



*the bushland shire*

*creating a living environment*

# **BUSINESS PAPER**

## **ORDINARY MEETING**

**Wednesday, 15 September, 2010  
at 6.30pm**

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## **AGENDA AND SUMMARY OF RECOMMENDATIONS**

### **PRESENT**

### **NATIONAL ANTHEM**

### **OPENING PRAYER/S**

Rev. Ann Hogan from Hornsby Uniting Church, Hornsby, will be opening the Meeting in prayer.

### **ACKNOWLEDGEMENT OF RELIGIOUS DIVERSITY**

Statement by the Chairperson:

*"We recognise our Shire's rich cultural and religious diversity and we acknowledge and pay respect to the beliefs of all members of our community, regardless of creed or faith."*

### **ABORIGINAL RECOGNITION**

Statement by the Chairperson:

*"We recognise the traditional inhabitants of the land we are meeting on tonight, the Darug and Guringai Aboriginal people, and respect is paid to their elders and their heritage."*

### **AUDIO RECORDING OF COUNCIL MEETING**

Statement by the Chairperson:

*"I advise all present that tonight's meeting is being audio recorded for the purposes of providing a record of public comment at the meeting, supporting the democratic process, broadening knowledge and participation in community affairs, and demonstrating Council's commitment to openness and accountability. The recordings will be made available on Council's website once the Minutes have been finalised. All speakers are requested to ensure their comments are relevant to the issue at hand and to refrain from making personal comments or criticisms."*

### **APOLOGIES / LEAVE OF ABSENCE**

### **PRESENTATIONS**

### **DECLARATIONS OF INTEREST**

*Clause 52 of Council's Code of Meeting Practice (Section 451 of the Local Government Act, 1993) requires that a councillor or a member of a Council committee who has a pecuniary interest in a matter which is before the Council or committee and who is present at a meeting of the Council or committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable. The disclosure is also to be submitted in writing (on the form titled "Declaration of Interest").*

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*The Councillor or member of a Council committee must not be present at, or in sight of, the meeting of the Council or committee:*

- (a) at any time during which the matter is being considered or discussed by the Council or committee.*
- (b) at any time during which the Council or committee is voting on any question in relation to the matter.*

*Clause 51A of Council's Code of Meeting Practice provides that a Councillor, Council officer, or a member of a Council committee who has a non pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable. The disclosure is also to be submitted in writing (on the form titled "Declaration of Interest").*

*If the non-pecuniary interest is significant, the Councillor must:*

- a) remove the source of conflict, by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another Council official.*

*OR*

- b) have no involvement in the matter by absenting themselves from and not taking part in any debate or voting on the issue as if the provisions of Section 451(2) of the Act apply.*

*If the non-pecuniary interest is less than significant, the Councillor must provide an explanation of why they consider that the interest does not require further action in the circumstances.*

## **CONFIRMATION OF MINUTES**

THAT the Minutes of the Ordinary Council Meeting held on 18 August, 2010 be confirmed; a copy having been distributed to all Councillors.

## **PETITIONS**

## **MAYORAL MINUTES**

## **NOTICES OF MOTION**

## **RESCISSION MOTIONS**

## **MATTERS OF URGENCY**

## **ITEMS PASSED BY EXCEPTION / CALL FOR SPEAKERS ON AGENDA ITEMS**

Note:

*Persons wishing to address Council on matters which are on the Agenda are permitted to speak, prior to the item being discussed, and their names will be recorded in the Minutes in respect of that particular item.*

*Persons wishing to address Council on **non agenda matters**, are permitted to speak after all items on the agenda in respect of which there is a speaker from the public have been finalised by Council. Their names will be recorded in the Minutes under the heading "Public Forum for Non Agenda Items".*

## **GENERAL BUSINESS**

- *Items for which there is a Public Forum Speaker*
- *Public Forum for non agenda items*
- *Balance of General Business items*

## **GENERAL MANAGER'S DIVISION**

### **Page Number 1**

**Item 1 GM18/10 COUNCILLORS STRATEGIC PLANNING WEEKEND - AUGUST 2010**

### **RECOMMENDATION**

THAT the contents of Executive Manager's Report No. GM18/10 be received and noted.

### **Page Number 7**

**Item 2 GM19/10 INFRASTRUCTURE LEVY**

### **RECOMMENDATION**

THAT the contents of General Manager's Report No. GM19/10 be received and noted.

## **CORPORATE AND COMMUNITY DIVISION**

### **Page Number 16**

**Item 3 CC48/10 COUNCILLOR REPRESENTATION ON COMMITTEES, WORKING PARTIES AND OTHER RELEVANT GROUPS - OCTOBER 2010 TO SEPTEMBER 2011**

### **RECOMMENDATION**

THAT Council review the list of Committees, Working Parties and other relevant groups included in the attachment to Executive Manager's Report No. CC48/10 and determine Councillor representation as appropriate for the period to September 2011.

### **Page Number 18**

**Item 4 CC49/10 OUTSTANDING COUNCIL RESOLUTIONS - PERIOD UNTIL 31 MAY 2010**

### **RECOMMENDATION**

THAT the contents of Executive Manager's Report No. CC49/10 be received and noted.

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**Page Number 20****Item 5 CC50/10 ELECTION OF DEPUTY MAYOR****RECOMMENDATION**

THAT:

1. Council determine if it wishes to elect a Deputy Mayor.
2. If a Deputy Mayor is to be elected, Council:
  - a) Determine the period for which the Deputy Mayor is to be elected;
  - b) Determine if the election of the Deputy Mayor is to be by preferential ballot, ordinary ballot or open voting; and
  - c) Request the Returning Officer to conduct the election, using the election method determined in b) above.
3. If a Deputy Mayoral election is held, the ballot papers (if any) be destroyed following the declaration of the elections.

**Page Number 24****Item 6 CC51/10 SCHEDULE OF COUNCIL MEETINGS AND ORDER OF BUSINESS TO APPLY AT THOSE MEETINGS - OCTOBER 2010 TO SEPTEMBER 2011****RECOMMENDATION**

THAT Council:

1. Adopt the Schedule of ordinary Council Meetings as set out in Attachment 1 for the period October 2010 to September 2011.
2. Adopt the Order of Business as set out in Attachment 2 for the ordinary Council Meetings to be held in the period October 2010 to September 2011.

**Page Number 27****Item 7 CC53/10 2009/10 MANAGEMENT PLAN AND BUDGET - JUNE 2010 QUARTER REVIEW****RECOMMENDATION**

THAT the June 2010 Quarter Review of the Management Plan for 2009/10 – 2011/12 and the Budget for 2009/10 be received and noted.

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**Page Number 30****Item 8 CC55/10 COST OF PROCESSING CODE OF CONDUCT COMPLAINTS  
AND ACCESS TO INFORMATION REQUESTS****RECOMMENDATION**

THAT:

1. The contents of Executive Manager's Report No. CC55/10 be received and noted.
2. Council authorise the General Manager to be the primary person nominated to implement management strategies to handle unreasonable conduct by complainants.
3. Management and Councillor support be provided in respect of Council's commitment to the management strategies implemented in 2. above.
4. A review of Council's Complaints Handling Policy be undertaken to take into consideration the Ombudsman's Manual Management Strategies.
5. It be confirmed with Mr Waite that complaints will only be assessed where all information is submitted in a single, organised and summarised manner and when a decision is made it is final, otherwise the complaint and subsequent correspondence will be filed and no further action taken.
6. It be confirmed with Mr Waite that his correspondence will be filed and no further action taken unless, in the General Manager's opinion, the correspondence raises substantially new issues of a contemporary and significant nature warranting further action.

**Page Number 44****Item 9 CC56/10 DECLARATIONS OF PECUNIARY INTEREST AND OTHER  
MATTERS RETURNS - COUNCILLORS AND DESIGNATED PERSONS****RECOMMENDATION**

THAT Council note that the Disclosure of Pecuniary Interests and Other Matters Returns recently lodged with the General Manager have been tabled as required by the Local Government Act.

**Page Number 47****Item 10 CC58/10 2010/11 INVESTMENTS AND BORROWINGS - REPORT FOR  
PERIOD ENDING JULY 2010****RECOMMENDATION**

THAT the contents of the Executive Manager's Report No. CC58/10 be received and noted.



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**Page Number 50****Item 11 CC59/10 2009/10 GENERAL PURPOSE AND SPECIAL PURPOSE FINANCIAL REPORTS****RECOMMENDATION**

THAT:

1. The 2009/10 General Purpose and Special Purpose Financial Reports, distributed under separate cover, be received and noted and referred for audit.
2. The Mayor and Deputy Mayor be authorised to sign the Statutory Statements in connection with the 2009/10 Financial Reports.
3. The 2009/10 Financial Reports be authorised for “presentation to the public” on receipt of the Auditor’s Reports.
4. The General Manager be delegated authority to fix the date of the Ordinary Meeting at which the 2009/10 Financial Reports and Auditor’s Report are formally “presented to the public”.

**ENVIRONMENT DIVISION****Page Number 53****Item 12 EN37/10 PROGRESS REPORT FOR INVESTIGATION OF MOUNTAIN BIKE TRAILS WITHIN HORNSBY LOCAL GOVERNMENT AREA****RECOMMENDATION**

THAT Council:

1. Note progress of the endorsed recommendations from Executive Manager’s Report No. EN58/09.
2. Provide in-principle support for the establishment of a mountain bike facility within the Hornsby Park/Old Mans Valley area subject to funding.
3. Not proceed with the proposal by World Trail for a Hornsby to Westleigh Mountain Bike Track due to environmental sensitivities.

**Page Number 60****Item 13 EN40/10 ADOPTION OF THE 2009/10 ESTUARY MANAGEMENT PROGRAM ANNUAL REPORT****RECOMMENDATION**

THAT Council adopt the 2009/10 Estuary Management Program Annual Report.

**Page Number 65****Item 14 EN41/10 SALE OF SURPLUS LOCAL OPEN SPACE LAND****RECOMMENDATION**

THAT Council:

1. Provide in-principle support to the potential sale of surplus local open space land within the Hornsby Local Government Area to address open space asset replacements and upgrades generally in accordance with the principles and process described in Executive Manager's Report No. EN41/10.
2. Authorise the engagement of a suitable project manager to commence predisposal activities and additionally manage the disposal activities in accordance with the steps outlined in Executive Manager's Report No. EN41/10.
3. Authorise the appointment of a suitable consultant to implement the Stakeholder Engagement Plan referred to in Executive Manager's Report No. EN41/10.

**Page Number 72****Item 15 EN42/10 REPORT ON FOOD INSPECTION PROGRAM FOR 2009-2010****RECOMMENDATION**

THAT the contents of Executive Manager's Report No. EN42/10 be received and noted.

**PLANNING DIVISION**

*Nil*

**WORKS DIVISION****Page Number 75****Item 16 WK59/10 PROPOSED PARRAMATTA TO HORNSBY REGIONAL BUS ROUTE (M60)****RECOMMENDATION**

THAT Council:

1. Note that the state government proposes to commence a high frequency regional bus service, the Metrobus M60 Route, between Parramatta and Hornsby, in February 2011.
2. Note that new or relocated bus stops will be shortly referred to the Local Traffic Committee for a recommendation, following completion of public consultation with affected property owners.

3. Advise Transport NSW of its support for the proposal subject to there being no cost implications to Council as a result of the new service, and that Transport NSW agrees to provide or fund new or relocated bus stops in accordance with the Commonwealth Disability Standards for Accessible Public Transport.
4. Request Transport NSW to raise with the RTA, Council's concerns regarding safe access for passengers on Boundary Road, and actively seek a commitment from the RTA to improve conditions for pedestrians along this road.

**Page Number 80****Item 17 WK60/10 TENDER T19/2010: SUPPLY AND LAY ASPHALTIC CONCRETE****RECOMMENDATION**

THAT Council accept the tender of Downer EDI Works Pty Ltd. for all work under Tender No. T19/2010: Supply and Lay Asphaltic Concrete.

**Page Number 83****Item 18 WK61/10 TENDER NO. T12/2010 - DESIGN AND CONSTRUCTION MANAGEMENT OF HORNSBY AQUATIC CENTRE****RECOMMENDATION**

THAT:

1. Council accept the tender of Peter Hunt Pty Ltd for the work detailed in Tender No. T12/2010: Design and Construction Management of Hornsby Aquatic Centre.
2. The price be made public upon formal acceptance of the tender.

**SUPPLEMENTARY AGENDA****PUBLIC FORUM – NON AGENDA ITEMS****MAYOR'S NOTES****QUESTIONS OF WHICH NOTICE HAS BEEN GIVEN****QUESTIONS WITHOUT NOTICE**

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## **1 COUNCILLORS STRATEGIC PLANNING WEEKEND - AUGUST 2010**

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### **EXECUTIVE SUMMARY**

A weekend workshop allows Councillors the time and space to undertake thoughtful and insightful consideration of strategic issues and plan ahead with vision and purpose. Councillors participated in a strategic planning exercise from Friday 13<sup>th</sup> August to Sunday 15<sup>th</sup> August 2010. The weekend workshop was moderated by an independent facilitator.

Councillors focused on the five major longer term challenges of climate, infrastructure, leadership, financial sustainability and management issues facing the organisation, recognising the inter-related nature of those challenges and the need for a coordinated response.

In order to fund a response it was decided that service reviews, based on an agreed set of principles, needed to be undertaken across the organisation to identify resources that could be redirected towards the response to future challenges.

Councillors also discussed the high priority actions for the coming two years, the most appropriate way to address the current budget deficit, the funding source for the pre-construction activities relating to the Hornsby Aquatic Centre, the future of the Councillor Task Forces and strategies for improving communication with the community.

### **PURPOSE/OBJECTIVE**

The purpose of this report is to report the outcomes of the Councillor's strategic planning workshop held at Wisemans Ferry from Friday 13<sup>th</sup> August to Sunday 15<sup>th</sup> August 2010.

### **DISCUSSION**

The strategic planning weekend workshop provided Councillors and senior management the appropriate time and space to reflect on strategic future directions, specific issues of interest and the governance structures of the organisation. The overarching objective for the planning weekend was to provide Councillors with the opportunity to reflect and build on the last planning weekend and to determine the direction of the Council over the next two years.

One of the other drivers for the planning weekend was the inability to secure approval for a Special Variation to General Income (under Section 508(2) of the Local Government Act) which was intended to provide the financial resources to undertake the major works needed to replace the Aquatic Centre, replace the George Street pedestrian over bridge, provide additional recreational facilities at Old Mans Valley and undertake some 'ward- based' projects which Councillors agreed need to be completed.

The weekend workshop was moderated by an independent facilitator to manage the process, the interactions, and create a favourable environment to optimise the time and ensure all views were given consideration. Hornsby Shire Council engaged the services of Libby Darlison of The Miller Group. The engagement required Ms Darlison to design, deliver and

report a facilitated weekend in a constructive and positive environment. Ms Darlison developed the agenda and format for the workshop following telephone discussion with Councillors.

### Context for weekend workshop

Council, in its leadership role as an influencer, controller and advocate takes account of the full range of dimensions (environmental, social, economic and legislative) as well as global, national, state and local implications of issues. Many of those issues are inter-related and all present significant challenges for council. At the same time Councillors are cognizant of the need to ensure a sustainable financial future for the organisation and the shire. Over the past decade council's costs have been rising faster than its income, and while council's financial position is relatively sound and council is meeting all its financial benchmarks, if current trends continue the medium to long-term outlook presents considerable difficulties.

### Discussion outcomes

#### Looking ahead ten years

In taking a 'helicopter' view and looking forward ten years, Councillors determined five inter-related categories of challenges associated with climate, infrastructure, leadership, financial and management that need to be addressed to ensure the sustainability of the organisation and the shire. Councillors also identified strategies and actions to be undertaken to prepare for or to protect against those challenges.

#### Climate

Issues	Strategies/actions
Changing demographic impacts Climate change effects Carbon taxing	<ol style="list-style-type: none"> <li>1. Prepare for potential changes in the nature of services provided based on a review of demographic forecasts</li> <li>2. Identify the resources needed for climate-based living changes</li> <li>3. Identify strategies to address/reduce carbon emissions</li> <li>4. Identify strategies to improve the use of open space and acquire new land for recreational purposes</li> </ol>

#### Infrastructure

Issues	Strategies/actions
Infrastructure investment Integrated approach to planning and reporting for all operations of Council	<ol style="list-style-type: none"> <li>1. Ensure the option to maintain or restore an existing asset is assessed before replacing or building new assets</li> <li>2. Manage community expectations by communicating council's limitations and challenges regarding infrastructure</li> <li>3. Ensure the ongoing review of all infrastructure</li> <li>4. Apply for a special variation to general income to fund infrastructure (an infrastructure levy) via Section 508A of the Local Government Act</li> </ol>

**Leadership**

Issues	Strategies/actions
Change from and within the State Government Leadership in the organisation Management of resident expectations	<ol style="list-style-type: none"> <li>1. Proactively lobby, advocate and negotiate with other levels of government to ensure the best outcomes for the shire</li> <li>2. Ensure Council takes a leadership role in explaining to the community the limitations of local government</li> <li>3. Provide the community with ongoing communication about all aspects of Council</li> </ol>

**Financial**

Issues	Strategies/actions
Ensuring Council's ongoing financial sustainability in the face of: <ul style="list-style-type: none"> <li>➤ Decreasing income</li> <li>➤ Increasing costs</li> <li>➤ More cost shifting</li> <li>➤ Competition</li> </ul>	<ol style="list-style-type: none"> <li>1. Investigate charging merchant fees on credit card transactions</li> <li>2. Maximise yields on existing property investments</li> <li>3. Seek an infrastructure levy (S508A) based on long term infrastructure priorities</li> <li>4. Set a contingency line in the budget each year</li> <li>5. Review service provision based on cost, community value and agreed principles for assessment</li> <li>6. Continue to seek efficiencies in all areas</li> <li>7. Prioritise the services that need to be provided</li> <li>8. Develop a financial response to potential carbon taxing</li> <li>9. Investigate the potential to advertise on council property to generate income</li> </ol>

**Management**

Issues	Strategies/actions
Outdated systems e-Government Organisational change management	<ol style="list-style-type: none"> <li>1. Investigate the use of electronic funds transfer</li> <li>2. Investigate the revenue potential of parking meters</li> <li>3. Communicate to the community the limitations of Council in providing infrastructure</li> <li>4. Explore strategies to increase online community contact e.g. S603 certificates</li> <li>5. Identify positive change agents willing to assist with positive organisational environment</li> <li>6. Maximise the use of technology i.e. smart meters to reduce energy use across the organisation</li> <li>7. Establish an ongoing review process with cost benefit analysis</li> </ol>

**Identifying funding sources for the strategies/actions**

It was agreed that if Council is to successfully implement any actions in response to the above five categories of challenges, it must first identify adequate funding sources. The funding source most favoured is to come from within existing income by a review/audit of all services provided by Council to identify savings or service rationalisation where possible.

The ongoing savings target to be achieved incrementally over the coming three years equates to approximately 5% of discretionary funds. Councillors recognise that savings of this magnitude are likely to noticeably impact on service delivery.

Councillors developed the following principles and criterion for the review of services:

- Is there a legislative requirement?
- Why did this service commence (e.g. State/Council decision)?
- Numbers receiving service (measure of demand based on demographics)
- Is the service provided elsewhere by others? (or should it be e.g. State Government)
- Social value (worth) of the service
- Relationship to strategic intent
- Primary/secondary/tertiary service i.e. direct, support or control service
- Funding sources and percentage of cost recovery
- Cost benefit analysis (Social/Economic/Environmental)
- Connection with 10 year plan (resource implications)
- Efficiency benchmarks where they exist
- Are there alternative or more cost effective ways of delivering service?

Service reviews are to be undertaken before the end of 2010.

### **Looking ahead two years**

Councillors then considered and agreed the more immediate priorities to be addressed in the coming two years.

The priority projects are:

- Deliver ward based projects identified by the community
- Develop a vision for Hornsby town centre
- Advocate for the widening of New Line Road
- Replacement of Hornsby Aquatic Centre
- Provision of additional recreational facilities at Old Mans Valley via Section 508A rate variation (infrastructure levy)
- Continue to seal the unsealed roads in rural areas
- Hornsby West side – develop a vision and masterplan
- South Dural (New Line Road)

In order to move ahead with the Hornsby Aquatic Centre, Councillors agreed that the \$600k required in the first year for preconstruction activities would be released from restricted asset fund.

It was also agreed that the \$802k budget deficit was to be addressed by consideration of the following measures:

- An increase in income from the financial assistance grants
- Improved revenue from aquatic centres
- Not filling two existing vacancies in the organisation
- Paying out the Energy Performance Contract

### **Task Forces**

Councillors agreed that for a range of reasons – especially the time consuming nature of the decision-making process between Task Force and Council, the Task Forces had not worked as well as had been hoped.

It was agreed that it would be better to use the new arrangements proposed originally in Council Report CC38/10 deferred from the 21 July 2010 Ordinary Meeting of Council. The

primary recommendation in that report was that the Community, Cultural and Recreation Facilities Task Force; the Employment and Economic Development Task Force; the Finance and Strategy Task Force; the Infrastructure and Asset Management Task Force; and the Sustainability and Environment Task Force be disbanded.

Following the strategic planning weekend further consideration was given to this matter and a determination made at the 18 August 2010 Ordinary Meeting of Council (Report CC54/10).

### **Communication**

The messages of Council are often overlooked or misinterpreted by residents. Local based information sometimes does not seem to reach its desired audience.

There was agreement that:

- Social networking should be embedded into Council's new internet site.
- Council needs to use existing community events more proactively to market itself and its services
- The internet should include 'purpose based' links e.g. "I want to ..."
- Council must act as a lobby group with a unified message
- Communication must be both broad based and local
- Consideration should be given to using local information boards
- Consider using curiosity 'hooks' to engender interest

There was discussion of the holding 'community cabinet' style meetings. It was agreed that the concept of holding Council Meetings outside the Chambers may have benefit but the logistical impacts and costs need to be carefully considered.

The strategic planning workshop concluded at lunchtime on Sunday 15<sup>th</sup> August 2010.

### **BUDGET**

The strategic planning workshop is accommodated from within the existing budget and therefore has no budget implication; however the discussion points and outcomes from the workshop have a fundamental impact on the formation of future budgets.

### **POLICY**

There are no policy implications with the convening of the strategic planning workshop.

### **CONSULTATION**

Eight Councillors, the Executive Committee, Manager Financial Services and Manager Corporate Strategy attended the workshop. Facilitation, including scribing, was provided by The Miller Group. Agenda items were canvassed from Councillors.

### **TRIPLE BOTTOM LINE SUMMARY**

#### **Enhance social and community well being**

Councils play a major role in creating the environment within which the local and regional community pursue their objectives. To achieve this, councils must take a short, medium and long term focus on the diverse mix of interests and needs that exist in their areas. (DLG 2000:5)



**Effective community infrastructure and services**

Council's strategic focus needs to be sufficiently specific and so clearly understood and accepted that it guides any resource allocation decisions.

**Guidance towards a sustainable future**

Council can not do everything. Councillors, managers and planners need to exercise both creativity and rationality in articulating their vision for the future. Council has worked to identify priority areas that need attention if it is to secure its long term future and that of the shire.

**RESPONSIBLE OFFICER**

Julie Williams, Manager Corporate Strategy is responsible for this report, and can be contacted on 9847 6790 for further information.

**RECOMMENDATION**

THAT the contents of Executive Manager's Report No. GM18/10 be received and noted.

ROBERT BALL  
General Manager  
General Manager Division

**Attachments:**

There are no attachments for this report.

File Reference: F2010/00424

Document Number: D01470410

## 2 INFRASTRUCTURE LEVY

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### EXECUTIVE SUMMARY

At the Councillor's strategic planning weekend in February 2009 and subsequently confirmed at the September 2009 Ordinary meeting (Report GM 13/09) it was agreed to pursue a special variation to general income as part of the 2010/11 Management Planning process. It was also agreed to implement activities to engage the community in long term planning.

The Minister for Local Government announced, on 16 February 2010, a rate pegging increase of 2.6% for the 2010/11 rating year. An application seeking approval from the Minister for a special variation to general income of 5.8% above the rate peg was then submitted on 26 March 2010 following extensive public consultation.

By letter dated 30 June 2010 advice was received that the Minister had not approved Council's application to increase general income by more than the 2010/11 general variation, following which a copy of the Division of Local Government's (DLG) assessment of Council's application was obtained. Although the letter dated 30 June from the Division is not particularly clear, there would appear to be three justifications for the Minister's decision not to approve Council's application.

Firstly, it appears that a more favoured approach may have been an application under section 508A of the Local Government Act, rather than a section 508(2) application that Council made. Secondly, there is reference to an additional \$1.5M per ward for originally unspecified infrastructure works and it is claimed that Council provided no justification as to why these projects are a priority. Thirdly, reference is made to Council not planning to borrow any funds to progress the Hornsby Aquatic Centre project for two years. The DLG claims that it is difficult to justify the need for additional funding until the loan repayments commence.

The Division's assessment however, under the various criteria, clearly demonstrates the quality of Council's application and the community support which exists for the proposed variation.

It is particularly pleasing to note that the Division acknowledges:

1. Council's business cases in relation to Hornsby Aquatic Centre, the Pedestrian overbridge and Old Mans Valley recreation area appear to be well presented and planned for.
2. Council has undertaken its community consultation process in a professional manner utilising best practice.
3. Council has received minor opposition to its proposed special rate variation.
4. The financial impact for average residential ratepayers is affordable.

Council then asked that the Minister reconsider Council's application subjecting the application to the same scrutiny as would apply to an application under section 508A. To expedite the review Council attached its application as both a section 508(2) and a section 508A application with amendments to reflect the Integrated Planning & Reporting Framework.

Council in response to its request for reconsideration received a letter dated 28 July 2010 advising that the Local Government Act does not provide a mechanism for a review or appeal of Ministerial decisions on special variation applications and the Minister's decision remains.

As there was a necessity to report publicly to Council on the Minister's determination and the actions taken by Council, a further letter dated 19 August 2010 was forwarded to the DLG. That letter expressed the view that a number of matters appear to have been overlooked in the assessment of Council's request for a review and invited the Division to reply to issues outlined in that letter, so that they could be comprehensively reported to Council.

To the date of preparation of this Report no reply has been received from the DLG to the issues and questions raised. When replies have been received a further report will be submitted to Council.

Council can be satisfied that its actions have been soundly based upon management best practice and community support; principles which should be endorsed by the Minister and the Division.

Recommending that General Manager's Report No. GM 19/10 be received and noted.

### **PURPOSE/OBJECTIVE**

To publicly report to Council on the Minister's determination of Council's application for a special variation to general income under section 508(2) of the Local Government Act 1993 that was to be implemented as an infrastructure levy.

### **DISCUSSION**

#### **Introduction**

At the Councillor's strategic planning weekend in February 2009, Councillors determined a number of specific priorities, including investigation of community preferences for modes of rating to fund the upgrade of recreational facilities and other infrastructure.

This determination was confirmed by Councillors at the September 2009 Ordinary meeting (Report GM 13/09) in which it was agreed to pursue a special variation to general income as part of the 2010/11 Management Planning process. It was also agreed to implement activities to engage the community in long term planning.

The engagement and consultation activities had a number of purposes. Firstly, to build support for the development of a community strategic plan based on the community's dream/vision for Hornsby, while recognizing the challenges in delivering that dream/vision. Secondly, to involve people and inform them about Council's desire to improve the ageing infrastructure and build new facilities to meet the changing needs of the community. Thirdly, to assist ratepayer understanding of Council's finances and the business case driving the proposed one-off variation, including the rating options, and fourthly, to elicit community preference regarding priority infrastructure projects.

Subsequently the Minister for Local Government announced a rate pegging increase of 2.6% on 16 February 2010 for the 2010/11 rating year. An application seeking approval from the Minister for a special variation to general income of 5.8% above the rate peg was then submitted to the Division of Local Government on 26 March 2010.

The Hornsby Shire Community Plan 2010-2020, the Delivery Plan 2010-2014, including the Operational Plan 2010-2011, were developed following the public consultations over a six month period from September 2009 to March 2010, culminating in the public exhibition from Thursday, 18 March to Monday 19 April 2010. The documents included extensive information regarding the proposed special variation to general income to be known as the Infrastructure Levy.

Following consideration of all submissions received, Council at its meeting held on 30 June 2010, adopted the Hornsby Shire Community Plan 2010-2020, the Delivery Plan 2010-2014, including the Operational Plan 2010-2011 and 2010-2011 Fees and Charges, excepting those parts that related to the application for a special variation to general income.

It was necessary to except out those parts that related to the special variation as Council had not been advised at that time of the Minister's determination of its application. The Council resolved to request a further Report as soon as practicable after the Minister for Local Government announced her determination on the special rate variation to general income.

### **Minister's determination and DLG assessment**

By letter dated 30 June 2010; copy attached, advice was received from the Chief Executive, Local Government (DLG) that the Minister had not approved Council's application to increase general income by more than the 2010/11 general variation.

Subsequently a request was submitted to the DLG for a copy of the Division's assessment of Council's application. A copy of the assessment is attached and the summary is reproduced following:

#### **Assessment summary:**

<b>Criterion</b>	<b>Rating<sup>1</sup></b>	<b>Comment</b>
1. Sound business case	4	For the replacement of deteriorating infrastructure and provide additional open space. Council has supplied all the details in relation to their program of works.
2. Impact on council's financial position	3.5	The SV will not improve Council's financial position but will provide Council access to funds for asset replacement.
3. Efficiencies	3	Council has illustrated savings in recent years and has in place plans for continued efficiencies.
4. Impact on ratepayers	3	\$57.26 average annual increase for residential rates.
5. Consultation/feedback	3.5	Council has undertaken community consultation using a variety of different forums and mediums.
6. Special variation history	3.5	SV for purchase Hornsby Quarry – 8.83% - finishes 2014/15
7. Other matters	2	Council sought comments from Local Members. Ms Hopwood concerned about the lack of community support.
<b>Summary comments</b>	<b>3</b>	<b>Application meets all criteria for a fixed term variation. However, this is a long term SV and a s508(2) application essentially avoids the Division's scrutiny of Council's IP&amp;R framework. Such a SV will have a long term impact</b>

<sup>1</sup> A rating of 5 indicates the Council very strongly meets the criterion, while a rating of 1 indicates the Council fails to meet the criterion.

Although the letter dated 30 June from the Division is not particularly clear, there would appear to be three justifications for the Minister's decision not to approve Council's application.

Firstly, it appears that a more favoured approach may have been an application under section 508A of the Local Government Act, rather than a section 508(2) application that Council made. The letter does not make it clear as to why one would be favoured over another but reference is made to the link between a Group one council and a section 508A application as if Council would have been favoured if it followed that course. A Group one council was one that had accepted its responsibility to implement the new Integrated Planning and Reporting Framework (IP&R) by 2010/11.

The DLG guidelines for the preparation of an application for a special variation to general income in 2010/11 'anticipate' that for Group 1 councils, applications using section 508(2) would become obsolete and those councils would/should use the section 508A process. There however is no legislated requirement to use one or the other application and the same DLG guidelines state that a section 508(2) application is appropriate to fund an initiative for a fixed number of years. The Minister in her press release dated 2 July 2010 advising of her determinations even states: "*A special rate variation allows councils to lift their rates above the rate peg of 2.6 per cent in order to fund a specific project*".

The fact that early consultation on the type of rate variation acceptable to the community of Hornsby Shire revealed that ratepayers preferred a one-off rate variation for a fixed term for fixed projects must have been overlooked by the DLG.

There however appears to be a contradiction when the letter indicates that a section 508(2) application would not be subject to the same level of rigorous analysis. This would seem to imply that a section 508(2) application should have been more favoured.

The DLG letter dated 30 June 2010, does infer that Council did not have "*in place a council-endorsed Community Strategic Plan and a council-adopted Delivery Program and Resourcing Strategy by 30 June 2010, and an Operational Plan adopted for the 2010/11 financial year*".

This inference is incorrect. As mentioned previously Council adopted these documents at its meeting held on 30 June 2010; i.e. the date of the DLG letter advising of the Minister's decision. Additionally, a DLG officer had been informed that Council would be adopting these documents on that date. The meeting of Council to adopt the documents was deferred from 16 June to 30 June in the hope that the Ministerial advice would be received in time to be incorporated into the Council meeting.

Secondly, there is reference to an additional \$1.5M per ward for originally unspecified infrastructure works. These works were subsequently identified at the request of the DLG for public consultation. Council extended the consultation period to 18 June 2010 to allow the community to make specific comments on the proposed ward program of works (DLG assessment – page 9). This was on the advice of the Division after Council had offered in May to delete these works from the application.

It is claimed that Council provided no justification as to why these projects are a priority, and states that "*Rather, it appears that Council has simply identified a number of projects in each Ward that totals \$1.5 million.*"

This statement misses the point that at the time of the original application (26 March 2010) Council was still consulting with the community regarding these works. These projects were developed directly as a result of Council's public consultation on the overall rate application and could be delivered during the planning phase for the three major projects. This is referred to in Council's application on pages 5, 8, 10, 12, & 30.

Unfortunately, the Division did not request any further clarification when assessing Council's application and Council could have provided, and can provide, the Division with details as to the long outstanding nature of these projects and their priority in addition to the community support that has already been demonstrated to the Division.

Thirdly, reference is made to Council not planning to borrow any funds to progress the Hornsby Aquatic Centre project for two years. The DLG claims that it is difficult to justify the need for additional funding until the loan repayments commence. The Council's intention was to fund the development application process and preliminary investigations during the first two years of the levy. It is considered prudent that Council be assured of the future rate income before it embarks upon an expenditure identified in its application of over \$1.5M on these preliminary costs.

Funds in excess of current expenditure needs in those first two years would be utilised for the ward based programme. This was outlined in Council's application (Pages 30 & 31) and was proposed as a consequence of the community consultation results as stated above where the community preferred a one-off rate variation for a fixed term for fixed projects.

The Division's assessment, under the various criteria, clearly demonstrates the quality of Council's application and the community support which exists for the proposed variation. The summary comments, however, indicates "*application meets all criteria for a fixed term variation. However, this is a long term SV and a s508(2) application essentially avoids the Division's scrutiny of Council's IP&R framework. Such a SV will have a long term impact.*"

Council under no circumstances intended to avoid scrutiny and made the application under section 508(2), as is acknowledged by the Division under criterion 3, after considering a number of options as suggested by the Division's officers at the meeting held on 2 September 2009. As there is no legislative requirement to use one form of application or another and the DLG guidelines state that a section 508(2) application is appropriate to fund an initiative for a fixed number of years Council pursued a section 508(2) application. As stated previously this followed extensive community consultation and the acknowledgement by the community that "*as a result of focus groups studies, Council found the residents understood the s508(2) special rate variation, as a one-off increase, more easily and therefore supported this approach rather than a s508A variation.*" (Division's assessment – Criterion 3 – page 4).

The section 508(2) special rate variation was clearly supported by the community and it was this community support which influenced Council's direction in submitting the application. It was certainly not targeted to avoid scrutiny.

The Division also appears to infer that if approval had been granted under section 508A, the financial burden would be able to be spread over a number of years rather than seeking to raise rates substantially in one year. This is the type of issue which was extensively discussed with the community during the consultation process and there was a clear preference by a significant majority for a one-off increase rather than staged increases. The certainty which this brought was valued by the community.

The only reasonable interpretation following this analysis is that a section 508A application would have been more favoured as Council's application has a long term impact. Council could have related a rate increase more directly to the annual expenditure, after deleting the ward based programme, whereas Council has responded to community input and determined to request a one-off increase for a fixed term of twenty years. Council's approach is a different approach but not an incorrect or invalid one and recognises the wishes of the community; supposedly the basis for the new integrated planning regime.

It however is particularly pleasing to note that the Division acknowledges:

1. Council's business cases in relation to Hornsby Aquatic Centre, the Pedestrian overbridge and Old Mans Valley recreation area appear to be well presented and planned for.
2. Council has undertaken its community consultation process in a professional manner utilising best practice.
3. Council has received minor opposition to its proposed special rate variation.
4. The financial impact for average residential ratepayers is affordable.

### **Request for reconsideration**

Following the Minister's determination Council sought legal advice and it was proposed that Council seek to have its application processed as a section 508A application relying upon the decision in *Sharples v Minister for Local Government* (2008) NSWLEC 328 (30 December 2008) which provides that the Minister is entitled to review her decision and not be bound by any guidelines issued by the DLG.

Council then asked that the Minister reconsider Council's application subjecting the application to the same scrutiny as would apply to an application under section 508A. To expedite the review Council attached its application as both a section 508(2) and a section 508A application with amendments to reflect the IP&R framework which was adopted by Council in December 2009 and June 2010. Council stated that reconsideration was warranted particularly after reviewing the assessment undertaken by the DLG officers dated 23 April 2010 and 21 June 2010.

Council was more than happy to have its application scrutinised by the Division and/or the IP&R Independent Assessment Panel at the equivalent of a section 508A application and any additional information required by the Division or a Panel would be readily made available. A section 508A application would not be contrary to any statements made during the consultation process, except the 20 year timeframe, which can be addressed by a resolution of Council at any time prior to 2029.

Council in response to its request for reconsideration received a letter dated 28 July 2010 from the Chief Executive, Local Government; copy attached, advising that the Local Government Act 1993 does not provide a mechanism for a review or appeal of Ministerial decisions on special variation applications and the Minister's decision remains.

As there was a necessity to report publicly to Council on the Minister's determination and the actions taken by Council, a further letter dated 19 August 2010 was forwarded to the Division of Local Government. That letter expressed the view that a number of matters appear to have been overlooked by the Division in its assessment of Council's request for a review and invited the Division to reply to issues outlined in that letter, so that they could be comprehensively reported to Council. Such matters involve the following and questions bolded were submitted to the Division for reply.

1. The DLG has ignored that Council was not seeking to rely upon any mechanism within the Local Government Act for a review of the Minister's decision on Council's special variation application. The Division's attention was drawn to the decision in *Sharples v Minister for Local Government* (2008) NSWLEC 328 (30 December 2008), which Council considered enabled the Minister of her own volition to review the previous decision.

**Could you please confirm that the Minister has advised the Division that she will not exercise her discretion in this matter?**

2. Council accepted that it is its responsibility to ensure that its application for a special variation adequately addressed the criteria. The Division's assessment summary clearly indicates that Council's "*Application meets all criteria for a fixed term variation.*"

**Could you please indicate the comparative weighting given by the Division to the ratings in the assessment and that given to statements otherwise contained in the assessment, but not related to the criteria, in making a final recommendation to the Minister?**

**What guidance is given or guidelines exist for the determination of the rating out of 5 given to each criterion?**

**If guidelines exist, could a copy please be forwarded for information?**

**How does "community consultation using a variety of different forums and mediums"; undertaken in a "professional manner" utilising "best practice" achieve a rating of 3.5 rather than a higher rating?**

**What is required to achieve a rating in excess of 3.5?**

3. It is correct that the Division had drawn to Council's attention, when Council officers met with the Division staff on 2 September 2009 that group 1 councils should give consideration (my underlining) to applying under section 508A. Council did give consideration to the Division's suggestion, as proposed by the Division's officers. There is however no mandatory requirement that Council submit an application under section 508A.

Council undertook its consultation in two stages. Stage one was explaining to the community the various options for an application and the impacts. The community preferred a section 508(2) application. Stage two involved the community consultation on the proposed section 508(2) application.

Following this extensive community consultation, Council pursued a course involving an application under section 508(2).

After considering the two (2) DLG letters dated 30 June 2010 and 28 July 2010, it appears that the Division's recommendation to the Minister to not approve Hornsby Council's application was based upon the Division's statement that Council's application "*is a long term SV and S508(2) application essentially avoids the Division's scrutiny of Council's IP&R framework and that such a SV will have a long term impact*".

**Does the Division consider that there was a mandatory requirement that Council as a Group 1 Council was required to submit an application under section 508A?**

**Does the Division consider that the community should be ignored if, with full information, the community expresses preference for a course of action which the Council also considers is appropriate and so endorses?**

**If the Division considers that a SV application requires a level of rigorous analysis equivalent to a s508A application, why would it not subject a SV application to the more rigorous analysis regardless of the application method chosen?**



4. How does the Division justify defining an ‘affordable’ increase (page 6 DLG assessment) as a “potentially significant rate increase” (page 11 DLG assessment)?

5. The Minister is quoted in the Monthly Chronicle, July/August 2010 Edition, page 2 as saying:

“I have declined Hornsby Council’s application for a 20 year special rate variation as Council was seeking a long term financial commitment from the community without it being supported by a long term plan. I have encouraged council to go back and work on its long term strategic plan with its community prior to applying for its next variation.”

**Did the Division assess the Council’s submitted long term planning information?**

**If so, did the Division choose not to subject it to more rigorous analysis and also chose not to advise Council of the Division’s apparent preference for a S508A application?**

**If the Division did assess the Council’s submitted long term planning information please provide a copy of that assessment?**

6. Mr Waite of Pennant Hills has stated in writing:

“The irony is I knew Council’s application was recommended for refusal before 30 June”.

This is of concern as Council’s enquiries solicited the response to await the Minister’s determination.

**Please confirm or deny the accuracy of this statement.**

### **Conclusion**

To the date of preparation of this Report no reply has been received from the DLG to the issues and questions raised above. When replies have been received a further report will be submitted to Council.

Council can be satisfied that its actions have been soundly based upon management best practice and community support; principles which should be endorsed by the Minister and the Division.

### **BUDGET**

The determination by the Minister will have a severe adverse effect on Council’s budget. Consequently, it will be necessary for Council to review all aspects of its operations and to consider the fate of the key infrastructure projects, which were the foundation of the application.

### **POLICY**

There are no policy implications.

### **CONSULTATION**

There has been no consultation in the preparation of this Report.

**TRIPLE BOTTOM LINE SUMMARY**

Triple Bottom Line is a framework for improving Council decisions by ensuring accountability and transparency on social, environmental and economic factors. It does this by reporting upon Council's strategic themes. As this report simply provides Council with information and does not propose any actions which require a sustainability assessment, no Triple Bottom Line considerations apply.

**RESPONSIBLE OFFICER**

The responsible officer is the General Manager, Mr Robert Ball.

**RECOMMENDATION**

THAT the contents of General Manager's Report No. GM19/10 be received and noted.

ROBERT BALL  
General Manager  
General Manager Division

**Attachments:**

1. Letter from Department of Local Government dated 30.06.2010
2. DLG Assessment Review
3. Letter from Department of Local Government dated 28.07.2010

File Reference: F2009/00639  
Document Number: D01477672

**3 COUNCILLOR REPRESENTATION ON COMMITTEES, WORKING PARTIES AND OTHER RELEVANT GROUPS - OCTOBER 2010 TO SEPTEMBER 2011**

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**EXECUTIVE SUMMARY**

This Report provides details of current Committees, Working Parties and other relevant groups and seeks Council's determination in respect of the continuation of each and the appointment of Councillors to them for the period to September 2011.

**PURPOSE/OBJECTIVE**

The purpose of this Report is to enable Council to review its existing Committees, Working Parties, etc and appoint Councillors for the period September 2010 to September 2011.

**DISCUSSION**

The current list of Committees, Working Parties and other relevant groups has been updated by each Division and is attached for information. To assist Council to determine required Councillor representation for 2010/11, the 2009/10 Councillor representatives on each Committee, Working Party, etc are included in the column titled Councillor Representation 2009/10 and a blank column has been left in respect of Councillor Representation 2010/11. Relevant comments about the operation of specific Committees, Working Parties, etc have been provided by Executive Managers as appropriate.

**BUDGET**

Any budgetary implications are included in the Comment column of the attachment to this Report.

**POLICY**

No Council policies are affected by this Report.

**CONSULTATION**

Consultation has occurred with the General Manager and Executive Managers in preparing the attached list of Committees, Working Parties and other relevant groups.

**TRIPLE BOTTOM LINE SUMMARY**

Triple Bottom Line is a framework for improving Council decisions by ensuring accountability and transparency on social, environmental and economic factors. It does this by reporting upon Council's strategic themes. As this Report simply provides Council with information and does not propose any actions which require a sustainability assessment, no Triple Bottom Line considerations apply.

**RESPONSIBLE OFFICER**

The officers responsible for the preparation of this Report are the Manager, Administration Services Branch – Robyn Abicaire, and Council’s Administration Coordinator – Natalie Cook. They can be contacted on 9847 6608 and 9847 6011 respectively.

**RECOMMENDATION**

THAT Council review the list of Committees, Working Parties and other relevant groups included in the attachment to Executive Manager’s Report No. CC48/10 and determine Councillor representation as appropriate for the period to September 2011.

ROBYN ABICAIR  
Manager - Administration Services  
Corporate and Community Division

GARY BENSLEY  
Executive Manager  
Corporate and Community Division

**Attachments:**

1. Councillor Representation on Committees / Working Parties etc for the period October 2010 - September 2011

File Reference: F2004/07056

Document Number: D01462159

## **4 OUTSTANDING COUNCIL RESOLUTIONS - PERIOD UNTIL 31 MAY 2010**

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### **EXECUTIVE SUMMARY**

Council's Policy dealing with Council Resolutions requires that a quarterly report be prepared for Council's consideration detailing resolutions which have not been substantially implemented within two months of being adopted, and the reason/s why they are not finalised. The attachment to this Report provides the necessary updates.

### **PURPOSE/OBJECTIVE**

The purpose of this Report is to provide details in respect of resolutions adopted by Council up until the end of May 2010 which have not been substantially implemented.

### **DISCUSSION**

In accordance with the Council Resolutions Policy, each Division has carried out a review of any resolutions adopted by Council up until the end of May 2010 which have not been substantially implemented. This has resulted in the attached spreadsheet being prepared which shows a list of outstanding resolutions per Division. Details are provided about the:

- Report Number and Name
- Outstanding Resolution
- Latest Status
- Comment

In preparing Outstanding Council Resolutions reports, the General Manager and Executive Managers give special consideration to any long outstanding resolutions and, where such resolutions exist, provide comments about whether further action may be unlikely or impractical. In these cases, Council may wish to determine whether or not the item should be removed from further reporting in the Outstanding Council Resolutions report.

### **BUDGET**

Any budgetary implications are included in the relevant report or in the "Latest Status" column of the attached spreadsheet.

### **POLICY**

This Report meets the requirements of Council's Policy dealing with Council Resolutions.

### **CONSULTATION**

Each Division with outstanding resolutions has contributed to the preparation of this Report.

**TRIPLE BOTTOM LINE SUMMARY**

Any Triple Bottom Line considerations are detailed in the relevant section of individual reports.

**RESPONSIBLE OFFICER**

The officer responsible for the preparation of this Report is the Administration Coordinator – Natalie Cook who can be contacted on 9847 6011.

**RECOMMENDATION**

THAT the contents of Executive Manager's Report No. CC49/10 be received and noted.

ROBYN ABICAIR  
Manager - Administration Services  
Corporate and Community Division

GARY BENSLEY  
Executive Manager  
Corporate and Community Division

**Attachments:**

1. Outstanding Resolutions - as at 31 May, 2010

File Reference: F2005/00112  
Document Number: D01462257

## 5 ELECTION OF DEPUTY MAYOR

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### **EXECUTIVE SUMMARY**

In accordance with Section 231 of the Local Government Act, Councillors may elect a person from among their number to be the Deputy Mayor, with such term of office being either equal to that of the Mayoral term or for a shorter period. Prior to the March 2004 local government elections, Hornsby Council's Mayor was elected annually by the Councillors. It was also the practice to elect a Deputy Mayor whose term of office was the same as for the Mayor.

At the 2004 local government elections, the method of electing the Mayor for Hornsby Council changed to be by the residents/ratepayers across the Shire for the term of the elected Council, rather than by the elected Councillors on an annual basis.

Although Councillors no longer have the responsibility of electing the Mayor, it is still necessary for Council to decide whether or not to elect a Deputy Mayor and if so, to determine the period of the term to be served by the Deputy Mayor. Council's latest decision in this regard was the Ordinary Meeting held on 9 September 2009, when it considered Report No. CC74/09 and elected Councillor Robert Browne as Deputy Mayor for the period to September 2010.

### **PURPOSE/OBJECTIVE**

The purpose of this Report is to provide Council with the opportunity to consider whether or not it wishes to elect a Deputy Mayor. If Council decides to elect a Deputy Mayor it will also need to determine the term for which the Deputy Mayor will serve and the method of voting to be used for electing the Deputy Mayor.

### **DISCUSSION**

#### **The Role of Deputy Mayor**

The Deputy Mayor may exercise any function of the Mayor, at the request of the Mayor, if the Mayor is prevented by illness, absence or otherwise from exercising the function, or if there is a casual vacancy in the office of Mayor. It should be noted that if there was to be a casual vacancy in the office of Mayor, a by-election for the position of Mayor would need to be conducted by a NSW Electoral Commission appointed Returning Officer in accordance with a timetable set by Section 292 of the Local Government Act i.e.; on a Saturday that falls not later than three months after the vacancy occurs.

#### **Period of Election of the Deputy Mayor**

Under Section 231 of the Local Government Act, Councillors may elect a Deputy Mayor for the same period as the Mayoral term or for a shorter period. As Council's Mayor is popularly elected, the current Mayoral term is until the next local government elections are held in September 2012. Council may, therefore, determine that a Deputy Mayor be elected for the

period until September 2012 or for some shorter period e.g.; 6 months, 12 months, 18 months, etc.

### **Method of Election**

If a Deputy Mayor is to be elected, the method of election is in accordance with Schedule 7 of the Local Government (General) Regulation 2005. A Councillor may be nominated without notice for election as Deputy Mayor provided the nomination is made in writing by two or more Councillors (one of whom may be the nominee) and the nominee consents to the nomination in writing. The nomination is to be delivered or sent to the Returning officer. A nomination form for a Deputy Mayoral Election is included as an attachment to this Report.

If only one Councillor is nominated for election as Deputy Mayor, that Councillor is elected. If more than one Councillor is nominated, an election shall be held at which the General Manager (or his nominee) is the Returning Officer. The Council must resolve whether the election is to proceed by preferential ballot, by ordinary ballot or by open voting. To ensure probity of the election process, the counting of votes, where necessary, is undertaken in the presence of the Returning Officer and at least one other staff member.

It should be noted that any recommendation on the method of election (if any) is dependent to some extent on the number of candidates – see below.

#### ***Preferential ballot***

Preferential ballot would only normally be used if there are three or more candidates. Under this system, Councillors indicate their order of preference for all candidates. If a candidate receives more than half the first preference votes (i.e. an absolute majority), he or she is declared elected. If no candidate has an absolute majority, the candidate with the lowest number of votes is excluded and his or her preferences are allocated to the other candidates and so on, until one candidate has more than half the votes. A preference for each candidate standing for election must be indicated on a ballot paper, or the ballot paper will be declared invalid.

#### ***Ordinary ballot***

Ordinary ballot would normally apply where there are two or more candidates and Council decides to proceed by secret ballot. If there are only two candidates, the candidate with the higher number of votes is elected. If the two candidates are tied, the one elected is chosen by lot. If there are three or more candidates, the candidate with the lowest number of votes is excluded and a fresh vote is taken and so on, until there are only two candidates. A final vote between the two candidates is then taken and the candidate with the higher number of votes is declared elected. If at any stage during a count up until two candidates are remaining, there is a tie on the lowest number of votes, the one excluded is chosen by lot.

#### ***Open Voting***

Open voting uses the same system as ordinary ballot, except that voting is by a show of hands or similar means and not by secret ballot.

### **Other Issues**

#### ***Choosing by Lot***



To choose a candidate by lot, the names of the candidates who have equal numbers of votes are written on similar slips of paper by the Returning Officer, folded, so as to prevent the names being seen, mixed and then drawn at random by the Returning Officer. The candidate whose name is on the drawn slip is chosen.

### ***Appointment of Scrutineers and Inspection of Ballot Papers and Progress of Count***

Following the Mayoral election held on 14 September, 2000 (which was conducted by preferential ballot) a number of Councillors sought permission to inspect the ballot papers and the progress of the count in respect of that election. Advice was sought from Abbott Tout Solicitors about the Councillors' requests and also about the ability of the candidates for election to appoint scrutineers. In summary, that advice was that the candidates were not entitled to appoint scrutineers; an inspection of the ballot papers should not be permitted; the progress of the count should not be revealed; and the ballot papers for the Mayoral and Deputy Mayoral election should be destroyed after the election has been declared.

### **BUDGET**

There are no budgetary implications associated with this Report.

### **POLICY**

There are no policy implications associated with this Report.

### **CONSULTATION**

This Report has been prepared following consultation with the General Manager.

### **TRIPLE BOTTOM LINE SUMMARY**

Triple Bottom Line is a framework for improving Council decisions by ensuring accountability and transparency on social, environmental and economic factors. It does this by reporting upon Council's strategic themes.

This Report provides information and proposes a standard procedural practice in accordance with the Local Government Act. It does not recommend any actions which require a sustainability assessment and, as such, no Triple Bottom Line considerations apply.

### **RESPONSIBLE OFFICER**

The officers responsible for the preparation of this Report are the Manager, Administration Services Branch - Robyn Abicaire, and the Administration Coordinator - Natalie Cook. They can be contacted on 9847 6608 and 9847 6011 respectively.

### **RECOMMENDATION**

THAT:

1. Council determine if it wishes to elect a Deputy Mayor.
2. If a Deputy Mayor is to be elected, Council:

- a) Determine the period for which the Deputy Mayor is to be elected;
  - b) Determine if the election of the Deputy Mayor is to be by preferential ballot, ordinary ballot or open voting; and
  - c) Request the Returning Officer to conduct the election, using the election method determined in b) above.
3. If a Deputy Mayoral election is held, the ballot papers (if any) be destroyed following the declaration of the elections.

ROBYN ABICAIR  
Manager - Administration Services  
Corporate and Community Division

GARY BENSLEY  
Executive Manager  
Corporate and Community Division

**Attachments:**

1. Deputy Mayoral Election - Nomination Form

File Reference: F2004/07075  
Document Number: D01462265

## 6 SCHEDULE OF COUNCIL MEETINGS AND ORDER OF BUSINESS TO APPLY AT THOSE MEETINGS - OCTOBER 2010 TO SEPTEMBER 2011

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### EXECUTIVE SUMMARY

In accordance with Clause 15(1) of its Code of Meeting Practice, Council annually determines a schedule of ordinary meeting dates for the following year and the order of business to apply at those meetings. Such determinations generally occur in September each year at the same meeting when the Deputy Mayor is elected.

In relation to the above, a draft schedule of meeting dates for the period October 2010 to September 2011, and the proposed order of business to apply at those meetings have been prepared and are recommended for adoption by Council. It is recommended that the current order of business continue and that Planning Meetings be held on the first Wednesday of the month, Ordinary Meetings be held on the third Wednesday of the month and Workshop Meetings be held (as required) on the second and fourth Wednesdays of the month.

### PURPOSE/OBJECTIVE

The purpose of this Report is to recommend a proposed schedule of ordinary meeting dates, and the order of business to apply at those meetings, for the period October 2010 to September 2011.

### DISCUSSION

#### Meeting Dates

As a result of its consideration of Report No CC75/09 in September 2009, Council adopted a schedule of meetings and an order of business to apply at those meetings for the period from October 2009 to September 2010. Subsequently, at its 18 August 2010, Council considered Report No CC54/10 dealing with a Review of Council, Workshop and Task Force Meeting Schedules. Council resolved in part that:

4. *There be no change to Planning Meetings i.e. they continue to be held on the first Wednesday of the month to consider items relating to planning matters*
5. *There be no change to Ordinary Meetings i.e. they be held on the third Wednesday of the month to consider items other than planning matters*
6. *Workshop Meetings be held on the second and/or fourth Wednesday of the month as necessary to consider items where there is a presentation by Council staff or a consultant as well as an opportunity for comments/questions from members of the public, prior to any decision making by Council.*

As a consequence of the above resolution, Council's Code of Meeting Practice has been amended and has resulted in the following definition now being included in the Code in respect of ordinary meetings:

*ordinary meetings are meetings of Council, other than extraordinary meetings, held during each year on such regular days and at such regular times as Council may appoint. They include:*

*Planning Meetings which are held at 6.30 pm on the first Wednesday of each month (excluding January) to consider items relating to planning matters;*

*Ordinary Meetings which are held at 6.30 pm on the third Wednesday of each month (excluding January) to consider items other than planning matters;*

*Workshop Meetings which are held at 6.30 pm on the second or fourth Wednesdays of each month as required (excluding January) to consider relevant items, especially those where a presentation by Council staff or an external person or organisation is required.*

In accordance with the above definition, a schedule of recommended ordinary meeting dates for the period from October 2010 to September 2011 has been drafted and is included as Attachment 1 to this Report. It is noted that the NSW Local Government Association Conference will be held from 24 - 27 October 2010 and that these dates do not interfere with any proposed Ordinary or Planning Meeting dates. It is also noted that a Deputy Mayoral election has been scheduled to be held at the 21 September 2011 Ordinary Meeting.

### **Order of Business**

The Order of Business which has applied since its most recent adoption by Council in September 2009 is proposed to be continued. In this regard, the Order of Business, as set out in Attachment 2, is recommended to apply for the period October 2010 to September 2011.

### **BUDGET**

There are no budgetary implications associated with this Report.

### **POLICY**

This Report has been prepared in accordance with Council's Code of Meeting Practice.

### **CONSULTATION**

There has been consultation with appropriate Council officers in the preparation of this Report as well as reference to relevant Council Policies and legislative documentation.

### **TRIPLE BOTTOM LINE SUMMARY**

Triple Bottom Line is a framework for improving Council decisions by ensuring accountability and transparency on social, environmental and economic factors. It does this by reporting upon Council's strategic themes.

As this Report simply provides Council with information and does not propose any actions which require a sustainability assessment, no Triple Bottom Line considerations apply.

**RESPONSIBLE OFFICER**

The officer responsible for the preparation of this Report is the Manager, Administration Services Branch - Robyn Abicair who can be contacted on 9847 6608.

**RECOMMENDATION**

THAT Council:

1. Adopt the Schedule of ordinary Council Meetings as set out in Attachment 1 for the period October 2010 to September 2011.
2. Adopt the Order of Business as set out in Attachment 2 for the ordinary Council Meetings to be held in the period October 2010 to September 2011.

ROBYN ABICAIR  
Manager - Administration Services  
Corporate and Community Division

GARY BENSLEY  
Executive Manager  
Corporate and Community Division

**Attachments:**

1. Schedule of Council Meetings for the Period October 2010 - September 2011
2. Order of Business for Council Meetings - October 2010 - September 2011

File Reference: F2004/07032  
Document Number: D01462347

## 7 2009/10 MANAGEMENT PLAN AND BUDGET - JUNE 2010 QUARTER REVIEW

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### **EXECUTIVE SUMMARY**

The Local Government Act requires that the General Manager report to Council each quarter as to performance against Council's current Management Plan and Budget, including revised estimates of income and expenditure. In this regard, the June 2010 Quarter Review is attached.

It is noted that the 2009/10 Original Budget forecast a deficit at 30 June 2010 of \$343K. Subsequently, the September 2009 Quarter Review included positive budget changes totalling \$118K, the December 2009 Quarter Review included positive budget changes of \$235K and the March 2010 Quarter Review included positive budget changes of \$200K. This amended the forecast 2009/10 Budget result at year end to a \$210K Budget surplus.

The June 2010 actual result is a surplus of \$163K. This liquidity result is satisfactory in improving Council's net financial position and combined with a write-up on the value of Council's investments of \$1.4 million (pre-audit) will see the unrestricted current ratio and net available working funds being at acceptable levels.

Major Budget variances for each Division are provided in the attached document. It is recommended that Council adopt the June 2010 Quarter Review.

### **PURPOSE/OBJECTIVE**

The purpose of this Report is to present for Council's consideration the June 2010 Quarter Review of the Management Plan for 2009/10 – 2011/12 and the Budget for 2009/10.

### **DISCUSSION**

On 10 June 2009, Council adopted its 2009/10 – 2011/12 Management Plan which included the 2009/10 Budget and 2009/10 Fees and Charges. The Management Plan sets out the manner in which Council intends to align its business goals with its intent of "*creating a living environment*" and is divided into the following five elements:

- Governance
- Ecology
- Economy
- Society and culture
- Human Habitat

The 2009/10 Original Budget forecast a deficit at 30 June 2010 of \$343K. The September 2009 Review of the Budget included positive budget changes totalling \$118K, whilst the December 2009 Review included positive changes of \$235K. The 2010 March Review

included further positive budget changes of \$200K thus amending the forecasted Budget result at year end to a \$210K Budget surplus.

Based on inflows and outflows of funds, the actual result at 30 June 2010 is a surplus of \$163K. This liquidity result is satisfactory in improving Council's net financial position and, combined with a write-up on the value of Council's investments \$1.4 million (pre-audit), will see the unrestricted current ratio and net available working funds being at acceptable levels.

It is noted that the sale of the old Cherrybrook Nursery and Pre-school site was realised during 2009/10 and that the sale proceeds were due back to general funds because they had partly funded capital expenditure in the previous two years on the new Cherrybrook Community, Cultural and Child Care Centre. The June 2010 Quarter Review recommends that rather than all of the proceeds returning to general funds, that \$202K be internally restricted for the replacement of ageing infrastructure and \$613K be applied to paying off an Internal Loan for the Energy Performance Contract. In this regard, the paying off of the Internal Loan will free up \$190K of budgeted repayments in the 2010/11 and future Budgets.

### **BUDGET**

This Report provides the June 2010 Quarter Review of the 2009/10 Budget.

### **POLICY**

There are no specific policy implications associated with this Report.

### **CONSULTATION**

All Divisions and appropriate staff have had input into the June 2010 Quarter Review process.

### **TRIPLE BOTTOM LINE SUMMARY**

Triple Bottom Line is a framework for improving Council's decisions by ensuring accountability and transparency on social, environmental and economic factors. It does this by reporting upon Council's strategic themes.

As this report does not propose any actions which require a sustainability assessment, no Triple Bottom Line considerations apply.

### **RESPONSIBLE OFFICER**

The officers responsible for preparation of this Report are Julie Williams - Manager, Corporate Strategy and Glen Magus - Manager, Financial Services. They can be contacted on 9847-6790 and 9847-6635 respectively.

### **RECOMMENDATION**

THAT the June 2010 Quarter Review of the Management Plan for 2009/10 – 2011/12 and the Budget for 2009/10 be received and noted.

GARY BENSLEY  
Executive Manager  
Corporate and Community Division

ROBERT BALL  
General Manager  
General Manager Division

**Attachments:**

1. 4th Quarter Review - Management Plan and Budget 2009/10 - 2011/12

File Reference: F2008/00630

Document Number: D01467591



## 8 COST OF PROCESSING CODE OF CONDUCT COMPLAINTS AND ACCESS TO INFORMATION REQUESTS

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### EXECUTIVE SUMMARY

At the Ordinary Meeting held on 21 July 2010, Council considered Report No. GM16/10, dealing with Code of Conduct complaints received during 2008/09 and 2009/10, and requested that a further report be prepared providing costs and other details associated with the complaints. It was also requested that the further report include details about the complainant who had submitted multiple Code of Conduct complaints and access to information requests.

In preparing this Report, the Executive Manager, Corporate and Community Division has consulted with the General Manager, Manager, Administration Services and Administration Coordinator as appropriate and this has assisted in responding to each of the individual resolution items emanating from Report No. GM16/10.

Although no details of specific costs have been maintained by the General Manager in assessing the Code of Conduct complaints received during 2008/09 and 2009/10, it has been estimated that the costs incurred would, at a minimum be \$30,000. This estimate is based on an assessment of the amount of time taken by the General Manager to process each of the complaints.

In respect of the Code of Conduct complaints lodged by the single complainant, who has been identified as Mr Peter Waite of Pennant Hills, the General Manager has estimated costs of approximately \$15,000. With respect to Mr Waite's access to information requests, it has been estimated that the net cost associated with processing those requests in the period January 2006 to June 2010 is \$136,595.

The Report also provides details of the extent of Mr Waite's other correspondence with Council and contends that Mr Waite's conduct may be unreasonable. In this regard, the Ombudsman has produced a Manual containing a table which provides a checklist on the warning signs of unreasonable conduct by complainants. This checklist has been reviewed by staff who have a responsibility to deal with Mr Waite's correspondence (whether that be through FOI, PPIPA or Document Access applications; through Code of Conduct complaints; or through general correspondence). Based on the assessment by Council officers, and the Ombudsman's statement at the beginning of the table that "*the warning signs of unreasonable conduct may include one, but more likely a number, of the following*", Mr Waite's conduct in his dealings with Council could fairly be described as "unreasonable".

As a consequence of the assessment, it is considered appropriate that Council's future actions in dealing with Mr Waite should be guided by the complaint management strategies proposed in the Ombudsman's Manual. A review of Council's Complaint Handling Policy would also be appropriate to take into consideration such management strategies.

The Report recommends that Council authorise the General Manager to be the primary person nominated to implement management strategies to handle unreasonable conduct by complainants; ensure that management and Councillor support is provided in respect of

Council's commitment to the management strategies implemented by the General Manager; review its Complaints Handling Policy, taking into consideration the Ombudsman's Manual Management Strategies; confirm with Mr Waite that complaints will only be assessed where all information is submitted in a single, organised and summarised manner and when a decision is made it is final, otherwise the complaint and subsequent correspondence will be filed and no further action taken; and confirm with Mr Waite that his correspondence will be filed and no further action taken unless, in the General Manager's opinion, the correspondence raises substantially new issues of a contemporary and significant nature warranting further action.

### **PURPOSE/OBJECTIVE**

The purpose of this Report is to respond to Council's resolution at its 21 July 2010 Ordinary Meeting in respect of Report No. GM16/10.

### **DISCUSSION**

At the Ordinary Meeting held on 21 July 2010, Council considered General Manager's Report No. GM16/10 which dealt with Code of Conduct complaints received by Council during 2008/09 and 2009/10. Following its consideration of the matter, Council resolved that:

1. *The contents of General Manager's Report No. GM16/10 be received and noted.*
2. *In respect of the code of conduct complaints referred to in Report No. GM16/10, a further report be prepared for Council's consideration outlining:*
  - i) *the costs incurred by Council in processing the complaints*
  - ii) *any actions taken by Council as a result of the complaints*
  - iii) *any policy change outcomes achieved as a result of the complaints*
  - iv) *options available to Council to recover costs associated with the processing of the complaints*
  - v) *options available to Council in respect of the referral to other agencies of complaints from persistent or vexatious complainants*
  - vi) *options available to Council in respect of refusing to process complaints from persistent or vexatious complainants*
3. *In respect of the complainant who made 13 of the 19 complaints listed in General Manager's Report No. GM16/10, the further report referred to in 2. above is to also include the:*
  - i) *name of the complainant (if allowed by the relevant legislation)*
  - ii) *costs incurred by Council in processing the complaints*
  - iii) *options available to Council to recover costs associated with the processing of the complaints*

4. *If the complainant who made 13 of the 19 complaints listed in Report No. GM16/10 is the same person as the applicant referred to in Report No. CC69/08 (which dealt with the estimated cost to Council of processing document access, Freedom of Information and Privacy and Personal Information Protection Act applications from that applicant in the period January 2006 to June 2008), the further report referred to in 2. above is to also include the cost to Council of processing document access, Freedom of Information and Privacy and Personal Information Protection Act applications from that applicant in the period January 2006 to June 2010.*

To assist Councillors and other readers of this Report, the Table of Complaints – July 2008/June 2009 and the Table of Complaints - July 2009/June 2010 which appeared in Report No. GM16/10 have been amended (see below) to remove any columns which are superfluous to the needs of this Report and to include the number of pages associated with each of the complaints made within the two time periods. An asterisk (\*) has also been placed in the No of Pages column in each of the Tables to indicate those complaints which were received from the complainant referred to in point 3 of the above resolution.

**TABLE OF COMPLAINTS – JULY 2008/JUNE 2009**

Date	No. of pages	Nature of Complaint	Finalised Inadequate information	Finalised after preliminary assessment	Further Action
2 Dec 2008	13	Councillor behaviour – DA.		✓	Councillor consultation. Information distributed.
4 Dec 2008	1	Councillor behaviour – DA.		✓	Councillor consultation. Information distributed.
4 Dec 2008	1	Councillor behaviour Planning Meeting.		✓	Councillor consultation. Information distributed.
15 Dec 2008	5	Use of resources for electoral purposes.		✓	Policy adopted 17/2/10 concerning practices prior to a local government election.
5 Jan 2009	2	Declaration of Interests – DA/928/2007	✓		
13 Mar 2009	7	Failure to disclose conflict of interest in investigation		✓	
1 June 2009	88*	Handling of 'new' Code of Conduct	✓		
6 June 2009	40*	Incomprehensible broad allegations of breaches of Code of Conduct	✓		
19 June 2009	70*	Failure to heed expert advice – DA	✓		
22 June 2009	74*	Behaviour of Councillors and staff	✓		
26 June 2009	1*	Councillor avoided responsibilities under S232 Local Government Act	✓		

TABLE OF COMPLAINTS – JULY 2009/JUNE 2010

Date	No. of pages	Nature of Complaint	Finalised Inadequate information	Finalised after preliminary assessment	Further Action
1 Sept 2009	29*	Failure to fulfil requirements of Local Government Act.	✓		
7 Jan 2010	32	Failure to correct alleged incorrect statement to Council.		✓	
21 Apr 2010	11	Failure to submit Code of Conduct Report.		✓	
8 June 2010	284*	Multiple complaints (5)			The complaints will be assessed by the Mayor and General Manager upon clarification and confirmation by the complainant.

It should be noted that after being allocated responsibility for the preparation of this Report, the Executive Manager, Corporate and Community Division consulted with the General Manager in respect of the Code of Conduct complaints referred to in Report No. GM16/10; and with the General Manager, Manager, Administration Services and Administration Coordinator in respect of Freedom of Information Act applications, Privacy and Personal Information Protection applications, Document Access applications, general correspondence and other matters as necessary.

In responding to each of the issues raised in Council's resolution in respect of Report No. GM16/10, points 2, 3. and 4. of the resolution are repeated below in ***bold italics***, and are followed by a comment prepared after consultation with the General Manager and/or the relevant officer/s referred to above.

2. ***In respect of the code of conduct complaints referred to in Report No. GM16/10, a further report be prepared for Council's consideration outlining:***

i) ***the costs incurred by Council in processing the complaints***

In determining such costs, it needs to be appreciated that the Model Code of Conduct issued by the Division of Local Government (DLG) and the Code of Conduct adopted by Council require all complaints, other than those submitted about the General Manager, to be assessed by the General Manager. In this regard, the General Manager is the most highly remunerated officer of the Council.

Although no details of specific costs have been maintained by the General Manager in assessing the Code of Conduct complaints received during the two periods, it has been estimated that the costs incurred would, at a minimum be \$30,000. This estimate is based on an assessment of the amount of time taken by the General Manager to process each of the complaints. It is noted that one particular complaint also required legal advice and support at a cost of \$7,407.40.

ii) ***any actions taken by Council as a result of the complaints***

Actions taken by Council as a result of the Code of Conduct complaints are outlined in the Tables reproduced above. With respect to the complaint dated 2 December 2008 and the two complaints dated 4 December 2008, it is also noted that the General Manager consulted with all Councillors and distributed information available from the Independent Commission against Corruption (ICAC) in relation to lobbying local government councillors.

**iii) any policy change outcomes achieved as a result of the complaints**

The only policy change which occurred as a result of the Code of Conduct complaints is that outlined in the Table in respect of the complaint dated 15 December 2008 which was in relation to the use of resources for electoral purposes. In this regard, at its meeting held on 17 February 2010, Council adopted a Policy titled "Elections - Caretaker Period" which concerned practices prior to local government elections.

**iv) options available to Council to recover costs associated with the processing of the complaints**

No legal advice has been obtained in relation to this matter, however, the NSW Ombudsman's office in its publication titled Managing Unreasonable Complainant Conduct Practice Manual 1<sup>st</sup> Edition, June 2009 (referred to hereafter as "Ombudsman's Manual") indicates "that dealing with unreasonable complainant conduct is seen as part of the core function of a complaint handling agency, not just an occupational hazard or interruption to the normal routine, and imposition or a nuisance on the periphery of core work." With this in mind, it is unlikely that Council could successfully pursue an option to recover costs associated with the processing of complaints.

[N.B. The Ombudsman's Manual is available on the NSW Ombudsman's website ([www.ombo.nsw.gov.au/guideorganisations/guidepubsecagencies](http://www.ombo.nsw.gov.au/guideorganisations/guidepubsecagencies))]

**v) options available to Council in respect of the referral to other agencies of complaints from persistent or vexatious complainants**

**vi) options available to Council in respect of refusing to process complaints from persistent or vexatious complainants**

The DLG makes it clear to complainants that it is Council's responsibility to deal with Code of Conduct complaints. This is confirmed by the Ombudsman's Manual. As a consequence, Council is required to assess complaints in accordance with the relevant requirements whilst at the same time being aware of the guidance offered by the Ombudsman's Manual. In this regard, the Ombudsman's Manual emphasises that:

- Every complainant deserves to be treated with fairness and respect
- In the absence of very good reasons to the contrary, members of the public have a right to access the agency
- No complainant, regardless of how much time and effort is taken up in responding to their complaint, should be unconditionally deprived of having their complaint properly and appropriately considered
- A complainant, whose conduct is unreasonable, may have a legitimate complaint
- The substance of the complaint dictates the level of resources allocated to it, not the complainant's wishes, demands or behaviour

It is appropriate, therefore, that Council is give full and proper consideration to all Code of Conduct complaints. In this regard, Clause 16.1 of Council's Code of Conduct clearly defines the complaint assessment criteria against which complaints are to be assessed to determine whether they should be finalised or referred to a Conduct Review Committee/Reviewer or a more appropriate person or body. These criteria include:

- a) whether there is any prima facie evidence of a breach of the code of conduct
- b) whether the subject matter of the complaint relates to conduct that is associated with the carrying out of the functions of civic office or duties as general manager
- c) whether the complaint is trivial, frivolous, vexatious or not made in good faith
- d) whether the conduct the subject of the complaint could reasonably constitute a breach of the code of conduct
- e) whether the complaint raises issues that require investigation by another person or body, such as referring the matter to the Department of Local Government, the NSW Ombudsman, the Independent Commission Against Corruption or the NSW Police
- f) whether there is an alternative and satisfactory means of redress
- g) how much time has elapsed since the events the subject of the complaint took place
- h) how serious the complaint is and the significance it has for council
- i) whether the complaint is one of a series indicating a pattern of conduct

The Ombudsman's Manual does indicate that a complainant whose conduct is unreasonable may still have a legitimate complaint and no complainant, regardless of how much time and effort is taken up in responding to their complaint, should be unconditionally deprived of having their complaint properly and appropriately considered. There is, however, a responsibility upon the complainant to ensure that the complaint clearly identifies the issues being complained about; refers to relevant dates, places and time; gives a concise description of the incident or problem; gives details of any relevant phone conversations and meetings; and gives relevant explanations and includes copies of all relevant documents (and only relevant documents).

One concern in respect of this matter, which was addressed in debate during Council's 30 June 2010 Ordinary Meeting, was the risk associated with attempting to assess complaints from complainants who submit information in an unsuitable or incomplete manner. This concern must be seen in the context of the guidance provided by the Ombudsman and should be addressed in any review of Council's Complaint Handling Policy.

3. ***In respect of the complainant who made 13\* of the 19 complaints listed in General Manager's Report No. GM16/10, the further report referred to in 2. above is to also include the:***

i) ***name of the complainant (if allowed by the relevant legislation)***

(N.B. Report No. GM16/10 incorrectly attributed 13 of the 19 complaints to the one complainant. The correct figure is 11 of the 19 complaints.)

In a "Public Letter" dated 28 June 2010 addressed to the Mayor, Mr Peter Waite of Pennant Hills identified himself as the complainant referred to in Report No. GM16/10 when he wrote "*yourself and Councillors know I am the "single complainant"*".

In his letter, Mr Waite referred to Report No. GM11/10 (dealing with Code of Conduct complaints) which had been submitted to the 30 June 2010 Ordinary Meeting of Council. That Report was subsequently deferred for consideration to the 21 July 2010 Ordinary Meeting – as Report No. GM16/10.

Based on the fact that Mr Waite had publicly identified himself as the subject complainant in the 28 June 2010 Public Letter, no consideration was required to be made by staff in respect of whether or not Mr Waite should be named in this Report.

An extract from Mr Waite's letter of 28 June 2010 is reproduced below.

Pennant Hills NSW 2120  
28 June 2010

PUBLIC LETTER

The Mayor Cr N Berman  
Hornsby Shire Council  
PO Box 37  
Hornsby NSW 1630

**Code of Conduct complaints: GM11/10 report for 30 June 2010 meeting**

Dear Mayor Berman,

Mr Ball's report notes "*General Manager's should be mindful that there may be need to protect identity of persons making complaints when preparing reports . . .*" He continues ". . . it is later noted that thirteen (13) of the nineteen (19) complaints in the table have been submitted by a single complainant."

Yourself and councillors know I am the "*single complainant*". Mr Ball's table states:

- Seven (7) are '*Finalised - Inadequate information*'.
- Seven (7) are '*Finalised after preliminary investigation*'.
- Further Action '*The complaints will be assessed by the Mayor and General Manager upon clarification and confirmation by the complainant*'.

**ii) *costs incurred by Council in processing the complaints***

As referred to in 2 i) above, no details of specific costs have been maintained by the General Manager in respect of the assessment of the Code of Conduct complaints received during the two periods. It has been necessary, therefore, to estimate costs associated with the complaints received from Mr Waite during the relevant periods.

In respect of Mr Waite's Code of Conduct complaints, it is apparent from an inspection of the volume, and particularly the character of material submitted, that the complaints mostly lack focus and are unnecessarily complicated. As a consequence, the General Manager has indicated that Code of Conduct complaints submitted by Mr Waite are generally required to be processed in accordance with the following process.

- The complaint is read for understanding and distillation of the foundation for each complaint
- A letter is forwarded to Mr Waite seeking confirmation of the organisation's understanding of the complaint
- When a response is received from Mr Waite, it is read for any clarification and further understanding required
- The complaint is then assessed against the criteria from the Code of Conduct
- A report is written in respect of the complaint
- A letter is forwarded to Mr Waite outlining a determination or any further action to be taken

The Tables above show the number of pages forming the basis of each complaint as originally submitted by each complainant. Those marked with an asterisk (\*) are those submitted by Mr Waite. In this regard, Mr Waite's complaints are more voluminous than those submitted by other complainants. The volume of these complaints, together with the other issues referred to in the previous paragraph, add considerably to the costs of processing Mr Waite's complaints.

In estimating costs, it again needs to be appreciated that the Model Code of Conduct issued by the DLG and the Code of Conduct adopted by Council require that all complaints, other than those submitted in respect of the General Manager, to be assessed by the General Manager. It is appropriate for the General Manager to be involved in the assessment of these complaints, not only because of his responsibility under the Code of Conduct, but also because Mr Waite's correspondence and concerns appear to have a source in the mid 1990's and the General Manager has the best knowledge of issues over such an extensive period.

Although no specific details have been maintained, the General Manager has estimated that the handling of Mr Waite's complaints have cost \$15,000, at a minimum. The General Manager has advised that these costs need to be considered in the context of an analysis of the complaints which shows that the majority of them were finalised because of inadequate information and did not require full investigation.

**iii) *options available to Council to recover costs associated with the processing of the complaints***

As indicated in the comments provided in respect of point 2 iv) of the subject resolution, it would appear that Council's options to recover costs associated with the processing of Code of Conduct complaints are limited and should not be pursued.

It is noted, however, that Council does have options available in respect of the processing of Mr Waite's correspondence which may assist in minimising resourcing and costs. These are discussed in "The Way Forward" section later in this Report.

**4. *If the complainant who made 13 of the 19 complaints listed in Report No. GM16/10 is the same person as the applicant referred to in Report No. CC69/08 (which dealt with the estimated cost to Council of processing document access, Freedom of Information and Privacy and Personal Information Protection Act applications from that applicant in the period January 2006 to June 2008), the further report referred to in 2. above is to also include the cost to Council of processing document access, Freedom of Information and Privacy and Personal Information Protection Act applications from that applicant in the period January 2006 to June 2010.***

The first point to note is that Mr Waite is also the applicant referred to in Report No. CC69/08. In this regard, the table shown in Report No. CC69/08 (for the period January 2006 – 10 June 2008) is repeated below and is followed by a further table which shows similar type information for the period 11 June 2008 to 30 June 2010. A combined table for the entire period January 2006 to 30 June 2010 is then provided.

<b>Period January 2006 – 10 June 2008</b>			
<b>Type of Application</b>	<b>No. of Applications</b>	<b>Processing Hours</b>	<b>Estimated Costs</b>
Document Access Applications	21	44	\$1,599
FOI Applications	30	157	\$5,749
Internal Reviews - FOI Applications	13	58	\$4,182
External Reviews – FOI Applications	5	110	\$9,270



PPIPA Applications (including External Review by the ADT)	4	104	\$8,057
Legal fees associated with the above applications			\$37,054
<b>TOTAL</b>	<b>73</b>	<b>473</b>	<b>\$65,911</b>
**Less all fees paid by the applicant			(\$4,483)
<b>Net cost to Council</b>			<b>\$61,428</b>

<b>Period 11 June 2008 – 30 June 2010</b>			
<b>Type of Application</b>	<b>No. of Applications</b>	<b>Processing Hours</b>	<b>Estimated Costs</b>
Document Access Applications	7	8.75	\$341
FOI Applications	42	230	\$12,037
Internal Reviews - FOI Applications	21	99.75	\$7,890
External Reviews – FOI Applications	20	237	\$20,881
PPIPA Applications (including External Review by the ADT)	0	0	0
Legal fees associated with the above applications			\$38,876
<b>TOTAL</b>	<b>90</b>	<b>575.50</b>	<b>\$80,025</b>
**Less all fees paid by the applicant			(\$4,858)
<b>Net cost to Council</b>			<b>\$75,167</b>

<b>Total Period - January 2006 – 30 June 2010</b>			
<b>Type of Application</b>	<b>No. of Applications</b>	<b>Processing Hours</b>	<b>Estimated Costs</b>
Document Access Applications	28	52.75	\$1,940
FOI Applications	72	387	\$17,786
Internal Reviews - FOI Applications	34	157.75	\$12,072
External Reviews – FOI Applications	25	347	\$30,151
PPIPA Applications (including External Review by the ADT)	4	104	\$8,057
Legal fees associated with the above applications			\$75,930

<b>TOTAL</b>	<b>163</b>	<b>1048.5</b>	<b>\$145,936</b>
**Less all fees paid by the applicant			\$9,341
<b>Net cost to Council</b>			<b>\$136,595</b>

### The Way Forward

The issue of concern in dealing with Code of Conduct complaints is the inequitable allocation of Council's resources to certain complaints and Mr Waite's in particular. In this regard, when multiple complaints from Mr Waite are not summarised and succinct, and are submitted in an incomplete and sometimes confusing manner, there is an unnecessary misdirection of resources.

The General Manager has advised that complaints are just one part of a broader concern in respect of Mr Waite's dealings with Council. In this regard, a search of Council's electronic document management system (EDMS) has indicated that there are 986 entries with Mr Waite as the author of letters to Council since April 2004 (when the EDMS became operational). These entries were distributed over that period on the following basis: 85 from April to December 2004; an additional 89 to December 2005; an additional 99 to December 2006; an additional 269 to December 2007; an additional 217 to December 2008; an additional 151 to December 2009; and an additional 76 to August 2010.

Although some of these entries may be duplicates or minor issues, their numbers demonstrate the inequitable allocation of resources in respect of responses to a single individual. They also potentially sustain an argument that Mr Waite's conduct may be unreasonable in terms of an assessment undertaken in accordance with information in the Ombudsman's Manual.

In this regard, the Ombudsman's Manual contains a table which provides a checklist on the warning signs of unreasonable conduct by complainants. This checklist (repeated below) has been reviewed by Council staff who have a responsibility to deal with Mr Waite's correspondence (whether that be through FOI, PPIPA or Document Access applications; through Code of Conduct complaints; or through general letter writing).

*"The warning signs of unreasonable conduct may include one, but more likely a number, of the following.*

<b><i>Complainant history – the complainant may have:</i></b>
• <i>made a number of previous complaints about this issue or related issues</i>
• <i>made a number of review requests, especially second review requests about the same issue</i>
• <i>made contact with other government agencies, MPs, Ministers or other oversight bodies about the current complaint</i>
• <i>sought legal advice about the current complaint or the agency's handling of the complaint</i>
• <i>made freedom of information requests about or related to the issue of complaint</i>
• <i>raised issues about the case officer's integrity or competence in handling the case.</i>
<i>They may also have expanded the subject matter of their complaint to include other people</i>

<i>or agencies – particularly those that have been involved in dealing with the complaint – or conspiracy theories.</i>
<b>Outcomes sought – the complainant may want:</b>
<ul style="list-style-type: none"> <li>• <i>a manifestly inappropriate provision of services</i></li> <li>• <i>manifestly inappropriate compensation</i></li> <li>• <i>a manifestly illogical or irrational solution</i></li> <li>• <i>an apology where this is clearly not warranted or where the terms of the apology sought are clearly unreasonable</i></li> <li>• <i>what amounts to revenge or retribution.</i></li> </ul>
<i>They may also have unrealistic expectations about what the agency can achieve or keep stating and restating their desired outcomes in terms of morals, justice, principles or the public interest.</i>
<b>Written complaint – the complaint may:</b>
<ul style="list-style-type: none"> <li>• <i>display excessive and idiosyncratic emphasis</i></li> <li>• <i>show punctuation, font changes and bolding excessively</i></li> <li>• <i>show coloured highlighting excessively</i></li> <li>• <i>use legal or medical terminology inappropriately</i></li> <li>• <i>imitate an official reporting style, such as a police operational format</i></li> <li>• <i>use excessively dramatic language</i></li> <li>• <i>include excessive and/or irrelevant information that may also be annotated.</i></li> </ul>
<b>Interacting with the agency – the complainant may:</b>
<ul style="list-style-type: none"> <li>• <i>make excessive written and telephone contact with the complaint handling agency</i></li> <li>• <i>give forceful instructions about how the complaint must be handled</i></li> <li>• <i>refuse to define issues of complaint</i></li> <li>• <i>be resistant to the case officer's explanation if this runs counter to their own views</i></li> <li>• <i>refuse to accept the case officer's advice, even if it is clearly valid and reasonable</i></li> <li>• <i>provide information in dribs and drabs, despite requests to provide all relevant information</i></li> <li>• <i>withhold information</i></li> <li>• <i>provide false information</i></li> <li>• <i>at the end of the process, provide previously withheld information in an attempt to have the case reopened</i></li> <li>• <i>make excessive demands on resources – copies, expert opinion etc</i></li> <li>• <i>be rude, confronting, angry or aggressive</i></li> <li>• <i>be overly ingratiating, manipulative or make threats.</i></li> </ul>
<b>Reacting to the news that their complaint will not be taken up or will be discontinued – the complainant may:</b>
<ul style="list-style-type: none"> <li>• <i>refuse to accept the case officer's or agency's decision</i></li> <li>• <i>reframe their complaint in an attempt to have it taken up again</i></li> <li>• <i>raise a range of minor or technical issues, arguing that these call into question the merits of the agency's decision</i></li> <li>• <i>expect a review of the decision based merely on an expression of dissatisfaction, unsupported by any arguments or new evidence</i></li> <li>• <i>demand a second review after the first review</i></li> </ul>

- *take the complaint to other forums and go on to allege bias or corruption on the part of the agency, simply because the decision went against them.*

Based on the assessment by Council officers, and the Ombudsman's statement at the beginning of the table that "*the warning signs of unreasonable conduct may include one, but more likely a number, of the following*", it is apparent that Mr Waite's conduct in his dealings with Council could fairly be described as "unreasonable". In this regard, the officer's assessment indicated that Mr Waite met approximately 85% of the 37 warning signs of unreasonable conduct. It is noted that the unreasonable complainant conduct commonly seen by many agencies, can in most cases be grouped into the following five categories: unreasonable persistence; unreasonable demands; unreasonable lack of cooperation; unreasonable arguments; and unreasonable behaviour.

As a consequence of the above, Council's future actions in dealing with Mr Waite should be guided by the complaint management strategies proposed in the Ombudsman's Manual. A review of Council's Complaint Handling Policy would also be appropriate to take into consideration the Ombudsman's management strategies. Any review should, however, ensure that the objectives for Council's management of unreasonable complainants are to ensure equity and fairness; to improve efficiency in the use of resources; and to ensure staff safety and comply with OH&S and duty of care obligations.

However, the use of these strategies must also be based on the clear understanding that:

- every complainant deserves to be treated with fairness and respect
- in the absence of very good reasons to the contrary, members of the public have a right to access the agency
- no complainant, regardless of how much time and effort is taken up in responding to their complaint, should be unconditionally deprived of having their complaint properly and appropriately considered
- a complainant whose conduct is unreasonable may have a legitimate complaint
- the substance of the complaint dictates the level of resources allocated to it, not the complainant's wishes, demands or behaviour

Dealing with unreasonable complainant conduct is part of Council's core business, however, it is for the Council to decide how the complaint will be dealt with, by whom, how quickly, with what priority, what resources will be given to it and what will be the outcome. These should not be determined or influenced by the complainant. In cases where it is clear that a complainant will not accept Council's decision on a matter, and all appropriate avenues of internal review or appeal have been exhausted, and the complainant continues to contact Council, it may be appropriate to notify the complainant that in future:

- no phone calls will be accepted or interviews granted concerning the specific matter already reviewed
- correspondence will be received, read and filed but only acknowledged or responded to if they provide significant, new information about their complaint or concern or raise new issues which, in the agency's opinion, warrant fresh action.

In these cases, it is important that adequate documentary records are made and maintained.

The Ombudsman's Manual makes it clear that "*Agencies can refuse to correspond further with complainants if they persist in their complaint after the agency's complaint process has been exhausted. In this case, a letter needs to be written to the complainant advising that any*

*further correspondence from them will be filed without acknowledgement, unless a substantially new issue is raised which the CEO of the agency considers warrants attention. This letter needs to be signed by the CEO.”*

Based on all of the above, and particularly noting the quantum of resources currently being allocated to the administration of Mr Waite’s various dealings with Council, it is appropriate that Council consider:

- Authorising the General Manager to be the primary person nominated to implement management strategies to handle unreasonable conduct by complainants.
- Ensuring management and Councillor support is provided in respect of Council’s commitment to the management strategies implemented by the General Manager.
- Reviewing its Complaints Handling Policy, taking into consideration the Ombudsman’s Manual Management Strategies.
- Confirming with Mr Waite that complaints will only be assessed where all information is submitted in a single, organised and summarised manner and when a decision is made it is final, otherwise the complaint and subsequent correspondence will be filed and no further action taken.
- Confirming with Mr Waite that his correspondence will be filed and no further action taken unless, in the General Manager’s opinion, the correspondence raises substantially new issues of a contemporary and significant nature warranting further action.

### **BUDGET**

Details of the costs associated with the processing of Code of Conduct complaints and requests for access to information are included in the Report.

### **POLICY**

This Report recommends a review of Council’s Complaint Handling Policy.

### **CONSULTATION**

There has been consultation with the General Manager; Manager, Administration Services; and the Administration Coordinator in the preparation of this Report.

### **TRIPLE BOTTOM LINE SUMMARY**

Triple Bottom Line is a framework for improving Council decisions by ensuring accountability and transparency on social, environmental and economic factors. It does this by reporting upon Council’s strategic themes. As this Report simply provides Council with information and does not propose any actions which require a sustainability assessment, no Triple Bottom Line considerations apply.

**RESPONSIBLE OFFICER**

The officer responsible for the preparation of this Report is the Executive Manager, Corporate and Community Division – Mr Gary Bensley. He can be contacted on 9847-6605.

**RECOMMENDATION**

THAT:

1. The contents of Executive Manager's Report No. CC55/10 be received and noted.
2. Council authorise the General Manager to be the primary person nominated to implement management strategies to handle unreasonable conduct by complainants.
3. Management and Councillor support be provided in respect of Council's commitment to the management strategies implemented in 2. above.
4. A review of Council's Complaints Handling Policy be undertaken to take into consideration the Ombudsman's Manual Management Strategies.
5. It be confirmed with Mr Waite that complaints will only be assessed where all information is submitted in a single, organised and summarised manner and when a decision is made it is final, otherwise the complaint and subsequent correspondence will be filed and no further action taken.
6. It be confirmed with Mr Waite that his correspondence will be filed and no further action taken unless, in the General Manager's opinion, the correspondence raises substantially new issues of a contemporary and significant nature warranting further action.

GARY BENSLEY  
Executive Manager  
Corporate and Community Division

**Attachments:**

There are no attachments for this report.

File Reference: F2010/00375  
Document Number: D01472277

## **9 DECLARATIONS OF PECUNIARY INTEREST AND OTHER MATTERS RETURNS - COUNCILLORS AND DESIGNATED PERSONS**

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### **EXECUTIVE SUMMARY**

Section 449 of the Local Government Act (the Act) details the statutory requirements in respect of the lodgement of Disclosure of Pecuniary Interests and Other Matters Return/s by Councillors and Designated Persons. Section 450A(2) of the Act details the reporting requirements associated with the lodgement of such Returns.

In accordance with those Sections of the Act, this Report provides information regarding the various Returns recently lodged with the General Manager. It is recommended that Council note that the Disclosure of Pecuniary Interests and Other Matters Return/s lodged with the General Manager have been tabled in accordance with the requirements of the Act.

### **PURPOSE/OBJECTIVE**

The purpose of this Report is to table the Disclosure of Pecuniary Interests and Other Matters Returns lodged by Councillors/Designated Persons who have left, commenced with, or internally transferred to a relevant position within Council.

### **DISCUSSION**

Section 449(1) of the Act requires a Councillor or Designated Person to complete and lodge with the General Manager a Disclosure of Pecuniary Interests and Other Matters Return within three months after becoming a Councillor or a Designated Person. Section 449(3) requires a Councillor or Designated Person holding that position at 30 June in any year to complete and lodge with the General Manager a Return within three months after that date. Section 449(5) states that nothing prevents a Councillor or Designated Person from lodging more than one Return in any year.

Section 450A(2) of the Act requires that Returns lodged under Section 449 are to be tabled at a meeting of Council. Returns lodged under Sections 449(1) and 449(3) are to be tabled at the first meeting held after the last day for lodgement under those Sections; and Returns lodged for any other reason are to be tabled at the first meeting after their lodgement.

Council's procedures in respect of the disclosing of interests have been developed to cater for the election/appointment/employment/retirement/resignation/etc of Councillors or Designated Persons. These procedures:

- require all Councillors and Designated Persons who hold that position at 30 June in any year to submit Returns to the General Manager by 30 September in that year (i.e. they are lodged under S449(3)). These Returns are tabled at the October Ordinary Meeting of Council in that year;
- require newly elected Councillors or newly appointed Designated Persons to lodge Returns to the General Manager within three months of their election/appointment (i.e.

they are lodged under S449(1). These Returns are tabled at the next available Ordinary Meeting of Council; and

- require those Councillors or Designated Persons who are leaving Council (because of retirement, resignation, etc) to lodge Returns to the General Manager by their last day with Council. These Returns are tabled at the next available Ordinary Meeting of Council.

Council last considered the tabling of Disclosure of Pecuniary Interests and Other Matters Returns at the Ordinary Meeting held on 21 July 2010 (see Report No. CC42/10). Since that time, one additional Return has been lodged with the General Manager and is now tabled as required by the Local Government Act.

<b>Date Lodged</b>	<b>Councillor/Designated Person (Position)</b>	<b>Reason for Lodgement</b>
13/08/2010	Manager - Environmental Sustainability & Health Team	Resignation

### **BUDGET**

There are no budgetary implications associated with this Report.

### **POLICY**

There are no policy implications associated with this Report.

### **CONSULTATION**

Consultation has occurred with those required to complete a Disclosure of Pecuniary Interests and Other Matters Return.

### **TRIPLE BOTTOM LINE SUMMARY**

Triple Bottom Line is a framework for improving Council decisions by ensuring accountability and transparency on social, environmental and economic factors. It does this by reporting upon Council's strategic themes.

As this Report simply provides Council with information and does not propose any actions which require a sustainability assessment, no Triple Bottom Line considerations apply.

### **RESPONSIBLE OFFICER**

The officer responsible for the preparation of this Report is Council's Senior Access to Information Officer – Stephen Waller who can be contacted on 9847 6749.

### **RECOMMENDATION**

THAT Council note that the Disclosure of Pecuniary Interests and Other Matters Returns recently lodged with the General Manager have been tabled as required by the Local Government Act.



ROBYN ABICAIR  
Manager - Administration Services  
Corporate and Community Division

GARY BENSLEY  
Executive Manager  
Corporate and Community Division

**Attachments:**

There are no attachments for this report.

File Reference: F2010/00368  
Document Number: D01472291

## **10 2010/11 INVESTMENTS AND BORROWINGS - REPORT FOR PERIOD ENDING JULY 2010**

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### **EXECUTIVE SUMMARY**

Council is provided with a monthly report summarising current general economic conditions which may have an impact on investment returns. The report includes schedules detailing Council's investments and borrowings and highlights the monthly and year to date performance of the investments. In this regard, investments are generally held for the medium to long term.

This Report indicates that the total investment income for the month ending July 2010 was \$107,000 compared to the 2010/11 budgeted income of \$107,000. Of the investment income earned, 42% relates to externally restricted funds such as Section 94, and is required to be allocated to those funds.

### **PURPOSE/OBJECTIVE**

The purpose of this Report is to advise Council of funds invested in accordance with Section 625 of the Local Government Act; and details as required by Clause 212(1) of the Local Government (General) Regulation 2005 and Council's Investment Policy and Strategy (which was last reviewed by Council at its 8 April 2009 Ordinary Meeting).

### **DISCUSSION**

#### **Council's Investment Performance - July 2010**

- The At-Call and Term Deposits achieved an annualised return of 5.69% for the month compared to the benchmark of 4.50%.
- NSW T-Corp Long Term Growth Facility achieved a marked to market return of 36.77% for the month compared to the benchmark of 31.45%. This fund has a 70% allocation to growth assets. Short term performance is expected to be volatile and the investment should be viewed over the longer term.
- Floating Rate Notes (FRNs) are bonds that have a variable coupon equal to a money market reference rate. This FRN investment achieved an annualised return of 6.93% for the month compared to the benchmark of 5.08%.
- Direct investments in CDO's achieved an annualised return of 6.12% for the month compared to the benchmark of 5.08%.
- The Capital Guaranteed Notes achieved an annualised return of 0.36% for the month compared to the benchmark of 5.08%. With the exception of the Longreach PIU Fund, the Capital Protected Notes coupons have not been accrued.
- For total investments, the annualised return for the month is 5.71% compared to the benchmark of 5.51%.

### **Economic Commentary**

Global equities traded a volatile range in July, losing ground early in the month as fears of a double-dip recession developed following signs of weakness in the United States and China - the two economies tipped to lead the global recovery. However, share markets rebounded strongly bolstered by optimism surrounding the reporting season coupled with most European banks passing the so-called "stress test".

In July, after assessing the pace of the local and global economic recovery, the Reserve Bank of Australia kept interest rates unchanged for a second consecutive month at 4.50%. Governor Glenn Stevens noted the cautious outlook for financial markets which was primarily driven by concerns about European sovereigns and banks, and uncertainty surrounding global growth. This assessment included China, Australia's largest trading partner, which is now starting to moderate to a "more sustainable rate".

### **Borrowings**

In respect of borrowings, the weighted average interest rate payable on loans taken out from 2000 to 2010, based on the principal balances outstanding, is 6.81%. The Borrowings Schedule as at 31 July 2010 is attached for Council's information.

### **BUDGET**

Total investment income for the month of July 2010 was \$107,000. The budgeted income for the month was \$107,000. Of the investment income, approximately 42% relates to external restrictions (Section 94) and is, therefore, restricted.

### **POLICY**

All investments have been made in accordance with the Local Government Act, the Local Government (General) Regulation 2005 and Council's Investment Policy and Strategy.

### **CONSULTATION**

Initial investments and reallocation of funds are made where appropriate, after consultation with Council's financial investment adviser and fund managers.

### **TRIPLE BOTTOM LINE SUMMARY**

Triple Bottom Line is a framework for improving Council decisions by ensuring accountability and transparency on social, environmental and economic factors. It does this by reporting upon Council's strategic themes. As this Report simply provides Council with information and does not propose any actions which require a sustainability assessment, no Triple Bottom Line considerations apply.

Council's Investment Strategy does recognise, however, the desirability of "ethical" or "socially responsible" investments and has invested in such products in the last year. These are referenced in the Investment Portfolio in Attachment 1. Council will continue to review new products, subject to funds availability and asset allocation and credit quality parameters contained in the Strategy.

**RESPONSIBLE OFFICER**

The officer responsible for the preparation of this Report is the Manager, Financial Services - Glen Magus. He can be contacted on 9847 6635.

**RECOMMENDATION**

THAT the contents of the Executive Manager's Report No. CC58/10 be received and noted.

GLEN MAGUS  
Manager - Financial Services  
Corporate and Community Division

GARY BENSLEY  
Executive Manager  
Corporate and Community Division

**Attachments:**

1. HSC Investment Portfolio as at 31 July 2010
2. HSC Borrowings Schedule as at 31 July 2010

File Reference: F2004/06987  
Document Number: D01475398

## 11 2009/10 GENERAL PURPOSE AND SPECIAL PURPOSE FINANCIAL REPORTS

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### EXECUTIVE SUMMARY

Council's General Purpose and Special Purpose Financial Reports for the year ended 30 June 2010 (the Financial Reports) have been completed and are ready to be referred for audit. Report No CC59/10 recommends such referral. Following receipt of the Auditor's Reports, it is anticipated that the Financial Reports and Auditor's Reports will be "presented to the public" at the 20 October 2010 Ordinary Meeting in accordance with legislative requirements.

### PURPOSE/OBJECTIVE

The purpose of this Report is to recommend that:

- Council receive and note the unaudited 2009/10 Financial Reports
- the 2009/10 Financial Reports be referred for audit
- on receipt of the Auditor's Report, the 2009/10 Financial Reports and Auditor's Report be authorised for issue to the public
- Council delegate authority to the General Manager to fix the date of the Meeting at which the 2009/10 Financial Reports and Auditor's Report will be "presented to the public"

### DISCUSSION

In accordance with the requirements of the Local Government Act, Council must prepare and have audited its Financial Reports within four months after the end of a financial year. The Financial Reports for 2009/10, which have recently been completed and are included under separate cover, are ready to be referred for audit.

Council is required to give notice as to the Meeting at which the Financial Reports (including the Auditor's Reports) will be "presented to the public". The proposed date for this Meeting will be set as soon as possible after the Auditor's Reports have been received. In this regard, it is anticipated that the Reports will be "presented to the public" at the 20 October 2010 Ordinary Meeting. Council's external auditor, Denis Banicevic of PricewaterhouseCoopers, is expected to be available to make a presentation on the Reports at that Ordinary Meeting.

Following presentation of the Reports to the public, any person may make a submission concerning the Reports within a period of seven days after the Ordinary Meeting.

It should be noted the Financial Reports are not for distribution to the public at this stage as they are unaudited. The audited Reports are those that will be made available to the public in accordance with Local Government Act requirements.

### BUDGET

There are no implications on the 2010/11 Budget.

**POLICY**

Details of relevant policies are set out in Note 1 to the Financial Reports.

**CONSULTATION**

Appropriate staff in all Divisions were requested to provide income and expenditure accruals where considered necessary in addition to information on internally and externally restricted asset accounts.

**TRIPLE BOTTOM LINE SUMMARY**

Triple Bottom Line is a framework for improving Council decisions by ensuring accountability and transparency on social, environmental and economic factors. It does this by reporting upon Council's strategic themes.

As this Report simply provides Council with information and does not propose any actions which require a sustainability assessment, no Triple Bottom Line considerations apply.

**RESPONSIBLE OFFICER**

The officer responsible for the preparation of this Report is the Manager, Financial Services – Mr Glen Magus. He may be contacted on 9847 6635.

**RECOMMENDATION**

THAT:

1. The 2009/10 General Purpose and Special Purpose Financial Reports, distributed under separate cover, be received and noted and referred for audit.
2. The Mayor and Deputy Mayor be authorised to sign the Statutory Statements in connection with the 2009/10 Financial Reports.
3. The 2009/10 Financial Reports be authorised for “presentation to the public” on receipt of the Auditor’s Reports.
4. The General Manager be delegated authority to fix the date of the Ordinary Meeting at which the 2009/10 Financial Reports and Auditor’s Report are formally “presented to the public”.

GLEN MAGUS  
Manager - Financial Services  
Corporate and Community Division

GARY BENSLEY  
Executive Manager  
Corporate and Community Division

**Attachments:** There are no attachments to this report.

File Reference: F2010/00065

Document Number: D01478160

## **12 PROGRESS REPORT FOR INVESTIGATION OF MOUNTAIN BIKE TRAILS WITHIN HORNSBY LOCAL GOVERNMENT AREA**

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### **EXECUTIVE SUMMARY**

At the Ordinary Meeting of 9 December 2009, Council endorsed recommendations from Executive Manager's Report No. EN58/09 - Investigation into the Development of Mountain Bike Trails within the Hornsby Local Government Area. The report discussed findings of the investigation, national and regional context of mountain bike (MTB) trails on public lands, explanation of mountain bike facilities and the need for proactive management.

The consultants (World Trail) recommended potential MTB trail routes for the purpose of identifying sites in Hornsby Shire for further consideration. One of the most feasible but controversial proposals was the Hornsby to Westleigh trail. This proposal is not going to proceed due to environmental sensitivities.

World Trail also provided cost estimates for each proposal, economic benefits of trail networks, International Mountain Bike Association (IMBA) design standards and its model for community participation and stewardship. World Trail recommended Hornsby Park and Old Mans Valley area as the best opportunity for a MTB facility in Hornsby Shire. Following the consultant's report, Council's Bushland and Biodiversity Team has investigated 15 sites and found the Hornsby Park and Old Mans Valley option to be the most suitable for Council to provide. Careful consideration has been given to how a MTB facility would, if constructed, be compatible with future Old Mans Valley parkland development and potential truck access routes to the quarry.

Submissions received from the community consultations for the development of an Open Space Masterplan for Old Mans Valley in February and March this year, also indicated support for Council to further investigate the inclusion of additional elements in the masterplan. One of those additional elements recorded was mountain bike trails.

The Department of Environment, Climate Change and Water (DECCW) has been in discussion with staff from several councils in Sydney as part of a recently completed regional trail mapping exercise. This department is planning to have two authorised MTB facilities in the northern Sydney region within their Northern Beaches and Lower Hawkesbury Management Areas. The Department of Environment, Climate Change and Water (NPWS) Sustainable Mountain Bike Strategy for New South Wales was due for release in July 2010.

On 16 May 2010 the NSW Government released its Bike Plan. Copies can be downloaded from <http://www.nsw.gov.au/shapeyourstate>. This specifies several Bike Plan action items on promoting mountain bike facilities in NSW National Parks and Crown reserves and linkages across publically managed lands.

### **PURPOSE/OBJECTIVE**

To report on progress of the endorsed recommendations from Executive Manager's Report No. EN58/09 and update Council of mountain bike trail planning in the northern Sydney



region, and to make recommendations concerning the preferred option for a MTB facility in Hornsby Shire.

## **DISCUSSION**

The endorsed recommendations from Executive Manager's Report No. EN58/09 are:

1. *Council provide in-principle support to the provision of cross country mountain bike tracks as outlined in Executive Manager's Report No. EN58/09, subject to more detailed assessment of the various options.*
2. *Council endorse the preparation of a detailed mountain bike trail plan for the Hornsby to Westleigh trail concept for public consultation, subject to funds being identified for this work. In the event this option is not viable Council authorise the preparation of a detailed mountain bike trail plan for other suitable alternatives.*
3. *Council include the potential for a mountain bike track and trailhead location within the Master Plan process for Old Mans Valley.*
4. *Council continue to work with the Department of Environment, Climate Change and Water to develop preferred mountain bike trail options within the Hornsby Shire.*
5. *The draft mountain bike trail plan for the Hornsby to Westleigh trail concept be considered by the Community, Cultural and Recreation Facilities Task Force prior to a further report being prepared for Council's consideration.*

Preparation of a detailed mountain bike trail plan for the Hornsby to Westleigh trail mentioned in Recommendation 2 has not proceeded due to environmental sensitivities. The consultants (World Trail) proposed this and other options prior to environmental assessment for the purpose of initially identifying feasible mountain bike trail routes in Hornsby Shire that would be worthy of consideration.

Between February and April this year site assessments were undertaken by officers from the National Parks and Wildlife Service and Council's Bushland and Biodiversity Team at the following 15 sites:

- Arcadia Park
- Pennant Hills Park
- Hayes Park Galston
- Mc Callums Road, Berrilee
- Berowra Park, Turner Road
- Campbell Crescent Bushland Glenorie
- Land west of the old toll gates near Cowan
- Crown Land near The Gulley Road Berowra
- Dog Pound Creek Bushland – Hornsby and Westleigh
- Valley Road, Hornsby to Wareemba Street, Thornleigh
- Crown Land and NPWS land south of Asquith golf course
- Hornsby Park and Old Man's Valley near Hornsby Quarry
- Tunks Ridge, Dural Berowra Valley Regional Park (BVRP)
- Rofe Park Bushland Hornsby Heights and adjacent area of BVRP
- Stringybark Ridge Pennant Hills, BVRP

### **Recommended Proposal**

Within Council managed land, staff and consultants (World Trail) consider that lands in Hornsby Park and Old Mans Valley offer the best opportunities for mountain biking. This is the most environmentally degraded site inspected and would therefore sustain the least amount of environmental impact of all the sites.

Council's endorsed Recommendation 3 from Report No. EN58/09 in December 2009, to "include the potential for a mountain bike track and trailhead location within the Master Plan process for Old Mans Valley," has been implemented. Since then resolutions from the April 2010 Report, EN12/10 - Open Space Masterplan For Old Mans Valley, authorised Council to investigate changes to the masterplan based on results from the community consultation, deliberative forum and subsequent Twyford's report. Inclusion of additional elements in the masterplan has been endorsed by Council. One of those additional elements recorded was mountain bike trails.

Given the current lack of funds for expensive items such as oval development in Old Mans Valley, lower cost items such as walking and cycling trails are more achievable and could deliver some components of the Recreational Masterplan in the short term.

Future development proposals in Old Mans Valley restrain the amount of area available for a typical cross country MTB trail (over seven kilometres long). However the natural topography of the site lends itself to recreational trails and there is enough area for a variety of MTB and other recreational facilities in this location that could be successfully incorporated into future planning documents for the site.

External independent environmental assessment and a detailed MTB trail plan are proposed for the land south and east of Hornsby Quarry. Such a plan would take into consideration Council's requirements for future parkland developments and truck movements for filling of the quarry.

This area offers great potential for a centrally located mountain bike facility and net environmental gains due to foreseen improvements to some highly degraded areas. World Trail stated that this site "has excellent potential as a mountain bike destination. Of all the council managed sites visited, World Trail believes that this site offers the most in terms of its suitability for mountain biking and its amenity and environmental values." This view is confirmed by the detailed investigations undertaken by staff.

### **Alternative proposals**

Council managed lands within Galston Recreational Reserve could possibly hold a trail loop of four to five kilometres, however given its less central location and lower support from the mountain bike community compared with Old Mans Valley, this proposal is not recommended for implementation in the short term.

Permission would be required from several land owners prior to preparation of a detailed MTB trail plan for the following proposals within Hornsby Shire:

Lands north of Berowra up to Cowan near the old tollgates is an expansive area, existing fire trails could form the basis of a trail loop that would exceed ten kilometres in length.

Lands south of Asquith Golf Club could possibly hold a trail loop of approximately six to seven kilometres.

### **Cross-Tenure Considerations in Hornsby Shire**

Potential MTB trail proposals within Hornsby Shire include areas owned by DECCW, the Land and Property Management Authority, Sydney Water and the Metropolitan Aboriginal Lands Council.

Any one cross-country MTB trail proposal may involve several organisations therefore cross-tenure agreements are often needed. DECCW is working towards providing several cross-country mountain bike facilities within the northern Sydney region. In June 2010 cross-tenure mapping was completed by NPWS for this purpose. This department is planning to have two authorised MTB facilities within the northern Sydney region.

Council staff have been working closely with DECCW to develop preferred mountain bike trail options within the Hornsby Shire. This action has been vital for cooperative regional planning and was endorsed by Council (Recommendation 5 of Report No. EN58/09).

### **Relevant Plans and Strategies**

The NPWS Sustainable Mountain Bike Strategy for New South Wales is due for release in July 2010. On 16 May 2010 the NSW Government released its Bike Plan. A couple of NSW Bike Plan action items are worthy of note regarding mountain bike facilities:

1. Section 2 - CREATE CONNECTED CYCLING NETWORKS - Page 23, Section 2.23 - *'Promote cycle access to and through designated NSW National Parks and Crown reserves, including the use of sustainable mountain biking trails'*
2. Section 5 - GROW JOBS IN CYCLING - Page 43, Section 5.1 - *'Identify and promote cycle tourism opportunities such as (c) Mountain Biking in the Snowy Mountains and Blue Mountains and linkages across other National Parks and publicly managed lands'*

### **Other MTB trail initiatives in the Sydney Region**

Ku-ring-gai Council has engaged consultants to design a MTB facility in the North Turramurra area that includes a short cross-country loop, pump track, downhill link, jump runs, and skills trail. Hornsby Shire Council currently has a draft unstructured recreation in bushland strategy on public exhibition. This lists several MTB proposals, including a new MTB park at Golden Jubilee oval and approval of several existing unauthorised cross country trails in adjacent bushland.

Mount Annan Botanic Garden is in the process of developing 14 km of single and double-track enduro mountain bike trails. Stages 1 and 2 of the trail have just been completed. By providing a dedicated mountain bike track for mountain bikers, this will support the maintenance and revegetation of the surrounding critically endangered Cumberland Plain Ecological Community where works are required for control of invasive African Olive trees. Whilst enjoying the ride, cyclists will be provided with rest areas, education and information about the significance of plants and animals within the garden. Details of the facility can be obtained from [http://www.rbgsyd.nsw.gov.au/annan/the\\_garden/future\\_planning#Adventure](http://www.rbgsyd.nsw.gov.au/annan/the_garden/future_planning#Adventure)

### **Proactive Management**

Land managers are responsible for managing legal and illegal use of public lands. Often, attempted prohibitive management of MTB riding has failed; some of these cases are well documented in the Sydney area. Hornsby Shire Council's Bushland and Biodiversity Team is

aware of the difficulty and expense of closing unauthorised walking tracks and bike trails. Poorly designed trails damage bushland and degrade it further over time. More often than not, forced track closure in bushland is ineffective. A proactive approach of providing well designed purpose built MTB trails would address some of these problems.

### **BUDGET**

The provision of a high quality MTB facility could be dependent upon submissions for budget phase-ups or grant applications, or a combination of both funding sources. There is good potential for both construction and maintenance costs for MTB trails to be reduced with the involvement of a community group or cycling club. Submissions have been received from the MTB community and some schools; they have offered assistance in this regard as detailed above. In addition recreational trail projects are eligible under both Greenspace and Sport and Recreation grant programs or other funding opportunities.

Based on a recent inspection at Awaba State Forest on the central coast, a high quality cross-country MTB trail can be solely built by volunteers. This track was hand built in bushland in several stages, taking approximately 2,000 person hours to form ten kilometres of single track. Material costs were minimal at approximately \$8,000 including five bridges. In stark contrast seven kilometres of trail at Mount Annan was constructed (mostly by machinery) in four weeks for about \$100,000. This included armoured water crossings, bridges and full bench trail construction for this cross country single track.

### **POLICY**

The report is in accordance with policy directions set out in the Unstructured Recreation Strategy 2008.

### **CONSULTATION**

The MTB feasibility investigation has been developed by the Bushland and Biodiversity Team, assisted by World Trail Pty Ltd and the Hornsby Shire MTB Alliance. Consultation has been undertaken with Council's Parks and Landscape Team, the Bushland Management Advisory Committee, the Works Division, Coordinator – Local Studies Hornsby Library, DECCW (NPWS) and IMBA Australia.

Close consideration has been given to information on the current condition and future development of the Hornsby quarry area and adjacent lands.

### **TRIPLE BOTTOM LINE SUMMARY**

Triple Bottom Line attempts to improve Council decisions by being more accountable and transparent on social, environmental and economic factors. It does this by reporting upon Council's strategic themes.

#### **Working with our community**

The URS identifies a strategy for the delivery of a range of additional recreation facilities for Hornsby Shire. It has been developed through building upon community surveys undertaken for the Leisure Strategic Plan. HSMBA and Council staff have been working closely to gather information on track options, trail needs, rider demographics and regional context.

**Conserving our natural environment**

The consultants report on preferred MTB trail options locates facilities within or close to bushland, bringing people to bushland for the purposes of recreation, and it is hoped this will promote community appreciation and understanding of bushland preservation. These facilities will need to be carefully designed to minimise potential environmental impacts, provide MTB facilities and progress closure of unauthorised tracks.

**Contributing to community development through sustainable facilities and services**

A range of community benefits are discussed on page 3 of this report, primarily that there will be improved opportunities for recreation activity and better access to healthy activity options. A proposal to develop a MTB facility addresses a shortfall for a high demand activity, currently there are no MTB facilities or trails set aside for public use in the Hornsby Shire. Authorised MTB trail facilities would relieve the pressure on some walking tracks.

Models of sustainable MTB trail design, construction and maintenance are well established in other parts of Australia.

**Fulfilling our community's vision in planning for the future of the Shire**

The URS arose from the extensive community consultation and research that underlies the Hornsby Leisure Strategic Plan. The main aim of the URS is to prepare a strategic approach for the future provision of facilities for unstructured recreation so that the community's needs for a healthy lifestyle are better met.

Consultation undertaken on behalf of the NSW Government in 2004–05 identified a strong community desire for parks and trails as places to enjoy a healthy, outdoor lifestyle and, as such, the current emphasis for the Metropolitan Greenspace Program is to encourage Councils to enter into partnerships to develop regional trails projects across their local government boundaries.

**Supporting our diverse economy**

The provision of recreation facilities enhances the quality of life for a community and this is often a prime consideration for new businesses wishing to relocate. Development of new facilities involves capital investment and subsequent engagement of suppliers and contractors. As discussed in the report MTB facilities have the potential for significant tourist influx.

**Maintaining sound corporate and financial management**

Further work will be required in the preparation of detailed capital cost estimates and maintenance budgets. Facilities will only be provided when sufficient funds and sufficient community support has been secured for the long term.

**Other Sustainability Considerations**

An MTB facility proposal will seek to integrate social, economic and environmental considerations.

**RESPONSIBLE OFFICER**

The responsible officer is Council's Bushland Management Operation Coordinator, Mr Anthony Newling, who can be contacted on telephone 9847 6839 between 9.00am and 5.00pm, Monday to Friday.

**RECOMMENDATION**

THAT Council:

1. Note progress of the endorsed recommendations from Executive Manager's Report No. EN58/09.
2. Provide in-principle support for the establishment of a mountain bike facility within the Hornsby Park/Old Mans Valley area subject to funding.
3. Not proceed with the proposal by World Trail for a Hornsby to Westleigh Mountain Bike Track due to environmental sensitivities.

ROBERT STEPHENS  
Executive Manager  
Environment Division

**Attachments:**

1. Mountain Bike Concept Map

File Reference: F2008/00693  
Document Number: D01439637

**13 ADOPTION OF THE 2009/10 ESTUARY MANAGEMENT PROGRAM ANNUAL REPORT**

**EXECUTIVE SUMMARY**

Council's Water Catchments Team is responsible for the implementation of catchment remediation initiatives, total water cycle management and the estuary program. Hornsby Shire Council's Estuary Management Program provides an integrated and strategic approach to the management of estuarine assets. These assets are protected through the implementation of strategies contained within the Lower Hawkesbury Estuary Management Plan (2008) (the Plan), which was adopted by Council on 11 March 2009. This Plan has also been adopted by Gosford City Council, to ensure a consistent local government approach to estuary management within the lower Hawkesbury estuary. The implementation of this Plan is overseen by the Lower Hawkesbury Estuary Management Committee, which is currently chaired by Councillor Wendy McMurdo.

The Estuary Management Annual Report for 2009/10 provides summary information on the implementation of Hornsby Shire Council's estuary management program (Table 1). The complete draft report is available at Council's estuary website ([www.estuary.hornsby.nsw.gov.au](http://www.estuary.hornsby.nsw.gov.au)). Implementation of the estuary program requires support from other branches within Council such as Bushland and Biodiversity, Parks, Environmental Health and Sustainability, Waste, Town Planning Services and Works.

During 2009-2010 the NSW State government introduced the Coastal reform package to better enable local councils to deal with the challenges of coastal erosion. These reforms include amendments to legislation and new coastal zone management guidelines. As part of the Estuary Management program, the Water Catchments Team and Town Planning Services have been considering the implications of these reforms upon planning processes and priorities for natural resource management within Hornsby Shire Council.

**Table 1: Projects undertaken during 2009/10**

Category	Project Description
Planning	Comprehensive Local Environment Plan
	Land capability assessment of Hornsby Shire to determine population impacts on estuarine assets
	Recreation needs analysis for estuarine areas
Compliance	Riverside settlement onsite wastewater management inspections
Education	Real time salinity and temperature maps
	New boating maps with seagrass beds identified
	Living on the Edge brochure produced
	Estuary Open Day
	Brooklyn Harbour Seagrass Marker Buoys
	Guided bushwalk program

Category	Project Description
Research	Saltmarsh monitoring
	Brooklyn and Dangar Island Sewage Treatment Plant monitoring
	Estuarine health monitoring
	Harmful Algal Bloom monitoring
	Remote water quality monitoring buoys
	QX disease and the oyster industry
	Estuarine habitat and geomorphic characterisation project
Capital Works	Foreshore rehabilitation
	Crosslands sustainable toilet facility
	Kangaroo Point Vessel Pump out Facility
	Removal of derelict boats from Sandbrook Inlet

Funding for these projects has been sourced principally from the Department of Environment, Climate Change and Water, the Hawkesbury Nepean Catchment Management Authority, CSIRO, NSW Industry and Investment and Hornsby Shire Council. The funding received for the 2009-2010 financial year is described in Table 2. In summary, \$355,240 was received from State government departments.

**Table 2 External grant funding received during 2009-2010**

Organisation	Project Title	Funding Received (\$)
Dept. Environment, Climate Change and Water	Impacts of climate change on key estuarine habitats within the lower Hawkesbury estuary	100,450
Dept. Environment, Climate Change and Water	Estuarine health monitoring within the lower Hawkesbury estuary	50,290
Dept. Environment, Climate Change and Water	Sustainable on-site sewage management system on the lower Hawkesbury river	104,500
Waste Services Improvement Program	Parsley Bay sea wall improvement program	100,000
	<b>Total</b>	<b>355,240</b>

During 2009-2010 Hornsby Shire Council's estuary management program maintained a high community profile (Figure 1:) and presence. The program is greatly supported by partnerships with local marinas, community bush regeneration groups, progress associations, commercial fishers and Broken Bay Oysters.



**Figure 1:** High profile projects undertaken include the removal of derelict boats from Sandbrook Inlet



## **PURPOSE/OBJECTIVE**

The purpose of this report is to present to Council the 2009/10 Annual Report for the Hawkesbury Estuary Management Program.

## **DISCUSSION**

For further information about the Estuary Management Program and project details please refer Councils' estuary management website ([www.estuary.nsw.gov.au](http://www.estuary.nsw.gov.au)).

## **BUDGET**

There are no budget implications for the presentation of this report.

## **POLICY**

The Hawkesbury Estuary Management Program is implemented according the required actions contained within the adopted Lower Hawkesbury Estuary Plan (11/03/2009, EN 7/09, D01199976).

## **CONSULTATION**

Consultation occurred with members of the Water Catchments, Bushland and Biodiversity and Town Planning teams to complete project descriptions and budget details as required

within the annual report.

### **TRIPLE BOTTOM LINE SUMMARY**

Triple Bottom Line attempts to improve Council decisions by being more accountable and transparent on social, environmental and economic factors. It does this by reporting upon Council's strategic themes.

#### **Working with our community**

This report provides readily accessible information about Councils Estuary Management Program to the Community. The adopted report is made available to the community via Councils' estuary website ([www.estuary.hornsby.nsw.gov.au](http://www.estuary.hornsby.nsw.gov.au))

#### **Conserving our natural environment**

This report provides information on activities that have been undertaken to protect estuarine assets and reduce the risk of further degradation of these assets within the Shire.

#### **Contributing to community development through sustainable facilities and services**

This report provides details on projects that have been implemented to enhance the amenity and use of public open spaces within the vicinity of the estuary.

#### **Fulfilling our community's vision in planning for the future of the Shire**

Enacting the requirements of the Lower Hawkesbury Estuary Management Plan fulfils Councils' strategic objectives for estuary management within the Shire.

#### **Supporting our diverse economy**

This report provides details on actions that have been undertaken to protect estuarine assets, specifically water quality, visual amenity and recreational pursuits. Maintenance of these assets provides direct support to estuarine industries (for example, commercial fishing and aquaculture), tourism and local community well being.

#### **Maintaining sound corporate and financial management**

This report details actions that have been implemented during the 2009/10 financial year. All projects undertaken have been financed with predominately 50/50 contributions from external sources.

### **RESPONSIBLE OFFICER**

Mr Peter Coad, Team Leader- Estuary Management, Water Catchments, 8.30am – 5pm, Monday to Friday, telephone 9847 6766 or email [pcoad@hornsby.nsw.gov.au](mailto:pcoad@hornsby.nsw.gov.au).

### **RECOMMENDATION**

THAT Council adopt the 2009/10 Estuary Management Program Annual Report.

ROBERT STEPHENS  
Executive Manager  
Environment Division

**Attachments:**

There are no attachments for this report.

File Reference: F2004/06902

Document Number: D01477442

## 14 SALE OF SURPLUS LOCAL OPEN SPACE LAND

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### EXECUTIVE SUMMARY

Council has a comprehensive and sound strategic planning framework for the development, management and operation of its open space resources and has taken a proactive asset management approach since the late 1990s.

Current asset management plans and other investigations have identified the need to replace worn out assets that have reached the end of their useful life, and to upgrade existing facilities such as amenity buildings to accommodate changing code requirements and community and club expectations. It has been estimated that over the next several years approximately \$10 million is required to meet the replacement of worn out open space assets and upgrade existing open space facilities to meet community expectations. There is also a range of unmet demands for unstructured recreation facilities for which no funds have been set aside. The cost of the provision of additional unstructured recreation facilities has been estimated at about \$8 million.

It is an opportune time to implement the proposal to engage with the community about the management of certain open space land and to commence the implementation plan to dispose of a small number of small **local** open space land assets. These parcels of land are underutilised, not servicing the needs of the community and, as a consequence, are considered surplus to the community's requirements.

It is estimated that the process would take 18 months or more before any proceeds would be realised and available to implement an Asset Investment Plan. A critical component of the consultation process will involve a determination of the underlying principles for expenditure of any money generated from any sales. There are basically two options available:

1. Spend funds locally to support infrastructure improvements.
2. Address major infrastructure replacements (e.g. Hornsby Pool) irrespective of the source of the money

Research undertaken suggests that funds generated from local land sales need to be spent on improvements in the local area in order to obtain community support.

### PURPOSE/OBJECTIVE

The purpose of this report is to provide information on the assessment of open space assets, the asset investment plan and the community consultation strategy and to seek approval to proceed with the overall implementation plan.

### DISCUSSION

Council's current open space asset management plans have identified significant investment is required to meet the cost of replacing worn out infrastructure and expansion/upgrading of old but functional infrastructure. The cost of such works is estimated to be in excess of \$18 million.

The underlying basis for consideration of the disposal of open space parcels is essentially one of responsible asset management. The need to better manage Council's assets, the cost of retaining them and the need to best match them to community needs has come into sharper focus due to Council's inability to obtain the Minister for Local Government's consent for an infrastructure levy.

Council has taken an asset management approach to open space lands and facilities since the late 1990s. As part of this approach, the disposal of open space assets has been considered by Council since 2001.

A report to Council on 10 October 2001, report number EN57/01 stated the following:

*“A major part of the investigation needed relates to community land, which, due to its size, shape or location, may be unsuitable for its intended purpose as a public reserve, or which may be surplus to requirements. Certain land of this nature, of residential lot size may be suitable for reclassification, and possible sale, with the proceeds invested to provide a revenue stream to fund asset management works in remaining parks and therefore move towards financial sustainability.”*

As Council has a responsibility to ensure that its resources are effectively and efficiently used to benefit the broader community, the retention of surplus assets is an inefficient use of Council's scarce resources. It ties up capital and increases Council's administrative and maintenance costs. This reduces funds available for Council to maintain and improve those assets which are well used and serving the needs of the community.

Council has a comprehensive and sound strategic planning framework for the development, management and operation of its open space resources. Key issues and specific trends identified through the planning framework include:

- Council has a clear open space planning framework that guides the development and management of a range of open space settings and well as identifying existing gaps and shortfalls
- Council has a focus on asset management and ensuring that funds expended on open space are meeting identified needs
- There is an identified funding gap to renew critical open space assets. If no additional funding is forthcoming, assets will deteriorate further
- Council has a number of projects and strategies that have no identified funding source at present
- Council has endorsed policies for the disposal of lands and the subsequent use of the funding

### **Assessment of Open Space Assets**

Council has over the last couple of years examined the suitability of its open space assets, primarily its small local park assets. This has resulted in the preparation of an Asset Investment Plan and Community Consultation Strategy which provide a clear rationale and guidance for the potential disposal and the subsequent use of funds to benefit the community.

These reports have assessed 45 open space parcels to determine each parcel's suitability for reuse and potential disposal.

The Open Space Parcel Assessment system allowed both qualitative and quantitative data to be analysed, weighted and scored. Two assessment tables were produced. The Assessment Summary Report provides a snapshot overview of all of the listed parcels and overall scores and the Open Space Parcel Scorecard lists the assessment criteria in detail and provides a simple method of scoring each open space parcel to determine its potential for disposal against the criteria.

The assessment criteria included:

- access
- access to services
- bushfire
- degree of constraints caused by services traversing the open space parcel
- flora and fauna constraints
- flood/inundation/drainage, geological conditions
- indigenous and local heritage items
- noise
- likelihood of contamination
- impact of title issues
- likelihood of landslip
- slope
- estimated realisation value

The key findings of the assessment of open space assets are as follows:

1. Almost all of the parcels are located in low density residential areas.
2. 26 of the 45 parcels are readily saleable.
3. Council owns 24 of the 26 parcels (two are Crown Land).
4. The gross realisation should be in excess of \$10 million dollars.
5. 11 of the 45 parcels have limited market appeal and value and these are only likely to have a nominal value to one or more adjoining owners.
6. Eight of the 45 parcels are not suitable for sale due to significant issues such as heritage, flora and fauna etc.
7. The rationalisation process is likely to be 18 months to two years in duration.

### **Asset Investment Plan**

The community generally places a high value on public open space and as such any proposed disposal must have a clear strategic planning base, disposal strategy and comprehensive community engagement process.

To determine the projects to be completed with the funds a set of guidelines have been determined to support the over-arching principles. These guidelines include:

- **Localised development:**  
Where possible, the funds should be distributed within the catchment area of the disposal parcel of land.
- **Asset management:**  
Funds should be directed towards asset management projects that aim to improve the efficiency and effectiveness of other open space settings.

- **Open space priority areas:**  
The Parks and Landscape Branch has identified the following high priority class of assets where renewals are required:
  - Replacement of sportsground surfaces
  - Playground renewals
  - Renewal of fencing
  - Renewal of lighting
- **Unstructured recreation activities:**  
Funds would enable implementation of the Unstructured Recreation Strategy and provide a diversity of potential projects for development
- **Community and stakeholder engagement:**  
Engagement should be proactive and comprehensive to help direct the finalisation of the AIP and provide Council with informed feedback on the level of community support for the proposals

### **Community Consultation Plan**

Consulting with the community is critical to the overall process. A Stakeholder Engagement Plan (SEP) is required to guide the consultation associated with the project. Community engagement involves the active exchange of information and viewpoints between Council and its stakeholders. Community engagement seeks to actively draw stakeholders into the activities of the organisation.

The key message of the consultation process is to ensure the community and stakeholders understand the process as part of responsible asset management and recreation planning, rather than the sale of public open space.

The consultation approach will have three distinct phases:

1. Education and awareness
2. Consultation process
3. Consultation assessment and evaluation

The key features of this approach are that it is proactive, structured and diverse.

The timetable for community consultation from commencement is expected to be twelve weeks from commencement.

### **Implementation Plan**

The discussion above has provided detail on the main elements of the proposal. The implementation plan itself is quite specific and has 11 steps:

1. Internal consultation with other teams in Council (Works, Environment, Property, Statutory Planning, Strategic Planning, Subdivision Engineer)
2. Review of Disposal of Land Policy (DLP)
3. Review Draft Asset Investment Plan
4. AIP and DLP approved by Councillors
5. Prepare draft LEP

6. Implementation of Community Consultation Strategy (12 weeks) which makes the draft AIP, DLP and LEP public
7. Finalise AIP, DLP, and LEP incorporating any community feedback
8. Advise NSW Lands Department that 2 parcels have been identified as surplus to Council's needs
9. Commence predisposal activities including:
  - Engagement of a specialist project manager to manage the pre disposal process if required
  - Detailed research into history of parcel acquisition
  - Gazettal of LEP rezone the surplus parcels and reclassification of land
  - Once parcels have been reclassified, removal of restrictive covenants on title
  - Creation of subdivisions, if required, to protect pedestrian walkways, fire trails or other areas that need to be retained for the community
  - Relocation of existing infrastructure, if necessary
  - Undertaking of value adding activities where required
  - Development of a disposal plan
10. Once all predisposal activities are completed it will be necessary to implement the disposal plan and commence disposal activities, including:
  - Engagement of a specialist project manager to manage the disposal process if required
  - Engagement of a solicitor and preparation of contracts for sale
  - Engagement of a licensed valuer to value each parcel
  - Engagement of a surveyor to conduct an identification survey on each lot
  - Engagement of sales agents
  - Marketing of the lots
  - Project finalisation reports detailing outcome of the project, performance of all specialists engaged, lessons learned, governance or probity issues and opportunities for improvement on future projects.

## **BUDGET**

It is estimated that the total disposal costs will be in the order of 10% of the gross realisation. Based on the estimate of \$11.6m the costs would be in the order of \$1.16m, leaving a net gain of \$10m if all were accepted by the community for disposal.

The analysis of Council's open space assets suggests that an additional \$3 million is required to replace critical open space assets over the next several years. To date this has been met through loan borrowings.

In addition to asset renewal, there are pressures to upgrade or build new facilities to accommodate increased visitation levels and to meet new standards at some sportsgrounds. Currently works totalling in excess of \$7.5m have been identified to build new amenities buildings or extensions at some grounds. In addition the provision of a range of unstructured recreation projects has been estimated at about \$8 million.

Sufficient funds would not be realised from the sale of open space parcels identified in this report to address open space requirements listed above and meet the cost of the projects listed for funding in the infrastructure levy such as the replacement of Hornsby pool, the development of a new open space recreation facility at Old Mans Valley, the Hornsby



pedestrian overbridge and many of the Ward based projects listed in the rate variation application.

Funding of the process and many of the identified open space improvements listed in this report can be derived from the sale of surplus small local open space parcels.

### **POLICY**

Council has a Disposal of Land policy which is proposed to be reviewed as part of the process. The disposal of surplus open space land is part of Council's adopted Leisure Strategic Plan (2002) and is mentioned in generic Plans of Management covering community land.

### **CONSULTATION**

The Parks and Landscape Team has briefed Councillors and consulted with the Bushland and Biodiversity Team and the Manager Property Development. The implementation plan recommends consultation and involvement of other teams within Council as well as a robust consultation process with the affected community.

### **TRIPLE BOTTOM LINE SUMMARY**

Triple Bottom Line (TBL) attempts to improve Council decisions by being more accountable and transparent on social, environmental and economic factors. It does this by reporting upon Council's strategic themes.

#### **Working with our community**

A stakeholder engagement plan has been prepared to ensure the community are actively involved in the process.

#### **Conserving our natural environment**

Selected criteria were used in the Open Space Parcel Scorecard that would ensure all relevant data was taken into consideration. Criteria included, but were not limited to, data such as bushfire, flora and fauna, geological conditions, indigenous and local heritage issues and likelihood of contamination.

#### **Contributing to community development through sustainable facilities and services**

The parcels that have been identified for potential disposal generally have limited usage and capacity for development to meet the recreational needs of the surrounding community and stakeholders.

#### **Fulfilling our community's vision in planning for the future of the Shire**

The process is part of Council's overall asset management strategy which includes acquisition, improvement, maintenance and disposal when the asset no longer is required or meets the need of the community.

#### **Supporting our diverse economy**

The implementation of the AIP would provide additional work for local suppliers and contractors.

#### **Maintaining sound corporate and financial management**

The proposal will ensure that Council's responsibility to ensure its resources are effectively and efficiently used to benefit the community.

**Other Sustainability Considerations**

Not applicable.

**RESPONSIBLE OFFICER**

The responsible officer for this report is Dana Spence, Parks Asset Coordinator, telephone 9847 6896, hours 8.30 am to 5.00 pm, Monday to Friday.

**RECOMMENDATION**

THAT Council:

1. Provide in-principle support to the potential sale of surplus local open space land within the Hornsby Local Government Area to address open space asset replacements and upgrades generally in accordance with the principles and process described in Executive Manager's Report No. EN41/10.
2. Authorise the engagement of a suitable project manager to commence predisposal activities and additionally manage the disposal activities in accordance with the steps outlined in Executive Manager's Report No. EN41/10.
3. Authorise the appointment of a suitable consultant to implement the Stakeholder Engagement Plan referred to in Executive Manager's Report No. EN41/10.

ROBERT STEPHENS  
Executive Manager  
Environment Division

**Attachments:**

There are no attachments for this report.

File Reference: F2008/00680

Document Number: D01477670

## 15 REPORT ON FOOD INSPECTION PROGRAM FOR 2009-2010

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### EXECUTIVE SUMMARY

The NSW Food Authority has amended its requirements and councils are now required to inspect at least 80% of high and medium risk category businesses as opposed to the previous 90% requirement. Councils must provide an annual activities report for the twelve month period.

Over 93% of high and medium risk food businesses had one routine inspection during the 2009-2010 financial year. The majority of identified non-compliance issues were rectified during the reporting period. There are a few premises, inspected late in the reporting period, where ongoing works were still required to achieve compliance.

### PURPOSE/OBJECTIVE

To provide information and results for Hornsby Shire Council's Food Business Inspection Program for the 2009/2010 financial year.

### DISCUSSION

Under partnership agreement with the NSW Food Authority, Council as a Category B Enforcement Agency must achieve an 80% inspection rate of high and medium risk businesses at least once per year. The NSW Food Authority has changed the reporting requirements and councils now must only provide an annual activities report for the twelve months reporting period.

A satisfactory inspection is where there may be minor issues but no reinspection or other intervention is warranted. Following any noncompliance with a critical food handling practice, one or more reinspections or interventions must be undertaken until a satisfactory result is achieved.

### **Results**

The results for 2009/2010 are as follows:

<b>Food Businesses Requiring Inspection</b>	<b>2009/10</b>
Number of high risk businesses	350
Number of medium risk businesses	125
<b>TOTAL</b>	<b>475</b>

<b>Inspection Results</b>	<b>2009/10</b>
Number of primary inspections conducted	444
Number of inspections requiring reinspection	244
% of those that pass at first reinspection	77%
% of those reinspected pass second reinspection	62.5%

During the above reporting period Council identified a total of 475 medium and high risk businesses which required at least one initial inspection.

### **Warning letters**

A graduated enforcement approach is undertaken to assist in achieving compliance with the Food Standards Code. Warning letters are sent when there are any identified issues of non-compliance (both critical and noncritical). The letter outlines the breach that has been identified and provides a list of actions and required timeframe to ensure compliance.

Number of Warning Letters issued	431
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### **Improvement Notices**

An Improvement Notice is issued when a critical risk is identified and a range of actions are required to be undertaken within a short period of time. The Improvement Notice incurs an administration fee of \$330 (including one reinspection) in addition to the inspection fee, annual administration fee and any penalty infringement notices.

Number of Improvement Notices issued	14
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### **Seizure Notices**

A Seizure Notice is issued to minimise immediate risk from food and/or equipment.

Number of Seizures	6
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### **Penalty Infringement Notices**

Fines are issued for breaches of food safety standards, often as a consequence of previously identified non-compliance.

Number of Penalty Infringement Notices (Fines)	20
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### **BUDGET**

There are no immediate budget implications arising from this report.

Under the Fees and Charges 2010/11, Council has elected to charge all high and medium risk food businesses an annual administration fee of \$250 for a small premise, \$500 for a medium premise and \$2,000 for a large premise. The sizes are based on the number of full time

equivalent food handlers employed at the business. Additionally, businesses are charged an inspection fee of \$77 for small, \$110 for medium and \$154 for large food businesses.

Since these fees were adopted the maximum administration fees have been increased under the *Food Regulation 2010* to \$390 for small, \$800 for medium and \$3,500 for a large business.

### **POLICY**

There are no policy implications arising from this Report.

### **CONSULTATION**

Consultation and training is ongoing with the NSW Food Authority and other councils through attendance at the Northern Sydney Regional Food Group and the State Food Group Council Meetings.

### **TRIPLE BOTTOM LINE SUMMARY**

Triple Bottom Line is a framework for improving Council decisions by ensuring accountability and transparency on social, environmental and economic factors. It does this by reporting upon Council's strategic themes.

As this report simply provides Council with information and does not propose any actions which require a sustainability assessment, a Triple Bottom Line assessment is not required.

### **RESPONSIBLE OFFICER**

The responsible officer is Sue Moyes, Sustainable Health Coordinator, telephone 9847 6816, hours 8.30 am – 5.00 pm, Monday to Friday.

### **RECOMMENDATION**

THAT the contents of Executive Manager's Report No. EN42/10 be received and noted.

ROBERT STEPHENS  
Executive Manager  
Environment Division

#### **Attachments:**

There are no attachments for this report.

File Reference: F2004/08373-03  
Document Number: D01483054

## 16 PROPOSED PARRAMATTA TO HORNSBY REGIONAL BUS ROUTE (M60)

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### **EXECUTIVE SUMMARY**

In July 2010, the NSW Premier announced the expansion of the Metrobus network across Sydney, with the number of routes increasing from five to 13 routes. As part of the expansion of the Metrobus network, HillsBus (on behalf of Transport NSW) will be introducing the new Metrobus Route M60 Hornsby to Parramatta via Castle Hill in February 2011.

The new service will offer higher frequency services than currently available, with a view to increasing public transport patronage. To meet the improved service requirements, additional bus stops will be required and some existing bus stops modified or relocated. The proposal has been reviewed and the new service is recommended for endorsement, subject to there being no cost implications to Council.

### **PURPOSE/OBJECTIVE**

This report advises Council of the Metrobus M60 Route proposal and the cost implications.

### **DISCUSSION**

#### The Metrobus Network

The Metrobus Network is expanding to 13 routes, providing a total of 8,000 more bus services across Sydney.

Passengers want more frequent buses and more direct services, and the Metrobus Network will deliver this by expanding to other regions of Sydney, bringing them a high frequency, comfortable and affordable alternative to regular bus routes and train services.

The expanded Metrobus network will reach as far as Parramatta, Bankstown and Liverpool in the west, Hornsby in the north, Bondi Junction and Randwick in the east, Hurstville and Sutherland to the south of Sydney's CBD.

Key features for the Metrobus Network include:

- 13 routes operating seven days a week
- High frequency - every 10 minutes during peak times, every 15 minutes weekday off peak and every 20 minutes evenings and weekends
- Safe and comfortable low floor fully accessible air-conditioned buses
- Wheelchair and pram friendly

- Easy to use - provide on-board announcements about the next stop and distinctive bus stop plinths to promote the route.

All Metrobus routes operate on major corridors, connecting more people with where they work, shop, study and have fun.

### Proposed Route

Specifically, from Hornsby, Route M60 will run on the following roads, with those roads denoted in italics being local roads for which Hornsby Shire Council is responsible:

Hornsby station  
Left Pacific Highway  
Pennant Hills Road  
Right Boundary Road  
*Right Francis Greenway Drive*  
*Left Macquarie Drive*  
*Left Shepherds Drive*  
*County Drive*  
Right Castle Hill Road  
Left Old Northern Road  
Left Windsor Road  
Church Street  
Left George Street  
Right Smith Street  
Station Street  
Left into Parramatta Interchange.

The M60 Route is being intentionally planned as a trunk, all-purpose service to cater for a variety of travel needs linking important destinations to maximise its attractiveness and usage. To be successful, the route will need to attract boardings along its length day and night, seven days per week.

Representatives from Council, the Roads and Traffic Authority (RTA), Westbus and Sydney Buses participated in a trial run with a 12.5 metre bus over the route on Monday, 16 August 2010.

### Council's Role

Council's role will be to manage the installation, removal or alteration of about 12 bus stops on local roads as required for the new service via referral to the Local Traffic Committee after the project manager consults with affected property owners. The RTA is responsible for bus stop management on state classified roads.

### Cost implications

On the 16 August 2010 representatives from Council, the RTA, Hillsbus and Sydney Buses surveyed the proposed route in a 12.5 metre bus that will be used on the route. In an email received 25 August 2010, the Regional Traffic & Services Manager-Eastern Region, Sydney Buses advised that -

*1. I will propose to CDC (the bus operator) that the paragraph below appear on the final submission to Hornsby Council.*

*"The path design and stopping pattern for the Metrobus route M60 has taken into consideration all traffic calming devices that are already in place within the Hornsby LGA, such as roundabouts and kerb extensions and also the proposed kerb nib program planned for County Drive at Cherrybrook."*

*2. I have for forwarded this information request to Transport NSW as Sydney Buses are not in a position to answer any questions in regard to financial arrangements. I will forward the reply from Transport NSW to you once I receive one.*

*3. Photo of Plinth attached (it is a factory photo as they are currently being built). The difference to any existing plinths is that the base is red, existing ones are blue, to identify a Metrobus stop.*

Council will charge the cost for any bus zone signage to the RTA Local Traffic Facilities Block Grant meaning there will be no direct cost to Council for Bus Zone or other parking signage.

The cost of the bus stop plinths will be born by the State Government. Attachment 1 shows a plinth under construction in the plant.

The Commonwealth Disability Standards for Accessible Public Transport came into effect in October 2002. The Act requires all new bus stops to accessible in accordance with the Act, and 55% of all bus stops to be accessible by 2012. Currently Council is auditing the approximately 1200 existing bus stops throughout the Shire to assess which bus stops require upgrading to comply with the Act, with a view to approaching the State government with a program of works for funding.

The Act also requires all new bus stops to be accessible. As the Metrobus route is a regional route, it is considered to be the responsibility of the State to meet the cost of installing new accessible bus stops. Such work may include concrete slabs, tactile markings and any ramps or connections to existing footpaths. The new bus stop locations will be subject to consultation with affected residents as well as the concurrence of the Local Traffic Committee.

Council will consider upgrading existing bus stops on all roads along the Metrobus Route to accessible standards in accordance with the priority that will be determined when the Shire wide bus stop audit is complete. Similarly, any requests for bus shelters or seats at existing stops will be prioritised by Council.

Bus passengers have requested pedestrian crossing facilities at existing bus stop locations on Boundary Road between Loftus Road and Francis Greenway Drive on a number of occasions. The number of requests is likely to increase as patronage in this area grows. This is a matter for the RTA to address as Boundary Road is a State Classified Road.

It should be noted that the project manager for the Metrobus service is satisfied that the route meets bus access requirements, including the existing roundabouts in Shepherds Drive, Macquarie Drive and Francis Greenway Drive, and also agrees with any future median kerb treatment in County Drive, should Council decide to proceed with same.

## **BUDGET**

There are no budget implications if the recommendation of this report is adopted.



**POLICY**

There are no policy implications.

**CONSULTATION**

The Project Manager (Sydney Buses) has consulted with the local bus operator (Comfort Delgro Cabcharge), the Roads and Traffic Authority and Council's Traffic and Road Safety Branch. Further consultation with affected property owners is required before the new bus stop locations can be referred to the Local Traffic Committee for a recommendation.

**TRIPLE BOTTOM LINE SUMMARY**

Triple Bottom Line is a framework for improving Council decisions by ensuring accountability and transparency on social, environmental and economic factors. It does this by reporting upon Council's strategic themes.

As this report simply provides Council with information and does not propose any actions which require a sustainability assessment, no Triple Bottom Line considerations apply.

**RESPONSIBLE OFFICER**

The responsible officer for this report is the Manager Traffic and Road Safety, Mr Lawrence Nagy, telephone 9847 6524.

**RECOMMENDATION**

THAT Council:

1. Note that the state government proposes to commence a high frequency regional bus service, the Metrobus M60 Route, between Parramatta and Hornsby, in February 2011.
2. Note that new or relocated bus stops will be shortly referred to the Local Traffic Committee for a recommendation, following completion of public consultation with affected property owners.
3. Advise Transport NSW of its support for the proposal subject to there being no cost implications to Council as a result of the new service, and that Transport NSW agrees to provide or fund new or relocated bus stops in accordance with the Commonwealth Disability Standards for Accessible Public Transport.
4. Request Transport NSW to raise with the RTA, Council's concerns regarding safe access for passengers on Boundary Road, and actively seek a commitment from the RTA to improve conditions for pedestrians along this road.

MAXWELL WOODWARD  
Executive Manager  
Works Division

**Attachments:**

1. Metrobus Plinth Prototype

File Reference: F2004/08742  
Document Number: D01477866

## 17 TENDER T19/2010: SUPPLY AND LAY ASPHALTIC CONCRETE

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### **EXECUTIVE SUMMARY**

The proposed contract for Supply and Lay Asphaltic Concrete is required to service the needs of Council's Works Division in carrying out road and carpark construction and maintenance.

Council does not have the specialist personnel and equipment required for this work and therefore open tenders have recently been called in accordance with the Local Government Act. The proposed contract will be for 12 months duration with an option to extend the contract for a further 12 months period. Downer EDI Works Pty Ltd. have been recommended for acceptance for this tender.

### **PURPOSE/OBJECTIVE**

This report provides a recommendation for the acceptance of Tender No.T19/2010: Supply and lay asphaltic concrete.

### **DISCUSSION**

The Tender No. T19/2010 is a Schedule of Rates tender. A summary of tenders, together with full evaluation details are in folder F2010/00379. Excepting this report, the summary and details of the tenders received are to be treated as confidential in accordance with the Local Government Act.

Nine (9) tenders were received for Tender No. T19/2010 from the following companies.

- Bitupave Ltd trading as Boral Asphalt
- Borthwick and Pengilly Asphalts Pty Ltd
- Downer EDI Works Pty Ltd
- Fullton Hogan Pty Ltd
- J & E Excavations and Plant Hire Pty Ltd
- MJJ Group Pty Ltd trading as National Road Services
- Ozpave (Aust) Pty Ltd
- State Asphalt Services Pty Ltd
- Tropic Asphalts Pty Ltd

The tenders were evaluated based on the stipulated criteria, namely:-

- Price
- Past performance and experience in similar types of works
- Plant and equipment resources
- Labour and sub-contract resources
- Material type and supply sources
- Traffic control systems
- Quality assurance
- Occupational health and safety systems

- Sustainability

The tendered Schedule of Rates were evaluated for each tender by applying them to estimated annual quantities for the main items of work that would normally be expected for the proposed contract. The other criteria were assessed based on information submitted with each tender, information gained from the tenderers' nominated referees and past performance with previous Hornsby Shire Council works where applicable.

The results of the evaluation indicate that the most advantageous tender is from Downer EDI Works Pty Ltd.

The total estimated work under this contract is in the order of \$2,000,000 per annum. The attached Confidential Memo WD D&C 58/2010 provides the evaluated value of each tender for a period of 12 months and a summary of the evaluation. Full details of the tender evaluation are on folder F2010/00379.

### **BUDGET**

There are no budgetary implications.

### **POLICY**

There are no policy implications.

### **CONSULTATION**

The tender has been evaluated in conjunction with the main users of the proposed contract.

### **TRIPLE BOTTOM LINE SUMMARY**

#### **Working with our Community**

The community was informed of the tender through advertising in the Sydney Morning Herald and the Advocate newspapers.

#### **Conserving our natural environment**

The surfacing and patching of road pavements with asphalt permits the use of some recycled material in the asphalt mix design. The materials excavated are recycled where possible.

The processes on site are controlled by sediment and erosion minimisation measures. Further, controls are clearly specified in the contract against environmentally sensitive areas such as noise, smoke and dust.

#### **Contributing to community development through sustainable facilities and services**

Rehabilitation of road pavements will have a positive effect on the amenity of the area and provides comfort and safety for the travelling public. Pavement management systems are used to evaluate the existing roads network and a pavement re-surfacing program is prepared annually. This is a systematic approach to rehabilitation of Council's roads to make them a sustainable facility.

#### **Fulfilling our community's vision in planning for the future of the Shire**

The rehabilitation and reconstruction of the road pavements will help in conserving and enhancing Council's road pavement assets, so that residents and the general public have a good road network to support their transport needs.

**Supporting our diverse economy**

Maintenance of a sustainable road network is essential in supporting the diverse economy of the Shire.

**Maintaining sound corporate financial management**

The cost effective rehabilitation of the road pavement enhances the value of Council's road pavement asset and helps guard against the expensive cost of total reconstruction.

**Other sustainability considerations**

The company's management policy, Quality Assurance, OH&S and Environmental management systems were taken in to consideration in the evaluation of tenders received.

**RESPONSIBLE OFFICER**

For further information, please contact Engineer construction, Mr. Wimal Dasanayake on 98476673.

**RECOMMENDATION**

THAT Council accept the tender of Downer EDI Works Pty Ltd. for all work under Tender No. T19/2010: Supply and Lay Asphaltic Concrete.

MAXWELL WOODWARD  
Executive Manager  
Works Division

**Attachments:**

1. Refer to Confidential Attachment to WK65/10, located in the Confidential Section of Business Paper Confidential Memo WD D&C58/10 (separately circulated to Councillors). - *This attachment should be dealt with in confidential session, under Section 10A (2) (d) of the Local Government Act, 1993. This report contains 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 the council; or (iii) reveal a trade secret.*

File Reference: F2010/00379  
Document Number: D01478866

## 18 TENDER NO. T12/2010 - DESIGN AND CONSTRUCTION MANAGEMENT OF HORNSBY AQUATIC CENTRE

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### EXECUTIVE SUMMARY

Council at its meeting of 17 March 2010 in considering report WK19/10 resolved that:

- “1. Council invite *The Cox Group, Geoff Ninnes Fong & Partners Pty Ltd, Mode Design, Peter Hunt Pty Ltd, Sutera Architects and TompkinsMDA Architects* to tender for the design and construction management of Hornsby Aquatic Centre.
2. *The result of the tender to be reported back to Council”.*

Tenders have been called in accordance with the Local Government Act and it has been recommended that Council accept the tender from Peter Hunt Pty Ltd

### PURPOSE/OBJECTIVE

This report provides a recommendation for Tender No. T12/2010 – Design and Construction Management of Hornsby Aquatic Centre.

### DISCUSSION

Tender No. T12/2010 is a combined Schedule of Rates and Lump Sum tender and a summary of all tenders together with full evaluation details have been placed on file. Excepting this report, the summary and details of the tenders received are to be treated as confidential in accordance with the Local Government Act.

Tenders were received from the following companies:

- The Cox Group
- Mode Design
- Peter Hunt Pty Ltd
- Sutera Architects
- TompkinsMDA Architects

Geoff Ninnes Fong & Partners Pty Ltd declined to make a submission.

The following criteria have been used for the evaluation of the tenders:

- Price
- Past performance and experience (The Tenderer shall present to the Client satisfactory evidence that they have satisfactorily completed projects similar to that required by this contract and provide sample drawings)
- Skills, qualifications, experience and past performance of the proposed personnel for the project team, including sub consultants
- Resources available to deliver the various project components; current commitments of key personnel

- Project methodology and a demonstration of a clear understanding of services to be provided by the successful Tenderer and the required outcomes of the proposed Contract
- Site-Specific Design Solution
- Project Financial Control
- Energy Efficient Design
- Sustainability
- Quality Assurance systems
- Occupational Health and Safety systems
- Financial Capacity

Both the lump sum and schedule of rates prices submitted were evaluated for each tender and also compared against a predetermined estimate of the work. Other criteria were assessed on information submitted with each tender, additional information requested, reference and financial checks, site visits to several aquatic facilities and presentations from three tenderers to the evaluation panel and a further presentation by two tenderers that were shortlisted after the first presentation.

The attached Confidential Memo WD D&C 59/2010 provides the schedule of rates and lump sum prices of each tender and a summary of the evaluation. Full details of the tender evaluation are on file.

From the results of the evaluation it is recommended that Council accept the tender from Peter Hunt Pty Ltd

### **BUDGET**

The funds for the tendered works were to be obtained from the Infrastructure Levy (Special Variation rate application applied for by Council, to commence in 2010/11). Council's application was unsuccessful. Notwithstanding, Council has indicated that this project is of the highest priority, and planning should proceed. As the Hornsby Aquatic Centre may be required to close in 2013, planning for a new facility should proceed without delay, in order to minimise the length of time without a usable facility.

It is proposed that funding for the works in 2010/11 (approximately \$0.6 million) be initially provided from working funds or from a Restricted Asset account, to be determined by Council at a future budget reviews.

### **POLICY**

There are no policy implications.

### **CONSULTATION**

The tender has been evaluated in consultation with the Council's Landscape Coordinator, Mr Kurt Henkel, Manager Design and Construction, Mr Rob Rajca, Manager Aquatic & Recreational Facilities, Mr Scott Hewitt and the Council's Procurement Manager, Robyn McKenzie.

### **TRIPLE BOTTOM LINE SUMMARY**

Working with our Community

The proposal to reconstruct Hornsby Aquatic Centre reflects strongly held community beliefs that such a Centre is required. In recent years, community surveys have placed the reconstruction of Hornsby Aquatic Centre as the highest priority project for Council to undertake. Provision of the Centre will demonstrate that Council is working with the community to provide recreation facilities. The proposal promotes social equity by providing enhanced access to Learn to Swim activities and aqua exercise facilities whilst still providing for existing services. The opportunity will exist for social equity to be promoted in the programs that will be operated at the Centre.

### **Conserving our Natural Environment**

The proposed location is using the same basic footprint that the current pool uses in Hornsby Park. Preparation of a Development Application in accordance with the relevant planning instruments will ensure that any adverse impact on the natural environment is minimised. Initiatives that minimise the quantity of energy to be used by the facility will be considered during the design phase. Where possible, the recovery, reuse and recycling of waste materials will be actively promoted. Water consumption will be minimised by the use of appropriate technology. There will be minimal impact on adjacent bushland or biodiversity.

### **Contributing to Community Development through Sustainable Facilities and Services**

The proposal will require a significant capital investment, and will, depending on the final design, require an ongoing financial commitment from Council. During the concept and preliminary design phases of the project, financial projections will enable Council to determine the long term financial implications of the facilities provided.

### **Fulfilling our Community Needs in Planning for the Future of our Shire**

The proposal will be designed to be consistent with the existing built and natural environment and take into account heritage items in Hornsby Park. Care will be taken to ensure that the character and features of the existing area are maintained. A new facility will provide on site parking, improving safety and access to the facility. The proposal will promote the well-being of the area's current and future population by providing quality leisure opportunities and providing the opportunity for greater participation in Learn to Swim programs.

### **Supporting our Diverse Economy**

The proposal is expected to have a positive effect on economic development in that it will provide additional employment opportunities with numerous part time and casual positions when in operation. Local contractors will have the opportunity to tender for work opportunities that may arise from construction and operation.

### **Maintaining Sound Corporate and Financial Management**

Depending on the final design and facilities provided, the costs of operation of the facility can be covered to a great extent by user fees. The facility is expected to operate at close to cost neutrality.

### **RESPONSIBLE OFFICER**

For further information, please contact the Project Coordinator, Mr. Craig Clendinning, on 9847 6701.



**RECOMMENDATION**

THAT:

1. Council accept the tender of Peter Hunt Pty Ltd for the work detailed in Tender No. T12/2010: Design and Construction Management of Hornsby Aquatic Centre.
2. The price be made public upon formal acceptance of the tender.

MAXWELL WOODWARD  
Executive Manager  
Works Division

**Attachments:**

1. Confidential Memo - WD D&C59/10 - Tender No. 12/2010 - This attachment should be dealt with in confidential session, under Section 10A (2) (d) of the Local Government Act, 1993. This report contains 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 the council; or (iii) reveal a trade secret.

File Reference: F2010/00169  
Document Number: D01485095