, Duncan McDonald and Steven Holland dated 8 December 2009**

We move -

"That the decision made by Council (Minute No 324 of Ordinary Meeting of Council held 8 December 2009) to reclassify the Cowan Road Car Park and the Ray Street Car Park is hereby rescinded."

**Resolved:**

(Moved: Councillors Malicki/McDonald)

That the above Notice of Rescission as printed be adopted.

*For the Resolution: Councillors Holland, Malicki, Keays, Szatow, Hall, Hardwick & McDonald*

*Against the Resolution: The Mayor, Councillor I Cross, Councillors Anderson & Duncombe*

**Councillor Hall withdrew**

33

**B2 Lands at South Turramurra**

File: S02846

**Notice of Motion from Councillor Rakesh Duncombe dated 22 January 2010**

I move:

- (a) That Council ask the Department of Planning to compulsorily acquire the unformed part of Hall Street with a view to closing the road. The agreement for this would be subject to the Department of Planning transferring the land to Council for nil consideration as part of the subdivision of the site.
- (b) That Council, in accordance with Division 4 LEPs of the Environmental Planning and Assessment Act, 1979 (as amended) and section 27 of the Local Government Act 1993 initiate a draft local environmental plan to zone the unformed portions of Hall Street and Warner Avenue consistent with the zoning of the adjoining land, and to reclassify the following from Community land to Operational land:
  - i. Lot 1 DP 746618
  - ii. Lot 3 DP 746618
  - iii. Lot 1 DP 847214
  - iv. Lot 74 DP 216500
  - v. Lot 1 DP 840228
  - vi. Lot 2 DP 840228
- (c) That the General Manager be granted delegation to prepare and submit a planning proposal to the Minister for Planning in accordance with Section 55 of the Environmental Planning and Assessment Act, 1979 (as amended) to zone the unformed portions of Hall Street and Warner Avenue consistent with the zoning of the adjoining land and to reclassify lands referred to in B (above) from Community land to Operational land, such planning proposal is to include the following:
  - i. a statement of the objectives or intended outcomes of the proposed instrument;
  - ii. an explanation of the provisions that are to be included in the proposed instrument;
  - iii. the justification for those objectives, outcomes and provisions and the process for their implementation (including whether the proposed instrument will comply with relevant directions under section 117);
  - iv. such as maps for proposed land use zones; heritage areas; flood prone land—a version of the maps containing sufficient detail to indicate the substantive effect of the proposed instrument; and

- v. details of the community consultation that is to be undertaken before consideration is given to the making of the proposed instrument.
- (d) That the planning proposal exhibition process be in accordance with the NSW Department of Planning's LEP practice Note (PN09-003) 12 June 2009 and any relevant parts of LEPs and Council Owned land Best practice guidelines (DUAP 1997).
- (e) That Council undertake a public hearing under the provisions of the Local Government Act, 1993 for the proposed reclassification of Council land between Barwon Avenue and Chisholm Street, South Turramurra. The public hearing be held at an appropriate time after the public exhibition of the draft LEP/ planning proposal.
- (f) That the Mayor and General Manager be authorised to execute and affix the Common Seal on all documentation associated with the Memorandum of Understanding.
- (g) That a new reserve be created to enable the funding for the next phase of this project and that progress, on expenditure, be reported to Council every three (3) months as part of the quarterly budget report.
- (h) That \$80,000 is borrowed from the Infrastructure and Facilities Reserve to fund the next phase of the project in 2009/10. These funds are to be repaid to the Reserve with interest at 6.1% pa on the sale of any land associated with the project.
- (i) That all funds taken from the Infrastructure and Facilities Reserve for this project are repaid with interest 6.1% pa on sale of any land associated with the project.
- (j) That sufficient surplus revenue from the sale, less that borrowed and interest, be allocated for the purpose of constructing a new indoor aquatic and leisure facility at West Pymble Pool.
- (k) That a meeting of the Planning Committee be held as soon as possible to discuss the process site specific development controls to achieve best practice civic infrastructure and that the Department of Planning be invited to address the Committee.
- (l) That site specific development controls be introduced by a development control plan to be prepared by Council and jointly funded by the Department of Planning. This DCP is to include sustainable urban design parameters such as building materials, solar access and alignment, cross flow ventilation, setbacks, floor space, access, parking and landscaping provisions. The DCP is to also include opportunities for alternative power sources and maximum opportunities for water reuse.
- (m) That a meeting be held between Officers of the Department of Planning and Councillors, and a new Memorandum of Understanding be developed and entered into with the Department of Planning which reflects the approach outlined in this Motion.



**Resolved:**

(Moved: Councillors Duncombe/Anderson)

That the above Notice of Motion, as amended, be adopted.

**CARRIED UNANIMOUSLY by those present**

**Councillor Hall returned**

**GENERAL BUSINESS** {cont}**34 Local Government Managers Association 2010 National Congress**

File: S04567

For Council to determine if it wishes to send delegates to the Local Government Managers Association 2010 National Congress.

**Resolved:**

(Moved: Councillors Keays/McDonald)

That the General Manager be granted authority to nominate staff to attend the Local Government Managers Association 2010 National Congress to be held 16 to 19 May 2010 in Adelaide, South Australia, if considered appropriate.

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

*Against the Resolution:              Councillor Hall*

**35 Funding of Local Government**

File: S02137

To consider a request from Gwydir Shire Council to sponsor a petition concerning the funding of Local Government.

**Resolved:**

(Moved: Councillors Malicki/McDonald)

That Council sponsors the petition concerning the funding of Local Government within the Council area.

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

*Against the Resolution:*              *Councillor Hall*

36      **Write-Off of Doubtful Debt relating to Arthur Stautner (Deceased) for the Oktoberfest**

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File: S06778

To obtain Council authority to write-off doubtful debt of \$17,594.40 for Arthur Stautner (deceased), relating to charges raised for the hire of St Ives Showground for the Oktoberfest.

**Resolved:**

(Moved: Councillors Malicki/Hall)

That Council write-off doubtful debt of \$17,594.40 for Arthur Stautner (deceased) Account Number 14740.

**CARRIED UNANIMOUSLY**

37      **Analysis of Land & Environment Court Costs - 2nd Quarter, 2009 to 2010**

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File: S02466

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

**Resolved:**

(Moved: Councillors Hall/Hardwick)

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

**CARRIED UNANIMOUSLY**

38      **Code of Meeting Practice - February 2010**

File: S02211

To further review Council's Code of Meeting Practice.

**Resolved:**

(Moved: Councillors Malicki/Keays)

That the further revised Code of Meeting Practice be endorsed for public exhibition with exception of changes to public participation at Council meetings and Item 11 regarding the Standard Order of Business -adopting items in accordance with the Officer's recommendation.

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

*Against the Resolution:              Councillor Hall*

39      **Application for a new Facilities Special Variation**

File: FY00019

To seek approval of Council to apply to the Minister for Local Government for a New Facilities special variation to fund the development of the North Turrumurra Recreation Area.

**Resolved:**

(Moved: Councillors Malicki/Holland)

That Council resubmit a capital expenditure review to the Department of Local Government for a New Facilities special rate variation under Section 508(2) of the Local Government Act 1993, to gain approval to extend the 3.15% increase above the rate pegging limit granted for 2009/10, for a further 5 years from 2010/11 to 2014/15, to fund North Turrumurra Recreation Area redevelopment.

**CARRIED UNANIMOUSLY**

40      **Budget Review 2009 to 2010 - 2nd Quarter Review as at December 2009**

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File: FY00315

To present to Council the quarterly financial review for the 2nd quarter ended 31 December 2009.

**Resolved:**

(Moved: Councillors Keays/Holland)

- A.     That Council adopt the budget adjustments contained in the report.
- B.     That the Restricted Assets Report Forecast to 30 June 2010 as at 31 December 2009, as shown in Attachment A be noted.
- C.     That the Reserve movements contained in the report be approved.

**CARRIED UNANIMOUSLY**

41      **International Planning Conference - 20 to 23 April 2010**

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File: S04383

To advise Councillors of the International Planning Conference, 20 to 23 April 2010.

**Resolved:**

(Moved: Councillors Malicki/Keays)

That the General Manager and/ or his delegates be permitted to attend the International Planning Conference, in Christchurch, New Zealand, 20 to 23 April 2010.

**CARRIED UNANIMOUSLY**

42      **Promoting Better Practice Review - Division of Local Government Final Report**

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File: S06054

To advise Councillors of receipt of the Division of Local Government's Review Report in relation to the Promoting Better Practice Program.

**Resolved:**

(Moved: Councillors Malicki/Holland)

- A. That Council receive and note the Division of Local Government's Review Report in relation to the Promoting Better Practice Program.
- B. That Council congratulate Staff on the results of the Report.

**CARRIED UNANIMOUSLY**

43

**Management Plan 2009 to 2012 - 2nd Quarter Review**

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File: FY00019

To report to Council the progress over the period October to December 2009 against the 2009 to 2012 Management Plan.

**Resolved:**

(Moved: Councillors Holland/McDonald)

That the report on the progress of the Key Performance Indicators contained in the 2009 to 2012 Management Plan for the 2<sup>nd</sup> quarter of the Plan be received and noted.

**CARRIED UNANIMOUSLY**

44

**Tender - Stormwater Pollution Devices**

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File: S07862

To consider tenders for the maintenance of stormwater pollution devices.

**Resolved:**

(Moved: Councillors Keays/McDonald)

- A. That Bell Environmental be advised that Council accepts its Tender for a 2 year Contract with 2 year option.
- B. That the Mayor and General Manager be given delegation to execute the contract documents and affix Council's Seal to the Contract.
- C. That the remaining Tenderers be advised in writing of Council's decision.

**CARRIED UNANIMOUSLY**

## QUESTIONS WITHOUT NOTICE

### 45      **Response to Residents - 52 Canoon Road, South Turramurra**

File: S08081

Question Without Notice from Councillor R Duncombe

Would the Mayor and General Manager develop a response to the speakers tonight that acknowledges their issues and provides a timeline and commitment to resolution of their issues by close of business tomorrow, 24 February 2010?

#### **Answer by the Mayor**

That maybe because they are getting more information than just a response to that letter. Mr Piconi, can we put a time on that or even if it is just a letter saying we will contact you within a certain time?

#### **Answer by the Director Operations**

We actually have sent an acknowledgement out to Mr Lush through an email of process to say that we are acknowledging his issues and we are actually are working in trying to come up with a solution to it. It's not as simple as saying we will get back to you with a solution. I actually met with him tonight before the meeting and I explained to them that there are number of things that we need to work on in terms of coming up with a solution. There have been some frustrations in terms of trying to get easements involved through those properties. There all in a 'sag', there's just been a number of issues that we have had to deal with in terms of trying to find a solution. I was out there today with a designer to suggest an alternative, an option for them. I mentioned that to them tonight. You know, there is even some resistance towards that particular option but I did give an indication that when we did come up some solution, I would meet out with them and go through the processes of discussing the processes and the options that we have with them. It was a little bit unfair in terms of some of the criticisms that was levelled at some of the staff that are involved in the negotiations about easements because, you know, they were trying to get solutions to them and they were saying... *no, you are not coming through our property and you are not doing this...* and there was some issues in the past, we have basically tried to and we have managed to get one of the residents to agree to an easement through the property - it is the one that hasn't actually got a building on that particular site and now we are trying to find a way around that but to try to cater for the one in the hundred year storm event, it is not simple as what they might think it is.

46      **East Roseville Bowling Club - Maintenance Issues**

File: S07451

Question Without Notice from Councillor J Anderson

Would the General Manager please look into and advise Council about the maintenance issues raised by the East Roseville Bowling Club?

**Answer by the General Manager**

Councillor Anderson, I will be happy to do that.

47      **Rescission Motion NM.1**

File: S07629

Question Without Notice from Councillor T Hall

I raised the question with you Mr Mayor that Council may not lawfully defer a Rescission Motion but advice to the contrary has been provided by Council's legal advisor.

Would you kindly arrange for this Advising dated 23 February 2010 to be released in the public interests please?

**Answer by the Mayor**

No.

48      **South Turramurra Subdivision**

Files: 88/05242/01, S08081

Question Without Notice from Councillor T Hall

I refer to Mr Lush and others' concerns raised in Council tonight about works undertaken in South Turramurra.

I ask the Mayor to request a written report from the Council and notify Council's loss assessors for any possible action for property damage by affected home owners in Canon Road and Barwon Avenue including why the Section 94 Contributions was not paid prior to issue of subdivision plan to sell the sites involved?

**Answer by the General Manager**

Two parts to that Question:

1. In relation to Section 94, Director Miocic is already looking into that.

2. In relation to Council's Loss Assessors, they have already been notified and they have been on site.

49 **Wahroonga Station Trees**

File: DA0259/09

Question Without Notice from Councillor D McDonald

Would the Director Operations please seek to advise the status of the Rail Corp's proposal to cull the trees?

**Answer by the Director Operations**

I will contact SRA and get back to Councillors with some advice on that.

*The Meeting closed at 10.15pm*

The Minutes of the Ordinary Meeting of Council held on 23 February 2010 (Pages 1 - 16) were confirmed as a full and accurate record of proceedings on 9 March 2010.

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General Manager

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Mayor / Chairperson