

## MINUTES OF ORDINARY MEETING OF COUNCIL HELD ON TUESDAY, 25 NOVEMBER 2008

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

Staff Present: General Manager (John McKee)  
Director Corporate (John Clark)  
Director Development & Regulation (Michael Miocic)  
Director Strategy (Andrew Watson)  
Director Community (Janice Bevan)  
Acting Director Operations (Matthew Drago)  
Senior Governance Officer (Geoff O'Rourke)  
Minutes Secretary (Christina Randall-Smith)

*The Meeting commenced at 7.02pm*

*The Mayor offered the Prayer*

### 406 APOLOGIES

File: S02194

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

#### **Resolved:**

(Moved: Councillors Cross/Ebbeck)

That the apology by Councillor T Hall 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.

No Interest was declared.

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

File: S02499

### Resolved:

(Moved: Councillors Cross/Ebbeck)

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 the attachment to GB.8 - West Pymble Pool Design Tenders.

**CARRIED UNANIMOUSLY**

## ADDRESS THE COUNCIL

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

J Watts

## 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:**            **Mayoral Minute - Prime Minister's Mayoral Summit - Australian Council of Local Government Inaugural Meeting**  
with Attachment - Local Communities to receive \$300 million -  
Announcement 18 November 2008

**Memorandums:** **Refer GB.4 - Budget Review 2008 to 2009 - 1st Quarter Review as at September 2008** - Memorandum by Director Corporate dated 21 November 2008 regarding clarification of budget variations within the report & attachments.

- Confidential Memorandum:** **Refer NM.3 - Code of Conduct & Planning Panel -** Memorandum by General Manager dated 25 November 2008 with attachment - Letter of Advice from Deacons.
- Councillors Information:** **9, 15, 17 Dumaresq Street, Gordon** - Memorandum by Director Strategy dated 21 November 2008 in answer to a Question Without Notice raised by Councillor Tony Hall at the Ordinary Meeting of Council held 11 November 2008.
- St Ives Showground** - Memorandum by Director Strategy dated 25 November 2008 in answer to a Question Without Notice raised by Councillor Tony Hall at the Ordinary Meeting of Council held 11 November 2008.

## CONFIRMATION OF MINUTES

### 408 Minutes of Ordinary Meeting of Council

File: S02131

Meeting held 11 November 2008  
Minutes numbered 372 to 405

#### Resolved:

(Moved: Councillors Ebbeck/Cross)

That Minutes numbered 372 to 405 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

### 409 Prime Minister's Mayoral Summit - Australian Council of Local Government Inaugural Meeting

File: S03788

It was a great privilege to be part of history last week when the Prime Minister the Hon Kevin Rudd hosted the inaugural meeting of the Australian Council of Local Government at Parliament house in Canberra.

Well in excess of 400 Mayors from all over Australia attended this summit which marks the start of a partnership between Federal and local government.

The PM, Deputy PM and every cabinet minister currently in Australia attended as did many government MPs. I felt that the role of local government was recognised and the delegates were afforded every respect, with their views heard and recorded on a wide range of issues.

The three major platforms of the summit were the establishment of this partnership between Federal and Local Government throughout Australia, commencing a process for constitutional recognition of Local Government in Australia, and a programme for delivery of infrastructure which our PM believes should involve local communities.

Mr Rudd announced a major infrastructure program of \$300 million for council projects across the country, and this includes \$392,000 for local infrastructure projects in Ku-ring-gai. There are strict rules governing the allocation of these funds and our General Manager and Directors are preparing a report to come back to Council on this matter.

Apart from the major sessions where we were addressed by the Prime Minister, the Deputy Prime Minister and the Minister for Local Government, there were morning and afternoon "break out" sessions. I attended the "Making our Major Cities more Liveable, Productive and Sustainable" – with Mr Albanese, Mr Howe and the Prime Minister in attendance.

I raised the issue of state government interference in local planning and in limiting our funding opportunities, and how these things were reducing our capacity to produce productive and sustainable communities, and requested that any process for constitutional recognition be framed to overcome this problem.

In the afternoon I attended "Adapting to our Changing Local Environments" which dealt with Climate Change and Sustainability issues. Ministers Garrett and Wong were present as well as Mr Debus. Water was a major issue at this session and it was clear that we are well ahead of other areas when it comes to water recycling.

The PM has agreed to pursue constitutional recognition of local government which will help overcome these problems.

It was a great privilege to meet Mayors from all over Australia, especially from small farming communities which are vastly different to our city areas. One Mayor from the tiny Shire of Koorda in Western Australia has 500 residents, and I also met the new Mayor of Bland Shire from central NSW which is the area whose people Ku-ring-gai has been assisting over the past two years.

Sharing ideas and concerns with such a range of councils has united us in a very special way and highlighted the problems we face in local government.

Closer co-operation between the Federal Government and councils could greatly benefit local communities – and this week's meeting provided many useful ideas on how this can be achieved. The will was strong for this to succeed and the PM has already urged councils to co-operate regionally on infrastructure proposals for the future, and invited councils to the 2009 summit.

I would like to thank councillors for supporting me in attending the first meeting of the Australian Council of Local Government and to recommend that Ku-ring-gai continue to send delegates to future summits.

**Resolved:**

That the Mayoral Minute be received and noted

**CARRIED UNANIMOUSLY**

**GENERAL BUSINESS**

410 **27 Vale Street, Gordon - Demolition of Existing Dwelling, Construction of New Dwelling & Swimming Pool**

File: REV0041/08

Ward: Wahroonga

Applicant: Chateau Constructions

Owner: Mr Peter Farmakis & Mrs Haroula Farmakis

To review the refusal of Development Application No 0298/08, which sought consent for demolition of the existing dwelling and construction of a new dwelling, swimming pool and front fence.

**Resolved:**

(Moved: Councillors Ebbeck/Cross)

- A. That consideration of Development Application 0298/08 at 27 Vale Street, Gordon be deferred pending a site inspection.
- B. That the applicant be requested to have the location of the proposed development pegged out on site for the inspection.

*For the Resolution: Councillors Anderson, Duncombe, Hardwick, Cross & Ebbeck*

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

411 **Council Meeting Cycle for December 2008**

File: S02355

To consider amending the Council Meeting Cycle for December 2008.

**Resolved:**

(Moved: Councillors Ebbeck/Anderson)

That Council amend its Meeting Cycle for December 2008, as follows:

2 December 2008	Ordinary Meeting of Council
9 December 2008	(transferred to 16 December 2008)
16 December 2008	Ordinary Meeting of Council

**CARRIED UNANIMOUSLY**

412 **Election Funding & Disclosure Act 1981**

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File: S06203

To advise Councillors of obligations under the Election Funding and Disclosure Reporting Act 1981.

**Resolved:**

(Moved: Councillors Ebbeck/Anderson)

That the letter dated 22 October 2008 from the Election Funding Authority be received and noted.

**CARRIED UNANIMOUSLY**

413 **Investment Report as at 31 October 2008**

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File: S05273

To present to Council investment allocations and returns on investments for October 2008.

**Resolved:**

(Moved: Councillors Ebbeck/Cross)

- A. That the summary of investments and performance for October 2008 be received and noted.
- B. That the Certificate of the Responsible Accounting Officer be noted and the report adopted.

**CARRIED UNANIMOUSLY**

414 **Analysis of Land & Environment Court Costs, 1st Quarter, 2008 to 2009**

File: S02466

To report legal costs in relation to planning matters in the Land & Environment Court for the quarter ended September 2008.

**Resolved:**

(Moved: Councillors Ebbeck/Anderson)

That the analysis of Land & Environment Court costs for the first quarter ended September 2008 be received and noted.

**CARRIED UNANIMOUSLY**

415 **West Pymble Pool Design Tenders**

File: S06518

To seek Council's approval to accept the tender for the design of the indoor aquatic facility at West Pymble Pool by Suturs Prior and Cheney Architects.

**Resolved:**

(Moved: Councillors Holland/Ebbeck)

- A. That once funding for the construction has been identified by Council in December 2008, Council engage the team of consultants headed by Suturs Prior and Cheney Architects, to undertake design of the indoor facilities.
- B. That authority be given to the Mayor and General Manager to affix the Common Seal of Council to the Contract.
- C. That all tenderers be advised of Council's decision.
- D. That once funding for the construction has been identified, financing for the design element of the project be drawn from the 2004-2009 Section 94 Contributions Plan first and the remainder from the Infrastructure and Facilities Reserve.
- E. That following engagement of the preferred tenderer, Council work with the lead consultant to develop a community consultation strategy for the project, as a high priority.
- F. That Council commence a selective tender process to provisionally engage an operator for this facility.

- G. That a life cycle cost of the current facilities mix, plus a dry health and fitness area, be undertaken as a matter of priority and reported back to Council as soon as practicable. Funding for this additional consultancy to a maximum of \$4,000 to be drawn from the Facilities and Infrastructure Reserve.

**CARRIED UNANIMOUSLY**

416 **2008 to 2012 Management Plan - 1st Quarter Review**

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File: S06351

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

**Resolved:**

(Moved: Councillors Cross/Duncombe)

That the report on the progress of the Key Performance Indicators contained in the 2008 to 2012 Management Plan for the 1st Quarter of the Plan be received and noted.

**CARRIED UNANIMOUSLY**

417 **Council Representation on KOPWA Board**

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File: P54662

To advise Council of correspondence from KOPWA Ltd regarding Council representation on the KOPWA Board.

**Resolved:**

(Moved: Councillors Keays/Szatow)

That Councillor Elise Keays be nominated as Council's representative on the KOPWA Board.

**CARRIED UNANIMOUSLY**



**418 Budget Review 2008 to 2009 - 1st Quarter Review as at September 2008**

File: S06351

To present to Council the quarterly financial review for the 1st quarter ended 30 September 2008.

**Resolved:**

(Moved: Councillors Ebbeck/Cross)

- A. That Council adopt the budget adjustments contained in the report.
- B. That the Restricted Assets Report Forecast to 30 June 2009 as at 30 September 2008, as shown in Attachment B be noted.
- C. That the Reserve movements and closures contained in the report be approved.
- D. That additional funding for revegetation and regeneration works and the arena roof for CARES not be provided due to insufficient funds being available.
- E.
  - i. That the Mayor write to the Minister for Planning seeking reimbursement of costs associated with the operation of the Planning Panel, including works programmes during its term.
  - ii. Such correspondence to list the Council projects/programmes that have been reduced or abandoned to fund the work of the Panel and, request reimbursement of Panel expenses to enable the organization to fund associated programmes/ projects as originally budgeted.
  - iii. The context of the letter to detail costs associated with LEP 194, 200 and the Town Centres incurred to date.

**CARRIED UNANIMOUSLY**

**MOTIONS OF WHICH DUE NOTICE HAS BEEN GIVEN****419 Ku-ring-gai Wildflower Garden - Change in Opening Hours & Establishment of a Kiosk Facility**

File: P52783

**Notice of Motion from Councillor Tony Hall dated 12 November 2008**

Due to the increasing number of families with young children seeking to visit the Wildflower Garden after school, to take advantage of the extended daylight saving

hours, and to encourage school children and others to use this unique Council facility more often -

I move:

- "1. The hours of opening of the Ku-ring-gai Wildflower Garden be extended from the existing set times of 8am to 4pm daily, to 8.00am to 6pm daily, during daylight saving.
2. The General Manager be asked to investigate opening a kiosk for visitors within the Pavilion during opening hours and for fee paying functions after hours."

**Resolved:**

(Moved: Councillors Hardwick/Duncombe)

That the above Notice of Motion as amended be adopted.

**CARRIED UNANIMOUSLY**

420

**Ku-ring-gai Planning Panel - Appointment of Second Panel on 29 February 2008**

File: S06347

**Notice of Motion from Councillor Tony Hall dated 14 November 2008.**

Note. The Council's reply of 8 February 2008 was in response to the Minister's proposal to appoint the second ( and current) Planning Panel due to his belief that "Ku-ring-gai Council's unsatisfactory planning performance in preparing its Town Centres' draft local environment plan" pursuant to s.118 (1)(b) of the Environmental Planning and Assessment Act 1979 as amended, warranted such intervention,

I move:

"That the General Manager be requested to produce to Councillors the written and/or oral instructions sent from this Council to its legal advisors - Deacons, on or about the first week in February 2008 that culminated in the transmission of Deacons' letter of 8 February 2008, enclosed, to the Department of Planning in reply to the then Planning Minister's request of 1 February 2008."

**The above Notice of Motion  
was withdrawn**

421 **Code of Conduct & Planning Panel**

File: S06347

**Notice of Motion from Councillor C Szatow dated 17 November 2008**

I move:

"That Councillors be advised of the correct procedure for dealing with Code of Conduct issues which may be raised in dealings with members of The Planning Panel."

**Council resolved itself into Closed Meeting  
for discussion purposes only  
with the Press and Public Excluded  
after a Motion moved by Councillors Szatow & Cross  
was CARRIED UNANIMOUSLY  
and the Chairperson ruled accordingly**

In accordance with the *Local Government Act 1993* and the *Local Government (General) Regulation 2005*, in the opinion of the General Manager, discussion of legal advice from Deacons dated 25 November 2008 is of a kind as referred to in Section 10A(2)(e) of the Act and should be dealt with in a part of the meeting closed to the public.

*Section 10A(2)(e) of the Act permits the meeting to be closed to the public where information that would, if disclosed, prejudice the maintenance of law.*

**To Open Council****Resolved:**

(Moved: Councillors Szatow/Keays)

1. a. That Council write to the Minister for Planning seeking details as to the appropriate conduct required of Panel members and supporting documentation/policies to substantiate these expectations.  
Correspondence to also request sanctions applicable where conduct is not appropriate.
- b. That Council request the Minister to direct the Planning Panel to follow its adopted Code of Meeting Practice.
- c. That correspondence to also include Council's concerns with the issue of the Panel not disseminating confidential information between Panel members and Councillors.
2. That Council request the Minister that the Panel's operations be concluded upon gazettal of the Town Centres LEP.

**CARRIED UNANIMOUSLY**

422 **Open Space Provision Priority 1 - Killara**

File: S04028

**Notice of Motion from Councillor C Szatow dated 17 November 2008**

To ameliorate the effects of intensive residential flat development in Gordon Ward for flat dwellings in the area bounded by the railway line, Pacific Highway, St John's Avenue, Gordon and Lorne Avenue, Killara,

I move:

"That Council re-visit the area in 2008 with a view to determining the merits of including it in the Priority 1 zonings for the Open Space Acquisition Strategy (prepared November 2006)."

**Motion:**

(Moved: Councillors Szatow/Keays)

That the above Notice of Motion as printed be adopted.

*For the Motion:* Councillors Holland, Keays and Szatow

*Against the Motion:* The Mayor, Councillor E Malicki, Councillors Anderson, Duncombe, Hardwick, Cross & Ebbeck

**The above Notice of Motion, when put to the Vote  
was LOST**

**QUESTIONS WITHOUT NOTICE**423 **St Ives High School**

File: P46153

Question Without Notice from Councillor C Hardwick

I believe the previous Council budgeted up to \$240,000 to manage and maintain the playing fields of St Ives High School over the next two years to permit soccer and cricket club games to be played there out of school hours. What is the background to this arrangement and the latest position in relation to this Council's negotiations with the School Principal and the Department of Education, please?

**Answer by the Director Strategy**

I can cover that now. Effectively what Council is looking for was shared use of existing facilities to make the most of school playing fields out of hours. We have

been through a very lengthy negotiation process with the Department of Education to get an agreement in place. Unfortunately, fairly recently, the School Principal has refused or declined to enter into a shared use agreement. So there was a significant amount of money in this year's budget that we would have allocated to that project and will be seeking to re-allocate that money to another project in the near future. At the moment, we will not be entering into agreement shared use of that School.

424 **St Ives Showground**

File: S02195

Question Without Notice from Councillor C Hardwick

Would the General Manager provide a report on the "approaches" made to the Council by the AFL NSW/ACT and Gordon Cricket Club in November 2007 to take over the St Ives Showground Crown Reserve and where are they to date, as reported to the Minister for Lands?

Would he include the update on the Proposed Plan of Management Committee, to which half the new Councillors have sought membership?

**Answer by the General Manager**

I am happy to take that on notice and provide a paper back to Councillors.

425 **Private Certifier providing Certification for a Building which contravenes a Development Application**

File: S02465

Question Without Notice from Councillor C Szatow

- A. What is the precise course of action that Council takes in such an eventuality?
- B. Could the General Manager provide a list of Developments where a PCA has been engaged by a developer and Council staff have found a non-compliance with a condition of a DA although a Certificate of Occupation has been issued by a privately certified person?

**Answer by the Director Development & Regulation**

The answer to the first question is the process is we establish evidence on which to base a complaint to the Building Professionals Board. The Building Professionals Board is the body that accredits Private Certifiers and private certifying authorities. Unfortunately, Council has no power to impose sanctions on private certifiers. That is solely the responsibility for the Building Professional Board. We have been in a position in the past where we have made complaints against various certifiers for this very offence. Today, we are yet to receive a satisfactory outcome.

In terms of Part 2 of the Question, yes I would happy to provide a list.

**INSPECTIONS COMMITTEE - SETTING OF TIME, DATE AND RENDEZVOUS**

A Inspections Committee will be held on Saturday, 29 November 2008 commencing at 9.00am at the following property:

27 Vale Street, Gordon.

*The Meeting closed at 8.30pm*

The Minutes of the Ordinary Meeting of Council held on 25 November 2008 (Pages 1 - 14) were confirmed as a full and accurate record of proceedings on 2 December 2008.

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General Manager

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Mayor / Chairperson