



Central Coast Council
Business Paper
Ordinary Council Meeting
26 October 2020





COMMUNITY STRATEGIC PLAN 2018-2028

ONE – CENTRAL COAST IS THE COMMUNITY STRATEGIC PLAN (CSP) FOR THE CENTRAL COAST LOCAL GOVERNMENT AREA

ONE – CENTRAL COAST DEFINES THE COMMUNITY'S VISION AND IS OUR ROADMAP FOR THE FUTURE

ONE – CENTRAL COAST BRINGS TOGETHER EXTENSIVE COMMUNITY FEEDBACK TO SET KEY DIRECTIONS AND PRIORITIES

One - Central Coast will shape and inform Council's business activities, future plans, services and expenditure. Where actions are the responsibility of other organisations, sectors and groups to deliver, Council will work with key partners to advocate on behalf of our community.

Ultimately, every one of us who live on the Central Coast has an opportunity and responsibility to create a sustainable future from which we can all benefit. Working together we can make a difference.

RESPONSIBLE

WE'RE A RESPONSIBLE COUNCIL AND COMMUNITY, COMMITTED TO BUILDING STRONG RELATIONSHIPS AND DELIVERING A GREAT CUSTOMER EXPERIENCE IN ALL OUR INTERACTIONS. We value transparent and meaningful

communication and use community feedback to drive strategic decision making and expenditure, particularly around the delivery of essential infrastructure projects that increase the safety, liveability and sustainability of our region. We're taking a strategic approach to ensure our planning and development processes are sustainable and accessible and are designed to preserve the unique character of the coast.

 **Good governance and great partnerships**

G2 Communicate openly and honestly with the community to build a relationship based on transparency, understanding, trust and respect

There are 5 themes, 12 focus areas and 48 objectives

COMMUNITY STRATEGIC PLAN 2018-2028 FRAMEWORK

All council reports contained within the Business Paper are now aligned to the Community Strategic Plan. Each report will contain a cross reference to a Theme, Focus Area and Objective within the framework of the Plan.



Meeting Notice

**The Ordinary Council Meeting
of Central Coast Council
will be held remotely - online
Monday 26 October 2020 at 6.30 pm,
for the transaction of the business listed below:**

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Jamie Loader
Acting Chief Executive Officer

Item No: 1.1
Title: Disclosures of Interest
Department: Governance



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Trim Reference: F2020/00039 - D14229233

Chapter 14 of the *Local Government Act 1993* ("LG Act") regulates the way in which the councillors and relevant staff of Council conduct themselves to ensure that there is no conflict between their private interests and their public functions.

Section 451 of the LG Act states:

- (1) *A councillor or a member of a council committee who has a 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.*
- (2) *The councillor or member 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, or*
 - (b) *at any time during which the council or committee is voting on any question in relation to the matter.*
- (3) *For the removal of doubt, a councillor or a member of a council committee is not prevented by this section from being present at and taking part in a meeting at which a matter is being considered, or from voting on the matter, merely because the councillor or member has an interest in the matter of a kind referred to in section 448.*
- (4) *Subsections (1) and (2) do not apply to a councillor who has a pecuniary interest in a matter that is being considered at a meeting, if:*
 - (a) *the matter is a proposal relating to:*
 - (i) *the making of a principal environmental planning instrument applying to the whole or a significant part of the council's area, or*
 - (ii) *the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant part of the council's area, and*
 - (a1) *the pecuniary interest arises only because of an interest of the councillor in the councillor's principal place of residence or an interest of another person*

1.1 Disclosures of Interest (contd)

(whose interests are relevant under section 443) in that person's principal place of residence, and

- (b) the councillor made a special disclosure under this section in relation to the interest before the commencement of the meeting.*

- (5) The special disclosure of the pecuniary interest must, as soon as practicable after the disclosure is made, be laid on the table at a meeting of the council and must:*
 - (a) be in the form prescribed by the regulations, and*
 - (b) contain the information required by the regulations.*

Further, the Code of Conduct adopted by Council applies to all councillors and staff. The Code relevantly provides that if a councillor or staff have a non-pecuniary conflict of interest, the nature of the conflict must be disclosed as well as providing for a number of ways in which a non-pecuniary conflicts of interests might be managed.

Recommendation

That Council and staff now disclose any conflicts of interest in matters under consideration by Council at this meeting.

Item No: 1.2
Title: Confirmation of Minutes of Previous Meeting
Department: Governance

26 October 2020 Ordinary Council Meeting

Trim Reference: F2020/00039 - D14229247



Summary

Confirmation of minutes of the Ordinary Meeting of Council held on 12 October 2020.

Recommendation

That Council confirm the minutes of the Ordinary Meeting of Council held on the 12 October 2020.

Attachments

- 1 Minutes - Ordinary Meeting - 12 October 2020 D14236759



Central Coast Council

Minutes of the
Ordinary Meeting of Council
Held remotely - online
on 12 October 2020

Present

Mayor Lisa Matthews and Councillors Greg Best, Jillian Hogan, Kyle MacGregor, Doug Vincent, Troy Marquart, Chris Burke, Chris Holstein, Bruce McLachlan, Jilly Pilon, Rebecca Gale, Louise Greenaway, Jeff Sundstrom, Richard Mehrtens and Jane Smith.

In Attendance

Jamie Loader (Acting Chief Executive Officer), Boris Bolgoff (Director Roads, Transport, Drainage and Waste), Julie Vaughan (Director Connected Communities), Scott Cox (Director Environment and Planning), Ricardo Martello (Executive Manager Innovation and Futures), Krystie Bryant (Executive Manager People and Culture) and Shane Sullivan (Unit Manager Governance and Business Services).

The Mayor, Lisa Matthews, declared the meeting open at 6.33pm.

At the request of the Mayor, Mr Jamie Loader, Acting Chief Executive Officer advised that the meeting will be held remotely in accordance with section 747A of The Local Government Act 1993 clause 1(a)(i) and section 413L of The Local Government (General) Regulation 2005. Councillors were also reminded to adhere to the relevant policies and procedures including the Code of Meeting Practice and Code of Conduct.

The Mayor, Lisa Matthews, advised in accordance with the Code of Meeting Practice that the meeting is being recorded and read an acknowledgement of country statement.

The reports are recorded in their correct agenda sequence.

Apologies

Time commenced: 6.36pm

Moved: Councillor MacGregor

Seconded: Councillor Sundstrom

Resolved

960/20 *That Council note that Councillor Gale was granted leave of absence from this meeting at the 28 September 2020 Ordinary Meeting. Councillor Gale contacted the Chief Executive Officer prior to the meeting and advised that she would be attending this meeting.*

For:

Unanimous

1.1 Disclosures of Interest

Time commenced: 6.37pm

3.7 Council Representative for Hunter and Central Regional Planning Panel

Councillor Sundstrom declared a pecuniary interest in the matter as he is a Council appointed delegate to the Joint Regional Planning Panel. Councillor Sundstrom left the meeting at 10.17pm, returned at 10.30pm and did not participate in discussion on this matter.

Councillor Smith declared a pecuniary interest in the matter as she is a Council appointed alternate delegate to the Joint Regional Planning Panel. Councillor Smith left the meeting at 10.17pm, returned at 10.30pm and did not participate in discussion on this matter.

Moved: Councillor Gale

Seconded: Councillor Hogan

Resolved

961/20 *That Council receive the report on Disclosure of Interest and note advice of disclosures.*

For:

Unanimous

1.2 Confirmation of Minutes of Previous Meeting

Time commenced: 6.43pm

Moved: Councillor Gale

Seconded: Councillor MacGregor

Resolved

962/20 *That Council confirm the minutes of the Ordinary Meeting of Council held on the 28 September 2020.*

For:
Unanimous

Procedural Motion

Time commenced: 6.44pm

Moved: Mayor Matthews
Seconded: Councillor Sundstrom

Resolved

963/20 That Council defer all items with the exception of the following to an Extraordinary meeting to be conducted remotely on Monday, 19 October 2020 at 6.30pm:

- **Item 1.3 – Notice of Intention to Deal with Matters in Confidential Session**
- **Item 1.4 - Mayoral Minute – Staff Matter**
- **Item 1.5 - Mayoral Minute – Establishment of a Finance Committee to Oversee Council’s Forensic Financial Audit and 100-Day Action Plan to Recovery**
- **Item 3.7 – Council Representative for Hunter and Central Regional Planning Panel (Late Report)**
- **Item 3.8 – Serious Financial Situation (Late Report)**
- **Notice of Motion 6.2 – Collapse of Confidence in Council’s Internal Controls and Financial Management**

964/20 That in accordance with clause 10.32 of the Code of Meeting Practice Council recognise this issues for consideration tonight are of great importance to the whole of the Central Coast and as such the time limit on debate in accordance with clause 10.31 of the Code of Meeting Practice is to be lifted for this meeting.

965/20 That Council formally resolve to conduct an Extraordinary Meeting remotely on Monday, 19 October 2020 at 6.30pm for the purpose of considering those items not dealt with at the meeting tonight and that appropriate notice be given of this meeting.

966/20 That Council consider Item 3.8 – Serious Financial Situation and Item 6.2 – Notice of Motion - Collapse of Confidence in Council’s Internal Controls and Financial Management concurrently to allow Councillors to record their lack of support or otherwise on each part of the motion.

For: Mayor Matthews, Councillors Best, Burke, Gale, Hogan, Holstein, MacGregor, Marquart, Mehrtens, Pilon, Smith, Sundstrom and Vincent	Against: Councillors Greenaway and McLachlan
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1.3 Notice of Intention to Deal with Matters in Confidential Session

Time commenced: 6.51pm

Moved: Mayor Matthews
Seconded: Councillor Smith

That Council resolve that the following matters be dealt with in closed session, pursuant to s.10A(2)(a) of the Local Government Act 1993 for the following reasons:

Item 1.4 – Staff Matter

Reason for considering in closed session:

That Council resolve that these matters be dealt with in closed session, pursuant to s.10A(2)(a) and (i) of the Local Government Act 1993 for the following reason:

2(a) personnel matters concerning particular individuals other than councillors

Amendment Moved: Councillor Best
Amendment Seconded: Councillor Greenaway

That Council defer consideration of Item 1.4 – Mayoral Minute – Staff Matter to the Extraordinary Meeting to be held on 19 October 2020.

<i>For:</i>	<i>Against:</i>
<i>Councillors Best, Burke, Gale, Greenaway, Holstein, Marquart, McLachlan and Pilon</i>	<i>Mayor Matthews, Councillors Hogan, MacGregor, Mehrtens, Smith, Sundstrom and Vincent</i>

The amendment was put to the vote and declared CARRIED and therefore become the motion.

A procedural motion was moved and Item 1.3 – Notice of Intention to Deal with Matters in Confidential Session was recommitted, the time being 7.11pm.

Moved: Councillor Best
Seconded: Councillor Greenaway

Resolved

967/20 That Council defer consideration of item 1.4 – Mayoral Minute – Staff Matter to the Extraordinary Meeting to be held on 19 October 2020 as a confidential item.

For:	Against:
Councillors Best, Burke, Gale, Greenaway, Holstein, Marquart, McLachlan and Pilon	Mayor Matthews, Councillors Hogan, MacGregor, Mehrtens, Smith, Sundstrom and Vincent

Procedural Motion – Recommit Item 1.3

Moved: **Councillor Vincent**

Seconded: **Mayor Matthews**

Resolved

968/19 That Council recommit Item 1.3 – Notice of Intention to Deal with Matters in Confidential Session, the time being 7.11pm.

For:

Unanimous

1.5 Mayoral Minute - Establishment of a Finance Committee to Oversee Council's Forensic Financial Audit and 100-Day Action Plan to Recovery

Time commenced: 7.16pm

Moved: Mayor Matthews

- 1 *That Council acknowledge the distress this latest news has caused our community, including the impact of community confidence in Council.*
- 2 *That Council note the forensic internal audit of Council's finances underway, including the establishment of a working group to implement a 100-day action plan to recovery.*
- 3 *That Council establish a finance committee comprised of all Councillors, the Office of Local Government appointed independent financial expert and human resources adviser, DMB Consulting Pty Ltd and an independent legal adviser to oversee Council's forensic internal audit and 100-day action plan to recovery.*
- 4 *That further to the financial crisis and the liquidity issue that Council face, that Council move a vote of no confidence in the Chief Executive Officer.*
- 5 *That further Council seek to have an urgent review of the Chief Executive Officer delegations.*

Amendment Moved: Councillor Marquart

Amendment Seconded: Councillor Best

- 1 *That Council acknowledge the distress this latest news has caused our community, including the impact of community confidence in Council.*
- 2 *That Council note the forensic internal audit of Council's finances underway, including the establishment of a working group to implement a 100-day action plan to recovery.*

- 3 *That further to the financial crisis and the liquidity issue that Council face, that Council move a vote of no confidence in the Chief Executive Officer.*
- 4 *That further Council seek to have an urgent review of the Chief Executive Officer delegations.*

For:
Councillors Best, Gale, Marquart, McLachlan and Pilon

Against:
Mayor Matthews, Councillors Burke, Greenaway, Hogan, Holstein, MacGregor, Mehrtens, Smith, Sundstrom and Vincent

The amendment was put to the vote and declared LOST.

The Mayor at 9.35pm withdrew her motion and as a result the following become the motion.

Further Motion Moved: Mayor Matthews
Further Motion Seconded: Councillor Smith

Resolved

969/20 That Council acknowledge the distress this latest news has caused our community, including the impact of community confidence in Council.

970/20 That Council note the forensic internal audit of Council's finances underway, including the establishment of a working group to implement a 100-day action plan to recovery.

971/20 That Council establish a finance committee comprised of all Councillors, the Office of Local Government appointed independent financial expert and human resources adviser and an independent legal adviser to oversee Council's forensic internal audit and 100-day action plan to recovery. Further that consideration be given to the inclusion of the relevant consultant.

For:
Mayor Matthews, Councillors Burke, Greenaway, Hogan, Holstein, MacGregor, Mehrtens, Smith, Sundstrom and Vincent

Against:
Councillors Best, Gale, Marquart, McLachlan and Pilon

Procedural Motion

Councillor Hogan left the meeting at 8.08pm and returned at 8.10pm.
Councillor Gale left the meeting at 8.13pm and returned at 8.15pm

Moved: Councillor Sundstrom
Seconded: Mayor Matthews

Resolved

972/20 That Council move into confidential session to consider legal advice regarding item 1.5 – Mayoral Minute - Establishment of a Finance Committee to Oversee Council's Forensic Financial Audit and 100-Day Action Plan to Recovery the time being 7.25pm.

For:
Mayor Matthews, Councillors Best, Burke, Greenaway, Hogan, Holstein, MacGregor, McLachlan, Mehrtens, Smith, Sundstrom and Vincent

Against:
Councillors Gale, Marquart and Pilon

Procedural Motion

Moved: Councillor MacGregor
Seconded: Mayor Matthews

Resolved

973/20 That Council adjourned the meeting and will move into open session at 8.45pm.

For:
Unanimous

Procedural Motion

Moved: Councillor MacGregor
Seconded: Councillor Greenaway

That Council deals with Item 1.5 - Mayoral Minute - Establishment of a Finance Committee to Oversee Council's Forensic Financial Audit and 100-Day Action Plan to Recovery in seriatim.

For:
Councillors Gale, Greenaway, Smith, MacGregor and Sundstrom

Against:
Mayor Matthews, Councillors Best, Burke, Hogan, Holstein, Marquart, McLachlan and Pilon

Abstained: Councillors Mehrtens and Vincent

2.1 Deferred Item - Planning Proposal RZ /6/2016 Warnervale and Virginia Rd, Warnervale

Council deferred the consideration of item 2.1 to the 19 October 2020 Extraordinary Meeting (minute 963/20).

3.1 Planning Proposal 84/2015 for land on the corner of Collingwood Drive and Matcham Road, Matcham

Council deferred the consideration of item 3.1 to the 19 October 2020 Extraordinary Meeting (minute 963/20).

3.2 Proposed Council Meeting Dates

Council deferred the consideration of item 3.2 to the 19 October 2020 Extraordinary Meeting (minute 963/20).

3.3 Establishment of Alcohol Free Zones

Council deferred the consideration of item 3.3 to the 19 October 2020 Extraordinary Meeting (minute 963/20).

3.4 Hawkesbury-Nepean River Coastal Management Program Stage 1 Scoping Study

Council deferred the consideration of item 3.4 to the 19 October 2020 Extraordinary Meeting (minute 963/20).

3.5 Management of Coastal Land Parcels at The Entrance North and Wamberal

Council deferred the consideration of item 3.5 to the 19 October 2020 Extraordinary Meeting (minute 963/20).

3.6 Meeting Record of the Catchments and Coast Committee Brisbane Water and Gosford Lagoons and Terrigal Water Quality Sub-Committee meetings held 25 August 2020

Council deferred the consideration of item 3.6 to the 19 October 2020 Extraordinary Meeting (minute 963/20).

3.7 Council Representatives for Hunter and Central Regional Planning Panel

Time commenced: 10.17pm

Councillor Sundstrom declared a pecuniary interest in the matter as he is a Council appointed delegate to the Joint Regional Planning Panel. Councillor Sundstrom left the meeting at 10.17pm, returned at 10.30pm and did not participate in discussion on this matter.

Councillor Smith declared a pecuniary interest in the matter as she is a Council appointed alternate delegate to the Joint Regional Planning Panel. Councillor Smith left the meeting at 10.17pm, returned at 10.30pm and did not participate in discussion on this matter.

Moved: Councillor MacGregor

Seconded: Councillor Burke

Resolved

974/20 That Council, pursuant to [Part 2 Division 2.4 c. 2.13 of the Environmental Planning and Assessment Act 1979](#), re-appoint the following Councillors to be members of the Hunter and Central Coast Regional Planning Panel:

- a. **Councillor MacGregor**
- b. **Councillor Burke**

975/20 That Council, pursuant to [Part 2 Division 2.4 c. 2.13 of the Environmental Planning and Assessment Act 1979](#) re-appoint the following two Councillors, as an alternate of the Councillors above to the Hunter and Central Coast Regional Planning Panel:

- a. **Councillor Sundstrom**
- b. **Councillor Smith**

976/20 That Council maintain the remuneration to be paid to each nominee when exercising functions as a member of the Hunter and Central Coast Regional Planning Panel at \$700.00 per meeting, inclusive of GST and expenses.

977/20 That Council note that the re-appointment to the Hunter and Central Coast Regional Planning Panel will be for a term of one year.

978/20 That Council request the Chief Executive Officer notify the secretariat of Hunter and Central Coast Regional Planning Panel in writing of the above.

For:

Unanimous

That the meeting be adjourned at 10.20pm and resumed at 10.30pm.

3.8 Serious Financial Situation

Time commenced: 10.31pm

Councillor Gale left the meeting at 11.00pm and returned at 11.05pm.

Mayor Matthews left the meeting at 11.15pm and returned at 11.16pm

Councillor Sundstrom left the meeting at 11.22pm and returned at 11.23pm

This item was considered in seriatim as resolved by Council (minute 966/20)

Moved: Mayor Matthews

Seconded: Councillor Best

Resolved

979/20 That the report on Central Coast Council's serious financial situation be received and noted.

For:

Unanimous

Moved: Councillor MacGregor

Seconded: Councillor Hogan

Resolved

980/20 That Council consider the draft 100-day recovery action plan and financial forensic scope documentation at a workshop to be held on Thursday 15 October 2020.

For:

Unanimous

Moved: Councillor Burke

Seconded: Councillor Sundstrom

Resolved

981/20 That Council request that the Chief Executive Officer write to the Minister for Local Government seeking urgent assistance with the following matters:

- **Seek approval to borrow from restricted funds including the Developer contributions under the EP&A Act, the Developer servicing plan contributions under the Water Management Act, Domestic**

Waste management funds and unrestricted cash within the water and sewer funds comprising income from user and service charges, and advice on the process to obtain such approval; or

- **Secure necessary external borrowing up to \$100 million from TCorp or any other emergency funding sources for the purposes of maintaining liquidity in the Council until such time as the actions within the draft 100-day recovery action plan are implemented; and**
- **Confirmation on the timing, scope and terms of reference for the previously committed financial and human resources advisors**

For:
Mayor Matthews, Councillors Burke, Greenaway, Hogan, Holstein, MacGregor, Mehrtens, Smith, Sundstrom and Vincent

Against:
Councillors Best, Gale, Marquart, McLachlan and Pilon

A division was called by Councillors Marquart and Best

For:
Mayor Matthews, Councillors Burke, Greenaway, Hogan, Holstein, MacGregor, Mehrtens, Smith, Sundstrom and Vincent

Against:
Councillors Best, Gale, Marquart, McLachlan and Pilon

Moved: Mayor Matthews
Seconded: Councillor Sundstrom

Resolved

982/20 That Council resolve to utilise current scheduled Councillor Workshops Saturday 31 October 2020 for the purposes of reviewing the actions taken to date.

For:
Unanimous

Moved: Councillor MacGregor
Seconded: Councillor Mehrtens

Resolved

983/20 That should the Minister for Local Government not be able to assist in securing borrowing through Tcorp that Council authorise the Chief Executive Officer to present a loan proposal for its consideration at a future meeting of Council for the sum of up to \$100 million.

For:
Mayor Matthews, Councillors Burke, Greenaway, Hogan, Holstein, MacGregor, Mehrstens, Smith, Sundstrom and Vincent

Against:
Councillors Best, Gale, Marquart, McLachlan and Pilon

Procedural Motion

Time commenced: 11.25pm

Moved: Councillor Smith
Seconded: Councillor Greenaway

That Council defer consideration of item 6.2 - Notice of Motion - Collapse of Confidence in Council's Internal Controls and Financial Management to the Extraordinary Meeting 19 October 2020.

For:
Councillors Burke, Greenaway, Marquart, McLachlan and Smith

Against:
Mayor Matthews, Councillors Best, Gale, Hogan, Holstein, MacGregor, Mehrstens, Pilon, Sundstrom and Vincent

The motion was put to the vote and declared LOST.

4.1 Meeting Record for the Catchments and Coast Committee Tuggerah Lakes meeting held on 26 August 2020

Council deferred the consideration of item 4.1 to the 19 October 2020 Extraordinary Meeting (minute 963/20).

4.2 Meeting Record of the Gosford CBD and Waterfront Advisory Committee meeting held 13 August 2020

Council deferred the consideration of item 4.2 to the 19 October 2020 Extraordinary Meeting (minute 963/20).

4.3 Meeting Record of the Social Inclusion Advisory Committee meeting held 11 August 2020

Council deferred the consideration of item 4.3 to the 19 October 2020 Extraordinary Meeting (minute 963/20).

4.4 Activities of the Social Impact Taskforce

Council deferred the consideration of item 4.4 to the 19 October 2020 Extraordinary Meeting (minute 963/20).

4.5 The Entrance Channel - Studies and Reports

Council deferred the consideration of item 4.5 to the 19 October 2020 Extraordinary Meeting (minute 963/20).

4.6 The Entrance Beach North - Coastal Erosion Update

Council deferred the consideration of item 4.6 to the 19 October 2020 Extraordinary Meeting (minute 963/20).

6.1 Deferred Item - Notice of Motion - Leveraging Jobs Hub off \$250M State Government Rail Investment at Kangy Angy

Council deferred the consideration of item 6.1 to the 19 October 2020 Extraordinary Meeting (minute 963/20).

6.2 Notice of Motion - Collapse of Confidence in Council's Internal Controls and Financial Management

Time commenced: 11.28pm

Councillor Greenaway left the meeting at 11.28pm and returned at 11.29pm

Councillor Greenaway left the meeting at 11.37pm and returned at 11.40pm

Councillor Smith left the meeting at 11.42pm and returned at 12.32pm

Councillor Hogan left the meeting at 11.52pm and returned at 11.57pm

Councillor Gale left the meeting at 11.53pm and returned at 11.54pm

This item was considered in seriatim as resolved by Council (minute 966/20)

Moved: Councillor Best

Seconded: Councillor McLachlan

Resolved

984/20 That Council notes with great concern the recent Audit Report by the NSW Audit Office around Council's "internal controls" over local infrastructure contributions (LICs) where serious concerns were raised around risks associated with Administration of LICs highlighting that up until June

2019 this Council unlawfully accessed \$13.2 million for unapproved administration activities.

For:
Mayor Matthews, Councillors Best, Burke, Hogan, Holstein, MacGregor, Marquart, McLachlan, Mehrtens, Pilon, Smith, Sundstrom and Vincent

Against:
Councillor Greenaway

Moved: Councillor Vincent
Seconded: Councillor Best

Resolved

985/20 Further Council's confidence is significantly eroded in the knowledge that now two Chief Financial Officers, two interim internal Chief Financial Officers (returned to their substantive positions) and four Governance Directors, have resigned or been replaced in the past three years and that this Council is currently again recruiting.

For:
Unanimous

Councillor Smith left the meeting at 11.42pm and returned at 12.32pm

Moved: Councillor Best
Seconded: Councillor McLachlan

- 3 *As Elected Representatives and trusted custodians of the Ratepayer purse, this year budget alone reflecting \$573 million 2020 FY, with \$335.5 million of this being Rates and Charges, this Council having regard to the issues outlined below a-k, now formally seeks independent advice and assistance from the Office of Local Government and the Office of the Auditor General to better understand this Council's compliance with our financial control standards, internal controls, transparency and probity.*
- a *That this Council in FY19/20 budgeted for an \$18 million loss with a now Q3 result of \$41 million loss with preliminary adjustments forecast resulting in full year loss eclipsing \$80 million. Compounding this, Council notes it's exhibited Budget FY20/21 also reflects a multi-million dollar loss.*
 - b *That Council's internal controls in the FY18/19 were unable to deliver the Accounts for some nine months past their due date requiring several Departmental extensions understandably exacerbating the crafting of the FY19/20 budget.*
 - c *The scathing commentary attached to the recently released Audit Office's Independent Report.*
 - d *Council also notes the extraordinary waste of millions of dollars through actively terminating binding Contracts and willingly paying extensive damages.*

- e That Council's lack of internal controls and transparency have resulted in this Council abandoning its \$171 million Civic Project known as the Gosford Art Centre and Library costing millions.
- f The escalating NSW Court List associated with this Council, again costing millions.
- g Council's confidence is further highly eroded due to the recognition that the current recruitment process on foot for a new Chief Financial Officer will be our fifth Chief Financial Officer in this term of Council alone.
- h Further to the Auditor General's Report, Council notes the exponential worsening of its now more than \$200 million infrastructure spending backlog.
- i Council's processes leading up to the extinguishment and refund of a \$5 million State Government Grant for a Community Walkway that had already commenced.
- j Budgeted staffing levels as advised by the Chief Executive Officer now up by some 500 FTEs since the Amalgamation with total Council employment being approximately 2,500 Staff plus \$9 million in Contractors, some being remunerated at \$1,300 a day.
- k Council's recent \$50 million borrowing with \$25 million being new money that forms part of Council's current \$232 million borrowing. Note this ratio is not excessive, however the interest rate is 6.25% in the current market.
- l That Council also notes the importance of sound internal controls as a result of its decisions around looming issues such as the Coastal Erosion and Property Losses and the extraordinary risks Council now faces with regard to its stance on the Airport.

For:
Councillors Best, Burke, Gale, Holstein,
Marquart, McLachlan and Pilon

Against:
Mayor Matthews, Councillors Greenaway,
Hogan, MacGregor, Mehrtens, Sundstrom
and Vincent

The motion was put to the vote and declared LOST on the casting vote of the Mayor.

Moved: Councillor Best
Seconded: Councillor Marquart

Resolved

986/20 That having regard to the wide range of issues identified and the sobering commentary from the Office of the Auditor General, this Council now seeks to take a proactive, responsible and self-reporting position through reaffirming Councils support for requesting the Office of Local Government, the Audit Office and the Minister to step in and assist Council in embedding an appropriate Review Team in to the back end of Council's systems to identify the root cause and other relevant issues and welcome the resources that have been identified by the Office of Local Government, such are our concerns as the Elected Body and we look forward to being expedited as a matter of urgency.

For:
Unanimous

6.3 Notice of Motion - Tradie led COVID recovery for the Central Coast

Council deferred the consideration of item 6.3 to the 19 October 2020 Extraordinary Meeting (minute 963/20).

The confidential reports were deferred for consideration to the 19 October 2020 Extraordinary Meeting (minute 963/20 and 967/20);

7.1 Code of Conduct Investigation Report - INV25/2019

Council deferred the consideration of item 7.1 to the 19 October 2020 Extraordinary Meeting (minute 963/20).

7.2 Code of Conduct Investigation Report - INV6/2020

Council deferred the consideration of item 7.2 to the 19 October 2020 Extraordinary Meeting (minute 963/20).

1.4 Mayoral Minute – Staff Matter

Council deferred the consideration of item 1.4 to the 19 October 2020 Extraordinary Meeting (minute 967/20).

The Meeting closed at 12.46 pm.

Item No: 1.3
Title: Notice of Intention to Deal with Matters in Confidential Session
Department: Governance



26 October 2020 Ordinary Council Meeting

Trim Reference: F2020/00039 - D14229269

Summary

It is necessary for the Council to adopt a resolution to formalise its intention to deal with certain matters in a closed and confidential Session. The report is incorporated in the "Confidential" business paper which has been circulated.

The *Local Government Act 1993* requires the Chief Executive Officer to identify those matters listed on the business paper which may be categorised as confidential in terms of section 10A of the *Local Government Act 1993*. It is then a matter for Council to determine whether those matters will indeed be categorised as confidential.

Recommendation

That Council receive the report and note that no matters have been tabled to deal with in a closed session.

Context

Section 10A of the *Local Government Act 1993* (the Act) states that a Council may close to the public so much of its meeting as comprises:

- 2(a) *personnel matters concerning particular individuals (other than Councillors),*
- 2(b) *the personal hardship of any resident or ratepayer,*
- 2(c) *information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business,*
- 2(d) *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,*
- 2(e) *information that would, if disclosed, prejudice the maintenance of law,*

- 2(f) *matters affecting the security of the Council, Councillors, Council staff or Council property,*
- 2(g) *advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,*
- 2(h) *information concerning the nature and location of a place or an item of Aboriginal significance on community land.*
- 2(i) *alleged contraventions of any code of conduct requirements applicable under section 440.*

It is noted that with regard to those matters relating to all but 2(a), 2(b) and 2(d)(iii) it is necessary to also give consideration to whether closing the meeting to the public is, on balance, in the public interest.

Further, the Act provides that Council may also close to the public so much of its meeting as comprises a motion to close another part of the meeting to the public (section 10A(3)).

As provided in the Office of Local Government Meetings Practice Note August 2009, it is a matter for the Council to decide whether a matter is to be discussed during the closed part of a meeting. The Council would be guided by whether the item is in a confidential business paper, however the Council can disagree with this assessment and discuss the matter in an open part of the meeting.

Attachments

Nil



Item No: 2.1
Title: Draft Land Transaction Policy - Outcome of Public Exhibition
Department: Innovation and Futures

26 October 2020 Ordinary Council Meeting

Reference: F2019/02120 - D14194508
Author: Joe O'Connor, Property Development Manager
Manager: Jamie Barclay, Unit Manager, Economic Development and Project Delivery
Executive: Ricardo Martello, Executive Manager Innovation and Futures

Summary

This report provides details of the outcome of the public exhibition of the draft Land Transaction Policy and seeks Council resolution to adopt the Policy.

Recommendation

- 1 That Council adopt the draft Land Transaction Policy as contained within this report.**
- 2 That Council revoke the following policies of the former Gosford City Council:**
 - a Land and Property Transactions Policy (to be replaced by Land Transaction Policy)**
 - b Acceptance of Care, Control & Management of Public lands acquired by other Authorities (to be replaced by Land Transaction Policy)**
 - c Citywide Business Improvement Districts (no longer needed)**
 - d Easements/Leases/Licences-Utilities, Authorities and Companies (no longer needed)**
- 3 That Council revoke the following policy of the former Wyong Shire Council:**
 - a Policy for Property Transactions – Sales and Acquisitions (to be replaced by Land Transaction Policy)**

Context

Council at its Ordinary Meeting of 13 July 2020 resolved:

- 623/20 That Council place the draft Central Coast Council Land Transaction Policy on public exhibition for 28 days.
- 624/20 That Council consider a further report on the results of the public exhibition.

As such, Council proceeded to exhibit the draft Land Transaction Policy from 13 August 2020 until 11 September 2020. The draft Policy was exhibited via a combined communications strategy, including; media release, public notice, social media, LinkedIn, and newspaper advertisement. **Attachment 1** provides a copy of the release.

Two responses were received from the community and these were reviewed by key staff for consideration. Following from this, the draft has been amended to incorporate some of these changes. The proposed amendments included in the draft Land Transaction Policy, which is **Attachment 2** to this report, are marked in **bold** and *italic* with deletions marked with ~~strikeout~~.

Consultation

An extensive consultation process has occurred in harmonising the two policies from the former Gosford City Council and former Wyong Shire Council. This included development of the draft policy initially with key staff who manage the day to day operation of Council's property portfolio.

Councillors have considered the draft Land Transaction Policy at the Ordinary Meeting of 13 July 2020.

Public consultation occurred from 13 August 2020 until 11 September 2020.

Options

Option 1:

That Council resolves that the draft Land Transaction Policy be adopted.

Further, that Council revoke the following policies:

- a *Acceptance of Care, Control & Management of Public lands acquired by other Authorities;*
- b *Easements/Leases/Licences-Utilities, Authorities and Companies;*
- c *Citywide Business Improvement Districts.*

This is the preferred option that would allow Council to update the existing former policies and revoke other policies that are no longer required or relevant.

Option 2:

That Council does not adopt the draft Land Transaction Policy, and does not revoke the following policies:

- a *Acceptance of Care, Control & Management of Public lands acquired by other Authorities;*
- b *Easements/Leases/Licences-Utilities, Authorities and Companies;*

2.1 Draft Land Transaction Policy - Outcome of Public Exhibition (contd)

c *Citywide Business Improvement Districts.*

Should this option be put forward, then the Land and Property Transactions Policy from the former Gosford City Council (refer to **Attachment 3**) and the Policy for Property Transactions – Sales and Acquisitions from the former Wyong Shire Council (refer to **Attachment 4**) should remain in use and not be replaced with the draft Land Transactions Policy.

This is not the preferred option and would not update and consolidate the existing policies to be current best practice. Consequently, the framework governing Council land transactions would differ between the former Wyong and the former Gosford local government areas and be inconsistent.

Financial Impact

It is not considered that there would be any financial impact through the implementation of Option 1.

Link to Community Strategic Plan

Theme 4: Responsible

Goal G: Good governance and great partnerships

R-G2: Communicate openly and honestly with the community to build a relationship based on transparency, understanding, trust and respect.

Risk Management

The adoption of this policy will help minimise Council's exposure to unnecessary risk in land sales, acquisitions, restrictions over Council's land, land swaps, dedications and donations of land. As such, this policy will assist in Council's risk management with relation to land transactions.

Critical Dates or Timeframes

It is a corporate initiative that all legacy policies be consolidated by 30 June 2020, while this deadline will not be met in this instance, the adoption of this policy will help progress towards the consolidation of the former policies.

Attachments

1	Media Release	D14224383
2	Draft Land Transaction Policy	D14230236
3	Land and Property Transactions (Gosford)	D14000959
4	Policy for Property Transactions – Sales and Acquisitions (Wyong)	D14000961

14/09/2020

Draft Land Transaction Policy | Your Voice Our Coast



Home > Draft Land Transaction Policy

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Draft Land Transaction Policy

Public Exhibition

Central Coast Council has developed the first region-wide draft Land Transaction Policy, and it is now on public exhibition for the community to view and submit comments.

This draft Land Transaction Policy is a consolidation of the former Gosford City Council's Land and Property Transactions Policy and Wyong Shire Council's Property Transactions - Sales and Acquisitions, with other policies informing its development.

The consolidated policy provides a framework for Council to inform decision and directions regarding Council's property portfolio in a consistent manner across the Local Government Area and in accordance with relevant legislation.

<https://www.yourvoiceourcoast.com/land-transaction-policy>

1/4

14/09/2020

Draft Land Transaction Policy | Your Voice Our Coast

To find out more and have your say on the draft Land Transaction Policy, you are invited to:

- [View the draft Land Transaction Policy](#)
- View the Frequently Asked Questions available below
- [Provide feedback via the online submission form](#), or
- Send a submission to ask@centralcoast.nsw.gov.au, or PO Box 20, Wyong NSW, 2259

Submissions and feedback will be accepted until 11 September 2020.

Your attention is drawn to the provisions of the Government Information (Public Access) Act 2009 which allows for possible access to certain public and personal documentation. [View our privacy statement](#).



Document Library

Draft Land Transactions Policy

Who's listening

Name: Joe O'Connor - Property Development Manager

Email: joe.o'connor@centralcoast.nsw.gov.au

14/09/2020

Draft Land Transaction Policy | Your Voice Our Coast

Frequently Asked Questions

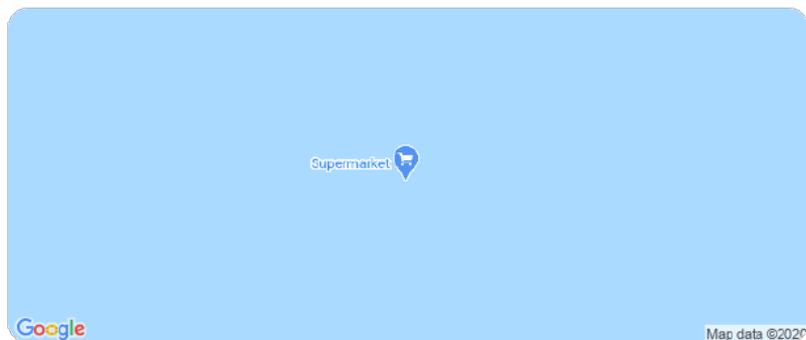
Why was it necessary to consolidate?

How does Council determine land to be sold?

Outside of the former Gosford and Wyong LGA key policies, which other policies informed its development?

Where's it happening?

[[View Map](#)]



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14/09/2020

Draft Land Transaction Policy | Your Voice Our Coast

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Land Transaction Policy

October 2020

Policy No: CCC 057

Policy owner:	Innovation and Futures
Approved by:	Central Coast Council
Date of approval:	Day/Month/2020
Policy category:	Strategic
Content Manager No:	D#####
Review date:	[Month] 2024

Central Coast Council P: 1300 463 954 E: ask@centralcoast.nsw.gov.au W: centralcoast.nsw.gov.au
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Purpose

1. The purpose of the Land Transaction Policy is to provide a framework for Council which will inform decisions and directions in a consistent manner and in accordance with relevant legislation. The Land Transaction Policy is a strategic policy which should be read in conjunction with any operational-level procedures which guide the implementation of this Policy.

Objectives

2. Central Coast Council is committed to:
 - a. ensuring Council retains or acquires ownership of land that is needed for its current and future service delivery;
 - b. ensuring that land is retained, acquired or sold to provide for the current and future needs of the community;
 - c. Council's land portfolio is managed strategically, having regard to the key themes in Council's Community Strategic Plan;
 - d. ensuring that land transactions include appropriate consultation with relevant stakeholders; and
 - e. ensuring that land transactions are undertaken in accordance with applicable laws.

Scope

3. This Policy applies to the following transactions involving land owned by Central Coast Council (Land Transactions):
 - a. sales;
 - b. acquisitions;
 - c. the creation of easements or restrictions over Council's land;
 - d. land swaps;
 - e. dedications and donations of land;
 - f. transfer or vesting of land in Council by government agencies.
4. This Policy does not apply to:
 - a. the dedication of land to Council as a development contribution under the *Environmental Planning and Assessment Act 1979*;
 - b. leasing, licensing or hiring of land or facilities owned by Council or third parties;

- c. transactions involving Crown land managed by Council; or
- d. acquisition of land pursuant to the Roads Act 1993.**

Principles

- 5. The following principles are provided to define duties and obligations of Council and Council staff. It should be noted that there will be occasions where an exception to the principle is required for the best outcome of all parties. Such exceptions require the Chief Executive Officer's approval.

Acquisitions

- 6. Land acquisitions require a Council resolution to support the decision; the report to Council must include justification for the acquisition and details of the long-term maintenance costs, outcome of due diligence investigations, and an independent valuation where appropriate **(unless the value of the land does not justify a valuation).**

Competitive sales process

- 7. Land sales should normally occur through a competitive open market process (for instance: expressions of interest, auction, or private treaty undertaken by an estate agent). Exceptions may occur only in special circumstances, such as sales to adjoining landowners of small lots that are not developable as stand-alone lots or that have little use or commercial appeal to the wider market, or where a competitive process is not appropriate or practical in the circumstances. Any proposal to sell land other than by a competitive open market process must be authorised by a Council resolution.

Compulsory acquisition

- 8. Council may only acquire land by compulsory process if the land is needed for the purpose of carrying out any of its functions. Any compulsory acquisition must be done in accordance with the requirements of the Land Acquisition (Just Terms Compensation) Act 1991 (NSW) and **Section 186(1) of the** Local Government Act 1993. Council will also comply with the NSW Government Property Acquisition Standards.

Council resolutions

- 9. A Council resolution is required to authorise the compulsory acquisition, purchase, sale, exchange or surrender of any land, in accordance with Section 377(1)(h) of the *Local Government Act 1993*.

Covenants and restrictions on Council land

- 10. **Covenants and** restrictions **that benefit other parties imposed on Council land** should not be imposed or agreed in relation to Council land unless there is a net tangible benefit to

Council, the public **or the environment** and provided the restriction does not unreasonably impact service delivery or the future use or development potential of the land. The beneficiary of the restriction must compensate Council for any diminution in the market value of the land arising from the restriction, as assessed by Council's independent valuer. All costs associated with the restriction including valuer costs should normally be paid for by the person benefitting from the restriction.

Dedications

11. Land dedications must be treated in the same way as a land acquisition or sale by Council. In seeking Council resolution to support the decision, the report to Council must include details of the long-term maintenance costs, outcome of due diligence investigations, **financial impact analysis** and an independent valuation where appropriate (**unless the value of the land does not justify a valuation**). Appropriate records should be kept detailing the purpose of the dedication and any conditions or restrictions of the dedication.

Due Diligence

12. All land which Council proposes to acquire or sell requires thorough investigation through a due diligence process, ensuring a net tangible benefit to Council, the public **or the environment** in accordance with the Community Strategic Plan. As a minimum this process must include: preparing a business case, land transaction plan **and financial impact analysis**; assessing the strategic value of the land having regard to need, the geographic context, environmental values and applicable strategic plans; assessing opportunities to capture uplift in the land through value adding proposals if applicable; inspecting Council records relating to the land; carrying out appropriate site investigations; and for land owned by Council, confirming the land classification and the historical details of the acquisition.

Easements over Council owned land

13. An easement should not normally be granted over Council land unless there is a net tangible benefit to Council or the public and provided the easement does not unreasonably limit service delivery or the future use or development potential of the land. The person or entity benefitting from the easement should pay full market value for the easement as assessed by Council's independent valuer. All costs associated with the easement including valuer costs should normally be paid for by the person benefitting from the easement. If the land is classified as community land, easements may not be granted other than for public utilities or if expressly authorised in a Plan of Management.

Land Classification

14. Council may only sell land if it is classified as operational land under the *Local Government Act 1993* and provided the sale is not inconsistent with the terms of any trusts, conditions or restrictions that affect the land. **Land classifications must be done in accordance with Division 1 of the Local Government Act 1993 and any relevant land classification policy.**

Land Swaps

15. A land swap must be treated in the same way as a land acquisition and/ or sale by Council. The Council resolution which authorises the land swap must include justification for the land swap, details of the outcome of due diligence investigations, and an independent valuation where appropriate (***unless the value of the land does not justify a valuation***).

Market Value

16. Land transactions should normally occur at market value, as assessed by a registered independent valuer appointed by Council, ***unless the value of the land does not justify a valuation***. Council resolutions should allow scope for negotiation to ensure market value is secured.

Review of land portfolio

17. A strategic review of Council's land portfolio needs be undertaken periodically by Council. This should consider the following:
 - a. Utilisation – whether assets are being optimally utilised in accordance with their intended use, opportunities for greater utilisation of the land (i.e. highest and best use), as well as to assist in planning priorities and expenditure for capital works;
 - b. Purpose – due diligence checks to investigate how the land came into Council's ownership;***
 - c. Surplus Land – whether land which is surplus to Council's current and future needs, in which case could be sold subject to undertaking the appropriate due-diligence and obtaining Council resolution;
 - d. Future Needs - identify additional land required for Council's future needs and as such appropriate due diligence and a Council resolution would be sought to support the requirement.

Valuations

18. A valuation must be obtained for acquisitions, sales, land swaps, or easements by an independent registered valuer who is suitably qualified in the asset type and locality. An assessment of the value of land or easements may, however, be undertaken by Council staff if the land or easement is of low strategic or financial value, or a valuation has been recently undertaken and Council staff can confirm the validity of the previous valuation.

Compliance, monitoring and review

19. Suspected breaches or misuse of this policy are to be reported to the Chief Executive Officer. Alleged breaches of this policy shall be dealt with by the processes outlined for breaches of the Code of Conduct, as detailed in the Code of Conduct and in the Procedures for the Administration of the Code of Conduct.

20. This policy will be reviewed every four years.

Records management

21. Staff must maintain all records relevant to administering this policy in a recognised Council recordkeeping system.

Related resources

22. Legislation:

- a. Local Government Act 1993 (NSW)
- b. Land Acquisition (Just Terms Compensation) Act 1991 (NSW)

23. Associated documents:

- a. Council's Code of Conduct
- b. NSW Government Property Acquisition Standards

History of revisions

Amendment history	Details
Original approval authority details	<p>Chief Executive Officer / Council</p> <p><remove as required ></p> <hr/> <p>XX/XX/20XX <insert Council Meeting date and minute number of resolution adopting the policy <remove if not needed></p> <hr/> <p>This policy sets out principles that apply to land transactions of Central Coast Council, drawing where appropriate on former policies including:</p> <ul style="list-style-type: none"> • Policy for Property Transactions - Sales and Acquisitions (former Wyong Shire Council) and • Land and Property Transactions policy (former Gosford City Council) <p>The policy may be underpinned by operational procedures.</p>

Land Property Transaction Policy 8

Version # <remove if not needed>

XX/XX/20XX <insert Council Meeting date and 'minute number' of resolution adopting the policy <remove if not needed>

CM document number

State reasons for amendments

Note: delete lines or add in additional lines as required



LAND AND PROPERTY TRANSACTIONS



LAND AND PROPERTY TRANSACTIONS

COMMUNITY GROWTH - PROPERTY & ECONOMIC DEVELOPMENT

POLICY OBJECTIVES

- To maintain and coordinate expeditious negotiations on land and property transactions.
- To undertake land and property transactions transparently with consideration being given to efficiency and benefit to Council.
- To appoint real estate agents who are capable of aggressively selling Council real estate.
- To proceed to compulsory acquisition only in cases where the public interest would be disadvantaged by Council not acquiring the property.

POLICY STATEMENT

The Property Services Unit is responsible for co-ordinating Council's real estate activities, including acquisitions, sales, leases and development, as approved by Council.

PROCEDURE

The procedure (attached), being an administrative process, may be altered as necessary by the Chief Executive Officer.

(Min No 699/1996 - 24 September 1996 - Review of Policies)
(Min No 43/1997 - 4 February 1997)
(Min No 74/1999 – 13 April 1999)
(Min No 239/2000 – 24 October 2000 – Review of Policies)
(Min No 116/2001 – 22 May 2001)
(Min No 122/2002 – 28 May 2002)
(Min No 214/2005 - 8 March 2005 - Review of Policies)
(Min No 311/2009 - 5 May 2009 - Review of Policies)
(Min No 2013/388 - 16 July 2013 - Review of Policies)

ATTACHMENT - PROCEDURE**LAND AND PROPERTY TRANSACTIONS****Acquisition of Real Estate**

Council approval will be obtained for the acquisition of all real estate (unless the transfer to Council is pursuant to a condition of development consent or other legislation). Responsibility to prepare the report seeking such approval rests with the program wishing to acquire the land or interest in land. The DRAFT report when prepared by the relevant program is to be referred to the Property Services Unit for vetting to ensure the recommendation is precise from a Real Estate perspective.

Classification procedures are to commence at an early stage.

Owners are to be notified and a sketch plan provided if applicable (ie part acquisition).

If required, a plan of survey is to be prepared as soon as practicable. In this regard the responsible program is afforded the opportunity to have the plan prepared by Council's registered Surveyor, or an outside firm of surveyors.

The owners are to be offered an amount of compensation based on advice received from a registered valuer.

If consideration is being given to the compulsory acquisition of the land, the Chief Executive Officer may vary the amount of compensation offered in an effort to resolve the matter.

The unreasonable refusal or neglect of any owner to concur will not impede the compulsory acquisition process.

Council approval is required before an application is made to the Minister for approval for publication of a Notice of Compulsory Acquisition.

Upon publication of a Notice of Compulsory Acquisition, the Chief Executive Officer is to do all things necessary to resolve the payment of compensation.

Before utilising the land acquisition accounts, it should be determined whether the acquisition can be funded from any of the precinct land development accounts and/or IDO 122 contributions.

"Community" land and land classified as "operational" and which complies with the requirements for a rates/charges exemption, shall be exempt from the payment of rates/charges from the date of acquisition.

DISPOSAL OF REAL ESTATE

Council approval will be obtained for the disposal of all real estate.

A minimum of three (3) local real estate agents are to be invited to make a submission on the disposal of Council owned real estate. The Chief Executive

Officer will appoint the real estate agent who offers the most appropriate marketing strategy and the best terms of sale.

Real estate agents will be assigned for a set period, or as the need arises, and will be selected following a competitive process including calling for expressions of interest.

The Chief Executive Officer is authorised to change real estate agents at the end of the agency agreement.

When selling real estate by public auction, a registered valuer is to be requested to recommend the reserve price. The reserve price is to be placed in two separate sealed envelopes, one marked 'Council', the other marked 'auctioneer'.

The Chief Executive Officer has authority to negotiate the sale of real estate and to allow a 10% reduction on the registered valuer's recommended reserve price.

Note that public auction may not always be the most appropriate method of sale.

When negotiating a sale by private treaty, the Chief Executive Officer has authority to negotiate the sale taking into consideration all valuation advice.

The Chief Executive Officer has authority to dispose of Council owned land if it is deemed the only possible purchaser is the adjoining owner and two (2) registered valuations have been obtained.

VALUATION ADVICE

When transferring real estate, two valuation reports are to be obtained. However, in the case of real estate with a value of less than \$50,000 only one (1) valuation report is required.

Unless there are compelling reasons to the contrary, all valuations are to be no more than three months old.

LEASING OF "COMMUNITY" LAND

Council approval is required for all proposed leases of "community" land for a period exceeding five (5) years.

Public notice must be given of any proposed lease of "community" land. Such notice must be placed on the land, in a local newspaper and sent to all adjoining land owners.

Chapter 6 Part 2 of the Local Government Act 1993 refers to "community" land, and Sections 46A, 47 and 47A refer in particular to leases and licences in respect of community land.

The sale of "community" land is prohibited under the Act.

SHORT-TERM LEASING OF UNUSED PUBLIC ROADS

Unused public roads may be leased for a period not exceeding five (5) years.

Public notice must be given of any proposed lease of the public road. Such notice must be placed on the land, in a local newspaper and sent to all adjoining land owners.

Part 10 Division 2 of the Roads Act 1993 applies to the short term lease of land comprising a public road to the owner of land adjoining the public road if the road is not being used by the public.

Market value is to be applied.

OCCUPATION PRIOR TO ACQUISITION OF LAND

Where the registered proprietor or owner allows pre-acquisition access to Council, the Chief Executive Officer should, wherever practical, obtain from the registered proprietor or owner of the land a Permit to Enter or a Deed which allows the Council such access. The Chief Executive Officer may settle such terms as deemed acceptable, including rent for occupation of the land.

CLASSIFICATION

In the case of acquiring land for community use, the report seeking Council's approval to acquire the land is to indicate that the land upon transfer to Council will be classified as "community" land.

Any land to be acquired by Council in association with a subdivisional consent or approval, whether determined by the Council or by delegation (except land to be dedicated as public reserve), will be deemed to be "operational" land and the proposal to classify the land will be the subject of a public notice.

If no representations are received, or a representation(s) is received and considered by the Chief Executive Officer to be trivial or frivolous, the land will be classified as "operational".

If representations are received objecting to the classification of the land as "operational", Council is required to determine the classification.

Council's land register will be as required by the Local Government Act 1993.

Until a regulation is made, or the Director-General of the Department of Local Government prescribes, the form of a certificate of classification of land will be as approved by the Chief Executive Officer.

The cost of a certificate of classification of land will be as determined by Council in its annual consideration of fees and charges.

If Council is advised by a Minister of the Crown or a Government Department that land will be transferred to Council, eg for water supply or sewerage needs, the Chief Executive Officer will give public notice in a local newspaper that such land will be classified as "operational".

If following public notification there is, in the opinion of the Chief Executive Officer, a bona fide objection to the classification, the Chief Executive Officer will report to Council and Council will be required to determine the classification.

This does not apply to land being transferred as "community" land, eg public reserve.

THE COMMON SEAL OF COUNCIL

Clause 48(4) of the Local Government (Meetings) Regulations 1999 states that 'the seal of a Council must not be affixed to a document unless the document relates to the business of the Council and the Council has resolved (by resolution specifically referring to the document) that the seal be so affixed'.

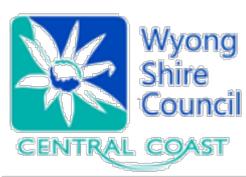
The Chief Executive Officer has directed that this regulation should be considered when preparing reports to Council if it is likely that a document will require the seal of Council.

The recommendation should read that "the Common Seal of Council be affixed to the documents if required".

GENERAL

The Director - Community Growth will provide a report to Council each six (6) months on the status of all of Council's land and property transactions.

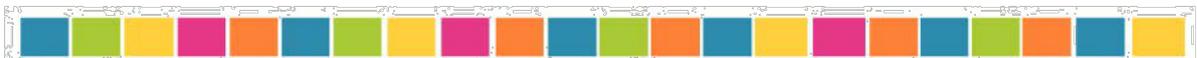
Policy for Property Transactions – Sales and Acquisitions



POLICY NO: WSC123

POLICY FOR PROPERTY TRANSACTIONS – SALES AND ACQUISITIONS

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Policy for Property Transactions – Sales and Acquisitions



AUTHORITY	NAME & TITLE
AUTHOR	Jari Ihalainen, Director Property and Economic Development
MANAGER	
DIRECTOR	
GENERAL MANAGER	Michael Whittaker

CERTIFIED A TRUE COPY OF POLICY ADOPTED BY COUNCIL

SIGNATURE	
COUNCIL RESOLUTION DATE	22/10/2014

History of Revisions:

Version	Date	TRIM Doc. #
1	16/4/2014	D06914286
2	22/10/2014	D11762460

Policy for Property Transactions – Sales and Acquisitions

A. POLICY SUMMARY

- A1 The policy provides guidance in relation to all prospective property transactions in accordance with Council's strategic priorities, service delivery, operational and legislative requirements.

B. POLICY BACKGROUND

- B1 This Policy has been prepared by Wyong Shire Council to provide guidance for staff members that are responsible for selling, acquiring or exchanging ownership of land.
- B2 From time to time, land owned by Wyong Shire Council may be identified as surplus to operational requirements and be offered for sale. Similarly, Council may identify the need for new assets and resolve to acquire property.
- B3 Council owned land is a valuable public asset owned by Council on behalf of ratepayers. The adoption of this policy will ensure the sale and acquisition of Council land (real property) with or without buildings or other improvements, and the granting of easements in land owned by Council, is transparent, consistent and has regard to Council's strategic aims and statutory responsibilities.
- B4 The *Local Government Act 1993* ('Local Government Act') sets out specific legislative requirements in regard to the management and disposal of public land by Councils. This policy is intended to provide further guidance on property dealings in addition to the statutory obligations under the Local Government Act.

C. DEFINITIONS

- C1 **Council** means Wyong Shire Council, being the organisation responsible for the administration of Council affairs and operations and the implementation of Council policy and strategies.
- C2 **Property Transactions.** For the purpose of this Policy, 'Property Transactions' means the sale and acquisition of real property and the grant of easements.

D. POLICY STATEMENTS**Jurisdiction**

- D1 This Policy covers all elected members of Council, all personnel employed by Council, any person or organisation contracted to or acting on behalf of Council, any person or organisation employed to work on Council premises or facilities and all activities of the Council.
- D2 This policy does not confer any delegated authority upon any person. All delegations to staff are issued by the General Manager.

Policy for Property Transactions – Sales and Acquisitions

General

OBJECTIVES

- D3 The objectives of this policy are to:
- Ensure property transactions comply with statutory obligations
 - Ensure property transactions are transparent, robust and aligned to Council's Strategic Plan
- D4 The following principles and practices will apply in governing the effective and efficient conduct of prospective property transactions.
1. **Principle: Strategic Resourcing**
In accordance with the changing economic environment the transactions of land and buildings will be governed by the priorities outlined in the WSC Property Strategy and Strategic Plan.
Practice:
Property transactions will be conducted in accordance with this Policy for Property Transactions – Sales and Acquisitions.
 2. **Principle: Legislation Framework**
All property transactions are to comply with relevant legislative requirements.
Practice
Applicable legislative requirements will be identified and managed during all contractual negotiations with prospective parties.
 3. **Principle: Basis of Property Transactions**
All property transactions will be conducted in a fair and equitable basis in the overall interests of the Shire.
Practice
All real property should generally be transacted at market value including that transacted with private entities, government departments and agencies, unless there is a Council resolution that authorises the transaction to proceed at other than market value.
 4. **Councillors will be advised of any pending property transactions.**
A report to Council relating to a property transaction should be considered in open Council, with commercially sensitive information contained in confidential attachments.

ACQUISITION AND DISPOSAL OF REAL PROPERTY ASSETS

- D5 There must be a Council resolution for any land to be sold or acquired. Council officers may undertake preliminary enquiries and processing of applications for the closure of roads and sale or purchase of land prior to reporting to Council but cannot agree to the sale or purchase of any Council land in the absence of a Council resolution.

Policy for Property Transactions – Sales and Acquisitions

Classification

- D6 Under the Local Government Act, land under Council's control, other than roads and crown land, must be classified as either "community land" or "operational land."
- D7 Council cannot sell, exchange or otherwise dispose of land classified as community land (s. 45 of the Local Government Act). Accordingly, where Council has resolved to dispose of property, it would first have to reclassify the land as operational land, which must be done by a Local Environmental Plan (LEP) and requires public exhibition of the proposed LEP, community consultation, a public hearing conducted by an independent chairperson and consent of the Minister.
- D8 Public land owned by Council and classified as operational land can be sold at the discretion of Council, subject to a resolution endorsing the sale.
- D9 Land acquired by Council must be designated as 'community' or 'operational' at the time of acquisition. All future land purchases by Council should generally be designated as operational land irrespective of the intended or existing use.
- D10 The Roads Act sets out some requirements for the formal and permanent closure of parts of public roads and lanes. Under s. 43(2) of the Roads Act land vested in a Council and forming part of a former public road is classified as operational land for the purpose of the Local Government Act, unless Council resolves before the land vests that it is to become community land.

PROPERTY DIVESTMENT**General Principles**

- D11 All sales of land must comply with the provisions of the Local Government Act.
- D12 Sales should be conducted through a competitive public process (i.e. public auction, public tender or by registration of expressions of interest or advertising) unless circumstances exist that justify an alternative method of sale, such as sale or exchange of land by private treaty (for example where the only viable purchasers are the adjoining owners). Council must outline the reasoning which led to its decision to use an alternative method of sale in the interests of probity, public accountability and transparency.
- D13 Sales should be in the best interests of the community and provide the best result, both financial and non-financial, for the Council and the community.
- D14 Generally, all sales should occur at not less than the market value assessed by an independent valuer engaged by Council.

Policy for Property Transactions – Sales and Acquisitions

- D15 The assessment of market value may be based on a market appraisal carried out by a Council officer with appropriate skills and experience who is independent from the Business Unit responsible for the property transaction, instead of an external valuation, if the land proposed to be sold:
- Is unimproved land; or
 - Is improved land with a market value likely to be less than \$300,000 (ex GST); or
 - An external valuation of the property was obtained by Council less than 3 years previously.
- D16 In the event that land is sold for less than the assessed market value, the Council should explain the circumstances, reasons or factors which led to the decision to accept a sale price that is less than market value.
- D17 Prior to being offered for sale, property should be appropriately zoned or arrangements made in preparation for re-zoning. This will ensure that the ultimate use of the land is determined by that zone and the highest possible sale price is achieved.
- D18 Where an opportunity exists to substantially increase the potential value of a site through development consent, Council should consider securing such consent prior to the sale of the land if appropriate in the circumstances.
- D19 Council policy is not to sell land which is used by the community as a public pedestrian thoroughfare, pathway, access way or the like, unless full details have been disclosed in the Report to Council recommending the sale, including potential impacts on the community.
- D20 Applications for the closure and sale of part of a lane or road are looked at individually. Amongst other things, Council's operational requirements are considered, effects on streetscape and access are considered, and any affected neighbours must be consulted.
- D21 Roads can only be closed by the Minister, even for roads owned by Council. Council can make the application to the Minister but cannot guarantee to any potential purchaser that such application will succeed.

CATEGORIES

- D22 There are three types of sales which are dealt with separately.
- **Section A** deals with the sale of stand-alone properties, that is properties that can be sold to any person (not just a neighbour) and can be used separately from neighbouring land.
 - **Section B** deals with sales to adjacent property owners without a public sales campaign of closed roads, drainage reserves and other small areas of land to be used and consolidated with the purchaser's existing property.
 - **Section C** deals with grants of rights of way and other easements over Council's land that benefit privately owned land

Policy for Property Transactions – Sales and Acquisitions

"Stand Alone" Properties

- D23 Without limiting Council's powers under the Local Government Act, Council may sell operational land if that sale is to provide funds for future asset acquisition through the Property Reserve.
- D24 Prior to the sale of land, Council must:
- Determine the property to be surplus to requirements, or
 - Where it is commercial property, prepare a Business Case outlining the reason for divestment.
- D25 Reports to Council recommending a property sale must include, where relevant:
- i. a detailed description of the property, its address, size, improvements and brief history of use;
 - ii. details of why the property is deemed surplus to Council's current and future service delivery requirements;
 - iii. disclosure of current or estimated maintenance costs or requirements;
 - iv. assessment of alternatives to disposal including potential interim uses to which the property may be put and the likely revenue (if any) from such interim uses;
 - v. an indicative value for the property (to be confirmed by independent valuation or internal market appraisal);
 - vi. any proposal for use of the sale proceeds
- D26 In the absence of a specific resolution for other application, the sale proceeds are to be paid into the Property Reserve for reinvestment into other land or property assets. The sale proceeds are not to be used for Council's recurrent or operational expenses. This requirement does not apply to proceeds from the sale of former public roads, on the basis that section 43(4) Roads Act requires these proceeds to be used for acquiring land for public roads or carrying out roadwork on public roads.
- D27 Prior to sale, Council will obtain an assessment of the market value from an external registered valuer, or an internal market appraisal if permitted under Paragraph D15 of this Policy. This will be used to set the reserve price at auction and for any negotiations.
- D28 Council may appoint a licensed real estate agent to act on the sale.
- D29 Sales should be structured to obtain the highest price for the land.
- D30 Sales will generally be conducted through a public competitive process (tender, EOI, auction, advertising).
- D31 The sale will be advertised in accordance with usual industry practice for the sale of similar types of properties by private sellers. If the property is auctioned but does not reach the reserve price, Council may negotiate a sale to the highest bidder.
- D32 In rare cases, stand-alone properties will have only one potential purchaser and in that case, Council may negotiate a private treaty sale with that purchaser, for not less than the market price, in accordance with the valuation received, or an internal market appraisal if permitted under

Policy for Property Transactions – Sales and Acquisitions

Paragraph D15 of this Policy.

Sales to Adjacent Property Owners

- D33 In some cases, such as small lots created through road closures, surplus land may have little commercial appeal to the broader market. In such cases a sale may be negotiated directly with adjoining land owners.
- D34 The sale of Council owned property to the adjacent property owner may be instigated by either Council or by the adjacent property owner interested in purchasing.
- D35 Council may be willing to sell drainage reserves to adjacent property owners, provided there is no impact on service delivery.
- D36 Any sale of a drainage reserve will require the creation of a drainage easement in Council's favour over the land to be sold.
- D37 Where the purchase is not instigated by Council, the purchaser must pay all costs and expenses incurred by Council in connection with the road closure (if relevant), subdivision (if any) and sale including but not limited to:
- i. surveyor's fees (if a road closure or subdivision of a drainage reserve is involved and/or if a plan of consolidation is required), and registration fees for the plan/s of subdivision and/or consolidation;
 - ii. development application fees, or the fees of an external assessor of the development application for subdivision (if any);
 - iii. fees payable to any other authority, for example the road closure application fee to the Department of Lands;
 - iv. valuer's fees; and
 - v. legal fees incurred by Council in connection with the sale
- D38 Where the purchase is instigated by Council, Council may require the purchaser to pay some or all of the costs and expenses referred to above.
- D39 In all cases, the purchaser must pay:
- a. the sale price of the land being the amount assessed by an external registered valuer, or an internal market appraisal if permitted under Paragraph D15 of this Policy, having regard to the amount by which the addition of the land will increase the market value of the purchaser's existing property with which it is to be consolidated and used; and
 - b. the purchaser's own costs in connection with the sale including but not limited to surveyor's fees for any plan of consolidation of the land sold with the purchaser's existing property and solicitor's costs and disbursements.
- D40 Net proceeds from the sale of land (other than for former public roads) will be paid into Council's Property Reserve.

Policy for Property Transactions – Sales and Acquisitions

Grants of Easements

- D41 An easement is a right burdening one parcel of land and benefitting another parcel of land owned by a different person. It allows the owner of the benefitted land to use part of the burdened land of another person for purposes which would not be permitted in the absence of the easement. For example, a right of way permits access over the burdened land to the benefitted land, which would otherwise be trespass without the easement. The easement is attached to the land and registered on the title of both properties, so that it automatically passes to purchasers of the land. It continues indefinitely unless and until, for example, it is expressly released by the owner of the benefitted land or extinguished by the Supreme Court on evidence that it is no longer used. It is a valuable interest in land.
- D42 Properties adjacent to Council owned land do not have a right to use the Council owned land for access to their private properties without a registered right of way, lease or licence agreement. Similarly, a private property owner does not have the right to run pipes or other services across, through or under Council owned land unless there is a legal registered easement allowing this. In this respect, Council owned land is no different from land owned by a private owner.
- D43 Council cannot grant rights of way over community land for access to private properties, and has very limited rights to grant easements for underground pipes under community land. Council can grant easements over its operational land the same as any private owner.
- D44 The grant of an easement over Council land reduces the value of that Council land. It also restricts the use of part of the Council land. Council cannot block any right of way and usually cannot build over the site of an easement for drainage or other services. The same restrictions would apply to any purchaser of Council land which is burdened by an easement and so reduces the sale value.
- D45 The grant of a right of way or other easement benefitting an adjacent or nearby private property increases the value of that property. It can give vehicular access to a property that otherwise does not have vehicular access. It can give rear access to a property that otherwise would not have rear access. It can allow development on that other property that may not otherwise be possible. It can allow increased development on that property because provision for access does not have to be made on that property to the road but only to the Council land and then along the right of way to the road. It can reduce the costs of development on that property if pipes can be taken under Council's land rather than on a longer route along the public road.
- D46 Any agreement by Council to create or grant an easement over Council land benefitting private land is on the basis that the grantee must pay:
- all costs and expenses in connection with creation of the right of way, including but not limited to survey, valuation, legal and registration fees; and
 - the consideration (sale price) for the easement being the amount assessed by an external registered valuer having regard to the amount by which the easement increases the market value of the benefitted land and the amount by which the easement reduces the market value of the burdened Council land.

Policy for Property Transactions – Sales and Acquisitions

- D47 The consideration for the easement may be based on a market appraisal carried out by a Council officer with appropriate skills and experience who is independent from the Business Unit responsible for the property transaction, instead of an external valuation, if the easement proposed to be created or granted:
- Is over unimproved land only; or
 - The consideration for the grant of easement is likely to be less than \$50,000 (ex GST); or
 - An external valuation of the affected property was obtained by Council less than 3 years previously

Compliance

- D48 Purchasers of Council land are expected to comply with the terms and conditions of any formal agreement and contract for sale entered into by them, including as to the time for completion and amounts to be paid. Grantees of easements over Council's land are expected to comply with the registered terms of the easement. The obligations are not reduced and will not be waived because the vendor/grantor is Council rather than a private seller/grantor.

E. POLICY IMPLEMENTATION - PROCEDURES

- E1 This policy should be read in conjunction with the Wyong Council Code of Conduct.
- E2 It is the personal responsibility of all Council employees and agents thereof to have knowledge of, and to ensure compliance with this policy.

PROCEDURE FOR THE SALE OF LAND**Preparation of land for sale**

- E3 Council should ensure that land is offered for sale in a manner that will ensure the maximum price is achieved while protecting both the Council and the public interest. Some examples of matters which should be addressed before offering land for sale include:
- The land proposed for sale being sold at its highest and best use and is zoned appropriately, or arrangements made for re-zoning.
 - Presentation of the land should expose its best attributes. Preparation for sale should include (where appropriate) repairs, cleaning, painting, clearing of vegetation, pegging of boundaries and associated works.
 - The optimum development potential of the land should be considered.
 - The need for any continuing interest in the land such as covenants, easements, leases, licenses, planning protections or controls and so on.
 - Is subdivision required?
 - Structural and engineering reports may be required.
 - Environmental reports should be obtained where there is possible contamination.
 - Land must be offered for sale with full disclosure of relevant information to enable a full and proper due diligence enquiry.

Policy for Property Transactions – Sales and Acquisitions

- If land proposed for sale is contaminated, a strategy for its remediation (including the responsibility for and the funding of remediation works) needs to be developed.
- A site survey is to be commissioned if required to accurately define the asset being sold.

E4 As each sale is different, the above matters are only examples of the many potential matters that should be addressed before offering land for sale. In all cases, the preparation of land for sale should be cost-effective and be consistent with the nature of the land being proposed for sale as well as the circumstances which have led to the proposed sale.

Appointment of consultants and real estate agents

E5 Consultants may be appointed to give advice or to assist with the preparation of the land for sale. Consultants may include valuers, surveyors, engineers, environmental assessors (i.e. in relation to soil contamination and remediation), demolition specialists, town planners, legal advisers and so on.

E6 Consultants must be independent and not have any personal or pecuniary interest in the transaction. A written declaration or disclosure in this regard is essential.

E7 A consultant must not be appointed as valuer and selling agent for the same land. Careful selection of consultants will ensure best results are achieved. Consultants should be fully briefed on the scope of their engagement. Only those consultants who are adequately qualified, skilled and experienced should be invited to tender for the services to be performed. This will generally enable acceptance of the lowest quote or tender.

E8 Consultants must provide evidence of professional indemnity insurance.

Instructions for Valuers

E9 Valuers should receive unbiased instructions to carry out the valuation independently, free from influence or collusion with the selling real estate agent and Council officers, and in the case where land is being exchanged, with the owners of property which are the subject of the exchange. In appointing the valuer, the Council must ensure that the preferred valuer does not have any conflict of interest.

E10 Generally, valuers should be instructed to provide a valuation on the basis of highest and best use of the land proposed for sale. However, where land is proposed for sale for some purpose other than the highest and best use, the valuer should be instructed to provide a valuation on both bases. This will enable the Council to make an informed decision on the sale of this land. Further, the community can be fully informed of the value of any community service obligation that might arise as a result of the land being used for a purpose other than highest and best use.

Policy for Property Transactions – Sales and Acquisitions

- E11 Generally, valuers should be instructed to provide a valuation on the basis of highest and best use of the land proposed for sale. However, where land is proposed for sale for some purpose other than the highest and best use, the valuer should be instructed to provide a valuation on both bases. This will enable the Council to make an informed decision on the sale of this land. Further, the community can be fully informed of the value of any community service obligation that might arise as a result of the land being used for a purpose other than highest and best use.
- E12 If the value of the land is high and/or the land is complex in nature, it would be prudent to have a second valuation done by an independently instructed valuer on the same instructions. If there is a difference of opinion in the valuation, a valuer's conference should be called to work out the differences and arrive at an agreed valuation. An impartial chairperson should preside over the conference.

Instructions for Real Estate Agents

- E13 Real estate agents should be required to provide a report, which outlines:
- details of the proposed marketing and advertising campaigns;
 - the expected selling price; and
 - details of any works required to be undertaken on the land being offered for sale
- E14 Where the sale is by auction, the real estate agent should nominate the auctioneer prior to the appointment.

Method of SaleSale by public auction

- E15 Where the Council has decided that land is to be sold by public auction, the sale of this land before auction must not be permitted.
- E16 Sale of land by public auction should be conducted in the following manner:
- After the selection and appointment of a real estate agent, the date of auction should be set, allowing approximately four to six weeks for an advertising campaign. The period may need to be varied depending on the type of land. The agent should be required to submit a summary to the Council of the marketing campaign, enquiry rate and anticipated result seven days before the auction.
 - The advertising campaign should be conducted in a manner that adequately exposes the land to the market.
 - If an external valuation is required, the valuer(s) should provide valuations to the Council at least two to three weeks before the auction date. This will allow sufficient time to arrange a conference of valuers, or to confer with the valuer(s) if there is any concern about or disagreement over the valuations provided.
 - When the valuation(s) and the selling agent's report have been received, the Council should determine a reserve price. The reserve price should be not less than the market value, unless there is a Council resolution that authorises the transaction to proceed at

Policy for Property Transactions – Sales and Acquisitions

other than market value. The reserve price must be set before the auction and must remain confidential at all times.

- Security must be maintained over documentation relating to the reserve price.

- E17 Documents such as valuations, agent's reports and related correspondence must be provided on a confidential basis and only to the Council representatives responsible for the transaction.
- The reserve price or valuation advice must not be disclosed, particularly to the selling agent, before the auction.
 - If the land fails to sell at auction, it is to be passed in for negotiation with the highest bidder and offered for sale to that person at not less than the reserve price, unless there is a Council resolution that authorises the transaction to proceed at other than at the reserve price or market value.
 - If the land remains unsold following negotiations after auction, it should be left on the market for private sale at not less than the reserve price, unless there is a Council resolution that authorises the transaction to proceed at other than market value, for an appropriate or reasonable period of time as determined by the Council.
 - If an offer is received which is lower than the market value and the Council is considering acceptance of the offer, it should be submitted to Council for consideration with an explanation as to why the lower value should be considered, unless there is a Council resolution that authorises the transaction to proceed at other than market value.

Sale by public tender

- E18 Where the Council has decided that land is to be sold by public tender, the sale of this land before the close of tenders must not be permitted.
- E19 Most of the procedures described in the conduct of a sale by public auction are relevant to a sale by public tender, and it is recommended that they be read in conjunction with this section.
- E20 Sale of land by public tender should be conducted in the following manner:
- Tender documents must be prepared which outline the process for the sale and all relevant timelines. The documents should also outline the broad objectives the Council wishes to achieve through the sale, how tenders will be received and assessed, and how any post tender negotiations will be conducted.
 - Where appropriate the Council should appoint a probity auditor to oversee the entirety of the sale process.
 - The reserve price must be set before the close of tenders and must remain confidential to ensure the integrity of the sale process. Tenders must not be opened until the reserve price is set (i.e. if a reserve price had not been set before the close of tenders).
 - Tenders must be lodged with the Council or its legal representative. Tenders must not be lodged with the selling agent. Tenders lodged with the selling agent should not be accepted. Tenders submitted by facsimile or by e-mail should also not be accepted.

Policy for Property Transactions – Sales and Acquisitions

- Late tenders must not be accepted.
- Tenders should only be opened by a formally appointed panel comprising representatives of the Council and may include its legal representative and, if appointed, the probity auditor.
- The conforming tender that offers the best result, both financial and non-financial, for Council and the community, at or above the reserve price should be accepted. If no conforming tenders are received at or above the reserve price, the Council may commence post tender negotiations in accordance with its pre-determined strategy. This may involve negotiations with the highest tenderer or may involve inviting tenderers to consider increasing their offers for the property. Post tender negotiations should only be conducted for the duration allowed in the tender documentation. If the land remains unsold, it should be formally passed in and all tenderers must be advised. The land should continue to be marketed for an appropriate or reasonable period of time as determined by the Council.
- If an offer is received which is lower than the reserve price or market value and the Council is considering acceptance of the offer, then Council should disclose the reasons for its decision to sell the land for a price lower than valuation, unless there is a Council resolution that authorises the transaction to proceed at other than market value.

Sale by Public Registration or Expression of Interest

- E21 This method of sale is useful where the Council wishes to expose land to the market without the assistance of an agent. It can be used as a public marketing process that is an alternative to an auction or tender.
- E22 This method of sale is also appropriate in circumstances where, in addition to selling the land, a Council wishes to control the future use or development of the land.
- E23 Potential purchasers can be invited to provide details of a design concept or to make a commitment to enter into an agreement to develop the land in accordance with the Council's brief. Interested parties may also be required to provide details of their ability to perform and of their history of achievements.
- E24 Registration of expressions of interest may or may not be binding on either party.
- E25 The reserve price for the land should be set before the receipt of offers. Again, the reserve price must remain confidential to ensure the integrity of the sale process.
- E26 The marketing of the land should be conducted in the same manner as sales by auction or tender. If a Council has a desired development outcome for the land, the advertising campaign must include details of the proposal.

Policy for Property Transactions – Sales and Acquisitions

Sale/Exchange by Private Treaty

- E27 There may be circumstances where it may be more appropriate to sell/exchange land by private treaty. Generally, it will be determined by:
- the nature of land that is proposed for sale/exchange; and
 - how the proposed sale/exchange is initiated, e.g. often it is an external person who has initiated discussions with the Council with regard to the sale/exchange of land, that will determine if a sale/exchange by private treaty is appropriate
- E28 The nature/type of land may include:
- rear laneways and rights-of-way;
 - disused/closed roads; and
 - small allotments from previous subdivisions
- E29 Prospective purchasers of this type of land may include:
- owners of adjacent properties;
 - developers;
 - community groups;
 - State/Commonwealth Government; and
 - other parties with a particular interest in that land
- E30 An important consideration is the value of land proposed for sale/exchange. The value of this land to the Council may be different (and in some cases, significantly different) to the value of land to the prospective purchaser. For example:
- The addition of small allotments or part of a laneway or disused/closed road to an adjoining owner's property may increase the value of the combined property.
 - The availability of the additional land could mean the difference between not being able to and being able to develop or subdivide the purchaser's property.
 - The sale/exchange of land to a developer could reap the developer a significant return on their investment.
- E31 Additionally, the sale/exchange of land may result in a loss of general public access to land which may become restricted as a consequence of the sale/exchange. Any change in public access needs to be balanced with the public/community benefit which may arise from the sale/exchange and managed properly.
- E32 Given the nature of land generally offered for sale/exchange, the differences in value of the land for the vendor and the prospective purchaser, and the likely public perceptions of the proposed transaction, the highest standards of probity and transparency must be applied and be seen to be applied.

Policy for Property Transactions – Sales and Acquisitions

PROCEDURE FOR ACQUISITION OF LAND

E33 At times Council will resolve to acquire new real property assets. These assets may be acquired to assist in current or future delivery of Council Services or to supplement Councils revenue – generating investment/development portfolio.

General Principles

E34 All property acquisitions must be supported by a Council resolution.

E35 New acquisitions should generally be classified as operational land.

E36 Purchases will be conducted through private treaty negotiation, tender or expressions of interest. Purchases through public auction should not be pursued.

E37 The purchase price should not be more than the market value as determined by an independent valuation, or an internal market appraisal if permitted under Paragraph D15 of this Policy, unless there is a Council resolution that authorises the transaction to proceed at other than market value. The valuation must be based on the current state, condition and zoning of the property and not the development potential of the site.

E38 Negotiations with potential vendors/owners of sites identified for acquisition can be conducted without a Council resolution, however, no binding offer to purchase can be made until a resolution supporting the acquisition has been pursued.

E39 Council must undertake detailed due diligence on the site including, but not limited to;

- Property and title searches
- Contamination
- Zoning development potential
- Registered interests (easement and rights of way, etc.)
- Structural/engineering reports
- Environmental constraints (flooding, EECs, etc.)
- Surveys.

E40 Associated documents

- Council Code of Conduct
- Local Government Act 1993
- Environmental Planning and Assessment Act 1979
- Crown Lands Act 1989
- Roads Act 1993



Item No: 3.1
Title: Pecuniary Interest Disclosure Returns 2019-2020
Department: Governance

26 October 2020 Ordinary Council Meeting

Reference: F2019/00064 - D13752769
Author: Kathy Bragg, Senior Governance Officer
Manager: James Taylor, Section Manager Governance
Executive: Gary Murphy, Chief Executive Officer

Report Purpose

Council's Code of Conduct, at clauses 4.8 to 4.27, require each Designated Person to lodge a Pecuniary Interest Disclosure form (as specified in Schedule 2 Council's Code of Conduct) with the Chief Executive Officer:

- 1 Annually; or
- 2 Within three months of joining Council; or
- 3 When becoming aware of a change in circumstances of "a designated person's interest as specified in Schedule 1 Council's Code of Conduct of personal".

Clause 4.25 of Council's Code of Conduct further requires that Returns lodged with the Chief Executive Officer need to be tabled at the "first meeting of Council after the last day that the returned is required to be lodged" (30 September 2019).

The purpose of this report is to meet the requirements under the Code of Conduct.

Recommendation

That Council receive the report on Pecuniary Interest Disclosure Returns 2019-2020 and note that the Chief Executive Officer has tabled Pecuniary Interest Disclosure Returns, pursuant to Clause 4.25 of Council's Code of Conduct.

Background

All required Returns by Councillors, the Chief Executive Officer, Independent Audit Risk and Improvement Committee members, other Senior Staff and those Council Staff identified as designated persons have been lodged before the statutory date.

Council's Code of Conduct

In addition to the annual disclosure requirements, Council's Code of Conduct states that Councillors and designated persons are required within three months of becoming aware of a

3.1 Pecuniary Interest Disclosure Returns 2019-2020 (contd)

new interest, to complete a new Pecuniary Interest Disclosure Return and lodge this with the Chief Executive Officer. These Returns must be tabled at a Council Meeting as soon as practicable after the Return is lodged.

The Council's Code of Conduct also states that Councillors and designated persons must disclose whether they were a property developer, or a close associate of a corporation that is a property developer, on the Return date.

Pecuniary Interest Returns and the [Government Information \(Public Access\) Act \(GIPA Act\)](#)

The [GIPA Act](#) defines Pecuniary Interest Returns as open access information. Section 6 of the [GIPA Act](#) provides for the mandatory proactive release of open access information. The [GIPA Act](#) provides that open access information must be made publicly available free of charge on Council's website.

The Information and Privacy [Commission's Guideline 1: For local councils on the disclosure of information contained in the returns disclosing the interests of Councillors and designated persons](#) states at 3.10:

3.10 Section 6(4) of the GIPA Act requires agencies 'must facilitate public access to open access information contained in a record by deleting matter from a copy of the record if disclosure of the matter would otherwise be prevented due to an overriding public interest against disclosure, and it is practicable to delete the matter'.

As such the residential address and signature (information which is classified as [personal information](#)) has been redacted from each published Return on Council's website. Any requests for further redactions to a Return have been assessed under the [Local Government Act](#) and the [GIPA Act](#).

Given Council Meetings are being held remotely at this time, the tabling of the Returns has been facilitated by the provision of all of the completed Returns in a folder to Meeting Support staff. The unredacted returns will subsequently be available for view only inspection by application, as per Council's current practice. The redacted published Returns can be viewed at this [link](#) on Council's Website.

Link to Community Strategic Plan

Theme 4: Responsible

Goal G: Good governance and great partnerships

G2: Communicate openly and honestly with the community to build a relationship based on transparency, understanding, trust and respect.

Attachments

Nil.



Item No: 3.2
Title: Meeting Record of the Water Management Advisory Committee meeting held 12 August 2020
Department: Water and Sewer

26 October 2020 Ordinary Council Meeting

Reference: F2019/01200 - D14179885
Manager: Luke Drury, Section Manager Water Services and Design
Executive: Jamie Loader, Director Water and Sewer

Summary

The purpose of this report is to note the Meeting Record of the Water Management Advisory Committee meeting held on 12 August 2020.

Recommendation

That Council receive the report on Meeting Record of the Water Management Advisory Committee meeting held 12 August 2020.

Background

The Water Management Advisory Committee held a meeting on 12 August 2020. The Meeting Record of that meeting is Attachment 1 to this report.

There are no recommendations made to Council. The Meeting Record is being reported for information only in accordance with the Terms of Reference.

Link to Community Strategic Plan

Theme 4: Responsible

Goal G: Good governance and great partnerships

G3: Engage with the community in meaningful dialogue and demonstrate how community participation is being used to inform decisions.

Attachments

1	Water Management Advisory Committee Meeting Record - 12 August 2020	D14179853
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Water Management Advisory Committee Meeting Record 12 August 2020



Location:	Zoom Meeting	
Date:	12 August 2020	
Time	Started at: 4.03pm	Closed at: 6.14pm
Chair	Councillor Jane Smith	
File Ref	F2019/01200	

Present:

Councillor Louise Greenaway, Councillor Chris Holstein (left 6.09pm), Councillor Jane Smith, Gary Murphy – Chief Executive Officer (left 5.54pm), John Asquith, Daryl Mann, Pamela McCann

Council Staff present:

Jamie Loader – Director Water and Sewer, Daniel Kemp – Unit Manager Planning and Delivery, Luke Drury – Section Manager Water Services and Design, Elizabeth Knight – Section Manager Treatment Plants and Catchments (joined 5.19pm), Greg Hickson - Operations Supervisor Dams and Treatment, Gregory Horvath – Water and Sewer Project Manager Major Construction, Charles Leung – Project Manager Integrated Water Cycle Management, Satpal Singh – Senior Engineer Water Resource Planning, Kelly Drover – Advisory Group Support Officer

Item 1 Welcome, Acknowledgement of Country and Apologies

Apologies received: Mayor Lisa Matthews, Ken Brookes, Michael Redrup

Councillor Jane Smith declared the meeting open and completed an Acknowledgement of Country and Connection to Land Statement.

Item 2 Disclosures of Interest

The Chair called for any declarations of interest.

No disclosures were received.

Item 3 Confirmation of Previous Meeting Record

The Advisory Group confirmed the Meeting Record from 30 June 2020.

The Advisory Group reviewed the Action Log.

Water Management Advisory Committee Meeting Record
12 August 2020



Item 4 Briefing on Drought Response Desalination Readiness Assessment (Action 6)

Gregory Horvath (Water and Sewer Project Manager, Major Construction) provided a presentation on the Drought Response Desalination Readiness Assessment including the original concept design, intake structure constructability assessment, ocean intake option, current approvals, project program and additional studies and investigations.

The Advisory Group discussed the need for a Communication engagement plan to map out the community consultation process.

Action: The Advisory Group indicated in-principle support for undertaking the additional studies and investigations however request additional clarification on costs per kilolitre, community engagement strategy and offsetting energy.

Item 5 Water Supply System Status Report – July 2020 (Standing Item)

Satpal Singh (Senior Engineer Water Resource Planning) provided a presentation on the Water Supply System Status and climate outlook including:

- Dam storage levels
- Rainfall statistics/outlook
- Status of important assets
- River extractions
- Hunter water storage and transfers
- Hunter Water Central Coast Transfer triggers
- Water Restrictions
- Water Demands

Item 6 Update on Water Resilience Works (Standing Item)

Luke Drury (Section Manager Water Services and Design) provided the Advisory Group with an update of the water security works and drought management projects that are currently underway and the status of each project.

Action: In regard to Woy Woy Treatment Plant, staff to provide information on where groundwater is being extracted from in comparison to where urbanisation has occurred and what parameters are monitored to ensure safety of this water source.

Action: Staff to provide an indication of annual sludge production volumes relative to onsite storage at Mardi Water Treatment Plant.

Item 7 Environmental Protection Licence Non-Compliance Summary – follow up Opportunity (Action 31)

The Advisory Group discussed Council's recent Environment Protection Licence non-compliance notices and responses.

Water Management Advisory Committee Meeting Record
12 August 2020



Action: Staff to provide ongoing annual summaries to the Advisory Group of any breaches of Environment Protection Licence's after the relevant annual returns are submitted as well as an update on any major incidents in the network should they occur.

Action: Staff to confirm the incident details for the sewer rising main failure which impacted Wamberal Lagoon.

Item 8 Integrated Water Resource Plan (IWRP) Shortlisted Options – follow up opportunity

Luke Drury (Section Manager Water Services and Design) provided the Advisory Group with an update on the IWRP shortlisted options.

Council is required to prepare and submit for approval an Integrated Water Cycle Management plan (IWCM) to Department of Planning Industry and Environment (DPIE) before 30 June 2021 to comply with the Water Management (General) Regulation 2018. IWRP is the water resources component of IWCM, ensuring supply of secure, reliable, safe and affordable raw water upstream of water treatment plants. The IWRP will also plan to identify enduring water supply provisions and triggers to be implemented during prolonged drought periods.

There are 35 shortlisted options which will now be moving through to option development which includes understanding risks, yield modelling and community engagement later in the year, the results of which will be fed into the overall decision-making tool to further assess these options.

Feedback was received from some Advisory Group Members on the shortlisted options and responses have been prepared and will be circulated to the Advisory Group. Staff are happy to receive any additional feedback via email.

Staff noted concerns regarding whether Mine Water is even worth considering due to the high risk for contamination.

Action: Staff to provide written responses to the issues that were raised by various Advisory Group members via email prior to the meeting including concerns raised regarding water quality.

Item 9 General Business and Close

The Advisory Group discussed a Local Government NSW Forum presentation from DPIE CEO Jim Bentley on Strategic Planning for Water and Waste Water Services across NSW and would like to see further information on this.

Action: The following items to be included on the agenda for the next meeting:

- Revised Engagement Plan for IWRP and IPART submission.
- Reassessment of continuation of level 1 water restrictions (Council report 13 July Meeting to be attached to meeting minutes).
- Summary of NSW Water Planning Framework discussions at the upcoming CEOs forum.

The meeting closed at 6.14pm

Water Management Advisory Committee Meeting Record
12 August 2020



Next Meeting: Tuesday 13 October 2020
3pm – 5pm
Zoom Meeting (TBC)



Item No: 3.3
Title: Meeting Record of the Gosford Foundation Trust Management Committee meeting held 22 September 2020
Department: Connected Communities

26 October 2020 Ordinary Council Meeting

Reference: F2018/00731 - D14209478
Manager: Phil Cantillon, Unit Manager Leisure and Lifestyle
Executive: Julie Vaughan, Director Connected Communities

Summary

To note the Meeting Record of the Gosford Foundation Trust Management Committee held on 22 September 2020.

Recommendation

That Council receive the report on Meeting Record of the Gosford Foundation Trust Management Committee meeting held 22 September 2020.

Background

The Gosford Foundation Trust Management Committee held a meeting on 22 September 2020. The Meeting Record of that meeting is Attachment 1 to this report.

There are no actions recommended to Council. The Meeting Record is being reported to Council for information only in accordance with the Terms of Reference.

Link to Community Strategic Plan

Theme 4: Responsible

Goal G: Good governance and great partnerships

G3: Engage with the community in meaningful dialogue and demonstrate how community participation is being used to inform decisions.

Attachments

- | | | |
|----------|---|-----------|
| 1 | Gosford Foundation Trust Management Committee Meeting Record -
22 September 2020 | D14209364 |
|----------|---|-----------|

Gosford Foundation Trust Management Committee Meeting Record 22 September 2020



Location:	Zoom Meeting	
Date:	22 September 2020	
Time	Started at: 3pm	Closed at: 3.51pm
Chair	Councillor Jane Smith	
File Ref	F2018/00731	

Present:

Councillor Jane Smith, Jamie Loader – Acting Chief Executive Officer, Clive Blunt, Barbara Wills

Staff present:

Vivienne Louie – Unit Manager Financial Performance (left 3.15pm), Glenn Cannard – Unit Manager Community Partnerships, Phil Cantillon – Unit Manager Leisure and Lifestyle, Shari Driver – Unit Manager Strategic Planning, Shane Sullivan – Unit Manager Governance and Business Services (left 3.13pm), Rebecca Cardy – Heritage Officer, Kelly Drover – Advisory Group Support Officer

Item 1 Welcome, Apologies and Acknowledgement of Country

Apologies received: Gary Murphy – Chief Executive Officer

The Chairperson, Councillor Jane Smith, declared the meeting open and completed an Acknowledgement of Country and Connection to Land statement.

Item 2 Disclosure of Interest

The Chair called for any declarations of interest.

No disclosures received.

Item 3 Confirmation of Previous Meeting Record

The Committee confirmed the Meeting Record from 26 May 2020.

The Committee discussed the Action Log.

Gosford Foundation Trust Management Committee Meeting Record
22 September 2020



Item 4 Potential Heritage Projects

This item was discussed after Items 5 and 6.

Rebecca Cardy (Heritage Officer) discussed potential Heritage Public Art and Conservation projects. The Committee had ranked their top 3 projects and submitted to the Heritage Officer. The top 3 projects of the Committee were:

1. Gosford Urban Stream
2. Gosford Fountain Upgrade
3. Interpretation Project of Pioneer Park

The Committee discussed the Heritage and Culture app that has already been developed as an option for a project that could be implemented quite quickly. Whilst the app has a focus on our history and heritage, the platform is there to include a whole range of things on the Central Coast.

Action: Staff to provide a scope and outline for short term and long term potential projects at the next meeting for consideration of the Committee.

Item 5 Update on stand-alone website for the Trusts (Action 37)

Shane Sullivan (Unit Manager Governance and Business Services) provided an update on the stand-alone website for the Trusts.

The website is yet to go live with ongoing issues with Westpac regarding the payment portal which will enable us to have the donation link to place on the website. As soon as this issue is sorted the Website is ready to go live.

It was noted that there isn't a huge amount of content on the Gosford Foundation Trust website.

Action: Gosford Foundation Trust website link to be provided to Committee members to provide any comments on content.

Item 6 Update from Finance

Vivienne Louie (Unit Manager Financial Performance) discussed the finance reports as at 30 June and 31 July 2020. For the month of August there were no donations or expenditure, just interest and bank charges. The 31 August 2020 Income Statement report will be distributed to the Committee as soon as it is available.

Item 7 General Business and Close

No General Business.

The meeting closed at 3.51pm

Next Meeting: Tuesday 10 November 2020
3pm – 4pm
Location TBA

Item No: 4.1
Title: Questions with Notice
Department: Governance



26 October 2020 Ordinary Council Meeting

Reference: F2020/00039 - D14229279

The following questions were submitted by Councillor Greenaway:

Obstacle Limitation Surface (OLS) Calculations

Would you please provide a copy of how the OLS calculations were made and confirmation as to how often the weather conditions relied upon to derive the OLS figures have been encountered at Warnervale (ie 42 degrees with 980 hPa)?

Notes:

Due to my unfamiliarity with weather conditions I did approach people with expertise around the figures used.

The reply is:

A station level pressure of 980hPa would most likely be an indicator that the aerodrome was at a higher elevation. Alice Springs and Canberra airports can typically record station level pressures of around 940-950hPa, with elevations of 545m and 575m respectively, and have corresponding Mean Sea Level Pressure (MSLP) or Height Above Sea Level (QNH) of around 1000-1010 hPa. A station level pressure of 980 hPa would be fairly common place at a aerodrome located at approximately 250m above sea level e.g. Somersby Airport.

If your materials specifies that the pressure is to be taken as MSLP these would present some very exceptional conditions, and I can't think of a realistic commonplace scenario that you would encounter them in. MSLP of 980hPa do occur in the far south e.g. the Antarctic circle, but you would be unlikely to encounter them along with 42C temperatures.

The response will be provided by Director, Roads Transport Drainage and Waste on or before the 26 October 2020 meeting.

Night flying at Warnervale ALA

Given that the State Government WAR Review stated that night flying is currently not permitted at Warnervale ALA, why has the Ecologist's Report stated that it was looking at managing trees for the OLS for night flying?

Councillors Note:

Page 22 of Review of the Warnervale Airport (Restrictions) Act 1996; April 2020

- assemble the supporting legal and aeronautical documentation to give effect to the ACP
- advise the proponent if the ACP is approved or not approved.

Airspace is designed and segregated in Classes (A to G) to provide appropriate services to the range of aviation operations, and considers aspects such as:

- Size, Weight, Speed and Type of operation of aircraft
- Categories such as Instrument or Visual Flight Rules.

For example, high-flying, heavy, fast, passenger carrying aircraft receive a vastly different service compared to low-flying, light, slow, recreation types of flying operations. These complexities, divisions and services are detailed at **Appendix G**.

The flying operations at Warnervale ALA currently operate in Class G Airspace (NON-CONTROLLED). Any development of Warnervale Airport and/or associated changes (increases) to flying activities are likely to implicate several higher Airspace Classes (CONTROLLED).

Warnervale ALA resides below a complex airspace architecture that services arrivals and departure at Sydney, Bankstown and, in the future, Western Sydney airport. The additional proximate airspace complexity and density, to the North, is the Joint User airport at Newcastle / RAAF Williamtown; Australia's Premier Fighter Air-Base.

Any changes to operations at Warnervale Airport would require extensive effort, cost and time to:

- change the registration / certification of the airport from an ALA to a Registered or Certified status
- address the CASA ACP approvals for integration into a complex and high-demand airspace that services current and future airports in the Sydney Basin as well as Newcastle / RAAF Williamtown
- comply with any Airservices Australia management requirements, including with regard to air traffic control communications, coordination, re-sectorisation and changes to procedures for separation and flow-control. For example, Warnervale ALA is currently permitted to operate only during daylight Visual Meteorological Conditions (VMC) because it does not have instrument approach systems or lighting for flying after daylight ends or begins.

The process would also involve economic studies as well as detailed and comprehensive noise and environmental studies, and a formal, structured Environmental Impact Assessment.

The *Warnervale Airport (Restrictions) Act 1996* also restricts operations, for example by means of the number of aircraft movements and by curfew. Without these restrictions the circuit rate is however self-limiting due to physical, operational and daylight VMC factors, and is also controllable by the Aerodrome Operator.

page 77 of the Ecologist's Report relating to Tree Management to the North

The impact area has been determined based on the management of vegetation 3m below an obstacle limitation surface gradient of 3.33% for night time flying.

The response will be provided by Director, Roads Transport Drainage and Waste on or before the 26 October 2020 meeting.

4.1 Questions with Notice (contd)

The following question was submitted by Councillor Gale:

Operational Budget Meetings

Following on from my motion on 24 July 2018, can the Chief Executive Officer advise how often he met with the Executive Leadership Team to discuss the high level cash flow statements and rolling forecast against Operational Budget prior to releasing the Quarterly Budget Review Statements?

The response will be provided by Chief Executive Officer on or before the 26 October 2020 meeting.

Attachments

Nil



Item No: 5.1
Title: Notice of Motion - Affordable Housing
Department: Councillor

26 October 2020 Ordinary Council Meeting

Reference: F2020/00039 - D14224798

Author: Jane Smith, Councillor

Councillor Smith has given notice that at the Ordinary Council Meeting to be held on 26 October 2020 she will move the following motion:

- 1 That Council request the Chief Executive Officer to prepare a "Council Affordable Housing Land (CAHL) Proposal" meeting the criteria as outlined in the Affordable Housing Strategy.**
- 2 As part of the process of developing the CAHL, the Chief Executive Officer conduct a workshop with Councillors prior to the end of February 2021 that includes:**
 - a) economic information / modelling of identified suitable sites**
 - b) options to deliver affordable housing including partnerships with providers**
 - c) an outline of a process that ensures transparency and good governance**
- 3 That the draft CAHL be reported to Council no later than the last meeting in March 2021 before being exhibited for 28 days**

Chief Executive Officer Response

The Chief Executive Officer considers that this notice of motion has legal, strategic, financial or policy implications which should be taken into consideration by the meeting. As a result, the Chief Executive Officer will provide a report in relation to the notice of motion. This report will be provided as a late item and will be made available by close of business on the Friday prior to the council meeting.

Attachments

Nil.



Item No: 5.2
Title: Notice of Motion - State advice, Council restricted funds, legal advice and moving forward
Department: Councillor

26 October 2020 Ordinary Council Meeting

Reference: F2020/00039 - D14245146
Author: Jilly Pilon, Councillor
Greg Best, Councillor
Rebecca Gale, Councillor
Troy Marquart, Councillor
Bruce McLachlan, Councillor

Councillors Pilon, Best, Gale, Marquart and McLachlan have given notice that at the Ordinary Council Meeting to be held on 26 October 2020 they will move the following motion:

- 1** *That pending a response from the The Hon. S.E. Hancock, MP, that Council note the 14 October 2020 media release from Parliamentary Secretary for the Central Coast and Member for Terrigal, Adam Crouch which states 'NSW Government will not bail out the Central Coast Council from its financial mismanagement' and 'there will be no State Funding or legislative exemption. That should Council be using restricted funds this must be acknowledged as breaching the law and ceased immediately.*
- 2** *Should it be found that Council has been using restricted funds to cover cash flow over the past financial year and beyond, without Councillors knowledge, that legal advice is urgently provided on how the business can continue to operate other than ceasing control of all financial operations under NSW Government State Administration.*
- 3** *That Council instruct Acting Chief Executive Officer to now provide The Minister for Local Government, Shelley Hancock the most recent and up to date financial deficit figures immediately.*
- 4** *That any motions put before Council for the remainder of this term of Council, must include accurate costs in regards to proposed actions and be backed by clear confirmation from Council staff that enough legally obtainable funds exist within the Council available cash flow or similar confirmation from staff exactly how the cost within the proposed motion will be legally funded.*
- 5** *That to enable Councillors to monitor the ongoing position of the business that Councillors be provided with weekly cash flow statements and forecasts.*

5.2 Notice of Motion - State advice, Council restricted funds, legal advice and moving forward (contd)

- 6** *That Council notes that financial irregularities were recently brought to the attention of the Office of Local Government by certain concerned Councillors. Please see letter attached.*

Chief Executive Officer Response

The Chief Executive Officer considers that this notice of motion has legal, strategic, financial or policy implications which should be taken into consideration by the meeting. As a result, the Chief Executive Officer will provide a report in relation to the notice of motion. This report will be provided as a late item and will be made available by close of business on the Friday prior to the council meeting.

Councillors Note

Attachments

- | | | |
|----------|--|-----------|
| 1 | Adam Crouch media release - No State bailout for Central Coast Council | D14245160 |
| 2 | Letter to the Office of Local Government | D14245163 |



Adam Crouch
Parliamentary Secretary for the Central Coast

MEDIA RELEASE

Wednesday, 14 October 2020

****Radio grabs and Letter from the Office of Local Government attached*

NO STATE BAILOUT FOR CENTRAL COAST COUNCIL

The NSW Government will not bail out Central Coast Council from its financial mismanagement, Parliamentary Secretary for the Central Coast and Member for Terrigal Adam Crouch said today.

Mr Crouch said the community expects Councillors and Council staff to do their job, balance the books and provide services to local residents.

“Under the Local Government Act, councils are independent, autonomous bodies with many statutory responsibilities in serving their communities and that includes sound financial management,” Mr Crouch said.

“It’s been over a week since Central Coast Council found out about its financial dire straits and all it has done is write a letter and set up yet another Finance Committee.

“Council’s so-called 100-Day Recovery Action Plan has not even been published for the community to see.

“I have spoken extensively with the Minister for Local Government and the Government will not be strong-armed into taking responsibility for Central Coast Council’s failings – there will be no State funding or legislative exemptions.

“The NSW Government will not bend the rules for a council that has fundamentally failed to do the job the community expects them to do.

“The Councillors are Council’s governing body, and are responsible for these operational failings

“The Mayor, Lisa Matthews, needs to stand up and take responsibility for the problems she was elected to oversee. She needs to show some leadership and work with her fellow Councillors and tell the community what they are going to do about it.”

Mr Crouch said the Office of Local Government has been in contact with Central Coast Council’s Audit, Risk and Improvement Committee, which has the knowledge, skills and experience to advise Councillors about these matters.

“This Committee – which is already in place and has extensive knowledge of the Council – has independent experts with extensive financial and human resources skills,” Mr Crouch said.

"The Office of Local Government has written to the Committee's independent chairperson Dr Col Gellatly AO to request that he play a key role in advising Councillors on how to address these matters as quickly as possible.

"This includes advising Councillors on the Council's current financial position, its statutory responsibility for managing its finances, the effectiveness of any actions taken by the Council, and any recommendations for the future.

Dr Gellatly has had a distinguished career in the public service and previously held the position of the Director General of the NSW Premier's Department for 13 years. He also has a wealth of local government experience as administrator of Wollongong City Council and chair of Newcastle City Council and City of Parramatta Council's Audit Committees.

MEDIA: Ben Sheath | 0403 767 636

14th September 2020

The Chief Executive
Office of Local Government
Locked Bag 3015
NOWRA NSW 2541

Dear Chief Executive,

COMPLAINT UNDER S429A LGA – CENTRAL COAST COUNCIL

Pursuant to s429A of the Local Government Act we the undersigned Public Officials being Councillors of the Central Coast Council hereby formally submit a complaint around the conduct of Central Coast Council and respectfully request you deal with this complaint by way of a formal and independent investigation into this Council.

We are particularly concerned as to the finances of the Council and note the following facts:-

- 1 That Council is on track for an operating loss for FY19/20 of some \$50 million with a budgeted multi million dollar loss for 20/21;
- 2 That Council was unable to finalise its 18/19 accounts for some nine months past the due date, requiring several Departmental extensions while seeking to craft its 19/20 Budget;
- 3 The Audited Reports of the Council for 18/19 were severely criticised by the Auditor General in his formal Audit Report;
- 4 That further Council has also been severely reprimanded by the Department for its unlawful expenditure of 94 Contributions and the mismanagement of some \$200 million of Developer Contributions due to underspend;
- 5 That this Council has wasted many millions of dollars in terminating binding Lease Agreements and paying extensive damages;
- 6 That this Council has again wasted millions of dollars abandoning plans for the largest Council Civic Project, that of a \$171 million Art Centre and Library;
- 7 The escalating NSW Court List associated with this Council costing millions;
- 8 Alarminglly four Chief Financial Officers/CFOs have resigned their positions in this Term of Council alone;
- 9 This Council's infrastructure backlog is exponentially worsening;
- 10 The tearing up of a \$5 million cheque from the State Government for a Walkway Project that had already commenced;
- 11 Wages Bill escalation now around \$200 million, 120 plus Contractors, Staffing levels now up by 500 FTEs in this Term of Council alone to approximately 2,500 costing Council in the order of an extra \$50 million per annum.

Having regard to the eleven items above and a myriad of other notable financial concerns, we the undersigned, Elected Community Representatives simply have no confidence in the Accounting / Financial Records of this Council and we believe there is no alternative but to call for a Financial Controller to be appointed under s438HB of the Act. This observation becomes almost self evident when taking into account the fact that this Council has had four CFOs in the past three years, not to mention the recent scathing financial commentary from the Auditor General around the 18/19 accounts.

- 2 -

We further note that the Regulations set out the criteria for consideration in making Performance Orders (see Reg 413D).

These criteria include whether the Council has failed to comply with its legislative responsibilities, standards, guidelines and governance of which we are of the view, as to its Accounts, it unquestionably has.

Also it is noted that under Reg 413D significant risks face Council that are clearly not being adequately addressed.

These include a pending significant Class Action against Council for alleged failure by Council to enact its Emergency Powers and dredge a major local waterway channel resulting in thousands of homes being flooded.

Also failures are clear in Council's repeated refusal to construct or allow the construction of a revetment wall at Wamberal Beach now causing major multi million dollar private and public property damage costing Ratepayers and State Tax Payers millions.

Of grave concern is Council's refusal to urgently address safety issues around its Airport Landing Corridor at Warnervale Airport despite known and present dangers of excessive vegetation. These risks have been formally highlighted in Staff Reports, CASA's Risk Matrix and the State Government's recent Warnervale Airport Restrictions (WAR) Act Review Recommendation 3 "That these trees be trimmed due to high risk of accidents."

It is our view and at the very least, unless a Financial Controller is appointed to this Council it will continue to suffer huge operating losses and a spiralling deterioration in our budgeted service delivery model.

Compounding this are external borrowings of some \$232 million whilst not excessive against asset base, the interest rate of 6.25% is in the current market inexplicably high.

Please understand we do not make this representation lightly, however so grave is the situation that we believe we have no alternative. This is something that none of us have ever considered in our collective 40 years of Civic Leadership.

Thank you for taking on board our genuine concerns as Elected Representatives on behalf of the Residents and Ratepayers of the Central Coast Region and we seek a Formal Meeting with you to further discuss these issues and a broader range of concerns.

Yours sincerely,



Councillor Greg Best JP

Signed for and on behalf of Colleagues

Councillor Bruce McLachlan
Councillor Jily Pilon
Councillor Troy Marquart