

# SHELLHARBOUR CITY COUNCIL

Ordinary Council Meeting - Tuesday 14 November 2006

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**Minutes of the Ordinary Meeting  
of Shellharbour City Council  
held at the Council Chambers, Warilla  
on Tuesday 14 November 2006 commencing at 5.12 pm**

## Present

|                       |  |
|-----------------------|--|
| His Worship the Mayor | Councillor D Hamilton                      |
| A Ward                | Councillor M Greig<br>Councillor T Hawker  |
| B Ward                | Councillor H Stewart                       |
| C Ward                | Councillor J Bailey<br>Councillor D Briggs |
| D Ward                | Councillor J Leedham<br>Councillor T Hore  |
| E Ward                | Councillor C Mifsud<br>Councillor G Rose   |
| F Ward                | Councillor B Bird                          |

## In attendance

|   |             |
|---|-------------|
| General Manager   | B A Weir    |
| Director of Operations & Services                       | A Webster   |
| Director of Community Planning & Strategies             | P O'Rourke  |
| Director Shell Cove Business Unit                       | P Woodcock  |
| Group Manager Corporate Services                        | T Gearon    |
| Group Manager Works & Services                          | C Watt      |
| Group Manager Customer & Env. Services                  | G Standen   |
| Group Manager Development & Tech Services               | M Boenisch  |
| Group Manager Corporate Planning                        | P Masterson |
| Group Manager Organisational Development                | B Rose      |
| Group Manager Planning Services                         | G Hoynes    |
| Corporate Solicitor – Manager Legal & Property Services | B McCann    |
| Manager Development Services                            | G Mitchell  |
| Public Relations Coordinator                            | A Baltovska |
| Corporate Meetings Officer                              | J Larsen    |
| Executive Assistant                                     | J Frasca    |

## **Acknowledgement to Country**

Shellharbour City Council acknowledges the Traditional Owners and Custodians of the Land on which we are meeting.

### **1. Apologies / Leave of Absence**

#### **Ordinary Council Meeting**

An apology was tendered on behalf of Councillor Jeffreys and Councillor Gillett

#### **Committee of the Whole Council Meeting**

An apology was tendered on behalf of Councillor Jeffreys and Councillor Gillett

534 RESOLVED: Briggs/Mifsud. That the apologies as tendered be accepted.

### **2. Confidential Business (Committee of the Whole)**

In accordance with the *Local Government Act 1993*, and the *Local Government (General) Regulation 2005*, in the opinion of the General Manager, the following business is of a kind as referred to in Section 10A(2) of the Act, and should be dealt with in a Confidential Session of the Council meeting closed to the press and public.

**Set out below is Section 10A(2) of the Local Government Act 1993, in relation to Confidential Business:**

**10A(2) Which parts of a meeting can be closed to the public? The matters and information are the following:**

- (a) personnel matters concerning particular individuals;
- (b) the personal hardship of any resident or ratepayer;
- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business;
- (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,
- (e) information that would, if disclosed, prejudice the maintenance of law;
- (f) matters affecting the security of the council, councillors, council staff or council property;
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege.

535 RESOLVED: Bailey/Briggs

1. That Council resolve into Committee of the Whole to consider the above business as listed, together with the verbal late report presented at the meeting.

2. That pursuant to Section 10A(1-3) of the *Local Government Act 1993*, the press and public be excluded from the proceedings on the basis that the business to be considered is classified confidential under the provisions of Section 10A(2) of the Act as outlined above.
3. That the correspondence and reports relevant to the subject business be withheld from access to the press and public as required by the *Local Government Act 1993*, Section 11(2).

## **CONFIDENTIAL ITEMS**

### **3.1 City Centre Master Planning and Stockland Shellharbour - Memorandum of Understanding (8641887)**

#### **Reason for Confidentiality**

This item is classified CONFIDENTIAL under the provisions of Section 10A(2)(d)(i) of the *Local Government Act 1993*, which permits the meeting to be closed to the public for business relating to the following:

- (d) commercial information of a confidential nature that would if disclosed:
  - (i) prejudice the commercial position of the person who supplied it

This item, if discussed in the Open Meeting of Council, would be contrary to the public interest because it is premature at this time. The appropriate time for its full release, such that the commercial position of the person who supplied it is not prejudiced, would be when a development application is lodged by the person supplying the information.

The General Manager requested that he be able to bring a late verbal report to the Committee of the Whole Council Meeting with the Council's permission.

### **3.2 Late verbal report by the General Manager – Investigation into the Leaking of Confidential Council Information**

#### **Reason for Confidentiality**

This item is classified CONFIDENTIAL under the provisions of Section 10A(2)(a,e and g) of the *Local Government Act 1993*, which permits the meeting to be closed to the public for business relating to the following:

- (a) personnel matters concerning particular individuals (other than councillors)
- (e) information that would, if disclosed, prejudice the maintenance of law
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege

This item if discussed in the Open Meeting of Council, could prejudice a Council investigation, it could cause legal advice to be publicly divulged contrary to Council's interests, and it could prejudice future litigation and personnel matters.

**Meeting adjourned at 5.15 pm**

**Meeting resumed at 7.20 pm**

### **3. Recommendations from Committee of the Whole**

The following Recommendation to Council from the Committee of the Whole Council was read to the Meeting by the General Manager.

#### **3.1 City Centre Master Planning and Stockland Shellharbour - Memorandum of Understanding (8641887)**

##### **COMMITTEE RECOMMENDATION:**

That Council resolve to affix the Seal of Council to the Memorandum of Understanding with Stockland Development Pty Ltd to progress the resolution of Council in Committee of the Whole on 11 April 2006.

#### **3.2 Late verbal report by the General Manager – Investigation into the Leaking of Confidential Council Information**

##### **COMMITTEE RECOMMENDATION: That Council:**

1. Endorse the General Manager's actions;
2. Authorise the General Manager to continue the investigation;
3. Endorse the General Manager's decision under delegated authority to commence proceedings in the Land & Environment Court;
4. Express its total support of Council staff, Directors and General Manager during this very difficult time.

Councillor Greig asked the General Manager to record that in voting for the adoption of the recommendations she took no part in discussion of Recommendation 3.1 from Committee of the Whole.

536 RESOLVED: Briggs/Bird

That the Recommendations to Council from the Committee of the Whole Meeting held earlier today be adopted.

#### **4. Confirmation of Minutes**

##### **4.1 Ordinary Meeting 24 October 2006**

537 RESOLVED: Briggs/Hore That the Minutes of the Ordinary Council Meeting held on 24 October 2006 be confirmed as a correct record of proceedings with the correction that at Item 11.5 Councillor Bird was the Mover of the recommendation and that for Item 11.4 Councillor Leedham was not in the chamber when the vote was taken.

Further that a note be added at Minute No. 524 That the General Manager confirmed that only staff handling accounts have access to the accounts.

Councillor Greig commented that she wanted Council's minutes kept strictly in accordance with Council's policy.

#### **5. Pecuniary Interest**

**Councillor Greig:** Committee of the Whole Council Meeting Item 3.1 City Centre Master Planning and Stockland Shellharbour – Memorandum of Understanding.

**Nature of Interest:** Councillor Greig owns property close by and may be affected by the proposal.

#### **6. Condolences**

The mayor read details of the following deaths in the Local Government area.

|                                     |             |                 |
|-------------------------------------|-------------|-----------------|
| Leslie Griffin                      | of          | Albion Park     |
| Sylvia Jane Headrick (nee Willett)  | of          | Barrack Heights |
| Marilyn (Maggie) Kennedy            | formerly of | Barrack Heights |
| Kenneth (Ken) Frank                 | formerly of | Dunmore         |
| Edeltraud (Eve) Ella Eva Aschenwald | of          | Oak Flats       |
| John Wesley Austin                  | of          | Oak Flats       |
| Maurice Walter (Maurie) Montgomery  | of          | Shell Cove      |
| Carol Moyle                         | of          | Shell Cove      |

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|                         |    |              |
|-------------------------|----|--------------|
| Robert Cardin Keast     | of | Shellharbour |
| Jose Luque              | of | Shellharbour |
| Gordon Ferguson Cannon  | of | Warilla      |
| Edward (Ted) Midgley    | of | Warilla      |
| John Misztl             | of | Warilla      |
| John Moss               | of | Warilla      |
| Raymond Malcolm Tompkin | of | Warilla      |
| June Tulloch            | of | Warilla      |

538 A Motion of condolence was passed by all present standing for one minute's silence.

### **7. Presentations**

Nil

### **8. Mayoral Minutes**

Nil

### **9. Councillors' Reports**

Nil

### **10. General Manager's Office**

#### **10.1 Australian Water Summit - Sydney 2-3 April 2007 (8636028)**

539 RESOLVED: Hawker/Greig

1. That Council resolve to approve attendance at the 2007 Australian Water Summit by any interested Councillor.
2. That Council resolve to approve attendance at the 2007 Australian Water Summit by an appropriate Council Officer
3. That Council confirm the numbers attending and indicate the names of the individual Councillors to enable bookings to be made as soon as possible, prior to the Early Bird Registration deadline of 22 December 2006.

**10.2 Nomination of Community Representatives for Australia Day & Special Promotions Committee (8640421)**

540 RESOLVED: Hawker/Leedham

That Council endorse the three community nominations received for the Australia Day and Special Promotions Committee

That the General Manager send letters of thanks to retiring community representatives of the Australia Day and Special Promotions Committee.

**11. Operations & Services Division**

**11.1 DA No. 432/2006 - Lot 11, DP 1073354, 139 The Esplanade, Oak Flats - Rear Elevated Deck & Awning (8632974)**

In response to a question from Councillor Rose the Manager Development Services advised that the Residential Development Control Plan provides for a 10m set-back for absolute water frontages. Properties close to the water but with a reserve in between are not properties with an absolute water frontage and therefore this condition does not apply. This property has an absolute water frontage therefore the 10m setback applies.

541 RESOLVED: Rose/Bird

That the Council refuse Development Application No. 432/2006 for an awning and deck (two levels) at Lot 11, DP 1073354, 139 The Esplanade, Oak Flats under Section 80 of the *Environmental Planning & Assessment Act, 1979* as amended for the reasons stated following the conclusion.

**11.2 DA No. 368/2006 - Lot 38, DP 15868, 36 Shell Cove Road, Barrack Point - Inground Swimming Pool (8637701)**

542 RESOLVED: Mifsud/Rose

That the Council approve Development Application No. 368/2006 for an inground swimming pool at Lot 38, DP 15868, 36 Shell Cove Road, Barrack Point, under Section 80 of the *Environmental Planning & Assessment Act, 1979*, as amended, subject to the 18 conditions following the conclusion.

**11.3 DA No. 343/2006 - Lot 5, DP 1095930, Illawarra Highway, Yellow Rock - Proposed Tullimbar Primary School (8638056)**

MOTION: Hawker/Greig

1. That Council seek the concurrence of the NSW Department of Training & Education to the imposition of the 66 conditions following the conclusion pursuant to the provisions of Section 116C of the *Environmental Planning & Assessment Act, 1979*, as amended
2. That Council grant delegated authority to the General Manager to determine Development Application No. 343/2006 for the proposed Tullimbar Primary School at Lot 5, DP 1095930, Illawarra Highway, Yellow Rock under Section 80 of the *Environmental Planning & Assessment Act, 1979*, as amended upon receipt of acceptance of the 66 conditions by the NSW Department of Education & Training.
3. That following consultation with the NSW Department of Education & Training, should the General Manager consider any variation sought to the conditions is warranted, that delegation be granted to make those variations.

Councillor Bird requested that an additional point be added to the Motion regarding traffic movement.

The Mover and Seconder agreed to the amendment.

The MOTION now became:

1. That Council seek the concurrence of the NSW Department of Training & Education to the imposition of the 66 conditions following the conclusion pursuant to the provisions of Section 116C of the *Environmental Planning & Assessment Act, 1979*, as amended
2. That Council grant delegated authority to the General Manager to determine Development Application No. 343/2006 for the proposed Tullimbar Primary School at Lot 5, DP 1095930, Illawarra Highway, Yellow Rock under Section 80 of the *Environmental Planning & Assessment Act, 1979*, as amended upon receipt of acceptance of the 66 conditions by the NSW Department of Education & Training.
3. That following consultation with the NSW Department of Education & Training, should the General Manager consider any variation sought to the conditions is warranted, that delegation be granted to make those variations.
4. That an additional consent condition be added, with the acceptance of the Department of Education and Training that vehicles only be permitted to enter and exit the carpark in a forward direction.

543 The MOTION on being PUT to the Meeting was CARRIED



**11.4 Forward Program for Capital Works (2007/2010)**

544 RESOLVED: Briggs/Hawker

1. That the Council adopts the three year citywide Forward Capital Works Program for 2007/2010 and the Main Roads Network, 'Attachment 1' & 'Attachment 2', subject to any future amendment in conjunction with the annual review of the Program.
2. That the 2007/2008 Capital Works Program comprising those projects listed in the three year 2007/2010 Forward Capital Works Program be approved.
3. That the projects included in the Program, which do not have 100% funding be staged or deferred as appropriate.
4. That the 2007/2010 Capital Works Program, 'Attachment 1', be included in the draft budget for consideration by the Council at its extraordinary meeting early next year.
5. That any increase in the Financial Assistance Grant (Roads Component) for 2007/2008 be allocated to offset jobs in the Capital Works Program currently funded from general revenue.

**11.5 Corporate Policy - Dealing with Difficult Customers (8658785)**

545 RESOLVED: Hawker/Briggs

That this item be deferred to allow for a briefing for councillors to be conducted.

**12. Community Planning & Strategies Division**

**12.1 Proposed Consolidation of Residential Development Control Plans (8638235)**

546 RESOLVED: Briggs/Bailey

That Council resolve to undertake a review of the Residential, Residential Infill, Medium Density and Residential Subdivision Development Control Plans in the manner outlined in this report.

That a briefing for councillors be conducted prior to the draft document being placed on Public Exhibition.

**12.2 Request for Interim Heritage Order - Surf Road Shellharbour (8637951)**

MOTION: Briggs/Bird

That Council:

1. Not make an Interim Heritage Order over land identified in Attachment 1 of this report.
2. Forward a copy of the independent heritage consultant's report to the NSW Heritage Office and advise that it is Council's opinion that the issues raised in the findings are best dealt with under planning controls and that an Interim Heritage Order will not be made.
3. Undertake a review of existing planning controls relating to foreshore development including SEPP 71-Coastal Protection.
4. Prepare guidelines on the application of SEPP 71- Coastal Protection Principles for the benefit of landowners, developers, Council staff and the community in general.

Councillor Mifsud FORESHADOWED a MOTION that Council defer consideration of this item pending the result of Land and Environment Court finding on 3 Surf Road Shellharbour, further, that further consultation be conducted with residents and Council's heritage officer regarding an update of information now received.

547 The MOTION on being PUT to the Meeting was CARRIED (7/4)

**13. Shell Cove Business Division**

Nil

**14. Committee Recommendations**

**14.1 Recommendations from the Traffic Committee Meeting held 8 November 2006 recommended for adoption.**

548 RESOLVED: Greig/Briggs

That the Recommendations from the Traffic Committee Meeting held 8 November 2006 be adopted.

**14.2 Recommendations from the Aboriginal Advisory Committee Meeting held 24 October 2006 recommended for adoption.**

549 RESOLVED: Bird/Greig

That the Recommendations from the Aboriginal Advisory Committee Meeting held 24 October 2006 be adopted.

**15. Notices of Rescission Motion**

**15.1 Rescission Motion submitted by Councillors Stewart, Rose and Mifsud (8638685)**

RESCISSION MOTION: Stewart/Rose

That Item 12.2 of the Ordinary Meeting of Council held on 24 October 2006 be rescinded.

Councillor Stewart addressed the meeting outlining her concerns with regard to the proposed closure of the laneway.

The Mayor warned Councillor Stewart not to criticise Council officers and councillors.

Councillor Stewart requested that Council resolve into Confidential session as she had further confidential information that she wanted to discuss.

The Mayor stated that if Council was to resolve into Committee of the Whole it would be more appropriate at the end of the meeting.

Councillor Mifsud MOVED a POINT of ORDER that Councillor Stewart was not making any accusations or attacking any council officers.

The Mayor overruled the POINT of ORDER.

Councillor Mifsud made a remark.

The Mayor reprimanded Councillor Mifsud for disagreeing with his ruling.

Councillor Hore stated that he had obtained a copy of a submission received by Council, which was available to all councillors on request, from a resident who lives on the laneway. He requested permission to read out the letter.

Councillor Stewart objected.

The Mayor ruled that Councillor Hore not be allowed to read the letter as it was new information.

The General Manager explained that the letter had been available to all councillors upon request.

The Mayor cautioned the gallery on two occasions to refrain from interjecting.

Councillor Briggs left the Chamber

The RESCISSION MOTION on being PUT to the meeting was LOST 4/6

Councillor Briggs returned to the Chamber.

**16. Notices of Motion**

Nil

**17. Items for Information**

**17.1 Asset Improvement Program (8639151)**

**17.2 Investments (8641602)**

550 RESOLVED: Hawker/Briggs

That the Items for Information be received and noted.

The General Manager requested permission to reschedule the next two Council meeting dates if necessary as there is a conflict with other community events involving councillors.

551 RESOLVED: Rose/Hawker

That delegated authority be given to the Mayor and General Manager to change the date of the next two Council Meetings to more appropriate dates due to clashes with other events.

**18. Questions without Notice**

**552 Councillor Stewart** – thanked the Councillor Liaison Officer for her assistance in arranging the trip to Coffs Harbour to the Coastal Conference.

She stated that there is a Learning workshop on financial issues being conducted in Wagga Wagga and requested that this training be made available in-house to all councillors if possible.

**553 Councillor Bird** advised that some lights at Oak Flats railway station carpark are not working and requested that they be repaired.

**554 Councillor Mifsud** stated that Wollongong Street, Shellharbour is in major need of resurfacing. He requested that this be investigated.

**555 Councillor Mifsud** requested that seating be provided in Addison Street Shellharbour.

**556 Councillor Mifsud** stated that flower beds in Addison Street are being littered with rubbish and cigarette butts. He requested more bins be provided.

**557 Councillor Mifsud** asked whether the Shellharbour cemetery car park could be upgraded before Christmas.

**558 Councillor Mifsud** thanked the Director Operations & Services on behalf of residents for attending to overgrown grass in the creek at Kings Park.

**559 Councillor Bailey** stated that there is a constant problem with rats in an open drain in Garrard Avenue. He requested that this be investigated.

**560 Councillor Hawker** stated that the Albion Park Spring festival was held on the weekend and that some stallholders were using power supplied by residents. He requested that the possibility of providing a power supply in Mood Park be investigated for future events.

Councillor Bailey MOVED a MOTION which was seconded by Councillor Mifsud, that Council resolve into Committee of the Whole to discuss matters which Councillor Stewart wished to discuss regarding Item 15.1.

**561** The MOTION on being PUT to the Meeting was LOST (4/7)

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**19. Late Items of Business / Urgent Business (as introduced by the Chairperson)**

**Meeting closed 8.40 pm**

CONFIRMED as a correct record of proceedings at the Ordinary Meeting of the Council of the City of Shellharbour held 28 November 2006.

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General Manager

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Chairperson