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28 August 2013

Dear Councillor

MEETING NOTICE
Ordinary Meeting
Wednesday, 4 September 2013
Open Day at 5.30pm
Council Meeting commencing at conclusion of Open day

Notice is hereby given that the above meeting of Mid-Western Regional Council will be held in the Council Chambers, 86 Market Street, Mudgee at the time and date indicated above to deal with the business as listed on the Meeting Agenda.

Members of the public may address the Committee Meeting at Open Day. Speakers are given 5 minutes to outline any issue of relevance to the Council. If you wish to speak at Open Day please contact the Mayor's Office on 1300 765 002 or 02 6378 2850 by 3.00 pm on the day of the meeting. Alternatively, please make yourself known to the Manager Governance prior to the commencement of the meeting.

Yours faithfully

A handwritten signature in black ink, appearing to read "Warwick L Bennett".

WARWICK L BENNETT
GENERAL MANAGER

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Item 1: Apologies

Item 2: Annual Elections

2.1 Delegations to the Mayor

REPORT BY MANAGER GOVERNANCE TO 4 SEPTEMBER 2013 COUNCIL MEETING

2.1 Delegations to the Mayor

A0100056, A0110016

RECOMMENDATION

That:

1. **the report by the Manager Governance on the delegations for the Mayor for the period September 2013 to September 2014 be received;**
2. **pursuant to the provisions of Section 377 of the Local Government Act, 1993, Council delegate to the Mayor authority:**
 - (a) **to monitor the General Manager in the exercise of the General Manager's powers, duties and functions;**
 - (b) **To authorise work, not approved in the Budget/Management Plan, which in the Mayor's opinion, is urgent at a cost not exceeding \$20,000 except in the case of Bush Fire Emergency where the limit is \$50,000;**
 - (c) **To approve the attendance of any Councillor at meetings or functions between Council meetings, that the Mayor would normally attend on behalf of Council;**
 - (d) **To affix and witness the Common Seal of Council, in response to a resolution of Council, to any necessary documents in conjunction with the General Manager or another councillor;**
3. **the attached delegations for the Mayor be adopted.**

Executive summary

To determine the Mayor's delegations and Role Statement for the period September 2013 to September 2014.

Detailed report

Section 226 of the Local Government Act, 1993 relates to the role of the Mayor. Section 377 of the Act enables the Council to delegate its functions.

Financial implications

Not applicable.

Strategic or policy implications

Not applicable.

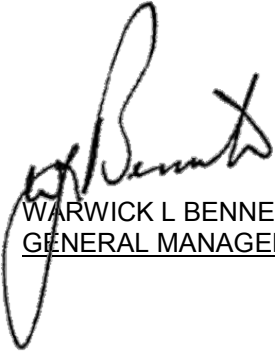


IAN ROBERTS
MANAGER GOVERNANCE

9 August 2013

Attachments: 1. Delegation of Authority for the Mayor

APPROVED FOR SUBMISSION:



WARWICK L BENNETT
GENERAL MANAGER

MID-WESTERN REGIONAL COUNCIL

DELEGATION OF AUTHORITY FOR THE MAYOR

The following authorities be delegated to the Mayor pursuant to the provisions of Section 377 of the Local Government Act, 1993:

1. To monitor the General Manager in the exercise of the General Manager's powers, duties and functions.
2. To authorise work, not approved in the Budget/Management Plan, which in the Mayor's opinion, is urgent at a cost not exceeding \$20,000 except in the case of Bush Fire Emergency where the limit is \$50,000.
3. To approve the attendance of any Councillor at Meetings or Functions between Council Meetings, that the Mayor would normally attend on behalf of Council.
4. To affix and witness the Common Seal of Council, in response to a resolution of Council, to any necessary documents in conjunction with the General Manager or another Councillor.

ROLE STATEMENT FOR MAYOR

A STATUTORY

- (i) To exercise, in cases of necessity, the policy-making functions of the governing body of the Council between meetings of the Council.
- (ii) To exercise such other functions of the Council as the Council determines.
- (iii) To preside at Meetings of the Council.
- (iv) To carry out the Civic and Ceremonial functions of the Mayoral Office.

B CORPORATE PLANNING

- (i) Exercise leadership and give direction to the elected Council in the pursuit of the Council's goals, objectives and Management Plan.

C EXTRAORDINARY/SPECIAL/SENSITIVE ISSUES

- (i) Receive advice from the organisation's Management and other sources on extraordinary, special, sensitive and other issues and, where appropriate, refer matters to the General Manager for attention.
- (ii) Represent the Council in deputations to government, inquiries and other forums where it is appropriate that the Mayor should present Council's position.
- (iii) Present the Council and its decisions and position in a positive way to the community, the media, to government and to others interested in the region.
- (iv) Conduct interviews with residents, groups, corporations and others on matters, which affect Council's Policy making role.
- (v) Where directed by Council, requested by a Committee Chairman or the General Manager or where deemed appropriate by the Mayor assume the lead in matters of Council or community interest.

D FUNCTIONAL

- (i) To authorise work, which in the Mayor's opinion, is urgent at a cost not exceeding \$20,000 except in the case of Bush Fire Emergency where the limit is \$50,000.
- (ii) To approve the attendance of any Councillor at Meetings or Functions between Council Meetings, that the Mayor would normally attend on behalf of Council.
- (iii) To affix and witness the Common Seal of Council, in response to a resolution of Council, to any necessary documents in conjunction with the General Manager or another Councillor.

E SUPERVISORY

- (i) In consultation with the Committee Chairpersons, establish, monitor and review the performance of the General Manager against the General Manager's approved performance measures.

F COMMUNITY LEADER

- (i) Attend Council, Community and other functions as required and as appropriate as Mayor.
- (ii) Assume a role, which will bring dignity to the Office and credit to the Council and the region in dealings within and outside the local government area.

2.2 Election of Mayor

REPORT BY MANAGER GOVERNANCE TO 4 SEPTEMBER 2013 COUNCIL MEETING

2.2 Election of Mayor

A0100056, A0110008

RECOMMENDATION

That:

1. **the report by the Manager Governance on the election of the Mayor for the period September 2013 to September 2014 be received;**
2. **Council determine that the Ballot for the election of the Mayor be by Ordinary Ballot/Open Voting/Preferential Ballot (delete two);**
3. **the election be conducted by the General Manager and the Manager Governance.**

Executive summary

To elect the Mayor for the period September 2013 to September 2014.

Detailed report

The Mayor is elected by the Councillors from among their number.

The Local Government Act 1993 provides that where the Mayor is elected by the Councillors from among their number, the election shall be held during the month of September (Section 290) and the Mayor shall hold office for one year (Section 230).

As provided by Clause 394 of the Local Government (General) Regulation 2005, the conduct of the election of the Mayor is governed by the provisions of Schedule 7 of that Regulation.

Council has, however, adopted a policy to facilitate the election, whereby nomination forms are made available to Councillors prior to the date of the election.

LOCAL GOVERNMENT (GENERAL) REGULATION 2005 REQUIREMENTS

The Returning Officer for the election of the Mayor shall be the General Manager (or a person appointed by the General Manager). The General Manager has indicated that he will act as Returning Officer and that the Manager Governance will assist.

Nominations for the Mayor shall be in writing, but may be without notice, by two (2) or more Councillors (one of whom may be the nominee). The nomination is not valid unless the nominee has indicated consent to the nomination in writing.

The nomination is to be delivered or sent to the Returning Officer who is to announce the names of the nominees at the Council Meeting at which the election is to be held.

If only one candidate is nominated, that Councillor is elected.

When more than one candidate is nominated, the Council may, by resolution, decide whether the election shall be carried out by:

- a) Ordinary Ballot - Involving the marking of Ballot Papers - subsequent exclusion of one candidate; further voting and exclusions; repeated until two candidates only remain, final vote between remaining two candidates.
- b) Open Voting - Procedure identical to Ordinary Ballot, however, the voting is by show of hands or similar means, not a Ballot Paper.
- c) Preferential Ballot - The complete numbering of Ballot Papers in consecutive order of preference for all candidates, commencing with "1" as first preference.

DRAWING OF LOTS

If this becomes necessary, it shall be done by the Returning Officer.

In any case for the purpose of excluding a candidate, the candidate's name drawn shall be excluded. In any case for the purpose of electing a candidate, the candidate's name drawn shall be elected.

Financial implications

Not applicable.

Strategic or policy implications

Not applicable.

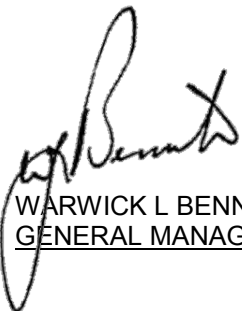


IAN ROBERTS
MANAGER GOVERNANCE

9 August 2013

Attachments: Nil.

APPROVED FOR SUBMISSION:



WARWICK L BENNETT
GENERAL MANAGER

2.3 Election of Deputy Mayor

REPORT BY MANAGER GOVERNANCE TO 4 SEPTEMBER 2013 COUNCIL MEETING

2.3 Election of Deputy Mayor
A0100056, A0110008

RECOMMENDATION

That:

1. **the report by the Manager Governance on the election of the Deputy Mayor for the period September 2013 to September 2014 be received;**
2. **Council determine that the Ballot for the election of the Deputy Mayor be by Ordinary Ballot/Open Voting/Preferential Ballot (delete two);**
2. **the election be conducted by the General Manager and Manager Governance.**

Executive summary

To elect the Deputy Mayor for the period September 2013 to September 2014.

Detailed report

Section 231 of the Local Government Act 1993 provides that the Councillors may elect a person from among their number to be the Deputy Mayor. That person may be elected for the mayoral term or for a shorter term. The Deputy Mayor has no specific functions other than to exercise the functions of the Mayor at the request of the Mayor or if the Mayor is prevented by illness, absence or otherwise from exercising those functions or if there is a casual vacancy in the office of the Mayor.

As provided by Clause 394 of the Local Government (General) Regulation 2005, the election of the Deputy Mayor is governed by the provisions of Schedule 7 of that Regulation.

Council has, however, adopted a policy to facilitate the election, whereby nomination forms are made available to Councillors prior to the date of the election.

LOCAL GOVERNMENT (GENERAL) REGULATION 2005 REQUIREMENTS

The Returning Officer for the election of the Deputy Mayor shall be the General Manager (or a person appointed by the General Manager). The General Manager has indicated that he will act as Returning Officer and that the Manager Governance will assist.

Nominations for the office of Deputy Mayor shall be in writing, but may be without notice, by two (2) or more Councillors (one of whom may be the nominee). The nomination is not valid unless the nominee has indicated consent to the nomination in writing.

The nomination is to be delivered or sent to the Returning Officer who is to announce the names of the nominees at the Council Meeting at which the election is to be held.

If only one candidate is nominated, that Councillor is elected.

When more than one candidate is nominated, the Council may, by resolution, decide whether the election shall be carried out by:

- a) Ordinary Ballot - Involving the marking of Ballot Papers - subsequent exclusion of one candidate; further voting and exclusions; repeated until two candidates only remain, final vote between remaining two candidates.
- b) Open Voting - Procedure identical to Ordinary Ballot, however, the voting is by show of hands, not the Ballot Paper.
- c) Preferential Ballot - The complete numbering of Ballot Papers in consecutive order of preference for all candidates, commencing with "1" as first preference.

DRAWING OF LOTS

If this becomes necessary, it shall be done by the Returning Officer.

In any case for the purpose of excluding a candidate, the candidate's name drawn shall be excluded. In any case for the purpose of electing a candidate, the candidate's name drawn shall be elected.

Financial implications

Not applicable.

Strategic or policy implications

Not applicable.

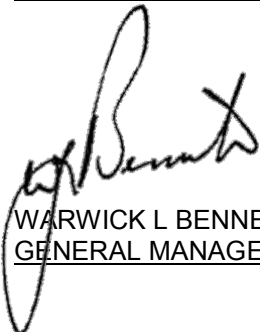


IAN ROBERTS
MANAGER GOVERNANCE

9 August 2013

Attachments: Nil.

APPROVED FOR SUBMISSION:



WARWICK L BENNETT
GENERAL MANAGER

2.4 Council Advisory Committees

REPORT BY MANAGER GOVERNANCE TO 4 SEPTEMBER 2013 COUNCIL MEETING

2.4 Council Advisory Committees

A0100056, A0110015

RECOMMENDATION

That:

1. the report of the Manager Governance on Council Advisory Committees be received;
2. Council confirm the membership of all proposed Council Advisory Committees with external membership as shown on the attached schedule;
3. Council appoints the following Councillor Representatives to the following Committees:
 - (a) Mudgee Showground Management Committee
(1 Councillor)
 - (b) Gulgong Memorial Hall Committee
(1 Councillor)
 - (c) Red Hill Reserve Working Party
(1 Councillor)
 - (d) Mid-Western Regional Council Peak Sports Council
(1 Councillor and Chairs and Presidents of Sports Councils with one meeting per year)
 - (e) Mudgee Sports Council Sub Committee
(1 Councillor)
 - (f) Gulgong Sports Council Sub Committee
(2 Councillors)
 - (g) Rylstone Sports Council Sub Committee
(1 Councillor)
 - (h) Mid-Western Regional Council Heritage Committee
(1 Councillor)
 - (i) Mudgee & Gulgong Access Committee
(1 Councillor)
 - (j) Rylstone & Kandos Access Committee
(1 Councillor)
 - (k) Mid-Western Regional Cultural Development Committee
(1 Councillor)

- (l) Australia Day Selection Committee
(Mayor, Deputy Mayor and 1 Councillor)**
 - (m) Mudgee Regional Saleyards Committee
(3 Councillors)**
 - (n) Mid-Western Regional Youth Council
(2 Councillors)**
 - (o) Community Safety Committee
(Mayor & 1 Councillor)**
 - (p) Noxious Weeds Control Advisory Committee
(1 Councillor)**
 - (q) Kandos Centennial Working Party
(1 Councillor)**
-

Executive summary

Council can if it so determines set up advisory committees which will be established pursuant to Section 355 of the Local Government Act 1993 and then appoint/elect Councillors to these committees.

Detailed report

Section 355 of the Local Government Act, 1993, provides that Council's functions may be exercised:

- by the Council
- by a Council Committee
- partly or jointly by the Council and another person or persons
- by two or more Councils jointly
- by a delegate of the Council.

At the same time, a Council may seek advice from others (be they individuals or groups/committees) to assist it in carrying out its functions.

Council has previously established several "Section 355 Committees" to assist in carrying out its functions. Some of these actually operate facilities on Council's behalf while others are established to provide advice to Council. It is important to note that Council does not need to appoint any 355 Committees. It can determine to manage the facility or activity itself or seek advice from other areas of the community.

Council needs to determine whether to continue with these committees and their representation. The Internal Audit Committee has been deleted from the recommendations above as Council has not funded the participation in a joint committee. The internal audit function is undertaken in house with the meaningful review of various procedures and operation efficiencies

Details of the existing Committee structure are set out on the attachment.

Financial implications

The attendance by Councillors at these committees may incur a travel cost to Council, provision for which is included in the budget.

Strategic or policy implications

Not applicable.

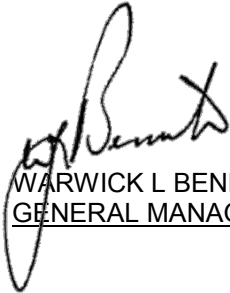


IAN ROBERTS
MANAGER GOVERNANCE

9 August 2013

Attachments: 1. 2012/13 Advisory Committee Structure

APPROVED FOR SUBMISSION:



WARWICK L BENNETT
GENERAL MANAGER

2012/13 ADVISORY COMMITTEE STRUCTURE**1. Mudgee Showground Management Committee**

Membership	Quorum	Responsibilities	Meetings
Councillor Webb Group Manager Operations Mudgee Show Society (1 delegate) Poultry Groups (1 delegate) Livestock and other animal groups (1 delegate) Mid-Western Working Horse Association (1 delegate) Mudgee Pony Club (1 delegate) Mudgee Dressage Group (1 delegate) Building & ground users (1 delegate)	4	Exercise powers to manage the facility as delegated by Council under S.377.	Meet bi-monthly on the 1 st Tuesday

2. Gulgong Memorial Hall Committee

Membership	Quorum	Responsibilities	Meetings
Councillor Cavalier Interested representatives of the Gulgong community Business Manager Resources & Recreation	N/A	Promotion of Gulgong Memorial Hall	Meets monthly, 1 st Tuesday of the month.

3. Red Hill Reserve Working Party

Membership	Quorum	Responsibilities	Meetings
Councillor Cavalier Community Representatives (10) Group Manager Operations	N/A	Development of Masterplan for the Red Hill site	As needed

4. Mid-Western Regional Council Peak Sports Council

Membership	Quorum	Responsibilities	Meetings
Councillor Weatherley Chairs and Presidents from each of the Sports Council Sub Committees	N/A	Co-ordination of activities of Mudgee, Gulgong and Rylstone Sports Council Sub Committees	Once per year

5. Mudgee Sports Council Sub Committee

Membership	Quorum	Responsibilities	Meetings
Councillor Weatherley 1 delegate from each of the sporting clubs or associations in Mudgee	N/A	Care control and management of active recreational facilities in Mudgee	Monthly

6. Gulgong Sports Council Sub Committee

Membership	Quorum	Responsibilities	Meetings
Councillors Cavalier & Thompson 1 delegate from each of the sporting clubs or associations in Gulgong	N/A	Care control and management of active recreational facilities in Gulgong	Monthly

7. Rylstone Sports Council Sub Committee

Membership	Quorum	Responsibilities	Meetings
Councillor Shelley Interested members of the Rylstone community	N/A	Care control and management of active recreational facilities in Rylstone	Monthly

8. Mid-Western Regional Council Heritage Committee

Membership	Quorum	Responsibilities	Meetings
Councillor White Community representatives (up to 13) General Manager's delegate Heritage Advisor	N/A	Provide advice to Council on heritage based issues	Once per month

9. Mudgee & Gulgong Access Committee

Membership	Quorum	Responsibilities	Meetings
Councillor Webb Community representatives (up to 10) General Manager's delegate	4	Provide advice to Council on Access based issues	Once per month

10. Rylstone & Kandos Access Committee

Membership	Quorum	Responsibilities	Meetings
Councillor Martens Community representatives (up to 10) General Manager's delegate	4	Provide advice to Council on Access based issues	Bi-monthly

11. Mid-Western Regional Council Cultural Development Committee

Membership	Quorum	Responsibilities	Meetings
Councillor White Up to 10 community representatives. Quorum is only 4.	4	Implementation of recommendation of Cultural Plan	As required

12. Australia Day Selection Committee

Membership	Quorum	Responsibilities	Meetings
Mayor, Deputy Mayor & Cr Cavalier (in addition the panel for Young Farmer of the Year also include Chairs of Mudgee, Gulgong & Rylstone branches of NSW Farmers Federation)	N/A	To select recipients of Council's Australia Day Awards	As required

13. Mudgee Regional Saleyards Committee

Membership	Quorum	Responsibilities	Meetings
Councillors Weatherley & Webb Agents (2 members) Nat Farmers (1 member) Transport (1 member) Beef Improvement Assoc. (1 member) Group Manager Operations Saleyards Supervisor	N/A	Advise Council on operation and improvements to the Saleyards.	Bi-monthly – 3 rd Thursday of the month.

14. Mid-Western Regional Youth Council

Membership	Quorum	Responsibilities	Meetings
Councillors Cavalier & Kennedy 2 representatives from each of the 4 high schools	4	Consultation and advocacy for youth	Twice each school term (8 per year)

15. Internal Audit Committee

Membership	Quorum	Responsibilities	Meetings
Councillor Kennedy One representative from each of Lithgow & Oberon Councils) General Manager from each Council Internal Auditor	N/A	Oversight of council systems and processes	As required

16. Community Safety Committee

Membership	Quorum	Responsibilities	Meetings
Mayor & Councillor Weatherley Police (2) Community (3) Business (3) Council staff	N/A	Provide advice to Council on the need for a Community Crime Prevention Plan	As required

17. Noxious Weeds Control Advisory Committee

Membership	Quorum	Responsibilities	Meetings
Councillor Webb Community members (3) Business Manager Resources & Recreational Chief Weeds Officer	N/A	Provide advice to Council on weed control in the MWRC area	4 times per year.

18. Kandos Centennial Working Party

Membership	Quorum	Responsibilities	Meetings
Councillor Martens Community Members		To provide input into the celebration of the centenary of Kandos in 2014	

2.5 Delegates to External Committees and other organisations

REPORT BY MANAGER GOVERNANCE TO 4 SEPTEMBER 2013 COUNCIL MEETING

2.5 Delegates to External Committees and other organisations

A0100056, A0110015

RECOMMENDATION

That:

1. the report by the Manager Governance on Delegates to external committees and other organisations for the period September 2013 to September 2014 be received;
2. Council appoint its delegates to the following external Committees or other organisations:
 - (a) Bushfire Management Committee (2 Councillors)
 - (b) Rural Fire Service District Liaison Committee (2 Councillors)
 - (c) Mudgee Region Tourism Inc (1 Councillor)
 - (d) Ulan Coal Mine Community Consultative Committee (1 Councillor)
 - (e) Wilpingjong Community Consultative Committee (2 Councillors)
 - (f) Charbon Community Consultative Committee (1 Councillor)
 - (g) Moolarben Community Consultative Committee (2 Councillors)
 - (h) Inglenook Exploration Community Consultative Committee (1 Councillor)
 - (i) Kingsgate Silver Mine Community Consultative Committee (1 Councillor)
 - (j) Central West Catchment Management Authority (1 Councillor)
 - (k) Bells Line Expressway Group (1 Councillor)
 - (l) Macquarie Valley Weeds Advisory Committee (1 Councillor)
 - (m) Joint Regional Planning Panel (2 Councillors)
 - (n) Botobolar Community Committee (1 Councillor)
 - (o) Goolma Amenities Committee (1 Councillor)
 - (p) Murray Darling Association (2 Representatives)

Detailed report

Council is represented on numerous external committees and other organisations.

Council needs to determine who its delegates to these external committee's and other organisations for the period September 2013 to September 2014, but before doing so needs to ensure that having a representative on these organisations and external committees has current relevance and is effective for the region.

The schedule attached sets out the current representation.

Financial implications

The attendance by Councillor at these external committees and other organisations may incur a travel cost to Council, provision for which is included in the budget.

Strategic or policy implications

Not applicable.

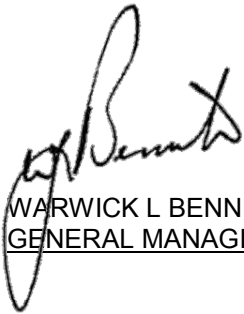


IAN ROBERTS
MANAGER GOVERNANCE

9 August 2013

Attachments: 1. Delegates to Other Bodies 2012/13

APPROVED FOR SUBMISSION:



WARWICK L BENNETT
GENERAL MANAGER

ATTACHMENT 1

DELEGATES TO OTHER EXTERNAL COMMITTEES AND OTHER ORGANISATIONS 2012/13

Name of Organisation	Current Council Delegate
Bushfire Management Committee	Councillors Cavalier & Webb
Rural Fire Service District Liaison Committee	Councillors Cavalier & Webb
Mudgee Region Tourism Inc	Councillor Kennedy
Ulan Coal Mine Community Consultative Committee	Councillor Webb
Wilpingjong Community Consultative Committee	Councillor Webb
Charbon Community Consultative Committee	Councillor Martens
Moolarben Community Consultative Committee	Councillor Webb
Inglenook Exploration Community Consultative Committee	Councillor Shelley
Kingsgate Silver Mine Community Consultative Committee	Councillor Shelley
Central West Catchment Management Authority – Local Government Reference Group	Councillor Webb
Bells Line Expressway Group	Councillor Thompson
Macquarie Valley Weeds Advisory Committee	Councillor Webb
Joint Regional Planning Panel	Councillors Walker & Weatherley
Botobolar Community Committee	Councillor Webb
Goolma Amenities Committee	Councillor Thompson
Murray Darling Association	Councillor Webb and Mr Holden

Item 3: Disclosure of Interest

In accordance with Section 451 of the Local Government Act 1993, Councillors should declare an interest in any item on this Agenda. If an interest is declared, Councillors should leave the Chambers prior to the commencement of discussion of the item.

Item 4: Confirmation of Minutes

4.1 Minutes of Ordinary Meeting held on 21 August 2013

COUNCIL DECISION:

That the Minutes of the Ordinary Meeting held on 21 August 2013, Minute Nos 310/13 to 333/13 be taken as read and confirmed.

The Minutes of the Ordinary Meeting are attached:

Minutes of the Ordinary Meeting of Council
Held at the Council Chambers, 86 Market Street, Mudgee
on Wednesday 21 August 2013, commencing at 5.50 pm and concluding at 6.34 pm

PRESENT	Cr D Kennedy (Mayor), Cr P Cavalier, Cr EE Martens (AM), Cr PA Shelley, Cr JP Thompson, Cr MB Walker, Cr JK Weatherley, Cr JR Webb (Deputy Mayor), Cr L White.
IN ATTENDANCE	General Manager (WL Bennett), Director Mid-Western Operations (B Cam), Director Development and Community Services (C Van Laeren), Director Finance and Administration (C Phelan), Manager Governance (I Roberts)
MEDIA REPRESENTATIVES	Mudgee Guardian / The Weekly (R Murray), Radio 2MG (M Heldon).

Item 1: Apologies

There were no apologies.

Item 2: Disclosure of Interest

Councillor Walker declared a pecuniary conflict of interest in Item 6.2.2 as he is the owner of the subject property.

Councillor White declared a pecuniary conflict of interest in Item 6.2.14 as she is employed in the tourism industry and had a business relationship with MRTI.

Item 3: Confirmation of Minutes

310/13 **MOTION: Shelley/Walker**

That the Minutes of the Ordinary Meeting held on 7 August 2013 (Minute Nos. 291/13 – 309/13) be taken as read and confirmed.

The motion was put and carried.

Councillor Webb requested that his name be recorded as having voted against this decision.

Item 4: Matters in Progress

Housing Plus – George Street Affordable Housing

311/13 **MOTION: Cavalier/Webb**

That Minute No. 253/13 be noted as completed.

The motion was put and carried.

Item 5: Mayoral Minutes

5.1.1 REINSTATEMENT OF BUDGET CUTS

A0100056, A0100055,

312/13

MOTION: Kennedy

That Council amend the 2013/14 Operational Plan to increase the expenditure on resheeting by \$431,000, increase expenditure on Cope Road capital project by \$400,000, undertake landscaping at the cemetery at \$40,000, provide irrigation at Lawson Park at a value of \$80,000 and increase the weed budget by \$49,000, all funded from Unrestricted Cash.

AMENDMENT: Thompson/Webb

That Council amend the 2013/14 Operational Plan to increase the expenditure on resheeting by \$550,000, increase expenditure on Cope Road capital project by \$400,000 and increase the weed budget by \$50,000, all funded from Unrestricted Cash.

The amendment was put and lost. The motion was put and carried.

Item 6: General Business

6.1 NOTICES OF MOTION

There were no Notices of Motion.

6.2 REPORTS TO COUNCIL

6.2.1 NOTICE OF MOTION

A0100056, A0110002, A0100035

313/13

MOTION: Cavalier/Weatherley

That the report by the General Manager on the Notice of Motion be received.

The motion was put and carried.

6.2.2 DA0052/2014 – PROPOSED FARM SHED, LOT 4 DP1146240, 51 LUE ROAD, MILROY

A0100056, DA0052/2014

Councillor Walker declared a pecuniary conflict of interest as he owns the subject property, left the meeting at 6.04 pm and did not participate in discussions or vote in relation to this matter.

314/13

MOTION: Shelley/Cavalier

That:

1. **the report by the Manager Health & Building on the DA 0052/2014 – Proposed Farm Shed, Lot 4 DP1146240, 51 Lue Road, Milroy be received;**
2. **That the Development Application 0052/2014 – Proposed Farm Shed, Lot 4 DP1146240, 51 Lue Road, Milroy be granted development consent subject to the following conditions:**
 1. **The development is to be carried out in accordance with the approved stamped plans, except as otherwise provided by the conditions of this determination (Note:- modifications to the approved plans will require the lodgement and consideration by Council of a modification pursuant to Section 96 of the Environmental Planning and Assessment Act).**
 2. **Notwithstanding the approved plans the structure is to be located clear of any easements and/or any water and sewer mains in accordance with Council Policy**
 3. **All building work must be carried out in accordance with the provisions of the National Construction Code, Volume One and the adopted Australian Standards referenced in the Building Code of Australia**
 4. **All plumbing and drainage work must be carried out by a licensed plumber and drainer and must comply with the requirements of the Plumbing Code of Australia 2013**
 5. **The shed shall not be adapted nor used for residential, commercial or industrial purposes without prior approval of certifying authority.**

6. All mandatory inspections required by the Environmental Planning and Assessment Act and any other inspections deemed necessary by the Principal Certifying Authority being carried out during the relevant stages of construction.
7. Construction work noise that is audible at other premises is to be restricted to the following times:
 - Monday to Saturday -- 7.00am to 5.00pm
 - No construction work is permitted on Sundays and Public Holidays.
8. The building(s) shall not be used or occupied until either an occupation certificate or an interim occupation certificate has been issued by the principal certifying authority.
10. A sign shall be erected in a prominent position on the premises on which the erection or demolition of a building is being carried out showing:
 - the name, address and telephone number of the principal certifying authority for the work, and
 - stating that unauthorised entry to the premises is prohibited, and
 - showing the name of the builder or other person in control of the premises and a telephone number at which the builder or other person may be contacted outside working hours. The sign shall be removed when the erection or demolition of the building has been completed
11. The strength of the concrete used for the reinforced concrete floor slab must be 25MPa (N25)
12. The site must be provided with a waste enclosure (minimum 1800mm x 1800mm x 1200mm high) that has a lid or secure covering for the duration of the construction works. The enclosure is to be emptied periodically to reduce the potential for rubbish to be blown from the site.
The Council encourages the separation and recycling of suitable materials.
NOTE: ALL WASTE GENERATED FROM THE CONSTRUCTION PROCESS IS TO BE CONTAINED ON-SITE.
13. Prior to the commencement of any construction works, the following provisions of the Environmental Planning and Assessment Act 1979 (the Act) are to be complied with:
 - A Construction Certificate is to be obtained in accordance with Section 81A(2)(a) of the Act.
 - A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 81A(2)(b) of the Act.
 - Council is to give at least 2 days notice of the date intended for commencement of building works, in accordance with Section 81A(2)(c) of the Act.
14. All stormwater is to discharge a minimum 3m from the building and disposed of in such a way as to not adversely affect the adjoining properties.
15. Erosion and sediment control measures being implemented prior to the commencement of works and must be maintained during the period of construction to prevent sediment and other debris escaping from the site. Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover.
16. The floor of the proposed farm shed is to be 450.3m AHD.

The motion was put and carried with the Councillors voting as follows:

Councillors	Ayes	Nayes
Cr Cavalier	✓	
Cr Kennedy	✓	
Cr Martens		✓
Cr Shelley	✓	
Cr Thompson	✓	
Cr Weatherley	✓	
Cr Webb	✓	
Cr White	✓	

Councillor Walker returned to the meeting at 6.06 pm.

6.2.3 MONTHLY STATEMENT OF MID-WESTERN REGIONAL COUNCIL BANK BALANCES AND INVESTMENTS AS AT 31 JULY 2013

A0100056, A0140304

315/13

MOTION: Shelley/Cavalier

That:

1. the report by the Financial Accountant on the Monthly statement of Mid-Western Regional Council bank balances and investments as at 31 July 2013 be received;
2. the certification by the Responsible Accounting Officer be noted.

The motion was put and carried.

6.2.4 MUDGEE COMMON – DRAFT PLAN OF MANAGEMENT

A0100056, F0650038

316/13

MOTION: Weatherley/Webb

That:

1. the report by the Manager Strategic Planning on the Mudgee Common - Draft Plan of Management be received;
2. that Council resolve to exhibit the draft Plan of Management for a period of 30 days to allow stakeholder and general community comment.

The motion was put and carried.

6.2.5 ON-SITE SEWAGE MANAGEMENT BULK INSPECTION FEE

A0100056, SEW200027

317/13

MOTION: Shelley/Cavalier

That:

1. the report by the Manager Health & Building on the Amendment to the 2013/14 fees and charges to include a \$30 on-site sewage management bulk inspection fee be received;
2. that a fee of \$30 be included in the current fees and charges to cover bulk on-site sewage management system inspections.

The motion was put and carried.

6.2.6 MUDGEE SEWERAGE AUGMENTATION PROGRESS REPORT

A0100056, A0100055, F0740001

318/13

MOTION: White/Cavalier

That:

1. the report by the Business Manager Services on the Mudgee Sewerage Augmentation Progress Report be received;
2. Council amend the 2013/14 Operational Plan to increase the budget for the Mudgee Sewerage Augmentation Project by \$370,000 to be funded from \$118,000 State Government grant; \$200,000 from Section 64 Developer Contributions; and \$50,000 from the Sewer Pump Station Capital Works program;
3. That Council approve a variation of \$57,029.09 ex GST, for the Putta Bucca Sewage Pump Station Upgrade Contract due to delay costs.

The motion was put and carried.

6.2.7 MANDATORY SWIMMING POOL INSPECTION PROGRAM

A0100056, DEV700006

MOTION: Weatherley/Martens

That:

1. the report by the Manager Health & Building on the Mandatory Swimming Pool Inspection Program be received.
2. the inspection regime of 260 swimming pool inspections per annum with an inspection fee of \$150 be placed on public exhibition for 21 days.

319/13

MOTION: Shelley/Cavalier**That:**

1. the report by the Manager Health & Building on the Mandatory Swimming Pool Inspection Program be received.
2. the inspection regime of 260 swimming pool inspections per annum with an inspection fee of \$100 for initial inspection and a further \$100 for any subsequent re-inspections and these fees be placed on public exhibition for 21 days.

The amendment was put and carried and on being put as the motion was again carried.

6.2.8 DRAFT FINANCIAL STATEMENTS 2012/13

A0100056, FIN300066

320/13

MOTION: Cavalier/Shelley**That:**

1. the report by the Director, Finance & Administration on the Draft Financial Statements 2012/13 be received;
2. the draft General Purpose Financial Report 2012/13 and draft Special Purpose Financial Report 2012/13 be referred for audit;
3. the Mayor, Deputy Mayor, General Manager and Responsible Accounting Officer be authorised to sign the Statement by Councillors and Management on its opinion of the General Purpose Financial Report 2012/13 and Special Purpose Financial Report 2012/13;
4. the General Manager be authorised to issue the 2012/13 Financial Reports immediately upon receipt of the Auditors Report, subject to there being no material audit adjustments or audit issues;
5. General Manager be authorised to finalise the date at which the Auditors Report and Financial Statements for 2012/13 are to be presented to the public.

The motion was put and carried.

6.2.9 2012/13 OPERATIONAL PLAN - JUNE QUARTERLY BUDGET REVIEW

A0100056, FIN300061

321/13

MOTION: Walker/Martens**That:**

1. the report by the Director, Finance & Administration on the 2012/13 Operational Plan - June Quarterly Budget Review be received;
2. the opinion by the Responsible Accounting Officer regarding the satisfactory financial position of Council be noted; and
3. Council make a dividend payment of \$250,000 from Private Works (P Fund) to General Fund (A Fund) as at 30 June 2013.

The motion was put and carried.

6.2.10 MONTHLY DEVELOPMENT APPLICATIONS PROCESSING & DETERMINED

A0100056

322/13

MOTION: Weatherley/Cavalier

That the report by the Director, Development and Community Services on the monthly development application reports for the months ending 30 June 2013 and 31 July 2013 be received.

The motion was put and carried.

6.2.11 REVOTES 2013

A0100056, FIN300062

323/13

MOTION: Shelley/Walker**That:**

1. the report by the Director, Finance & Administration on the Revotes from the 2012/13 Operational Plan into the 2013/14 Operational Plan be received;
2. the 2013/14 Operational Plan be amended to reflect the revote of \$2,468,877 of estimates from 2012/13 as follows:
 - General Fund Unrestricted Cash \$84,464
 - General Fund Reserves \$748,610
 - General Fund Voluntary Planning Agreements \$176,173
 - General Fund Unspent Grants \$306,076
 - General Fund Specific Purpose Revenue \$176,860
 - Sewer Fund Unrestricted Cash \$72,500
 - Sewer Fund Reserves \$137,394
 - Sewer Fund Section 64 Developer Contributions \$47,182
 - Sewer Fund Specific Purpose Revenue \$684,368
 - Water Fund Unrestricted Cash \$9,500
 - Water Fund Reserves \$25,750

The motion was put and carried.

6.2.12 FINANCIAL ASSISTANCE APPLICATIONS

A0100056, A0140201

324/13

MOTION: Shelley/Cavalier

That:

1. the report by the Financial Accountant on the Financial Assistance Applications be received;
2. Council provide financial assistance to the following applicants in accordance with the criteria and guidelines of the Financial Assistance Policy, subject to those requirements being met, with the funding from the general financial assistance vote:

Mudgee Baptist Church	\$500.00
The Rylstone Kandos Anglican Parish (The Hill Top Arts Committee)	\$500.00
NSW Endurance Riders Association – Central West Zone Two Incorporated	\$500.00
Gulgong Pistol Club Incorporated	\$782.56

The motion was put and carried.

6.2.13 ADDRESSING INFRASTRUCTURE BACKLOG

A0100056, A0149939

325/13

MOTION: Shelley/Weatherley

That the report by the General Manager on the Addressing Infrastructure backlog be received.

The motion was put and carried.

6.2.14 MRTI QUARTERLY REPORT – JUNE 2013

A0100056, F0770077

Councillor White declared a pecuniary conflict of interest as she is employed in the tourist industry had a business relationship with MRTI, left the meeting at 6.19 pm and did not participate in discussions or vote in relation to this matter.

326/13

MOTION: Walker/Martens

That the report by the General Manager on the MRTI Quarterly Report – June 2013 be received.

The motion was put and carried.

Councillor White returned to the meeting at 6.20 pm.

6.2.15 PURCHASE OF MEDICAL CENTRE GULGONG

A0100056, F0610002

327/13

MOTION: Webb/Martens

That:

1. the report by the General Manager on the Purchase of Medical Centre Gulgong be received;

2. the General Manager seek further information on the purchase price, ways of attracting and retaining doctors and financial implications of sourcing grants to fund the purchase of the Gulgong Medical Centre located at 87 Mayne street Gulgong.

The motion was put and carried.

6.2.16 NSW COUNTRY RUGBY CHAMPIONSHIPS 2014

A0100056, A0140201

328/13

MOTION: Walker/Weatherley

That:

1. the report by the General Manager on the NSW Country Rugby Championships 2014 be received;
2. Council approves a grant of \$10,000 towards the NSW Country Rugby Championships 2014 comprising \$2,500 from the Event Management budget and \$7,500 from the Financial Assistance budget.
3. Council provide an additional \$1,000 for the Kandos Mountain Hoedown.
4. during the next Quarterley Review, Council increase the funding to the Events Management and Financial Assistance budgets.

The motion was put and carried.

6.2.17 SCULPTURES IN THE GARDEN

A0100056, A0149939

329/13

MOTION: Cavalier/Weatherley

That:

1. the report by the General Manager on the Sculptures in the Garden be received;
2. that Council form a interim committee consisting of Councillors Walker and White and the Director of Development and Community Services to meet with a representative (Nigel White) of the Sculptures in the Garden Committee to select a sculpture and a location within Mudgee for public display.

The motion was put and carried.

6.2.18 TELSTRA LEASE OF FLIRTATION HILL, MUDGEE

A0100056, P2013611, A0070005

330/13

MOTION: Walker/Martens

That:

1. the report by the General Manager on the Telstra Lease of Flirtation Hill, Mudgee be received;
2. Council authorise the affixing of the Common Seal on the lease agreements with Telstra Corporation Limited to allow them to place a communication tower on the reservoir site on Flirtation Hill, Mudgee, and that the Mayor and General Manager be authorised to affix that Common Seal.

The motion was put and carried.

Item 7: Urgent Business Without Notice

There was no Urgent Business Without Notice.

Item 8: Confidential Session

331/13 **MOTION:** Webb/White

That pursuant to the provisions of Section 10 of the Local Government Act, 1993, the meeting be closed to the public.

Following the motion to close the meeting being moved and seconded, the Manager Governance announced that the following matters would be considered in confidential session and the reason why they were being dealt with in this way.

Subject: Performance Review of General Manager 2012 -13 and

Performance Assessment General Manager 2013 - 14

The reason for dealing with these reports confidentially is that they relate to personnel matters concerning particular individuals (other than Councillors) in accordance with Section 10A(2)(a) of the Local Government Act, 1993.

Following an enquiry from the Mayor, the Manager Governance advised that there were no written representations in respect of this matter and that no person in the gallery wished to make verbal representations.

The motion was put and carried.

8.1.1 General Manager's Performance Review 2012-13

A0100056, A0381421

332/13

MOTION: Cavalier/Weatherley

That:

1. **the report by the General Manager on the General Manager's Performance Review 2012-13 be received.**
2. **The General Manager Performance for the year ending 30th June 2013 be assessed at satisfactorily met objectives and at times exceeded objective expectations in accordance with the assessment scale include in the General Managers Performance Agreement for the year ending 30 June 2013.**

The motion was put and carried.

8.1.2 General Manager's Performance Agreement 2013/14

A0100056, A0381421

333/13

MOTION: Shelley/Martens

That:

1. **the report by the Mayor on the General Manager's Performance Agreement 2013/14 be received;**
2. **consideration of this matter be deferred.**

The motion was put and carried.

Item 9: Open Council

The Manager Governance announced the decisions taken in Confidential Session.

Closure

There being no further business the meeting concluded at 6.34 pm.

Item 5: Matters in Progress

SUBJECT	RESOLUTION NO. & DATE	RESOLUTION	ACTION
Rylstone/Kandos Sewerage Augmentation	S.85/10 Assets Mtg 1/12/10	That: 2. Council commence negotiations with the Department of Environment, Climate Change and Water to defer construction of a new Treatment Plant at Kandos until funds become available under the Country Town Water and Sewerage Scheme; 3. staff review options to stage the proposed works in this region to improve the affordability of the augmentation required to meet effluent discharge quality requirements.	With the focus on delivering the Mudgee Sewer Works insufficient staff resources are available to review this scheme
Quarry Road – Kandos	Res. 64/12 Ordinary Mtg 15/2/2012	That consideration of this matter be deferred until discussions with Cement Australia have been completed.	No determination as yet.
Return of Royalties	Res. 151/12 Ord. Mtg. 18/4/2012	That Council continue to fight for the return of royalties for the region.	Three projects have been approved by the State Government for consideration after Council submits a detailed Business case. That work is underway and needs to be submitted by 6th September 2013
NSW Origins Legends	Res. 192/13 Ord. Mtg. 6/6/2013	That consideration of the submission from the NSW Origin Legends be deferred until the September quarterly budget review.	This matter will raised again at the September quarterly budget review
Mudgee Civilian Rifle and Small Bore Club	Res. 193/13 Ord. Mtg. 6/6/2013	That consideration of the submission from the Mudgee Civilian Rifle and Small Bore Club Inc be deferred	This matter will raised again at the September quarterly budget review
Frontline Community Services	Res. 194/13 Ord. Mtg. 6/6/2013	That consideration of the submission from Frontline Community Services be deferred until the September Quarterly Budget Review.	This matter will raised again at the September quarterly budget review

SUBJECT	RESOLUTION NO. & DATE	RESOLUTION	ACTION
Welcome Signs	Res. 278/13 Ord Mtg. 24/7/2013	<ol style="list-style-type: none"> 2. Council publicly exhibit the proposed designs and invite comment from the community; 3. Council approve the purchase of 12 signs to be installed at the following locations: <ul style="list-style-type: none"> - Rylstone at two locations - Gulgong at four locations - Mudgee at three locations - Kandos at three locations 4. Council allocates a further \$15,000 in the 2013/14 budget to fund all twelve signs to be installed and this budget adjustment be prioritised at the September quarterly budget review. 	<p>The public consultation process commence on Friday 2nd August and will be completed on Friday 23 August 2013.</p> <p>A report will be presented on the public submissions at a meeting in the near future</p>
Rylstone Aerodrome – Section 94 Contribution and Rates	Res. 299/13 Ord Mtg. 07/08/13	<ol style="list-style-type: none"> 1. The report by the Director, Development and Community Services on the Rylstone Aerodrome – Section 94 Contribution and Rates be received 2. Consideration of request by the developer for deferment of the payment of Section 94 contributions and rates be deferred subject to a further report from staff with options. 	<p>Report will be presented to Council in due course</p>
Purchase of Medical Centre, Gulgong	Res. 327/13 Ord Mtg. 21/08/13	<ol style="list-style-type: none"> 2. the General Manager seek further information on the purchase price, ways of attracting and retaining doctors and financial implications of sourcing grants to fund the purchase of the Gulgong Medical Centre located at 87 Mayne Street, Gulgong. 	<p>A letter has been sent to the respective parties seeking the information requested by Council</p>
Events Management and Financial Assistance Budget	Res. 328/13 Ord Mtg. 21/08/13	<ol style="list-style-type: none"> 4. during the next Quarterly Review, Council increase the funding to the Events Management and Financial Assistance budgets. 	<p>This matter will raised again at the September quarterly budget review</p>

SUBJECT	RESOLUTION NO. & DATE	RESOLUTION	ACTION
General Manager's Performance Agreement 2013/14	Res. 333/13 Ord Mtg. 21/08/13	<ol style="list-style-type: none">1. the report by the Mayor on the General Manager's Performance Agreement 2013/14 be received;2. consideration of this matter be deferred.	A report will be presented to the next meeting of Council

Item 6: Mayoral Minute

Item 7: General Business

7.1 Notices of Motion

7.1.1 Recording of Council Meetings

LISTED BY COUNCILLOR JOHN WEBB TO 4 SEPTEMBER 2013 COUNCIL MEETING

Document2

A0100055, A0100035

MOTION

That Council reinstate recording of Council Meetings

BACKGROUND

Recording of meetings would assist to remove doubt about the accuracy of minutes.

26 August 2013

7.2 Reports

7.2.1 Caerleon – Environmental Planning & Assessment Act 1979 s73A Amendment

REPORT BY THE MANAGER STRATEGIC PLANNING TO 4 SEPTEMBER 2013 COUNCIL MEETING
S73 A Amendment Caerleon
GOV400029, A0100056, A0420238

RECOMMENDATION

That:

- 1. the report by the Manager Strategic Planning on the Caerleon - Environmental Planning & Assessment Act 1979 s73A Amendment be received;**
 - 2. Council prepare an amendment to Local Environmental Plan 2012 to fix the mapping error in relation to the Caerleon site.**
-

Executive summary

Council undertook to rezone land to facilitate the Caerleon residential development. The re-zoning was generally consistent with the earlier Development Control Plan (DCP) adopted by Council. The DCP refers to the distance from the railway corridor to the residential zone as being 40m measured from the middle of the track, however, the published LEP Map shows the distance as measured from the boundary of the railway corridor.

This was an error in drafting the mapping for the LEP. The proponent is seeking to use section 73A of the Environmental Planning and Assessment Act to rectify this error and has lodged a Planning Proposal on that basis. The supporting documentation is attached to the end of the business paper.

Detailed report

Following is an extract from the Planning Proposal prepared by Elton Consulting on behalf of the proponent.

This Planning Proposal seeks approval for a housekeeping amendment to the Mid Western Regional Local Environmental Plan 2012 (LEP 2012) to amend the Land Zoning Maps, Minimum Lot Size Maps and Height of Building Maps for part of the 'Caerleon' site (part lot 1, DP 1146227). It is submitted to Mid-Western Regional Council (the Council) by Elton Consulting on behalf of Caerleon Mudgee Pty Ltd ATF Caerleon Mudgee Trust.

The land that is the subject of this Planning Proposal consists of a strip of land between the Gwabegar railway line and the residential land in Caerleon which was previously rezoned for residential development under Mid Western Regional LEP 2012 (Amendment No. 3 published on Legislation website on 15/3/2013).

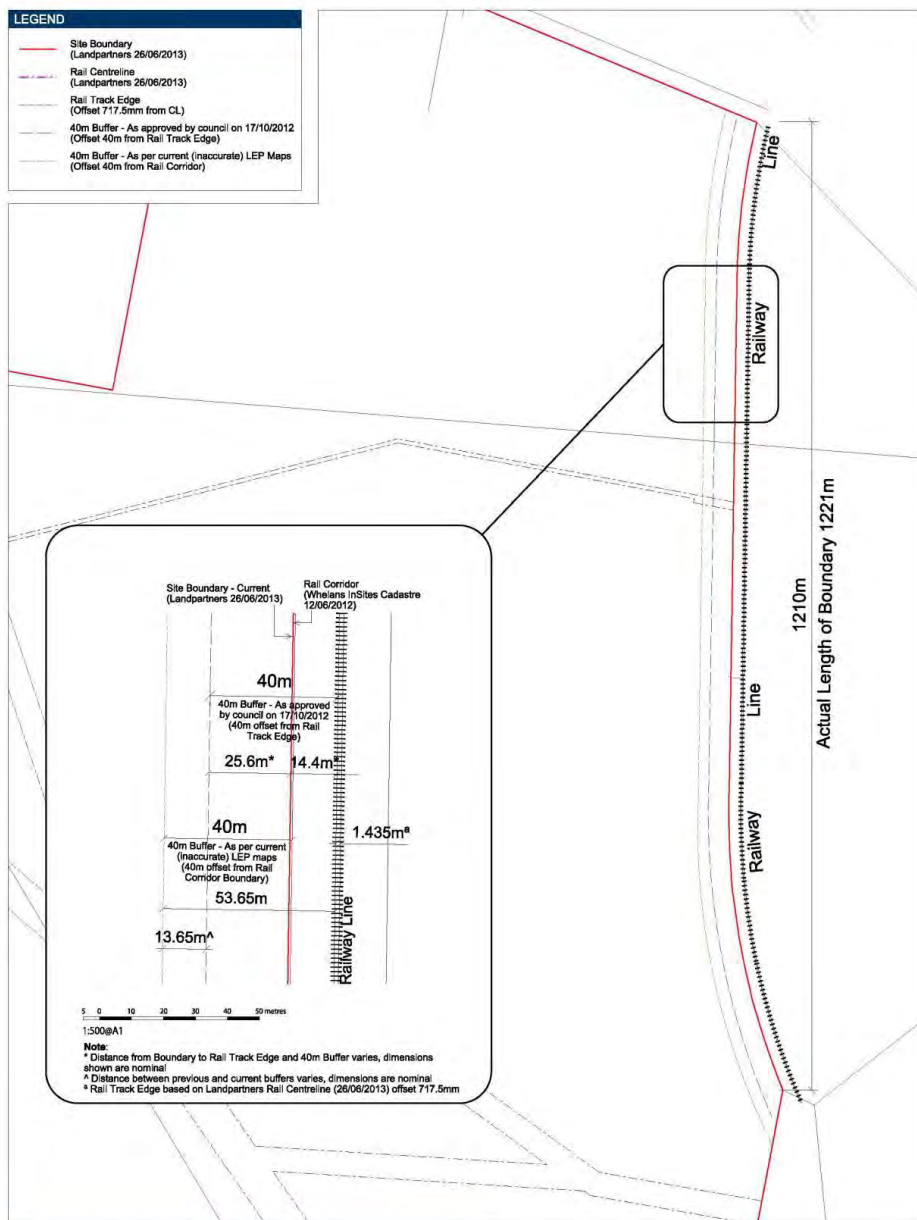
Specifically, the land that is the subject of this Planning Proposal is a 13.65 metre wide strip on the outside of the correct 40 metres buffer line when measured west from the railway line (i.e. the land between the green and blue lines in Figure

1a / the land highlighted in blue in Figure 1b). As part of the preparation of Amendment No. 3, this land was incorrectly mapped as RE1 Public Recreation.

Although the Gwabegar railway line is not in use, one objective of the Planning Proposal associated with Amendment No. 3 ('original Planning Proposal') was to provide an appropriate buffer between the railway line and future residential development within Caerleon. The developers agreed to apply a 40 metre buffer between the railway line and residential lots, to protect the amenity of future housing and provide an opportunity for open space/landscaping.

The purpose of this Planning Proposal is to correct a mapping error/map formatting error by correctly applying a 40 metre buffer to the railway line. Currently, the LEP Maps provide a buffer of approximately 53 metres from the railway line, greater than that which was approved by Council on 17 October 2012.

It is also proposed to request the Minister to expedite this Amendment under the provision of section 73A of the Environmental Planning & Assessment Act 1979 (EP&A Act). Section 73A allows an LEP Amendment to be made by dispensing with the community and public consultation requirements under section 57, but only if the amendment is to correct an obvious error or misdescription in a map and/or matters that are minor in nature.



7.2.2 Modification to Wilpinjong Coal Project – Council Submission

REPORT BY THE STATUTORY/STRATEGIC PLANNER TO 4 SEPTEMBER 2013 COUNCIL MEETING
Council Report Wilpinjong Mod 5
A0100056, A0420169

RECOMMENDATION

That:

1. **the report by the Statutory/Strategic Planner on the Wilpinjong Coal Mine Modification be received;**
2. **Council make a submission in accordance attachment 1 to this report.**

Executive summary

Wilpinjong Coal Pty Ltd (WCPL) has lodged an application for the modification of development consent 05-0021 with the NSW Department of Planning and Infrastructure (DoPI). The application seeks the following modifications to the original development consent:

- Increase the open cut area of the mine by approximately 70ha; 21.9ha of this area is grassland and 28.8ha woodland. This is anticipated to result in the recovery of an additional 3 million tonnes of run-of-mine (ROM) coal over the life of the mine.
- Increase the amount of waste rock production from 28 million bank cubic metres (mbcm) to 33.3 mbcm.
- Upgrade of coal handling and preparation plant.
- Upgrade of osmosis plant.
- Amend the waste emplacement strategy in the following manner:
 - Develop elevated waste rock emplacement platform.
 - Disposal of building and demolition waste sourced from off-site into the approved waste rock emplacements.
- Operation of a light vehicle servicing workshop at an existing shed located on site.

The EA has been placed on public exhibition from 19 August until 9 September.

Detailed report

History of Approvals

Wilpinjong Coal mine was approved under the now defunct Part 3A of the Environmental Planning and Assessment Act 1979 (EP&A Act) on 1 February 2006.

A modification was granted in November 2007 to alter the mine's access route and to increase the blasting frequency.

A second modification was granted in September 2010 to increase the maximum run-of-mine production from 13 million tonnes per annum (mtpa) to 15 mtpa. The modification also increased the mining fleet and increased the number of train movements from four (4) to five (5) per day.

A third modification was approved in 2011 which increased the total exported coal from 12mtpa to 12.5mtpa, increased the train movements from 5 to 6 and approved a reverse osmosis water treatment plant.

Traffic and Transport

A Road Transport Assessment forms part of the EA and takes into consideration the following:

- Existing Road Environment;
- Existing operations and the proposed modification;
- Changes to the road environment;
- Future road environment.

The main access to the mine is via Ulan-Wollar Road which is sealed from Ulan Road to the entrance to the mine. Other roads that are impacted by mining activities include Ulan Road and Cope Road.

The Ulan-Wollar Road east of the Wilpinjong Access Road is currently formed gravel for a distance of approximately 5.5km until it becomes sealed again approximately 5km east of the village of Wollar.

Comment:

The report concludes that there will be a short term increase in traffic generated by the temporary construction workers used to carry out the upgrades to mining facilities. Upon completion of these works, the report states that the impact of the modification on the local road network would be negligible. This view is supported by Council as the number of workers required to carry out the works is estimated to be only 20 and there will be no net increase in workers post construction.

Council's submission regarding modification number four (4) in 2011 identified that the Ulan-Wollar Road to the east of the mine entrance should be sealed due to the amount of traffic movements generated by mining activities. A traffic survey conducted in December 2012 which formed part of the submitted traffic assessment identified 164 vehicle movements per day on Ulan-Wollar Road east of the mine entrance which is higher than the 119 weekday vehicle movements identified in the 2011 modification. The addition of the light vehicle workshop as an ancillary use to coal operations will also place additional pressure on a 3km section of this road.

Council is therefore of the opinion that the road should be sealed to the relevant AustRoad Standards for a distance of approximately 5.5km between the mine entrance and the village of Wollar and that WCPL should upgrade the road.

Noise and Vibration

The Noise Assessment Report submitted with the application acknowledges that four (4) privately owned residences in the vicinity of the mine have the potential to experience an exceedence of project specific noise criteria. This is down on the previous 2010 modification which identified up to 15 dwellings having the potential to experience an exceedence of these criteria.

Noise associated with mining activities is assessed in accordance with the NSW Industrial Noise Policy and is regulated by the NSW Environmental Protection Authority (EPA).

Comment:

Council does not object to the proposed modification on any noise related issues, so long as noise is attenuated at its source and that compliance with the conditions imposed by the DoPI and EPA are consistently achieved.

Ground and Surface Water

The reports for both surface and groundwater both conclude that there will be a negligible effect on natural water resources in the vicinity of the mine site.

Comment:

Council generally agrees with the conclusions reached regarding the potential impact on surface and groundwater; however some concern is raised regarding potential for spillage of tailings water from one of the dams during high rainfall events. It is recommended that a management plan be prepared to ensure that WCPL can adequately respond to any such event.

Air Quality

The Air Quality Impact Assessment identified that the additional open cut area would mean that the potential exists for mining activities to be slightly closer to receptors. Air dispersion modelling was conducted and concluded that no privately owned receptors would be subjected to adverse air quality impacts above the EPA criteria.

Comment:

Council raises no objection to the proposed modification in this regard, subject to compliance with the relevant EPA criteria.

Additional Matters

The report proposes the construction of a light vehicle servicing facility in an existing shed located on the northern side of Ulan-Wollar Road. The facility is permissible as a use ancillary to the coal mining operations.

Comment:

Council has no objection to the carrying out of light vehicle servicing as long as the servicing is limited to Wilpinjong Coal mine vehicles, the facility is built to comply with the relevant industry standards and that all contaminated waste from the activity is disposed of in accordance with an approved waste management plan. Council has also requested that the road between the mine entrance and the light vehicle servicing building should be sealed.

Financial implications

There are approximately 550 WCPL employees and full-time equivalent contractors employed at the mine. This is not anticipated to change as a result of the modification. Up to 20 people will be employed on a temporary basis for a period of up to six (6) months during construction.

The proposed modification will not have any impact on the Voluntary Planning Agreement currently in place between Council and WCPL.

Strategic or policy implications

N/A

MARK LYNDON
STATUTORY/STRATEGIC PLANNER

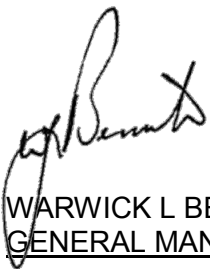


CATHERINE VAN LAEREN
DIRECTOR, DEVELOPMENT & COMMUNITY SERVICES

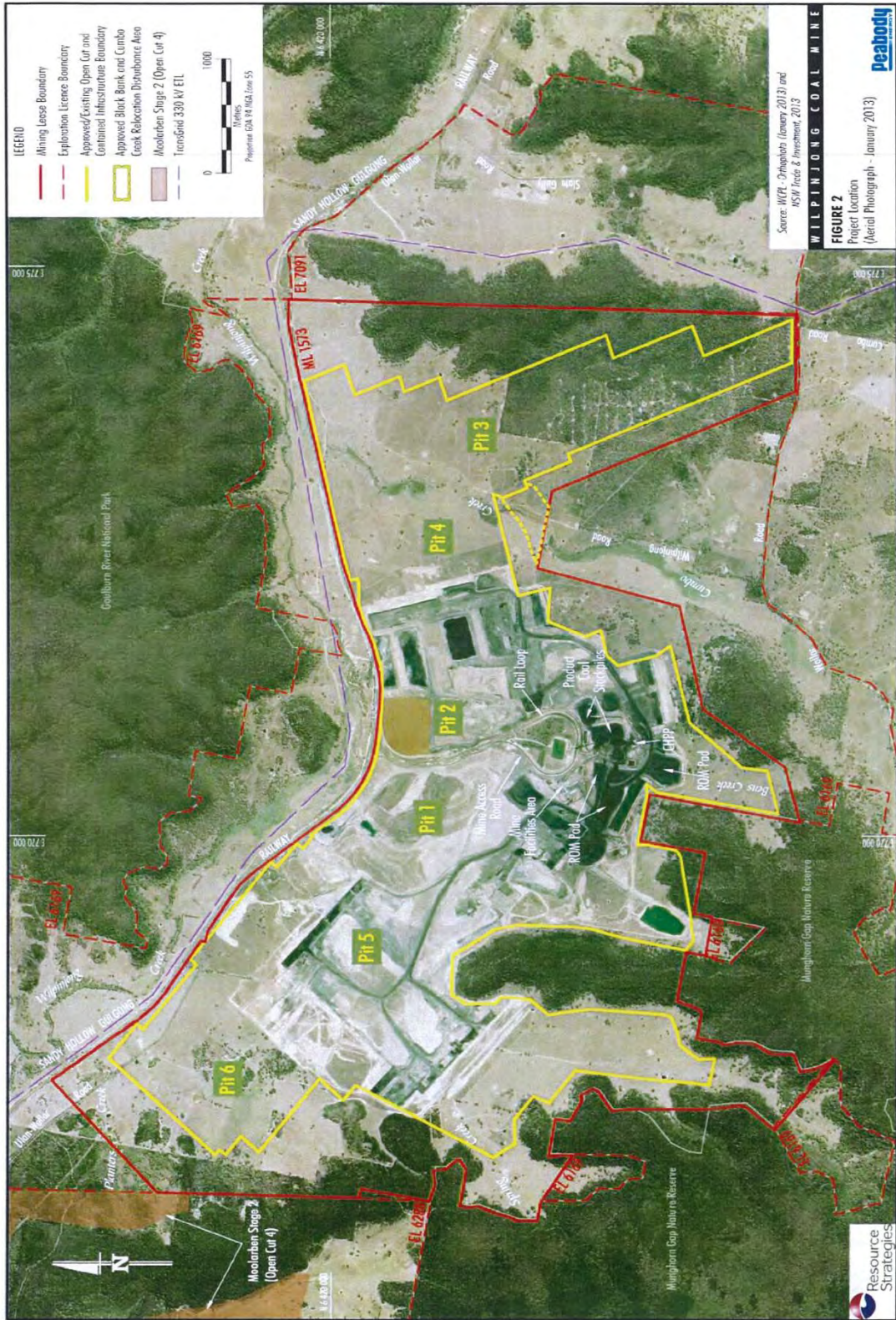
23 August 2013

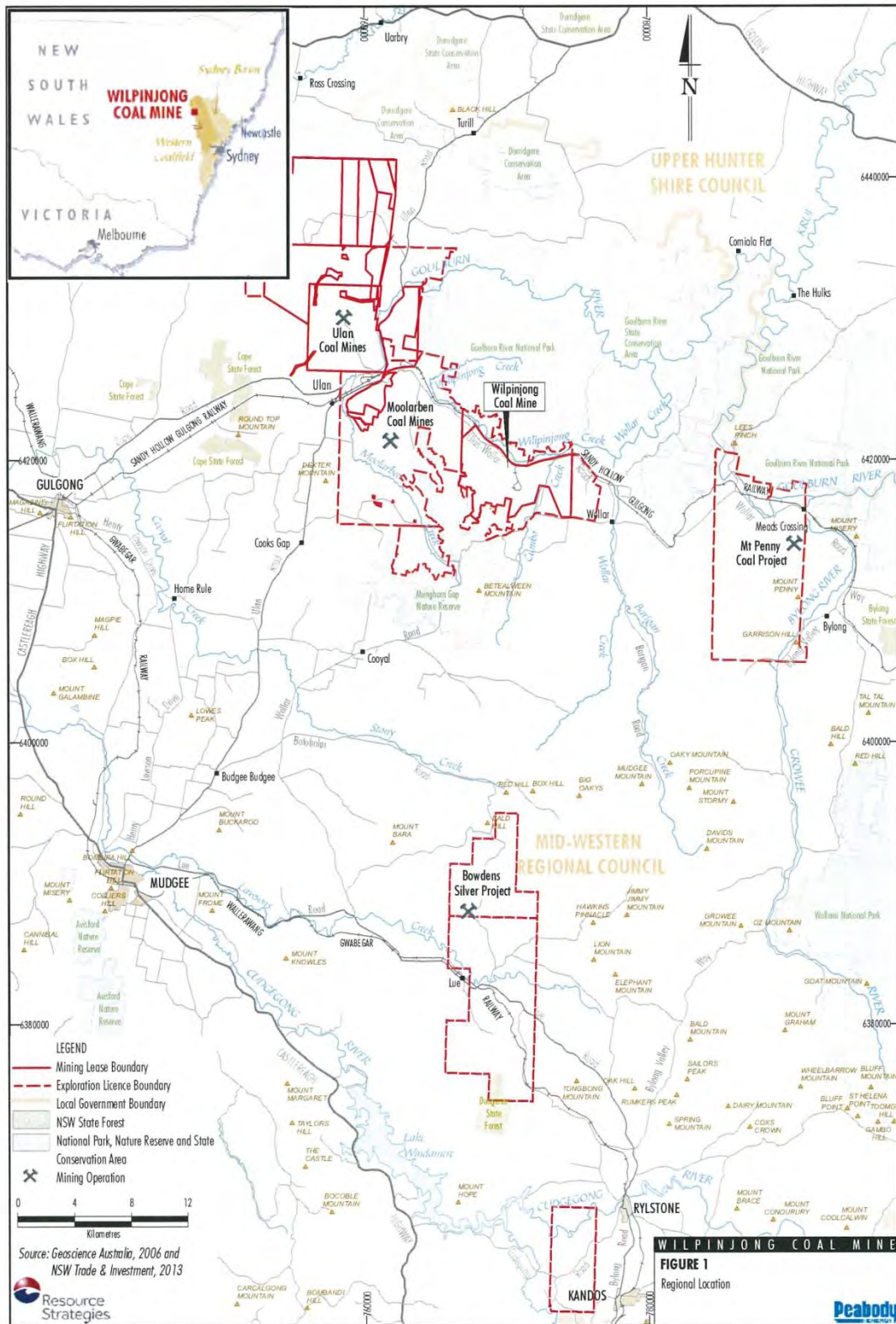
Attachments: 1. Map of proposed mine expansion area.

APPROVED FOR SUBMISSION:



WARWICK L BENNETT
GENERAL MANAGER





WL-12-12_75WML02_2050

7.2.3 Cobbora Holding – Voluntary Planning Agreement

REPORT BY THE GENERAL MANAGER TO 4 SEPTEMBER 2013 COUNCIL MEETING

Cobbora Holding - Voluntary Planning Agreement

GOV400029, A0100056

RECOMMENDATION

That:

1. **the report by the General Manager on the Cobbora Holding – Voluntary Planning Agreement be received; and**
2. **Council endorse in principle the draft Voluntary Planning Agreement with Cobbora Holding and agree to place this draft Voluntary Planning Agreement on public exhibition for 28 days.**

Detailed report

Please find attached the draft Voluntary Planning Agreement (VPA) for the Cobbora Coal Mine development. The purpose of the VPA is so that Council is able to have a source of funding to cope with the impact of residential growth within the Region. This VPA not only covers that financial contribution but also covers the upgrade of the intersection of Spring Creek Road and Castlereagh Highway, and the upgrades of Laheys Creek Road and Spring Creek Road. The draft VPA confirms the presentation made to Council recently by the proponents. The amounts proposed in the draft VPA per employee are more generous than Council has experienced from other developers in the past.

The VPA will come into effect when construction on the site commences. As Council is aware that has been delayed indefinitely however the proponents are wanting to have all of the issues complete for what I presume is to create a saleable asset.

The recommendation in this report is commencing the public consultation process of the VPA. Council is required to obtain public comment over a period of 28 days.

Financial implications

As set out in the draft VPA but Council is unlikely to receive any funding for some considerable time as this project is on hold. The proposed financial contribution are vary from the construction phase to the operational phase.

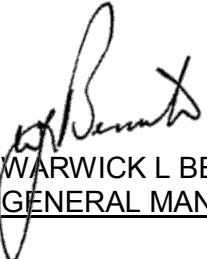
Strategic or policy implications

It is Council's policy to obtain a VPA for large developments.

23 August 2013

Attachments:

1. Letter from Cobbora Holdings dated 22 August 2013
2. Draft Voluntary Planning Agreement
3. Explanatory note



WARWICK L BENNETT
GENERAL MANAGER



ATTACHMENT 1

22 August 2013

Our Ref: TM:ER M01-CHI-2013-EXE-LT-0072

Mr. Warwick Bennett
General Manager
Mid-Western Regional Council
PO Box 156
MUDGEE NSW 2850

By email: warwick.bennett@midwestern.nsw.gov.au

Dear Warwick

VOLUNTARY PLANNING AGREEMENT AND COBBORA COAL PROJECT CONDITIONS OF APPROVAL

As you are aware, Cobbora Holding Company (CHC) is in the latter stages of NSW Project Approval for the Cobbora Coal Project.

We have been advised by the NSW Department of Planning and Infrastructure (DP&I) that it requires written indication from Council on its position regarding the Voluntary Planning Agreement (VPA).

Should Council provide written in principle agreement with the terms of the proposed VPA, the letter will be referenced in any conditions of approval for the Project.

Should no agreement be provided, DP&I will draft conditions relating to the VPA which will then be referred to the Planning Assessment Commission (PAC) for determination. That is, the negotiation will be no longer continue directly between CHC and Council. Instead, the outcome will be decided by the DP&I and PAC.

In order to fit with DP&I's timeframe for preparation of draft consent conditions, it is requested that Council provide to CHC a letter endorsing (or otherwise) the proposed VPA contribution no later than close of business **5 September 2013**.

It would be appreciated if Council could provide a response to CHC indicating one of the options below:

1. Council agrees to the proposed VPA for infrastructure and financial contribution per worker.
2. Council agrees to the proposed VPA for the financial contribution per worker only and acknowledges the infrastructure upgrades will become Project Approval conditions.
3. Council does not agree to the proposed VPA and acknowledges that any contributions will be Project Approval conditions determined by the PAC.

First Floor, 133-135 King Street
Newcastle NSW 2300
Ph: 02 4924 3600 | Fax: 02 4924 3699
www.cobbora.com ABN 28 147 813 125

For the absence of doubt, listed below is the proposed financial contribution per worker, which is the same for all Councils, followed by the proposed infrastructure upgrade for Mid-Western Regional Council.

Proposed financial contribution

- \$1,000 per employee per annum during both the construction and operation phases, based on a minimum workforce of 400.
- Financial contribution will be based on actual number of workers as at 1 April each year, with a minimum of 400, to provide certainty for Councils for budgeting purposes.
- Each Council is guaranteed a minimum payment of \$100,000 per annum during the construction phase and \$60,000 per annum during the operational phase.
- Annual payment during the construction phase will be calculated and distributed as follows:
 - As the workers will live on-site in the construction camp, each Council will receive 25% of the total contribution.
 - Based on a minimum workforce of 400, each Council will receive a minimum payment of \$100,000 (400 workers x \$1,000 x 25%).
- Should the construction workforce exceed 400 and part of the workforce is living outside the construction camp, the following will apply:
 - Each Council will receive a payment of \$250 for each worker living in the construction camp (\$1,000 x 25%) plus \$1,000 for each worker residing within its Local Government Area (LGA).
- The annual payment during the Project's operational phase will be calculated and distributed as follows:
 - Each Council will receive 15% of the total contribution (4 Councils x 15% = 60%).
 - The remaining 40% will be distributed to the four Councils based on the number of workers residing within the individual LGAs.
 - Based on a minimum workforce of 400 each Council will receive a payment of \$60,000 (400 workers x \$1,000 x 15%) plus a percentage of the remaining \$160,000.

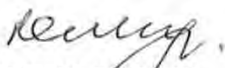
Proposed infrastructure upgrades

- In addition to the financial contribution, CHC will fund the following infrastructure upgrades within the Mid-Western Regional Council LGA:-
 - Upgrade Laheys Creek/Spring Ridge Road (widening and realignment).
 - Upgrade intersection of Laheys Creek Road and Castlereagh Highway.
 - Level crossing upgrades between Tallawang and Gulgong, consistent with the findings of ALCAM report conducted by ARTC in November 2012.

As you are aware, a political Advisory Group has been established to work on the nomination, selection and implementation of key projects for the region. Please note, the proposed VPA is completely separate from any funding or projects administered by this Group.

Thank you for your assistance with this matter. I remain available to discuss any issue with you if required.

Yours faithfully


RICHAARD OUTRIDGE
COMPANY SECRETARY

Copy to:

Steve O'Donoghue (DP&I) *Stephen.O'Donoghue@planning.nsw.gov.au*
Howard Reed (DP&I) *Howard.Reed@planning.nsw.gov.au*

ATTACHMENT 2

Planning agreement for Cobbora Coal Project

Cobbora Holding Company Pty Ltd ACN 147 813 125

Mid-Western Regional Council

Version: 2

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Planning agreement for Cobbora Coal Project

Dated

Parties

- Developer** **Cobbora Holding Company Pty Ltd ACN 147 813 125**
Registered address: First Floor, 133-135 King Street, Newcastle, NSW 2300
Contact: The Company Secretary
- Council** **Mid-Western Regional Council**
Registered address: 86 Market Street, Mudgee, NSW 2850
Contact: The General Manager

Background

- A The Developer has been granted the Approval by the Minister under Part 3A of the Act for the carrying out of the Development.
- B By letter to the Council dated 26 February 2013 the Developer offered to enter into this Agreement with the Council.
- C The Developer is required under condition [insert condition number] of the Approval to make the Development Contributions to the Council. The Developer has come to an agreement with the Council to make Development Contributions to the Council in connection with the carrying out of the Development under section 93F of the Act.
- D The parties enter into this Agreement to give effect to the requirements of the Approval and the agreement reached between them.

Agreed terms

1 Definitions and interpretation

1.1 Definitions

In this document:

Term	Definition
the Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Agreement	means this Planning Agreement.

Term	Definition
Approval	means the project approval granted by the Minister on [insert date] in respect of major project application 10_0001 relating to the carrying out the Development.
Construction Period Commencement Date	means the date on which by written notice the Developer advises Council that the construction works will commence. For the avoidance of doubt, minor works following the grant of the Approval will not be considered construction works.
Construction Period End Date	means the day immediately prior to the Operational Period Commencement Date.
Construction Personnel	means contractors and their personnel engaged by the Developer at the Development for at least two of the four weeks preceding the Count Date.
Construction Personnel Contribution	means the annual payment made by the Developer to Council in accordance with Schedule 3.
Council	means Mid-Western Regional Council.
Count Date	means 1 April of each year.
CPI	means the published Consumer Price Index (Sydney – All Groups), or if that index is no longer published, then any other index which, in the reasonable opinion of the Minister, is a similar index.
Developer	means Cobbora Holding Company Pty Ltd ACN 147 813 125.
Development	means the development known as the Cobbora Coal Project as authorised by the Approval.
Development Contributions	means the monetary contributions detailed in Schedule 2.
Dispute	means a dispute regarding the terms and operations of this Agreement.
Explanatory Note	means the note exhibited with a copy of this Agreement, when this Agreement is made available for inspection by the public in accordance with the Act, as contemplated by clause 25E of the Regulation.
Force Majeure Event	means an event affecting a party which is outside that party's reasonable control including, but not limited to, fire, storm, flood, drought, earthquake, failure of major dam, explosion, war, invasion, rebellion, sabotage, epidemic, labour dispute, failure or delay in transportation, act or omission (including laws, regulations, disapprovals or failures to approve) of any third person (including, but not limited to, subcontractors, customers, governments or government agencies).
GST	has the meaning given to that term in the GST Act.
GST Act	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).

Term	Definition
Input Tax Credit	has the meaning given to that term in the GST Act.
Joint Venture Operator	has the meaning given to that term in the GST Act.
Land	means the land the subject of the Approval.
Mining Lease	means a mining lease granted under the <i>Mining Act 1992</i> in respect of Mining Lease Application 442.
Minimum Personnel	means a minimum of 400 employees or contractors at the Development.
Mining Operations	means the ongoing operations required for the winning or removal of materials including clearing and grubbing, topsoil removal, drill and blast, overburden removal, stockpiling, processing and treatment of coal and rehabilitation of final landforms.
Minister	means the Minister administering the Act.
Operational Period Commencement Date	means the date which is two years after the Construction Period Commencement Date.
Operational Period End Date	means the date on which the completion of all winning and removal of coal from the Development occurs.
Operational Personnel	means any personnel engaged by the Developer at the Development for the purposes of carrying out the Mining Operations.
Operational Personnel Contribution	means the annual payment made by the Developer to Council in accordance with Schedule 4.
Portion Works Plan	means the plan to be prepared by Council and the Developer under Schedule 6 of this Agreement for each section of the agreed road upgrade works.
Progressive or Periodic Supply	means a Taxable Supply that satisfies the requirements of section 156-5 GST Act.
Recipient	has the meaning given to that term in the GST Act.
Regulation	means the <i>Environmental Planning and Assessment Regulation 2000</i> (NSW).
Rehabilitation Period Commencement Date	means the final rehabilitation of the Land which commences the day after the completion of all winning and removal of coal from the Development.
Rehabilitation Period End Date	means the date on which the Mining Lease ceases to apply to the Development.
Rehabilitation Personnel	means any personnel engaged by the Developer between the Rehabilitation Period Commencement Date and the Rehabilitation Period End Date.
Rehabilitation Personnel Contribution	means the annual payment made by the Developer to Council in accordance with Schedule 5.
Representative Member	has the meaning given to that term in the GST Act.
Supplier	means the entity making the Supply.
Supply	has the meaning given to that term in the GST Act.

Term	Definition
Suspension Event	means when the Mining Operations are suspended including, but not limited to, when the Development is under care and maintenance.
Tax Invoice	has the meaning given to that term in the GST Act.
Taxable Supply	has the meaning given to that term in the GST Act.

1.2 Interpretation

In this document:

- (a) a singular word includes the plural and vice versa;
- (b) a word which suggests one gender includes the other gender;
- (c) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this document and references to this document include any schedules or annexures;
- (d) a reference to a party to this document or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (e) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;
- (g) a reference to this document includes the agreement recorded by this document;
- (h) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (i) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity; and
- (j) a reference to 'month' means calendar month.

2 Application of the Agreement

This Agreement applies to:

- (a) the Land; and
- (b) the Development.

3 Planning agreement under the Act

This Agreement constitutes a planning agreement within the meaning of section 93F of the Act. Schedule 1 demonstrates how this Agreement complies with the requirements of Division 6 of Part 4 of the Act.

4 Application of sections 94, 94A and 94EF

This Agreement excludes the application of sections 94, 94A and 94EF of the Act to the Development.

5 Provision of Development Contributions under this Agreement

5.1 The Development Contributions

Subject to this Agreement, the Developer will pay to the Council the Development Contributions which are to be made:

- (a) in accordance with the specification in column 1 of Schedule 2;
- (b) in the amount referred to in column 2 of Schedule 2; and
- (c) at the times referred to in column 3 of Schedule 2.

5.2 CPI

The Development Contributions are to be adjusted according to CPI as follows:

$$DCP = \frac{DC \times A}{B}$$

where:

- (a) DC equals the particular Development Contribution payment amount required to be paid as per column 3 of Schedule 2;
- (b) DCP equals the actual Development Contribution payment amount payable at the time the particular payment is made;
- (c) A equals the most recent CPI published prior to the date the payment is due to be made; and
- (d) B equals the most recent CPI published prior to the date of this Agreement.

6 Payment of Development Contribution

6.1 Payments

- (a) For each Count Date between the Construction Period Commencement Date and the Construction Period End Date, the Developer will make the Construction Personnel Contribution to the Council.

- (b) For each Count Date between the Operational Period Commencement Date and the Operational Period End Date, the Developer will make the Operational Personnel Contribution to the Council.
- (c) For each Count Date between the Rehabilitation Period Commencement Date and the Rehabilitation Period End Date, the Developer will make the Rehabilitation Personnel Contribution to the Council.
- (d) With regards to the road upgrades, once the Parties have agreed on the final Portion Works Plan for each Portion in accordance with Schedule 6, the Developer will pay to Council the estimated actual costs set out in the Portion Works Plan and Council must commission the Portion accordingly and Council must construct the Portion within an agreed timeframe.
- (e) If a Suspension Event or Force Majeure Event has been in effect for a continuous period exceeding 90 days in the year preceding the Count Date, the Development Contributions are to be reduced on a pro-rata basis by the number of months that the Suspension Event or Force Majeure Event occurred as notified to the Council.

6.2 Time of payment

A Development Contribution is made for the purposes of this Agreement when cleared funds are deposited by means of electronic transfer into a bank account nominated by Council.

6.3 Intention to make payment

- (a) The Developer must give the Council not less than two business days following the Count Date written notice of:
 - (i) its intention to pay a Development Contribution as required by Schedule 2; and
 - (ii) the amount proposed to be paid.
- (b) Following receipt of the notice in accordance with clause 6.3(a) Council may request supporting documentation evidencing the calculation of the Development Contribution. The Developer must provide the documentation requested within 10 business days of receipt of this request from Council.

6.4 Requirement for invoices

- (a) The Council must upon receiving the Developer's notice under clause 6.3, provide the Developer with a Tax Invoice for the amount of the Development Contribution that the Developer proposes to pay.
- (b) The Developer must pay Council the Development Contribution within 10 business days of receiving the Tax Invoice from Council in accordance with Clause 6.4(a).
- (c) The Developer:
 - (i) is not required to pay a Development Contribution; and
 - (ii) will not be in breach of this Agreement if it fails to pay a Development Contribution at the time required by this Agreement

if the Council fails to provide the Developer with a Tax Invoice for the amount proposed to be paid by the Developer.

6.5 Application of Development Contributions

- (a) The Development Contributions must be applied to one or more of the following public purposes:
 - (i) road construction, upgrade and maintenance;
 - (ii) environmental protection and management;
 - (iii) provision and maintenance of community infrastructure;
 - (iv) local social amenity; or
 - (v) training and education of the community.
- (b) Within 60 days following receipt of a Development Contribution, Council must provide to the Developer a written proposal itemising the proposed public purposes for expenditure of the Development Contribution.
- (c) The Developer may only object to the written proposal provided in accordance with clause 6.5(b) if the proposed expenditure does not relate to one of the public purposes set out in 6.5(a). If the Developer objects, it must provide a written notice to Council in accordance with clause 10.2 of this Agreement.

7 Enforcement

- (a) Without limiting any other remedies available to the Parties, this Agreement may be enforced by either Party in any court of competent jurisdiction.
- (b) Nothing in this Agreement prevents:
 - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; or
 - (ii) the Minister from exercising any function under this Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

8 Bank Guarantee

8.1 Bank Guarantee

Within 60 days of the Construction Period Commencement Date the Developer must provide Council with a bank guarantee in favour of and in terms acceptable to Council in the amount of \$300,000 in respect of the contribution to be made under clause 5.1 (**Bank Guarantee**).

8.2 Release of Bank Guarantee

Council must release the Bank Guarantee in any of the following circumstances:

- (a) if this Agreement is terminated for any reason;
- (b) if the rights and obligations under this Agreement are assigned or novated to another person; or

- (c) upon receiving the final Operational Personnel Contribution.

8.3 Discharge of obligations

Any monies paid to Council pursuant to a demand made under the Bank Guarantee will be considered a discharge of the Developer's obligations to the extent of the monetary amount paid to Council.

9 Registration

The Parties agree not to register this Agreement under section 93H of the Act.

10 Dispute resolution

10.1 Not Commence

A Party may not commence any court proceedings relating to a dispute of any matter under this Agreement (a Dispute) unless it complies with this clause 10.

10.2 Written Notice of Dispute

A Party claiming that a Dispute has arisen under or in relation to this Agreement must give notice to the other Party specifying the nature of the Dispute.

10.3 Attempt to Resolve

On receipt of notice under clause 10.2, the Parties must endeavour in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

10.4 Mediation

If the Parties do not agree within seven days of receipt of notice under clause 10.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; and
- (c) the selection and compensation of the independent person required for such technique,

the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales (or any replacement). The Parties must request the President of the Law Society of New South Wales or the President's nominee to select the mediator and determine the mediator's remuneration.

10.5 Costs

Each Party to a dispute must pay its own costs of complying with this clause 10. The Parties to the Dispute must equally pay the costs of the Mediation including without limitation the fees of any mediator and the cost of room hire.

10.6 Court Proceedings

If the Dispute is not resolved within 42 days after notice is given under clause 10.2, then any Party which has complied with the provisions of this clause 10 may in writing terminate any dispute resolution process undertaken pursuant to this clause 10 and may then commence court proceedings in relation to the Dispute.

10.7 Not Use Information

The Parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 10 is to attempt to settle the Dispute. No Party may use any information or documents obtained through any dispute resolution process undertaken pursuant to this clause 10 for any purpose other than in an attempt to settle the Dispute.

10.8 No Prejudice

This clause 10 does not prejudice the right of a Party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Agreement.

11 Costs

The Developer agrees to pay the Council's reasonable costs not exceeding \$10,000 of preparing, negotiating, executing and stamping this Agreement and any document related to this Agreement.

12 GST

12.1 GST exclusive

Except under this clause, the consideration for a Supply made under or in connection with this document does not include GST.

12.2 Taxable Supply

If a Supply made under or in connection with this document is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:

- (a) the Recipient must pay the Supplier an amount equal to the total GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under this document for that Supply; and
- (b) the Supplier must give the Recipient a Tax Invoice for the Supply.

12.3 Later GST change

For clarity, the GST payable under clause 12.2 is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the Supplier is liable, however caused.

12.4 Reimbursement or indemnity

If either party has the right under this document to be reimbursed or indemnified by another party for a cost incurred in connection with this document, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).

12.5 Warranty that Tax Invoice is issued regarding a Taxable Supply

Where a Tax Invoice is given by the Supplier, the Supplier warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.

12.6 Progressive or Periodic Supplies

Where a Supply made under or in connection with this document is a Progressive or Periodic Supply, clause 12.2 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

13 Explanatory Notice to this Agreement

Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist interpreting this Agreement.

14 General**14.1 Amendments**

This document may only be amended by written agreement between all parties.

14.2 Assignment

- (a) The Developer may (at its discretion) assign to any of the following (**New Party**) the whole or a part of an interest in this Agreement:
 - (i) the purchaser of the whole or an interest in the Project;
 - (ii) the purchaser of the whole or an interest in the Mining Lease; or
 - (iii) any subsidiary, parent company or related body corporate (as provided in the Corporations Act) of the Developer or the party in clause 14.2(a)(i) or 14.2(a)(ii).
- (b) If requested by the Developer, Council will execute all documents and undertake all acts reasonably necessary to give effects to the Developer's assignment of its rights and obligations under this document.
- (c) The Developer must pay the reasonable costs of Council related to the compliance by Council with Council's obligations under this clause 14.2.

14.3 Counterparts

This document may be executed in any number of counterparts. All counterparts together make one instrument.

14.4 No merger

The rights and obligations of the parties under this document do not merge on completion of any transaction contemplated by this document.

14.5 Entire agreement

- (a) This document supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties.
- (b) To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion, has no effect except to the extent expressly set out or incorporated by reference in this document.

14.6 Further assurances

Each party must do all things reasonably necessary to give effect to this document and the transactions contemplated by it.

14.7 Representations and warranties

The parties represent and warrant that they have the power to enter into this Agreement and comply with their obligations under this Agreement and that entry into this Agreement will not result in the breach of any law.

14.8 Confidentiality

Any information or documents disclosed by a party under this Agreement:

- (a) must be kept confidential unless it is already available in the public domain; and
- (b) may only be used to attempt to resolve a dispute.

14.9 No waiver

- (a) The failure of a party to require full or partial performance of a provision of this document does not affect the right of that party to require performance subsequently.
- (b) A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A right under this document may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

14.10 Governing law and jurisdiction

- (a) New South Wales law governs this document.
- (b) Each party irrevocably submits to the exclusive jurisdiction of the New South Wales courts and courts competent to hear appeals from those courts.

14.11 Severability

A clause or part of a clause of this document that is illegal or unenforceable may be severed from this document and the remaining clauses or parts of the clause of this document continue in force.

14.12 Notice

- (a) A notice, consent or communication under this document is only effective if it is:
- (i) in writing, signed by or on behalf of the person giving it;
 - (ii) addressed to the person to whom it is to be given; and
 - (iii) given as follows:
 - (A) delivered by hand to that person's address;
 - (B) sent by prepaid mail (and by prepaid airmail if the person is overseas) to that person's address; or
 - (C) sent by fax to that person's fax number where the sender receives a transmission confirmation report from the despatching machine indicating the transmission has been made without error and showing the relevant number of pages and the correct destination fax number or name of recipient.
- (b) A notice, consent or communication delivered under clause 14.12(a) is given and received:
- (i) if it is hand delivered or sent by fax:
 - (A) by 5.00pm (local time in the place of receipt) on a Business Day—on that day; or
 - (B) after 5.00pm (local time in the place of receipt) on a Business Day, or at any time on a day that is not a Business Day—on the next Business Day; and
 - (ii) if it is sent by post:
 - (A) within Australia—three Business Days after posting; or
 - (B) to or from a place outside Australia—seven Business Days after posting.
- (c) A person's address and fax number are those set out below, or as the person notifies the sender:
- (i) The Company Secretary
Cobbora Holding Company Pty Ltd
First Floor
133-135 King Street
NEWCASTLE NSW 2300
Fax: (02) 4924 3699
 - (ii) The General Manager

Mid-Western Regional Council
86 Market Street
MUDGEES NSW 2850
Fax: (02) 6378 2815

Draft

Schedule 1

Requirements of Division 6 of Part 4 of the EP&A Act

Subject and subsection of the Act	The planning agreement
<p>Planning Instrument and/or Development Application (Section 93F(1))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument;</p> <p>(b) made, or proposes to make, a project or development application</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies.</p>	<p>No.</p> <p>Yes.</p> <p>No.</p>
<p>Planning Instrument and/or Development Application (Section 93F(1))</p> <p>For the purpose or being used or applied towards a public purpose, the Developer has:</p> <p>(a) dedicated land free of cost;</p> <p>(b) paid a monetary contribution;</p> <p>(c) provided any other material public benefit.</p>	<p>No.</p> <p>Yes.</p> <p>No.</p>
<p>Description of the land to which the Planning Agreement applies (Section 93F(3)(a))</p>	<p>See clause 2.</p>
<p>Description of the development to which the Agreement applies (Section 93F(3)(b)(ii))</p>	<p>See clause 2.</p>
<p>The scope, timing and manner of delivery of contribution required by the Planning Agreement (Section 93F(3)(c))</p>	<p>See clauses 5 and 6.</p>
<p>Applicability of section 94 of the Act (Section 93F(3)(d))</p>	<p>The application of section 94 of the Act is excluded.</p>
<p>Applicability of section 94A of the Act (Section 93F(3)(d))</p>	<p>The application of section 94A of the Act is excluded.</p>
<p>Applicability of section 94EF of the Act (Section 93F(3)(d))</p>	<p>The application of section 94EF of the Act is excluded.</p>
<p>Mechanism for dispute resolution (Section 93F(3)(f))</p>	<p>See clause 10.</p>
<p>Enforcement of the Planning Agreement (Section 93F(3)(g))</p>	<p>See clause 7 and 8.</p>
<p>Registration of the Planning Agreement (Section 93F(3)(g))</p>	<p>See clause 9.</p>

Schedule 2

Development Contributions

Purpose of Development Contribution	Development Contribution	Date for payment of Development Contribution
Construction Personnel Contribution	Calculated in accordance with Schedule 3.	Annually in accordance with clause 6 of this Agreement.
Operational Personnel Contribution	Calculated in accordance with Schedule 4.	Annually in accordance with clause 6 of this Agreement.
Rehabilitation Personnel Contribution	Calculated in accordance with Schedule 5.	Payment to be made in accordance with Schedule 5.
Financial contributions towards the following road upgrades: (a) intersection of Laheys Creek Road and Castlereagh Highway; (b) Laheys Creek Road/Spring Ridge Road.	The Developer will provide Council with financial contributions towards the road upgrades to be carried out in accordance with the requirements in Schedule 6.	Payment to be made upfront based on the estimate included in the Portion Works Plan.

Schedule 3

Construction Personnel Contribution

1 Contribution payable

The Developer must pay Council the Construction Personnel Contribution on an annual basis commencing from the first Count Date to occur following the Construction Period Commencement Date.

2 Explanation

During the construction phase, the Developer will make a financial contribution of \$1,000 per employee per annum which is to be split equally between the four Councils (25% each). This means that each Council will receive \$250 per employee per annum.

Financial contributions will be based on actual number of workers as at 1 April each year, with payments based on a minimum workforce of 400 people. Therefore, each Council is guaranteed a minimum payment of \$100,000 per annum during the construction phase (400 workers x \$1,000 x 25%).

It is expected that all Construction Personnel will reside in the construction camp provided by the Developer. The Developer will only pay the additional Construction Personnel Contribution of \$1,000 per employee per annum if the total number of Construction Personnel exceeds the Minimum Personnel. In these circumstances, the additional \$1,000 per employee will be paid to the Council in which the employee resides.

3 Calculating the Construction Personnel Contribution

The Construction Personnel Contribution is determined by the following formula:

Construction Personnel Contribution if the total number of Construction Personnel is greater than or equal to 400 people (Construction Personnel Contribution 1) (\$) =	= (MP x \$250) + (\$1000 x WLGA)
Construction Personnel Contribution if the total number of Construction Personnel is less than 400 people (Construction Personnel Contribution 2) (\$) =	= MP x \$250

$$\text{Construction Personnel Contribution (\$)} = W \times \$250$$

Where:

MP means the Minimum Personnel.

WLGA means the number of Construction Personnel residing in the Council's Local Government Area as at the Count Date but only if the total number of Construction Personnel exceeds the Minimum Personnel.

4 Examples

Between the Construction Period Commencement Date and the Construction Period End Date

Example 1:

Assuming there is a total number of 414 Construction Personnel working at the Development as at 1 April 2014, with 400 residing at the construction camp, 11 residing in the Mid-Western Local Government Area and 3 residing in other Local Government Areas, then the Developer will pay Council the Construction Personnel Contribution for 1 April 2014 at the following rate:

$$= 400 (\text{Construction Personnel}) \times \$250 + 11 (\text{residents of Mid-Western LGA}) \times \$1000 =$$

\$111,000

Example 2:

Assuming there is a total number of 382 Construction Personnel working at the Development as at 1 April 2014, then the Developer will pay Council the Construction Personnel Contribution for 1 April 2014 at the following rate:

$$= 400 (\text{Minimum Personnel}) \times \$250 = \mathbf{\$100,000}$$

Schedule 4

Operational Personnel Contribution

1 Contribution payable

The Developer must pay Council the Operational Personnel Contribution on an annual basis commencing from the first Count Date to occur following the Operational Period Commencement Date.

2 Explanation

During the operational phase, the Developer will make a financial contribution of \$1,000 per employee per annum.

From the total contribution of \$1,000 per employee, each of the four Councils will receive 15% of this amount (four Councils x 15% = 60%) which equates to \$150 per employee per Council.

The remaining 40% of the total \$1,000 will be distributed between the four Councils based on the number of employees residing within the individual LGAs. This means that each Council will receive an additional \$400 per employee that resides in their LGA.

Financial contributions will be based on actual number of workers as at 1 April each year, with payments based on a minimum workforce of 400 people. Therefore, based on a minimum workforce of 400 people, each Council will receive a payment of \$60,000 (400 workers x \$1,000 x 15%) plus potentially a percentage of the remaining \$160,000 based on the number of workers residing in their LGA.

3 Calculating the Operational Personnel Contribution

The Operational Personnel Contribution is determined by the following formulas:

Operational Personnel Contribution if the total number of Operational Personnel is greater than or equal to 400 people (**Operational Personnel Contribution 1**) (\$) = $(\$150 \times WD) + (\$400 \times WLGA)$

Operational Personnel Contribution if the total number of Operational Personnel is less than 400 people (**Operational Personnel Contribution 2**) (\$) = $(\$150 \times WD) + (\$400 \times WLGA) + (\$250 \times MP)$

Where:

WD means the total number of Operational Personnel as at the Count Date.

WLGA means the number of Operational Personnel residing in the Council's Local Government Area as at the Count Date.

MP means the difference between the Minimum Personnel and WD as at the Count Date.

4 Examples

Example 1:

Assuming there is a total number of 423 Operational Personnel as at 1 April 2015 who are residing in the following Local Government Areas:

- (i) total number residing in Mid - Western Local Government Area – 223 people
- (ii) total number residing in Warrumbungle Local Government Area – 50 people
- (iii) total number residing in Wellington Local Government Area – 50 people
- (iv) total number residing in Dubbo Local Government Area – 100 people

Then the Operational Personnel Contribution 1 will apply.

On this basis, the Developer will pay Council the Operational Personnel Contribution for 1 April 2015 at the following rate:

$$= (\$150 \times 423) + (\$400 \times 223) = \mathbf{\$152,650}$$

Example 2:

Assuming there is a total number of 305 Operational Personnel as at 1 April 2015 who are residing in the following Local Government Areas:

- (i) total number residing in Mid - Western Local Government Area – 70 people
- (ii) total number residing in Warrumbungle Local Government Area – 80 people
- (iii) total number residing in Wellington Local Government Area – 30 people
- (iv) total number residing in Dubbo Local Government Area – 125 people

Then the Operational Personnel Contribution 2 will apply. In these circumstances MP will equal 95 as the difference between the Minimum Personnel of 400 people and the total number of Operational Personnel being 305 is 95 people.

On this basis, the Developer will pay Council the Operational Personnel Contribution for 1 April 2015 at the following rate:

$$= (\$150 \times 305) + (\$400 \times 70) + (\$250 \times 95) = \mathbf{\$97,500}$$

Schedule 5

Rehabilitation Personnel Contribution

1 Contribution payable

The Developer must pay Council the Rehabilitation Personnel Contribution on an annual basis commencing from the first Count Date to occur following the Rehabilitation Period Commencement Date.

2 Explanation

During the rehabilitation phase, the Developer will make a financial contribution of \$1,000 per employee per annum which is to be split equally between the four Councils (25% each). This means that each Council will receive \$250 per employee per annum. There will be no minimum personnel requirement during the rehabilitation phase and therefore, the Developer will only make contributions based on actual workforce numbers as at April 1 each year during the rehabilitation phase.

3 Calculating the Rehabilitation Personnel Contribution

The Rehabilitation Personnel Contribution is determined by the following formula:

$$\text{Rehabilitation Personnel Contribution (\$)} = W \times \$250$$

Where:

W means the total number of Rehabilitation Personnel as calculated on the Count Date.

Example:

Assuming there is a total number of 60 Rehabilitation Personnel during the Rehabilitation Period as at 1 April 2033 then the Developer will pay Council the Rehabilitation Personnel Contribution for 1 April 2033 at the following rate:

$$= 60 (\text{Rehabilitation Personnel}) \times \$250 = \mathbf{\$15,000}$$

Schedule 6

Contributions towards road upgrades

1 Road upgrade scope of works

- 1.1 The Developer will provide the Development Contributions towards each portion of the following road upgrade works:
 - (a) the intersection of Laheys Creek Road and Castlereagh Highway; and
 - (b) Laheys Creek Road/Spring Ridge Road,(each a **Portion**).
- 1.2 With regards to the upgrade works for the intersection of Laheys Creek Road and the Castlereagh Hwy:
 - (a) these works are to be governed by NSW Roads & Maritime Services (**RMS**) requirements; and
 - (b) the scope of these works is to be consistent with the detailed design submitted to the RMS under the "Works Authorisation Deed" number 12.2601.2740 (the **RMS WAD**) or any further works authorisation deed issued by RMS.
- 1.3 With regards to the targeted upgrade and speed limit reduction works for Spring Ridge Road and Laheys Creek Road (**Council Portion Works**):
 - (a) these works are governed by Council requirements to the extent that the works are located within Council Local Government Area;
 - (b) the scope of these works will be generally consistent with Revision 1 of the report prepared for the Developer by Constructive Solutions Pty Ltd titled "Spring Ridge Road & Laheys Creek Road Upgrade Proposed Road Upgrades & Associated Works" dated 21 May 2013; and
 - (c) Council must prepare a detailed design for the Council Portion Works to be approved by the Developer.

2 Final approval of detailed designs for upgrades

- 2.1 Final approval of the detailed design for the upgrade of the intersection of Laheys Creek Road and Castlereagh Highway will be subject to the process outlined in the RMS WAD. No Portion Works Plan is required for this work as the Developer will engage the works contractor directly.
- 2.2 Final approval of the detailed design for the Council Portion Works will be negotiated between the Developer and the Council. Prior to finalising the detailed design for the Council Portion Works, the Council must submit the proposed design to the Developer for approval. The Developer must, within 10 Business Days notify Council that the design is or is not suitable. If the Developer notifies Council that the design is not suitable, the Developer shall give reasons why it is not suitable and Council shall submit a new or amended design for the Developer's approval.

ATTACHMENT 3

Explanatory Note – Draft Planning Agreement

Cobbora Coal Project - Mid-Western Regional Council and Cobbora Holding Company Pty Ltd ACN 147 813 125

Introduction

The purpose of this explanatory note is to provide a plain English summary to support the public notification of the draft planning agreement (**Planning Agreement**) prepared under Subdivision 2 of Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**).

This explanatory note has been prepared jointly by Council and the Developer in accordance with clause 25E(3) *Environmental Planning and Assessment Regulation 2000* (NSW).

Parties to the Planning Agreement

The parties to the Planning Agreement are Mid-Western Regional Council (**Council**) and Cobbora Holding Company Pty Ltd ACN 147 813 125 (**Developer**).

Description of the Proposed Development

The Developer is seeking approval to carry out the Cobbora Coal Project, which is a proposed open cut coal mine with workshops, coal preparation plant, rail infrastructure and associated facilities capable of producing up to 20 million tonnes of run-of-mine coal (equivalent to 12 million tonnes of product coal) a year for a period of 21 years (**Cobbora Coal Project**). In January 2010, the Developer lodged application 10_0001 for project approval under Part 3A of the Act relating to the carrying out of the Cobbora Coal Project.

Description of the Subject Land

The Cobbora Coal Project covers four local government areas (**LGAs**), namely Mid-Western Region, Warrumbungle Shire, Wellington Shire and Dubbo. The Developer proposes to enter into similar planning agreements with each of the four councils for the LGAs.

The Planning Agreement applies to the land listed in Appendix A – Schedule of Lands to the Environmental Assessment for the Cobbora Coal Project.

Objectives, nature and effect of the Planning Agreement

The objective, nature and effect of the Planning Agreement is to provide financial contributions to the Council and to enable the Council to use those financial contributions for public purposes.

The Planning Agreement requires the Developer to pay financial contributions to the Council:

- (a) based on the number of personnel during the construction, operational and rehabilitation stages of the Cobbora Coal Project. The financial contributions will be a payment of \$1,000 per employee per annum, and will be based on a minimum workforce of 400 people during the construction and operational stages. The payment will be divided equally between the four councils during the construction and rehabilitation stages. During the operational stage, part of the payment will be subject to the LGA in which each employee resides; and

- (b) towards road upgrade works at the intersection of Laheys Creek Road and Castlereagh Highway and Laheys Creek Road/Spring Ridge Road.

The Planning Agreement provides that the financial contributions must be applied by the Council to one or more of the following public purposes:

- (a) road construction, upgrade and maintenance;
- (b) environmental protection and management;
- (c) provision and maintenance of community infrastructure;
- (d) local social amenity; or
- (e) training and education of the community.

The personnel contributions must be made by the Developer on an annual basis for the life of the Project. The contributions towards the road works must be paid by the Developer after Council has prepared a detailed works plan.

After the Construction Period Commencement Date, the Developer will also enter into a separate agreement with Australian Rail Track Corporation (**ARTC**) for the purpose of providing financial contributions towards the identified level crossing upgrades between Gulgong and Tallawang.

Due to the number of land parcels over which the Project is located, the parties agree that the Developer is not required to register the Planning Agreement on the title to the land under section 93H of the Act.

However, security is provided by way of a bank guarantee in favour of and in terms acceptable to Council in the amount of \$300,000 (which will guarantee the Developer's performance under this Planning Agreement).

Assessment of the merits of the Planning Agreement including the impact on the public

The merits of the Planning Agreement are therefore to enable Council to finance infrastructure, environmental, amenity or community projects in the LGA. Such Council development and initiatives will have a positive impact on members of the public.

Promotion of the public interest and one or more of the objects of the Act

The Planning Agreement requires that Council use the financial contributions for public purposes and in doing so this Agreement promotes the following objects of the Act:

- (a) the provision and co-ordination of community services and facilities; and
- (b) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats.

The Planning Agreement also promotes the public interest by requiring the Developer to make financial contributions towards road upgrade works which will inevitably improve the safety of these roads.

Promotion of Council's Charter under section 8 of the LGA

The Planning Agreement promotes one or more of the elements of the Council's charter under section 8 *Local Government Act 1993* (NSW) in that it enables the Council:

- (a) to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively; and
- (b) to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development.

Identification of the planning purpose served by the Planning Agreement and assessment of whether the Planning Agreement provides a reasonable means of achieving that purpose

The Planning Agreement will lead to the improvement of infrastructure and to environmental, amenity or community projects in the LGA. The proposed amount of financial contributions is assessed to be a reasonable means of achieving this purpose.

Identification of whether the Planning Agreement conforms with the Council's capital works program

[Council to insert]

Requirements to be complied with before issue of construction, occupation or subdivision certificates

The Planning Agreement does not specify that certain requirements of the Planning Agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued.

Interpretation of Planning Agreement

This explanatory note is not to be used to assist in construing the Planning Agreement.

3 Portion Works Plan

- 3.1 Following final approval of the Council Portion Works, the Council must develop a Portion Works Plan for all aspects of the Council Portion Works which must include:
- (a) the final approved design;
 - (b) a detailed works schedule which must include estimated start, completion and other relevant milestone dates;
 - (c) the proposed construction contractor(s); and
 - (d) a detailed estimate of the construction cost of the Council Portion Works, including supporting evidence (e.g. contractor estimates);
- 3.2 Each Portion Works Plan must be submitted by Council to the Developer for review.
- 3.3 The Developer will provide an agreed contribution towards the cost of the relevant Portion works and once that contribution has been committed, Council must commission and construct the Council Portion Works in accordance with the Portion Works Plan.

4 Rail upgrades

- 4.1 After the Construction Period Commencement Date, the Developer will enter into a separate agreement with Australian Rail Track Corporation (**ARTC**) for the purpose of providing financial contributions towards the identified level crossing upgrades between Gulgong and Tallawang. The scope of works for the rail upgrade will be consistent with the findings of the ALCAM Report conducted by ARTC for the Developer dated November 2012.

Execution

EXECUTED as an agreement

Executed by
Cobbora Holding Company Pty Ltd
ACN 147 813 125 by:

▲ _____ ▲ _____
Director Director/Secretary

▲ _____ ▲ _____
Full name of Director Full name of Director/Secretary

Signed by
Mid-Western Regional Council in accordance with a
resolution passed on

▲ _____ ▲ _____
Signature of authorised person Signature of authorised person

▲ _____ ▲ _____
Name of authorised person Name of authorised person

▲ _____ ▲ _____
Office held Office held

7.2.4 Appeal by Mac Group Pty Ltd – Progress Report

REPORT BY THE MANAGER STATUTORY PLANNING TO 4 SEPTEMBER 2013 COUNCIL MEETING

Mac Group Update 23082013

A0100056, A0420251, P1048568

RECOMMENDATION

That the report by the Manager Statutory Planning on the Appeal by Mac Group Pty Ltd – Progress Report be received.

Executive summary

The Mac Group have appealed a decision by the Western Region Joint Regional Planning Panel (JRPP) to refuse a development application for a 400 bed temporary workers accommodation facility on the outskirts of Gulgong.

The purpose of this report is to provide monthly updates to the Councillors as to where the appeal is up to.

During June and July, the Appeal involved the preparation of expert statements, joint expert statements and the Hearing held over five days from the 29 July through to the 2 August 2013. The following actions were completed during this period;

- Provided information to the Mac Group's legal and engineering representatives regarding Council's water and sewer reticulation network;
- Preparation of expert statements in water and sewer, stormwater, planning, social impact, and economic impact;
- Preparation of joint expert statements between the experts (basically the opposing experts must conference to determine what they can agree and disagree over);
- Barrister's prepared their Statements on the issue of permissibility (planners were not required to discuss this matter);
- Hearing in Gulgong and Sydney.

The period was an extremely busy time preparing and reviewing expert statements from all of Council's experts and reviewing the expert statements from the Mac Group. This culminated in conferences with the opposing expert and the preparation of joint expert statements.

The Hearing was held in late July and resulted in the adjournment of the hearing so that the Mac Group could prepare new stormwater management plans and carrying out testing the Gulgong Sewerage treatment plant to determine the capacity and current demand.

The Hearing demonstrated how very differently the engineering experts had viewed the capacity and current demands on the sewerage system in Gulgong. The experts were so far apart in their views that this is ultimately what made the Commissioner decide to ask for testing because the evidence was of such a technical nature that she was not going to be able to determine who was correct.

The Commissioner was also deeply concerned about the impact of the development on the adjoining neighbour, Mr Kreuzen, that the Mac Group sought leave from the Court to amend their stormwater design to maintain overland flows to his property.

It is now proposed to report back to Court in early November and late November to finalise the matter. The separate hearing dates are because of expert availability.

Detailed report

BACKGROUND

In October 2012 the Western Region Joint Regional Planning Panel refused a development application for the establishment of a 400 bed temporary worker's accommodation facility proposed to be constructed 1.5 km from Gulgong on the Cope Road.

Council had prepared an assessment report recommending refusal of the application and forwarded it to the Panel Secretariat in May 2012. The application was originally heard by the JRPP in June 2012 where they recommended deferral of the application pending legal advice as to the permissibility of the application. The legal advice was obtained from Sandra Duggan SC and the application was reheard in October 2012 where the JRPP refused the application.

Council should be aware that two separate pieces of legal advice were obtained prior and during the assessment of the application before the final legal advice being obtained as requested by the JRPP. The first piece of legal advice was obtained from Sandra Duggan prior to the lodgement of this application and was not related to any specific development application but in a general sense as to whether a temporary workers accommodation facility could be defined as tourist and visitor accommodation. Advice was also obtained from Council's solicitor, Tony Pickup upon lodgement of this application and finally with Sandra Duggan SC again, but specifically in relation to the application.

All of the legal advice confirmed that the proposed use could be characterised as tourist and visitor accommodation and therefore the application could not be approved as the use was prohibited in the Agriculture zone.

Council also recommended refusal of the application on the grounds of significant impact on our capacity to provide water and sewer services to the township of Gulgong, social impact on the character of Gulgong and inconsistencies of the development with Council's Strategic planning documents.

THE APPEAL TEAM

- Barrister – Sandra Duggan SC
- Solicitor – Tony Pickup (Local Government Legal)
- Engineer – Dr. Daniel Martens
- Social Planner – Dr. Alison Ziller
- Town Planner – Gary Bruce

Financial implications

Council was originally provided with fee estimates that put the cost of the hearing at approximately \$100,000.00. It is now likely that the case will cost significantly more due to the additional hearing dates and the amendments proposed by the Mac Group. Council was successful in arguing to the Court that these amendments come at additional costs for Council and therefore the Mac Group have agreed to pay costs associated with the review of the new plans and documentation (amendment of the stormwater management system and the testing of the Gulgong sewerage treatment system).

Council is in the process of getting revised fee estimates from the legal team and experts so as to provide a more accurate view on the Court costs.

Strategic or policy implications

Not applicable.

GARY BRUCE
MANAGER STATUTORY PLANNING



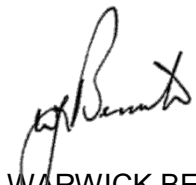
CATHERINE VAN LAEREN
DIRECTOR, DEVELOPMENT & COMMUNITY SERVICES

23 August 2013

Attachments:

1. Short Minutes of Order
2. Local Government Legal Letter
3. Timetable of events

APPROVED FOR SUBMISSION:



WARWICK BENNETT
GENERAL MANAGER

Form 43 (version 2)
UCPR 36.11

SHORT MINUTES OF ORDER

COURT DETAILS

Court	Land and Environment Court of New South Wales
Class	1
Case number	12/11190

TITLE OF PROCEEDINGS

Applicant	THE MAC SERVICES GROUP PTY LIMITED
Respondent	MID-WESTERN REGIONAL COUNCIL

FILING DETAILS

Filed for	The MAC Services Group Pty Limited, Applicant
Legal representative	Alan Joseph McKelvey, Sparke Helmore Lawyers
Legal representative reference	MAC011/25
Contact name and telephone	Alan McKelvey +61 2 4924 7277
Contact email	Alan.McKelvey@sparke.com.au

TERMS OF ORDER MADE BY THE COURT

The Court orders that:

1. The applicant is to file and serve the following documents by 4.00pm on 16 August 2013:
 - (a) Amended stormwater concept plan;
 - (b) Water quality report;
 - (c) A plan showing the location of any additional cut and fill required as a result of the amended stormwater concept plan;
 - (d) 3 sections through the area of cut and fill and buildings as shown on Annexure A;
 - (e) A cut and fill balance;
 - (f) Amended landscape plan.
2. The applicant is to provide an electronic copy of the plan referred to in 1(a) and the model used to produce 1(b) to the respondent by 4.00pm on 16 August 2013.

3. If the respondent's stormwater expert does not agree with the parameters used in the water quality model then the respondent is to inform the applicant of which parameters are disagreed by 23 August 2013.
4. The stormwater experts are to confer in accordance with the requirements of Division 2 of Pt 31 of the Uniform Civil Procedure Rules and the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules and are to file and serve their supplementary joint report, which is to include any evidence in reply, by 30 August 2013.
5. The applicant is to undertake the testing referred to in Annexure B by 27 September 2013. The Respondent is directed to provide the Applicant's consultants with access to the Gulgong Sewerage Treatment Plan for the purpose of completing the testing.
6. The results of the testing is to be provided to the Respondent's water and sewer experts by 4 October 2013.
7. The water and sewer experts are to confer and prepare in accordance with the requirements of Division 2 of Pt 31 of the Uniform Civil Procedure Rules and the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules and are to file and serve their supplementary joint report, which is to include any evidence in reply, by 11 October 2013.
8. If any of the plans, details or reports referred to in orders 1, 4, 6 or 7 affect the evidence of the planning experts in the proceedings then those experts are to confer and prepare in accordance with the requirements of Division 2 of Pt 31 of the Uniform Civil Procedure Rules and the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules and are to file and serve their joint report, which is to include any evidence in reply, by 14 September 2013.
9. The proceedings are listed for resumption of the hearing on *6, 7, 8 November 2013* commencing in Court in Sydney at 10.00am. *and continuing on 25, 26, 27 November 2013.*

The Court notes the agreement of the parties that:

10. The applicant is to pay the respondent's costs thrown away as a result of the applicant relying upon the amended plans and details referred to in order 1 and the testing referred to in order 5 as agreed or assessed. *The Applicant will pay the costs of any required costs assessment.*

11. The applicant is to pay the additional costs incurred by Dr Martens and Mr Bruce in respect of the consideration and assessment of the additional material and the preparation of the joint reports referred to in orders 4, 7 & 8 as agreed or assessed.

12. The testing referred to in order 5 is to be carried out at the cost and expense of the applicant.

13. *liberty to rest on 24 hrs notice to Commissioner Dixon.*

SIGNATURE

Applicant

Signature of legal representative _____

Capacity Solicitor on record

Date of signature 1/8/ 2013

SIGNATURE

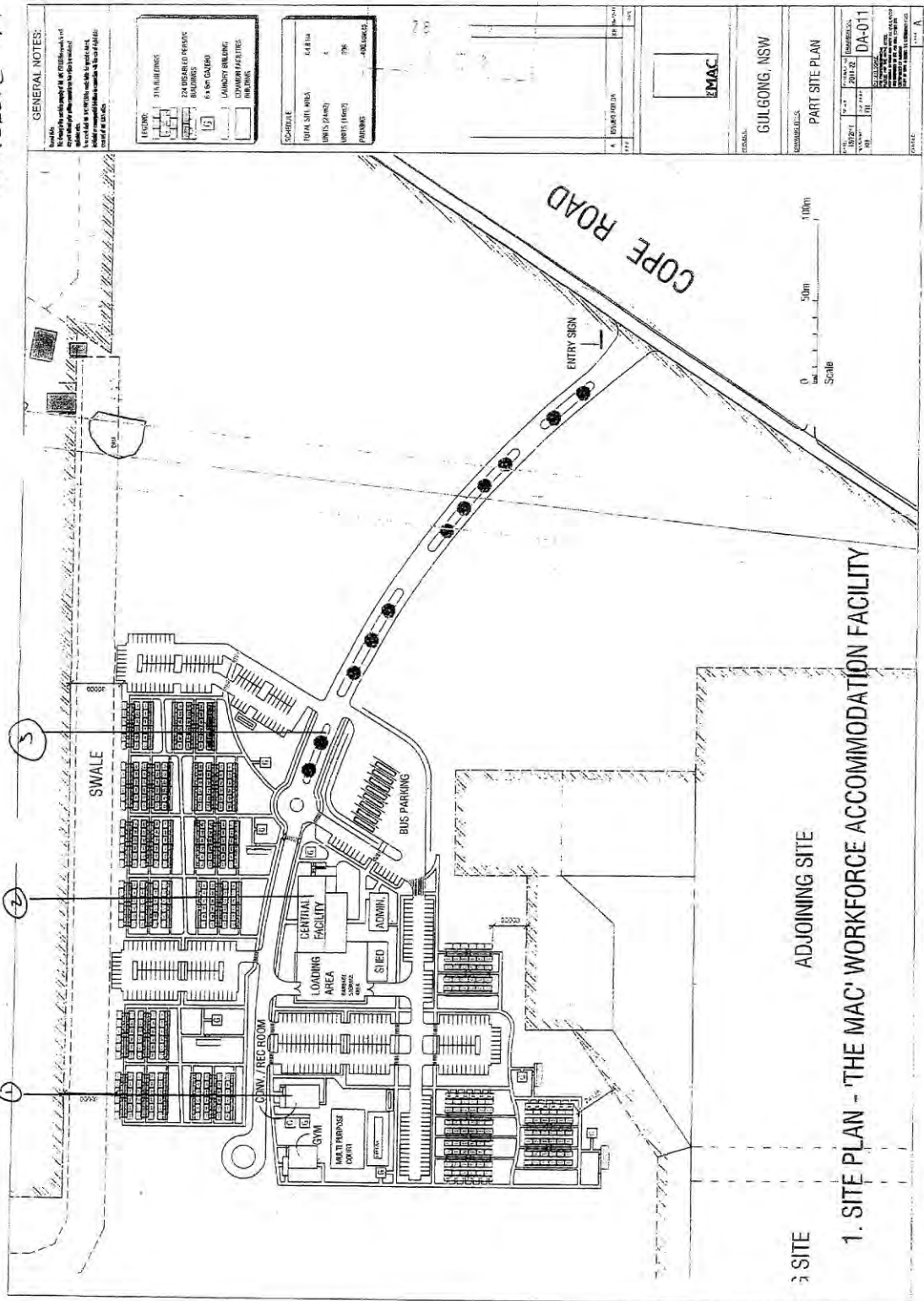
Respondent

Signature of legal representative _____

Capacity Solicitor on record

Date of signature 1/8/ 2013

Anneure "A4"



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STP SAMPLING AND ASSESSMENT REGIME**Sampling Protocol**

The regime will consist monitoring the following:

Table 1: - Sampling regime.

Monitoring Location	Sampling Routine
Raw sewage inflow	<p><u>First 7 days (sampling period A - calibration period)</u></p> <p>Samples will be collected by automatic sampler each hour for a 7 day period. The automatic sampler shall enable samples to be refrigerated so that they are suitably preserved and ready for collection on a daily basis.</p> <p>Sewage inflow rate shall be monitored automatically at a 15 minute interval.</p> <p>If in the event that a monitoring day is omitted, this should be added to the 7 day period.</p> <p><u>Next 30 days (sampling period B – on-going period)</u></p> <p>At the completion of the 7 day period, an amended / reduced monitoring regime can be put in place on the basis of the first 7 day calibration period.</p> <p>Automatic flow monitoring shall continue at a 15 minute interval.</p>
Mixed liquor in reactor	A daily grab sample shall be collected from the mixed liquor towards the end of an aeration cycle between 9:00am and 12:00pm for the sampling period.
Outlet point of catch pond	A daily grab sample shall be collected from the catch pond between 9:00am and 12:00pm for the sampling period.

Parameters to be monitored include the following:

Table 2: - Parameters to be evaluated over the first 7 day period.

NATA Registered Laboratory Analyses	Raw Sewage	Mixed Liquor	Catch Pond Effluent	General
BOD5	√		√	
COD	√		√	
Suspended Solids (SS)	√	√	√	
Volatile Suspended Solids (VSS)	√	√		
Ammonia - N (NH ₄ -N)	√		√	
Total Kjeldhal Nitrogen (TKN)	√		√	
Total Nitrogen (TN)	√		√	
Total Phosphorus (TP)	√		√	
Sodium			√	
Total Dissolved Solids			√	

Faecal Coliforms			√	
Field Measurements:				
Flow (m ³ /day)	√			
pH		√	√	
Temperature		√		
Dissolved Oxygen (DO)		√		
Oxygen Uptake Rate (mgO ₂ /gVSS/min)		√		
Sludge Volume Index (SVI)		√		
Aerator Power Draw (kWh/day)				√

Assessment Regime

The Applicant will provide the following information:

1. A comprehensive assessment of the current influent load, for the range of parameters specified above.
2. An assessment of the STP treatment capacity under existing equipment performance regimes, existing site operating condition and waste stream characteristics.

ATTACHMENT 2



**LOCAL
GOVERNMENT
LEGAL**

LOCAL GOVERNMENT LEGAL
ABN: 67 155 076 181
59 Bonville Ave | PO BOX 3137 THORNTON NSW 2322
t (02) 4978 4037
f (02) 4966 0588
e admin@lglegal.com.au w lglegal.com.au

Our Ref: TP:120108
Your Ref: Gary Bruce

5 August 2013

The General Manager
Mid-Western Regional Council
PO Box 156
MUDGEE NSW 2850

By email

Attention: Gary Bruce

Dear Sir,

Mid-Western Regional Council -ats- The MAC Services Group Pty Ltd
Land & Environment Court No. Proceedings: 11190 of 2012
Property: 2 Black Lead Lane, Gulgong

The Hearing of these proceedings commenced on Monday 29 July 2013 before Commissioner Dixon of the Land and Environment Court. Sandra Duggan SC instructed by Tony Pickup appeared on behalf of the Council. Chris McEwen SC together with Michael Staunton, appeared on behalf of the Applicant.

The proceedings commenced on-site at 2 Black Lead Lane, Gulgong with a view of the site. The Commissioner and the legal representatives and their experts then heard evidence from Mr Paul Kruezen at his property at 159 Cope Road. Mr Kruezen also took the Commissioner and the parties through his bird breeding business and expressed his concern at the possible impact the proposed development may have on this business.

At the conclusion of the site view, the proceedings adjourned back to the Gulgong RSL to hear evidence from the resident objectors. Whilst there, the Court heard evidence from the following objectors:-

Agnes Noordman of 83 Mayne Street, Gulgong
Giselle Bell of 42 Black Lead Lane, Gulgong
Chris Pearson of Pearsons Jewellers, Gulgong
Alex Lithgow of 60 Black Lead Lane, Gulgong
Gary Rohr of 8 Black Lead Lane, Gulgong
Diane O'Mara of 2 Little Belmore Street, Gulgong
Sharella Fellows of 6 Bulga Street, Gulgong
Andrew Honeysett of 26 Queen Street, Gulgong
Jorie Ryan on behalf Creative Community of Gulgong
Bev Smiles of Mudgee District Environment Group
Dr Glenys Paterson, former local General Practitioner
Bob Campbell of 429 Cope Road, Gulgong



Liability limited by a scheme approved under Professional Standards Legislation.
Legal practitioners employed by Local Government Legal are members of the scheme.

At the conclusion of the evidence from the resident objectors, the Commissioner adjourned the proceedings for the remainder of the scheduled Hearing to take place in the Land and Environment Court from 30 July to 2 August 2013.

Once back in the Court, Ms Duggan SC did her opening and tendered the Council's evidence. Part of the evidence included a large Bundle of Documents that contained copies of the Council's controls, various reports, together with copies of all submissions that had gone to the JRPP. To that was added some additional submissions, including letters from Andrew Gee MP, State Member for Orange, Mark Coulton MP, Federal Member for Parkes and a submission from the CFMEU. Mr McEwen then did his opening and tendered the Applicant's evidence.

After each party did their opening, and tendered their evidence, the Court commenced hearing evidence from the Town Planners (Gary Bruce for the Council and Peter Strudwick for the Applicant). However this evidence was limited to the operations of the proposed Mac Development including how the site was to be managed.

At the end of Day 2, the Applicant advised that they proposed to amend their stormwater regime. Mr McEwen indicated that they would try and have a revised concept plan available at the end of Day 3 which addressed the Council's concerns with the current proposal, in relation to the lack of treatment to the stormwater, the depriving of natural flows to Mr Kruezen's property and the concentration of the overland flows to the property to the north, and the lack of any rights to deposit these concentrated flows across that property. For that reason it was decided to hold off hearing evidence from the drainage experts.

On Day 3 of the Hearing, the Court heard evidence from the sewer experts. The Applicant's Experts, Ian Law and Ross Lucas, expressed the view that capacity existed in the existing Council STP to cater for the proposed development. Whilst Dr Daniel Martens, on behalf of the Council, expressed the view that insufficient capacity existed to cater for the proposed development.

During the course of the Sewer Experts' evidence, they agreed that the best way to determine the issue of the capacity of the STP and the flows and loads generated by both the existing system and proposed development, was to carry out testing of the existing system. Therefore, towards the end of Day 3, the Applicant indicated that they wished to carry out some testing of the STP whilst the foreshadowed amended stormwater regime was being assessed.

Whilst the Applicant did not have the foreshadowed revised stormwater concept plan available, Mr McEwen was able to indicate generally how the concept was to work. The amended proposal was to include some bio-retention works and a relocated detention basin. In order to maintain some flows to Mr Kruezen's property, the Applicant agreed it would be necessary to raise the levels of part of the site and to amend the landscape regime. Ms Duggan expressed concern at the Planners completing their evidence until the revised concept was prepared, given that the filling of the site may create other impacts. It was also agreed to hold off hearing evidence from the Social Impact Experts and the Economists until the revised concept was prepared and assessed.

On Day 4, the parties endeavoured to agree on some revised Court Directions for preparation and assessment of revised plans and the completion of the hearing. The parties also endeavoured to negotiate a figure for the costs thrown away by the Applicant's decision to change their stormwater regime and carry out testing of the Council's STP. Unfortunately there was no agreement on the amount of costs thrown away.

On Day 5, the Commissioner heard argument/submissions from the parties on the issue of permissibility of the proposed development within the Rural Zone of the Mid-Western Regional Interim Local Environmental Plan 2008. At the conclusion of those submissions, the Commissioner made directions for the preparation and assessment of the revised plans and testing and further evidence, and set the matter down on dates to complete the hearing. The Commissioner made the following directions by consent:-

1. *The applicant is to file and serve the following documents by 4.00pm on 16 August 2013:*
 - (a) *Amended stormwater concept plan;*
 - (b) *Water quality report;*
 - (c) *A plan showing the location of any additional cut and fill required as a result of the amended stormwater concept plan;*
 - (d) *3 sections through the area of cut and fill and buildings as shown on Annexure A;*
 - (e) *A cut and fill balance;*
 - (f) *Amended landscape plan.*
2. *The applicant is to provide an electronic copy of the plan referred to in 1(a) and the model used to produce 1(b) to the respondent by 4.00pm on 16 August 2013.*
3. *If the respondent's stormwater expert does not agree with the parameters used in the water quality model then the respondent is to inform the applicant of which parameters are disagreed by 23 August 2013.*
4. *The stormwater experts are to confer in accordance with the requirements of Division 2 of Pt 31 of the Uniform Civil Procedure Rules and the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules and are to file and serve their supplementary joint report, which is to include any evidence in reply, by 30 August 2013.*
5. *The applicant is to undertake the testing referred to in Annexure B by 27 September 2013. The Respondent is directed to provide the Applicant's consultants with access to the Gulgong Sewerage Treatment Plant for the purpose of completing the testing.*
6. *The results of the testing is to be provided to the Respondent's water and sewer experts by 4 October 2013.*
7. *The water and sewer experts are to confer and prepare in accordance with the requirements of Division 2 of Pt 31 of the Uniform Civil Procedure Rules and the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules and are to file and serve their supplementary joint report, which is to include any evidence in reply, by 11 October 2013.*
8. *If any of the plans, details or reports referred to in orders 1, 4, 6 or 7 affect the evidence of the planning experts in the proceedings then those experts are to confer and prepare in accordance with the requirements of Division 2 of Pt 31 of the Uniform Civil Procedure Rules and the Expert Witness Code of Conduct in*

Schedule 7 of the Uniform Civil Procedure Rules and are to file and serve their joint report, which is to include any evidence in reply, by 14 September 2013.

9. *The proceedings are listed for resumption of the hearing on 6, 7, 8 November 2013 commencing in Court in Sydney at 10.00am and continuing on 25, 26, 27 November 2013.*


The Court notes the agreement of the parties that:

10. *The applicant is to pay the respondent's costs thrown away as a result of the applicant relying upon the amended plans and details referred to in order 1 and the testing referred to in order 5 as agreed or as assessed. The applicant will pay the costs of any required costs assessment.*
11. *The applicant is to pay the additional costs incurred by Dr Martens and Mr Bruce in respect of the consideration and assessment of the additional material and the preparation of the joint reports referred to in orders 4, 7 & 8 as agreed or assessed.*
12. *The testing referred to in order 5 is to be carried out at the cost and expense of the applicant.*
13. *Liberty to restore on 24 hours notice to Commissioner Dixon.*

We will provide you with a copy of the Applicant's additional material once it is received. As discussed at the Hearing, we understand that the Council will give consideration to notifying the amended stormwater regime to relevant objectors for a period of time for further comment. If that is to occur can you indicate that any further comments should relate to the amended proposal. We also understand that Mr Bruce will meet with Mr Kruezen to explain the changes in the plans to him.

Should you wish to discuss this matter please do not hesitate to contact me on 4978 4003.

Yours faithfully
Local Government Legal



Tony Pickup
Principal Lawyer

ATTACHMENT 3

Timetable of events in MWRC ats. Mac Group

Date	Responsible Person	Action
28/11/2012	Sparke Helmore/ Mac Group	Appeal lodged with L&E Court
03/12/2012	Sparke Helmore	Appeal served on Council
20/12/2012	Local Govt Legal	Draft Statement of Facts & Contentions
21/12/2013	MWRC	Appointment of engineering expert
07/01/2013	MWRC	Review of Statement of Facts & Contentions
08/01/2013	Local Govt Legal	Statement of Facts & Contentions submitted to Court
11/01/2013	L&E Court registrar	1 st call over
17/01/2013	Sparke Helmore	Request for additional detail in order for the applicant to prepare their response to Council's Statement
18-24/01/2013	MWRC	Prepare response to applicant's request
23/01/2013	MWRC	Appointment of social expert
24/01/2013	Local Govt Legal MWRC Dr. Daniel Martens	Site inspection and discussion of engineering aspects of the appeal
04/02/2013	L&E Court Sparke Helmore Local Govt Legal	2 nd call over
12/02/2013	Local Government Legal	Addendum to Statement of Facts and Contentions
18/02/2013	Sparke Helmore	Statement of Facts and Contentions in Reply
26/02/2013	Local Government Legal	Advice to applicant on expert witnesses
27/02/2013	Sparke Helmore	Advice to respondent on expert witnesses
05/03/2013	Sparke Helmore	Potential Directions
06/03/2013	L&E Court Sparke Helmore Local Govt Legal	Issues Conference
07/03/2013	Local Government Legal	Letter re outcomes of Issues Conference
14/03/2013	MWRC	Advice on size of water and sewer treatment plant, any augmentation and approvals that are not online
27/03/2013	Sparke Helmore	Summary of water and sewer supply systems that are appropriate for their development to occur, and updated plan of management
03/04/2013	L&E Court Sparke Helmore Local Govt Legal	Further mention regarding adequacy of details provided
30/04/2013	Sparke Helmore	Water and Sewer Servicing

Timetable of events in MWRC ats. Mac Group

Date	Responsible Person	Action
03/05/2013	L&E Court Sparke Helmore Local Govt Legal	Strategy submitted for review Further Mention regarding timeframe for evidence and hearing
24/05/2013	Expert witnesses	Engineering and social experts to prepare individual reports
07/06/2013	Expert witnesses	Town Planning experts to file individual reports
10/07/2013	Expert Witnesses	Conference for experts
13/07/2013	Expert witness	Conference for planning experts
29/07-02/08/2013	Hearing	1 day in Gulgong and 4 days in Sydney
06-08/11/2013	Hearing	
25-27/11/2013	Hearing	

7.2.5 Catchment A Drainage Project

REPORT BY THE MANAGER, DEVELOPMENT ENGINEERING TO 4 SEPTEMBER 2013 COUNCIL MEETING

Catchment A Drainage Project

A0100056, F05060027, A0100050, A0411307

RECOMMENDATION

That:

- 1. The report by the Manager, Development Engineering on the Catchment A Drainage Project be received;**
- 2. Council terminates Request for Tender 2013/09;**
- 3. Council accepts the tender submitted by the A1 Earthworx Civil and Mining Pty Ltd for the construction of two stormwater detention basins, Mudgee at a contract price of \$534,561.50 (inclusive of GST) in accordance with clause 178 of the *Local Government (General) Regulation 2005*;**
- 4. Council authorises the General Manager to finalise and execute the contract on behalf of Council with A1 Earthworx Civil and Mining Pty Ltd for the construction of Catchment A detention basins, Mudgee RFT 2013/13; and that the General Manager be given delegation to approve contract variations of up to 5% of the contract price;**
- 5. The unsuccessful tenderers be notified that their tenders were unsuccessful.**

Executive summary

Following Council's decision to the construct two stormwater detention basins, Mudgee (Catchment A) tenders were called for suitably qualified contractors to undertake the associated civil works.

Tenders were called on 28th June 2013 for the construction of two stormwater detention basins, Mudgee and closed on 19th July 2013. Unfortunately an error was incurred during the tender process and once discovered, the tender process was stopped with the tender reissued to close on the 20th August 2013. The tender was reissued as RFT 2013/13 to avoid confusion with the previous submissions.

Advertisements for the tender were placed in the Local Government Tenders section of the Sydney Morning Herald, Community News and Council's website.

The terms of the contract are a schedule of rates contract.

Council has a present allocation of \$672,000 available for drainage capital improvements this financial year. The recommended contract price is \$485,965 excluding GST

The tendering process was initiated and a Procurement Plan and Tender Evaluation Plan were developed. A Tender Assessment Panel was formed, comprising representatives from the most relevant departments within Council. Members of the Tender Assessment Panel used the Evaluation Plan and methodology to determine which tenderers offered the best value for money in the provision of services to construct the two stormwater detention basins.

Detailed report

Tenders Received

Thirteen tenders received were as follows:

	(incl. GST)
A1 Earthworx Mining Civil	\$534,561.50
Civil Edge Contracting	\$639,121.00
Eden Construction Co Pty Ltd	\$767,686.66
Gleeson Civil Engineering Pty Ltd	\$822,593.88
Hamcon Civil Pty Ltd	\$1163018.98
Ian Colley Earthworks Pty Ltd	\$594,137.50
James Excavations	\$689,092.51
Keller Civil Engineering Pty Limited	\$736,560.00
Mark E Miller assoc	\$1021957.00
Peters Earthmoving Pty Limited	\$537,995.70
Precision Civil Infrastructure Pty Ltd	\$1,681,418.00
Smiths Earth Moving Canowindra Pty Ltd	\$657,520.56
Young Family Trust T/A Bustin' Free Earthworks	\$610,962.66

Tenders were assessed against pre-determined price (80%) and non-price (20%) components of their submissions. Further detail is provided in the confidential section of the Business Paper.

Late Tenders

No late submissions were received.

Conforming Tenders

All tenders met the mandatory requirements and proceeded to a detailed evaluation.

Non-complying or Alternate Tenders

No non-conforming or alternate tenders were received.

Evaluation Methodology

The objective of the evaluation was to select the tenderer(s) offering the best value for money in a rational and defensible way which is fair to all tenderers. The evaluation criteria and criteria weightings were identified in the Request For Tender documentation.

Tenders were evaluated strictly in accordance with the Tender Evaluation Plan, and in compliance with the provisions of the *Local Government Act 1993* and Local Government (General) Regulation 2005.

Assessment Panel

Daryl Colwell	Manager – Development Engineering
Ahmed Albanna	Development Engineer
Allen Hsieh	Management Accountant

Evaluation Findings

All tenderers were assessed and scored against the evaluation criteria listed in the tender document and weightings in the Evaluation Plan (Attachment A), to determine the Total Weighted Score. The application of the Local Preference Policy was a main determining factor in assessing the tender.

Evaluation of tenderers against the specified evaluation criteria indicates the following tenderer has submitted the most superior tender representing the best value to Council for the construction of two stormwater detention basins, Mudgee:

A1 Earthworx Mining and Civil Pty Ltd

Financial implications

Council presently has a total budget of \$672,000 allocated for drainage capital improvements. The preferred tendered price is within the budget as it equates to \$485,965 excluding GST.

Strategic or policy implications

Nil.

DARYL COLWELL
MANAGER, DEVELOPMENT ENGINEERING

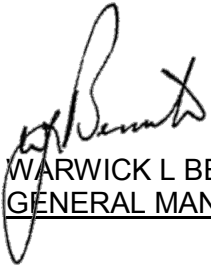


CATHERINE VAN LAEREN
DIRECTOR, DEVELOPMENT & COMMUNITY
SERVICES

21 July 2013

Attachments: 1. Tenderers' Final Scores (included in the confidential section of the business paper)

APPROVED FOR SUBMISSION:



WARWICK L BENNETT
GENERAL MANAGER

7.2.6 Financial Assistance Applications

REPORT BY THE FINANCIAL ACCOUNTANT TO 4 SEPTEMBER 2013 COUNCIL MEETING

Financial Assistance report to council 04 September 2013

A0100056, A0140201

RECOMMENDATION

That:

1. **the report by the Financial Accountant on the Financial Assistance Applications be received;**
2. **Council provide financial assistance to the following applicants in accordance with the criteria and guidelines of the Financial Assistance Policy, subject to those requirements being met, with the funding from the general financial assistance vote:**

The Mudgee Poultry and Pigeon Club

\$360

Executive summary

This report considers requests for financial assistance under the Council's Financial Assistance Policy.

Detailed report

Provision is made in Council's Financial Assistance Policy for community not for profit organisations, group and individuals which offer a significant contribution to the social, economic and/or environmental well being of the Community.

Following are excerpts from submissions for financial assistance, together with staff comments on the applications.

THE MUDGEE POULTRY AND PIGEON CLUB

The Mudgee Poultry and Pigeon Club would like to apply for financial assistance to cover the cost of purchasing two wall mounted fans for the Poultry Pavilion at the Mudgee Showground. The temperature inside the pavilion is said to cause heat stress to the birds and as the club was unable to meet this cost at the present time, the Showground Management Committee paid this money so that the 2013 Show could go ahead without risk to the birds. The club request that Council reimburse the management committee the total cost of \$360 for the two fans.

RATES REFUNDS

At the 24 July 2013 meeting, Council made provision for \$5,570 for rate refunds for particular community organisations. In accordance with this provision, it is to be noted that the following has been distributed for rates refunds:

Mudgee Civilian Rifle and Small Bore Club Inc \$1,458.57

The Club would like to thank Council for last year's donation of the general rate.

Financial implications

Funding of \$152,000 is provided in the Operational Plan for Financial Assistance. \$139,754.96 has been allocated to date, leaving a balance of \$12,245.04. Should Council approve the donations in accordance with the recommendation, a balance of \$11,885.04 will remain.

The Councillor's Discretionary vote for 2013/14 is \$2,000 per Councillor. The balances are detailed below:

Cr Thompson	\$2,000.00
Cr Shelley	\$1,750.00
Cr Walker	\$1,217.44
Cr Webb	\$2,000.00
Cr Martens	\$2,000.00
Cr Kennedy	\$2,000.00
Cr Weatherley	\$2,000.00
Cr White	\$1,750.00
Cr Cavalier	\$1,700.00

Strategic or policy implications

Council's Financial Assistance Policy applies.

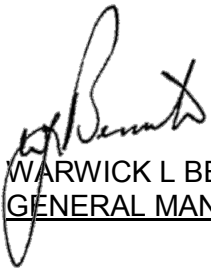
NEIL BUNGATE
FINANCIAL ACCOUNTANT

CLARE PHELAN
DIRECTOR, FINANCE & ADMINISTRATION

23 August 2013

Attachments: 1. Applications for financial assistance

APPROVED FOR SUBMISSION:



WARWICK L BENNETT
GENERAL MANAGER

MUDGEE POULTRY
& PIGEON CLUB
INC.

Mudgee Poultry & Pigeon Club
P OP Box 142
Mudgee
N.S.W. 2850

Abn 74032174188
Phone (02)63742460
Email windrodel@bigpond.com



17th August 2013

Midwestern Regional Council

The Mudgee Poultry and Pigeon Club would like to apply for a Council grant to cover the cost of purchasing two wall mounted fans for the Poultry Pavilion at the Mudgee show ground

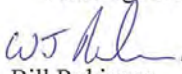
During the Mudgee Show, held in March, the temperature inside the Pavilion can cause heat stress to the birds. We have installed one unit as a trial and find that it works well by circulating the air around the shed.

In the last three years the Club has spent over \$35,000 on the Pavilion to upgrade 1,000 cages. We are at present completing the fit out of the Kiosk near the Poultry shed that has cost over \$5000. Unfortunately the club is unable to meet this cost at the present time.

The cost of the fans is \$180 each, a total of \$360. The Show Ground Management Committee has paid this money so that the 2013 Show could go ahead without risk to the Birds.

The Club request that the Council reimburse the Management Committee this cost.

Looking forward to a favourable response.


Bill Robinson
President



**MUDGEES CIVILIAN
RIFLE AND SMALL BORE CLUB INC.**

P.O. BOX 206 MUDGEES 2850 ph.02 63724013

CAPTAIN: Full Bore: Bob Hollow
Small Bore: Danny Carev
SECRETARY: Leigh Milton
TREASURER: Stuart Swanson

14th. AUGUST 2013

To
General Manager
Mid-Western Regional Council
P.O.Box 156
Mudgee 2850

Dear Warwick

Find enclosed cheque for our rates this year. \$1458.57

The club would like council to donate the general rate back to the club again this year.

We will take this opportunity to thank council for last years donation.

Regards

L. J. Milton

Leigh Milton: hon. secretary



\$ 1458-57
15 AUG 2013
R/N: 296738

NS

Please return to records for scanning

7.2.7 Tender Assessment No 2013-11 – Kandos Swimming Pool Lease

REPORT BY THE DIRECTOR OPERATIONS TO 4 SEPTEMBER 2013 COUNCIL MEETING
REPORT Council 2013
GOV400029, A0100056, COR400046

RECOMMENDATION

That:

1. **the report by the Director Operations on the Tender Assessment No 2013-11 – Kandos Swimming Pool Lease be received;**
2. **Council accepts Riley Aquatic Management Pty Ltd for tender 2013/11 for the Lease of the Kandos Swimming Pool at a fee of \$133,650.00 (including GST) and that Council enter into a contract with Riley Aquatic Management Pty Ltd in accordance with clause 178 of the Local Government (General) Regulation 2005;**
3. **Council authorises the General Manager to finalise and execute the contract on behalf of Council with Riley Aquatic Management Pty Ltd for Tender 2013/11 Kandos Swimming Pool Lease for the sum of \$133,650 including GST;**
4. **The unsuccessful tenderer(s) be notified that their tenders were unsuccessful.**

Executive summary

Following Council's resolution to invite tenders for the Kandos Swimming Pool Lease, tenders were called for the establishment of a suitable contractor to operate the Kandos Swimming Pool under lease for the 2013/14 swimming season with a further two year option.

Tenders were called on 15th July 2013 for Kandos Swimming Pool Lease and closed on 16th August 2013. Four tenders were received. Advertisements for the tender were placed in the Local Government Tenders section of the Sydney Morning Herald, Community News and Council's website on 16th July 2013.

The tendering process was initiated and a Procurement and Evaluation Plan was developed. A Tender Assessment Panel was formed, comprising representatives from the most relevant departments within Council. Members of the Tender Assessment Panel used the Evaluation Plan and methodology to determine which tenderers offered the best value for money in the provision of the Kandos Swimming Pool Lease to Council.

Detailed report

Tenders Received

The Tenders received were as follows:

- Terry Melbourne
- Ross Lomax
- Dave Karel
- Riley Aquatics Management Pty Ltd

Late Tenders

There were no late tenders received

Conforming Tenders

All tenders met the mandatory requirements and proceeded to a detailed evaluation.

Non-complying or Alternate Tenders

Under Section 7.2.3 of the Request for Tender, Dave Karel was contacted to clarify his tendered proposal and during that clarification discussion it became clear that Dave Karel could not meet the requirements of the tender specification for the price tendered. Dave Karel agreed that he would not be able to proceed in the tender process and Dave Karel withdrew his tender application. Additionally, clarifications were sought from Riley Aquatics Pty Ltd to determine the GST status of their tender.

Evaluation Methodology

The objective of the evaluation was to select the tenderer(s) offering the best value for money in a rational and defensible way which is fair to all tenderers. The evaluation criteria and criteria weightings applied to this evaluation process are shown in the Request for Tender.

Tenders were evaluated strictly in accordance with the Tender Evaluation Plan, and in compliance with the provisions of the *Local Government Act 1993* and Local Government (General) Regulation 2005.

Tender Evaluation Process

The evaluation was conducted in six stages:

1. An initial cull of any seriously non-conforming tenders such as late tenders, tenders not following the instructions set out in the Request for Tender documents, or tenders which clearly were not of an acceptable standard to warrant further detailed evaluation. One tender was culled in this initial stage.
2. The Tender Assessment Panel undertook an objective analysis of tenderers' ability to meet both mandatory and desirable criteria.
3. The tendered information and specific questions were listed under the evaluation criteria and weighted in order of importance to the overall evaluation. Team members scored the tenders against the criteria in accordance with the Evaluation Plan.
4. Two referee checks were undertaken on each short-listed tenderer in order to determine their capacity to provide the services required. Each referee check forms part of the overall score.
5. Due to the competitive tenders received and the importance of this public position, presentations were sought from each tenderer and interviews were held on 21/8/13 and this assisted in developing the scores for the evaluation criteria.
6. This Tender Evaluation Report detailing the rating of each short-listed tenderer, and the final recommendations of the preferred tenderer(s) for Kandos Swimming Pool Lease for the consideration of Council.

Assessment Panel

Julian Geddes	Business Manager Resources and Recreation
Neil Bungate	Financial Accountant
Andrew Drummond	Business Manager Plant and Facilities
Nareeda Endacott	Personal Assistant Director Operations

Evaluation Findings

All tenderers were assessed and scored against the evaluation criteria listed in the tender document and weightings in the detailed evaluation scores (Attachment 1), to determine the Total Weighted Score.

The three tenderers that were evaluated are all capable and experienced at operating public swimming pools. The panel also took into account the Local Preference Policy that allows for a 3% advantage to local suppliers and the total weighted score below recognises that discount on the tender submitted by Ross Lomax. The tendered prices below include GST.

<i>Tenderer</i>	<i>Total Weighted Score</i>	<i>Tendered Price</i>
Terry Melbourne	8.5	\$139,250.00
Ross Lomax	8.8	\$148,005.00
Riley Aquatics Management Pty Ltd	9.3	\$133,650.00

Evaluation of tenderers against the specified evaluation criteria indicates the following tenderer has submitted the most superior tender representing the best value to Council for the lease of the Kandos Swimming Pool:

Riley Aquatics Management Pty Ltd

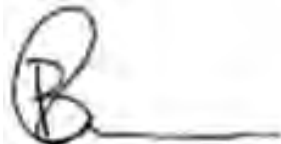
Riley Aquatics Management Pty Ltd submitted the most cost effective tender and with over 30 years experience in managing various Council swimming pools in the central west region they are well qualified to successfully operate the Kandos pool.

Financial implications

Council currently budgets \$135,000 (exclusive of GST) per annum for the Kandos Swimming Pool contract.

Strategic or policy implications

Not applicable.

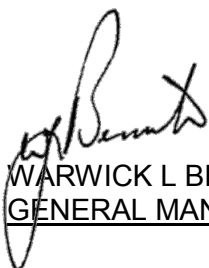


BRAD CAM
DIRECTOR, MID-WESTERN OPERATIONS

22 August 2013

Attachments: 1. Detailed evaluation scores (included at the end of the Confidential section of the business paper).

APPROVED FOR SUBMISSION:



WARWICK L BENNETT
GENERAL MANAGER

7.2.8 Governance Policy Review

REPORT BY THE MANAGER GOVERNANCE TO 4 SEPTEMBER 2013 COUNCIL MEETING

Governance policies

GOV400029, A0100056, A0100021

RECOMMENDATION

That:

1. **the report by the Manager Governance on the Governance Policy Review be received;**
2. **Council adopt the revised Public Interest Disclosure Internal Reporting policy;**
3. **Council confirm and adopt the existing Vandalism policy.**

Executive summary

A number of governance related policies have been reviewed.

Detailed report

This report addresses reviews carried out to the following governance policies:

- Public Interest Disclosure Internal Reporting
- Vandalism

Some minor amendments are required to the Public Interest Disclosure Internal Reporting policy and these are shown as track changes on the attached document. There are no changes proposed to the Vandalism policy.

Financial implications

Not applicable.

Strategic or policy implications

This report recommends adoption or changes to the stated policies.

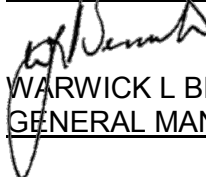


IAN ROBERTS
MANAGER GOVERNANCE


19 August 2013

Attachments: 1. Public Interest Disclosure Internal Reporting policy
2. Vandalism policy

APPROVED FOR SUBMISSION:



WARWICK L BENNETT
GENERAL MANAGER

	POLICY	ADOPTED C/M 21/9/11 Minute No. 270/11
	Public Interest Disclosure Internal Reporting	REVIEW: Sept 13 FILE No. A0100021

OBJECTIVE

The purpose of this policy is:

- To encourage and facilitate the reporting of disclosures by establishing an internal reporting system for the reporting of disclosures of corrupt conduct, maladministration or serious and substantial waste of public money by Council, its staff and Councillors;
- To compliment normal communication channels between supervisors and staff. Staff are encouraged to continue to raise appropriate matters at any time with their supervisors, but as an alternative have the option of making a protected disclosure in accordance with this policy;
- To provide protection from reprisals under the Public Interest Disclosures Act 1994 (the PID Act) for staff or Councillors wishing to make disclosures;
- To properly investigate matters raised in disclosures;
- To provide confidentiality of the identity of the person making the disclosure.

POLICY

1. ORGANISATIONAL COMMITMENT

Mid-Western Regional Council is committed to the highest standards of ethical and accountable conduct, to the principles of integrity, impartiality, responsiveness and honesty and to the aims and objectives of the PID Act.

Council recognises the value and importance of contributions of staff to enhance administrative and management practices and strongly supports disclosures being made by staff or Councillors which disclose corrupt conduct, maladministration or serious and substantial waste of public money.

Council will not tolerate corrupt conduct, maladministration or serious and substantial waste of public money and will take all reasonable steps to provide protection to staff members who make such disclosures from any detrimental action in reprisal for the making of the disclosure.

Council is committed to:

- continuing to create a climate of trust, where staff are comfortable and confident about reporting wrongdoing
- encouraging staff to come forward if they have witnessed what they consider to be wrongdoing within the council
- keeping the identity of the staff member disclosing wrongdoing confidential, wherever possible and appropriate
- protecting staff who make disclosures from any adverse action motivated by their report
- dealing with reports thoroughly and impartially and if some form of wrongdoing has been found, taking appropriate action to rectify it
- keeping staff who make reports informed of their progress and the outcome

Public Interest Disclosure Internal Reporting

- encouraging staff to report wrongdoing within the Council, but respecting any decision to disclose wrongdoing outside the Council – provided that disclosure outside the Council is made in accordance with the provisions of the PID Act
- ensuring managers and supervisors at all levels in the Council understand the benefits of reporting wrongdoing, are familiar with this policy, and aware of the needs of those who report wrongdoing
- providing adequate resources, both financial and human, to:
 - encourage reports of wrongdoing
 - protect and support those who make them
 - provide training for key personnel
 - investigate allegations
 - properly manage any workplace issues that the allegations identify or create
 - correct any problem that is identified
- keeping the policy under review to ensure it is still relevant and effective.

2. ROLES AND RESPONSIBILITIES OF STAFF

This policy will apply to:

- both council staff and Councillors
- permanent employees, whether full-time or part-time
- temporary or casual employees
- consultants
- individual contractors working for the Council.

The persons or positions to whom internal disclosures can be made in accordance with this policy are:-

- the General Manager; and
- the Mayor (if the disclosure concerns or involves the General Manager or Councillor roles); and
- the Disclosure Co-ordinator.

This Internal Reporting System places roles & responsibilities upon people at all levels within the Council as follows:

Employees

Employees are encouraged to report known or suspected incidences of corrupt conduct, maladministration, serious and substantial waste of public money and government information contravention in accordance with this Policy.

General Manager

The General Manager is responsible for ensuring that action is taken as a result of investigations into an internal disclosure and if necessary report any wrongdoing to external agencies.

The Mayor

The Mayor is responsible for ensuring that action is taken as a result of investigations into an internal disclosure about the General Manager or another Councillor and if necessary report any wrongdoing to external agencies.

Disclosure Co-ordinator

Public Interest Disclosure Internal Reporting

The [position of](#) Disclosure Co-ordinator has a key position in the internal reporting system and acts as an arranger and facilitator for disclosure investigations.

3. WHAT SHOULD BE REPORTED?

You should report any wrongdoing you see within Mid-Western Regional Council. Reports about the four categories of serious wrongdoing – corrupt conduct, maladministration, serious and substantial waste of public money, and government information contravention – will be dealt with under the PID Act as protected disclosures and according to this policy.

a.) Corrupt conduct

Corrupt conduct is the dishonest or partial exercise of official functions by a public official.

For example, this could include:

- the improper use of knowledge, power or position for personal gain or the advantage of others
- acting dishonestly or unfairly, or breaching public trust
- a member of the public influencing or trying to influence a public official to use their position in a way that is dishonest, biased or breaches public trust.

For more information about corrupt conduct, see the NSW Ombudsman's guideline on what can be reported.

b.) Maladministration

Maladministration is conduct that involves action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives.

For example, this could include:

- making a decision and/or taking action that is unlawful
- refusing to grant someone a licence for reasons that are not related to the merits of their application.

For more information about maladministration, see the NSW Ombudsman's guideline on what can be reported.

c.) Serious and substantial waste in local government

Serious and substantial waste is the uneconomical, inefficient or ineffective use of resources that could result in the loss or wastage of local government money. This includes all revenue, loans and other money collected, received or held by, for or on account of the Council.

For example, this could include:

- poor project management practices leading to projects running over time
- having poor or no processes in place for a system involving large amounts of public funds.

For more information about serious and substantial waste, see the NSW Ombudsman's guideline on what can be reported.

d.) Government information contravention

Public Interest Disclosure Internal Reporting

A government information contravention is a failure to properly fulfil functions under the *Government Information (Public Access) Act 2009* (GIPA Act).

For example, this could include:

- destroying, concealing or altering records to prevent them from being released
- knowingly making decisions that are contrary to the legislation
- directing another person to make a decision that is contrary to the legislation.

For more information about government information contravention, see the NSW Ombudsman's guideline on what can be reported.

e.) Other wrongdoing

Although reports about the previous four categories of conduct can attract the specific protections of the PID Act, you should report all activities or incidents that you believe are wrong.

For example, these could include:

- harassment or unlawful discrimination
- reprisal action against a person who has reported wrongdoing
- practices that endanger the health or safety of staff or the public.

These types of issues should be reported to a supervisor, in accordance with Council's Code of Conduct and Human Resources policies.

Even if these reports are not dealt with as protected disclosures, Council will consider each matter and make every attempt to protect the staff member making the report from any form of reprisal.

4. WHEN WILL A REPORT BE PROTECTED?

Mid-Western Regional Council will support any staff who report wrongdoing. For a report to be considered a protected disclosure, it has to meet all of the requirements under the PID Act. These requirements are:

- The person making the disclosure must honestly believe on reasonable grounds that the information shows or tends to show wrongdoing.
- The report has to be made to one or more of the following:
 - a position nominated in this policy – see section 9 (b), (c) & (d) below
 - the General Manager
 - one of the investigating authorities nominated in the PID Act – see section 9 below

Reports by staff and Councillors will not be considered to be protected disclosures if they:

- mostly question the merits of government policy, including the policy of the governing body of the Council.
- are made with the sole or substantial motive of avoiding dismissal or other disciplinary action.

5. HOW TO MAKE A REPORT

You can report wrongdoing in writing or verbally. However, you are encouraged to make a report in writing as this can help to avoid any confusion or misinterpretation.

If a report is made verbally, the person receiving the report must make a comprehensive record of the disclosure and ask the person making the disclosure to sign this record. The person making the report should keep a copy of this record.

If you are concerned about being seen making a report, ask to meet in a discreet location away from the workplace.

Public Interest Disclosure Internal Reporting

6. CAN A REPORT BE ANONYMUS?

There will be some situations where you may not want to identify yourself when you make a report. Although these reports will still be dealt with, it is best if you identify yourself. This allows Council to provide you with any necessary protection and support, as well as feedback about the outcome of any investigation into the allegations.

It is important to realise that an anonymous disclosure may not prevent you from being identified. If we do not know who made the report, it is very difficult for us to prevent any reprisal action.

7. MAINTAINING CONFIDENTIALITY

Mid-Western Regional Council realises many staff will want their report to remain confidential. This can help to prevent any action being taken against you for reporting wrongdoing.

Council is committed to keeping your identity, and the fact you have reported wrongdoing, confidential. However there may be situations where this may not be possible or appropriate. We will discuss with you whether it is possible to keep your report confidential.

If confidentiality cannot be maintained, Council will develop a plan to support and protect you from risks of reprisal. You will be involved in developing this plan. You will also be told if your report will be dealt with under the Council's Code of Conduct, as this may mean certain information will have to be tabled at a council meeting.

If you report wrongdoing, you should only discuss your report with those dealing with it. This will include ~~a the~~ Disclosures Coordinator and the General Manager. If you discuss your report more broadly, you may affect the outcome of any investigation.

8. WHO CAN RECEIVE A REPORT IN MID-WESTERN REGIONAL COUNCIL?

You are encouraged to report general wrongdoing to your supervisor. However the PID Act requires that – for a report to be a protected disclosure – it must be made to a public official in accordance with Council's disclosure procedures. For Mid-Western Regional Council this means this policy and any supporting procedures.

Any supervisor who receives a report that they believe may be a protected disclosure must refer the staff member making the report to one of the positions listed below.

If you are a staff member and your report involves a Councillor, you should make it to the General Manager or the Mayor. If you are a Councillor and your report is about another Councillor, you should make it to the General Manager or the Mayor.

The following positions are the only staff within the Mid-Western Regional Council who can receive a protected disclosure.

a.) General Manager

You can report wrongdoing directly to the General Manager. The General Manager is responsible for:

- receiving and assessing any report received by a staff member.
- deciding if a report is a protected disclosure
- determining what needs to be done next, including referring it to other authorities
- deciding what needs to be done to correct the problem that has been identified.

Public Interest Disclosure Internal Reporting

The General Manager must make sure there are systems in place in Council to support and protect staff who report wrongdoing.

He is also responsible for referring actual or suspected corrupt conduct to the Independent Commission Against Corruption.

b.) Mayor

If you are making a report about the General Manager, you should make your report to the Mayor.

The Mayor is responsible for:

- receiving and assessing any report received by a staff member regarding the General Manager
- deciding if a report is a protected disclosure
- determining what needs to be done next, including referring it to other authorities
- deciding what needs to be done to correct the problem that has been identified.

The Mayor must make sure there are systems in place in Council to support and protect staff who report wrongdoing.

If the report is about the General Manager, the Mayor is also responsible for referring actual or suspected corrupt conduct to the Independent Commission Against Corruption.

c.) Disclosure Co-ordinator

The [position of Disclosures Co-ordinator](#) has a central role in dealing with reports made by staff. They receive them, assess them and refer them to the people within Mid-Western Regional Council who can deal with them appropriately.

d.) Disclosures Officers

Disclosures officers work with the Disclosures Co-ordinator and are responsible for receiving, forwarding and/or dealing with reports made in accordance with this policy.

In Mid-Western Regional Council, disclosures officers are:

- [Director Group Manager](#) Operations
- [Director Group Manager](#) Development and Community
- [Director Group Manager](#) Finance and Administration.

9. WHO CAN RECEIVE A REPORT OUTSIDE MID-WESTERN REGIONAL COUNCIL?

Staff are encouraged to report wrongdoing within Mid-Western Regional Council but internal reporting is not your only option. If you follow the guidance below, your report can still be a protected disclosure.

You can choose to make your report to an investigating authority. You can do this first, or at any stage after your initial report to Council. If your report is about the General Manager or the Mayor, you should consider making it to an investigating authority.

You can also choose to make a report to a Member of Parliament or a journalist, but only in limited circumstances which are outlined below.

a.) Investigating Authorities

Public Interest Disclosure Internal Reporting

The PID Act lists a number of investigating authorities in NSW that staff can report wrongdoing to and the categories of wrongdoing each authority can deal with.

In relation to Council, these authorities are:

- the Independent Commission Against Corruption (ICAC) — for corrupt conduct
- the Ombudsman — for maladministration
- the Police Integrity Commission (PIC) — for police misconduct
- the Division of Local Government, Department of Premier and Cabinet — for serious and substantial waste in local government (reports about serious and substantial waste in State government agencies should be made to the Auditor General)
- the ICAC Inspector — for disclosures about the ICAC or its staff
- the Information Commissioner — for disclosures about a government information contravention.

You should contact the relevant authority for advice about how to make a disclosure to them. Contact details for each investigating authority are provided at the end of this policy.

You should be aware that it is very likely the investigating authority will discuss the case with Council. Mid-Western Regional Council will make every effort to assist and cooperate with the investigating authority to ensure the matter is dealt with appropriately and there is a satisfactory outcome. Council will also provide appropriate support and assistance to staff who report wrongdoing to an investigating authority.

b.) Members of Parliament or journalists

To have the protections of the PID Act, staff reporting wrongdoing to a Member of Parliament (MP) or a journalist must have already made substantially the same report to one of the following:

- the General Manager
- a person nominated in this policy
- an investigating authority in accordance with the PID Act.

Also, Mid-Western Regional Council or an investigating authority that received the report must have either:

- decided not to investigate the matter
- decided to investigate the matter, but not completed the investigation within six months of the original report
- investigated the matter but not recommended any action as a result
- not told the person who made the report, within six months of the report being made, whether the matter will be investigated.

Most importantly – to be protected under the PID Act – if you report wrongdoing to an MP or a journalist you will need to be able to prove that you have reasonable grounds for believing that the disclosure is substantially true and that it is in fact substantially true.

If you report wrongdoing to a person or an organisation that is not listed above, you will not be protected under the PID Act. This may mean you will be in breach of legal obligations or Council's Code of Conduct – by, for example, disclosing confidential information.

For more information about reporting wrongdoing outside Mid-Western Regional Council contact [the Disclosures Coordinator](#) or the NSW Ombudsman's Public Interest Disclosures Unit. Their contact details are provided at the end of this policy.

10. FEEDBACK TO STAFF WHO REPORT WRONGDOING

Public Interest Disclosure Internal Reporting

Staff who report wrongdoing will be told what is happening in response to their report.

When you make a report, you will be given:

- an acknowledgement that your disclosure has been received
- the timeframe for when you will receive further updates
- the name and contact details of the people who can tell you what is happening.

This information will be given to you within two working days from the date you make your report.

After a decision is made about how your report will be dealt with, you will be given:

- information about the action that will be taken in response to your report
- likely timeframes for any investigation
- information about the resources available within Council to handle any concerns you may have
- information about external agencies and services you can access for support.

This information will be given to you within 10 working days from the date you make your report.

During any investigation, you will be given:

- information on the ongoing nature of the investigation
- information about the progress of the investigation and reasons for any delay
- advice if your identity needs to be disclosed for the purposes of investigating the matter, and an opportunity to talk about this.

At the end of any investigation, you will be given:

- enough information to show that adequate and appropriate action was taken and/or is proposed to be taken in response to your disclosure and any problem that was identified
- advice about whether you will be involved as a witness in any further matters, such as disciplinary or criminal proceedings.

11. PROTECTION AGAINST REPRISALS

The PID Act provides protection for people reporting wrongdoing by imposing penalties on anyone who takes detrimental action substantially in reprisal for them making the protected disclosure.

Mid-Western Regional Council will not tolerate any reprisal action against staff who report wrongdoing. The criminal penalties that can be imposed include imprisonment or fines. Detrimental action is also misconduct that justifies disciplinary action. People who take detrimental action against someone who has made a disclosure can also be required to pay damages for any loss suffered by that person.

Detrimental action means action causing, comprising or involving any of the following:

- injury, damage or loss
- intimidation or harassment
- discrimination, disadvantage or adverse treatment in relation to employment
- dismissal from, or prejudice in, employment
- disciplinary proceedings.

a.) Responding to reprisals

Mid-Western Regional Council will act to protect staff who report wrongdoing from reprisals.

When a report is received, Council will ensure that a thorough risk assessment is conducted. This will identify any risks to the member of staff who reported the wrongdoing, as well as strategies to deal with those risks.

Public Interest Disclosure Internal Reporting

If you believe that detrimental action has been or is being taken against you or someone else who has reported wrongdoing in reprisal for making a report, you should tell your supervisor, your ~~Director/Group Manager~~ or the General Manager immediately.

All supervisors must report any suspicions they have that reprisal action against a staff member is occurring, or any reports that are made to them, to the appropriate ~~Director/Group Manager~~ or the General Manager.

If the General Manager (or the Mayor) becomes aware of reprisal action against a person who has made a disclosure, they will:

- ensure a senior and experienced member of staff, who has not been involved in dealing with the initial disclosure, will investigate the suspected reprisal
- give the results of that investigation to the General Manager for a decision or
- give the results of that investigation to the Mayor for a decision if the allegation of reprisal action is about the General Manager
- if it has been established that reprisal action is occurring against someone who has made a disclosure, take all steps possible to stop that activity and protect the member of staff who made the disclosure
- take appropriate disciplinary or criminal action against anyone proven to have taken or threatened any action in reprisal for making a disclosure.
- If you report reprisal action, you will be kept informed of the progress of any investigation and the outcome.

The General Manager may issue specific directions to help protect against reprisals. If the allegation of reprisal action is about the General Manager, the Mayor may issue similar directions.

These may include:

- issuing warnings to those alleged to have taken reprisal action against the member of staff who made the disclosure
- relocating the member of staff who made the disclosure or the subject officer within the current workplace
- transferring the member of staff who made the disclosure or the staff member who is the subject of the allegation to another position for which they are qualified
- granting the member of staff who made the disclosure or the subject officer leave of absence during the investigation of the disclosure.

These directions will only be taken if the member of staff who made the disclosure agrees to it.

The General Manager will make it clear to other staff that this action was taken in consultation with the staff member and with management support – and it is not a punishment.

If you have reported wrongdoing and feel that any reprisal action is not being dealt with effectively, contact the Ombudsman or the ICAC – depending on the type of wrongdoing you reported. Contact details for all these investigating authorities are included at the end of this policy.

b.) Protection against legal action.

If you make a disclosure in accordance with the PID Act, you will not be subject to any liability and no action, claim or demand can be taken against you for making the disclosure. You will not have breached any confidentiality or secrecy obligations and you will have the defence of absolute privilege in defamation.

12. SUPPORT FOR THOSE REPORTING WRONGDOING

Mid-Western Regional Council will make sure that staff who have reported wrongdoing, regardless of whether they have made a protected disclosure, are provided with access to any professional

Public Interest Disclosure Internal Reporting

support they may need as a result of the reporting process – such as stress management, counselling services, legal or career advice.

Council has staff who will support those who report wrongdoing. They are responsible for initiating and coordinating support, particularly to those who are suffering any form of reprisal. At Mid-Western Regional Council the Human Resources staff ~~of the Human Resources Section~~ will provide that support.

All supervisors must notify the General Manager or the appropriate Group Manager if they believe a staff member is suffering any detrimental action as a result of disclosing wrongdoing.

13. SANCTIONS FOR MAKING FALSE OR MISLEADING DISCLOSURES

It is important that all staff are aware that it is a criminal offence under the PID Act to wilfully make a false or misleading statement when reporting wrongdoing.

14. SUPPORT FOR THE SUBJECT OF A REPORT

Mid-Western Regional Council is committed to ensuring staff who are the subject of a report of wrongdoing are treated fairly and reasonably. If you are the subject of a report, you will be:

- treated fairly and impartially
- told your rights and obligations under our policies and procedures
- kept informed during any investigation
- given the opportunity to respond to any allegation made against you
- told the result of any investigation.

15. MORE INFORMATION

More information about protected disclosures can be obtained from the Mid-Western Regional Council's Disclosure Co-ordinator or the NSW Ombudsman's website at www.ombo.nsw.gov.au

16. RESOURCES

The contact details for external investigating authorities that staff can make a protected disclosure to or seek advice from are listed below:

For disclosures about corrupt conduct:

Independent Commission Against Corruption (ICAC)
Phone: 02 8281 5999
Toll free: 1800 463 909
Tel. typewriter (TTY): 02 8281 5773
Facsimile: 02 9264 5364
Email: jcac@icac.nsw.gov.au
Web: www.icac.nsw.gov.au
Address: Level 21, 133 Castlereagh Street, Sydney NSW 2000

For disclosures about maladministration:

NSW Ombudsman
Phone: 02 9286 1000
Toll free (outside Sydney metro): 1800 451 524
Tel. typewriter (TTY): ~~133 67702 9264 8050~~
Facsimile: 02 9283 2911
Email: nswombo@ombo.nsw.gov.au
Web: www.ombo.nsw.gov.au
Address: Level 24, 580 George Street, Sydney NSW 2000

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For disclosures about serious and substantial waste in local government agencies:

For disclosures about breaches of the GIPA Act:
Information Commissioner

Public Interest Disclosure Internal Reporting

Division of Local Government in the Department of Premier and Cabinet
Phone: 02 4428 4100
Tel. typewriter (TTY): 02 4428 4209
Facsimile: 02 4428 4199
Email: dlg@dlg.nsw.gov.au
Web: www.dlg.nsw.gov.au
Address: 5 O'Keefe Avenue, Nowra, NSW 2541

Toll free: 1800 463 626
Facsimile: 02 8114 3756
Email: ipinfo@ipccinfo@pic.nsw.gov.au
Web: www.ipccinfo.nsw.gov.au
Address: Level 11, 1 Castlereagh Street, Sydney NSW 2000

Field Code Changed


Field Code Changed

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For disclosures about police misconduct:

Police Integrity Commission (PIC)
Phone: 02 9321 6700
Toll free: 1800 657 079
Facsimile: 02 9321 6799
Email: contactus@pic.nsw.gov.au
Web: www.pic.nsw.gov.au
Address: Level 3, 111 Elizabeth Street, Sydney NSW 2000

	POLICY	ADOPTED C/M 20/7/11 Minute No. 155/11
	VANDALISM	REVIEW: July 2013 FILE No. A0100021, F0650131, R0791070

PURPOSE

The purpose of this policy is to minimise both the unsightliness and the cost of vandalism and graffiti to Council and the community and to enlist the community's help in reporting instances of vandalism and graffiti as soon as possible.

The policy provides a reward regime where information regarding an offence results in legal action being taken against the offender.

OBJECTIVES

The objectives of this policy are to:

1. reduce acts of vandalism and malicious damage to public and commercial/retail property in the Mid-Western Regional local government area; and
2. encourage the public to report acts of vandalism and malicious damage and to offer a reward for the provision of such information

DEFINITIONS

Graffiti

Any inscription, word, figure or word design that is marked, etched, scratched, drawn, sprayed, painted, pasted, applied or otherwise affixed to or on any surface without the owners consent and includes any remnants of same such as adhesives, glues, tape, shadows or colour variations remaining after removal.

Incident

An incident refers to an offence of malicious damage occurring in one location or in a specific timeframe by the same offender or group of offenders, and as such may refer to more than one specific action.

Vandalism

The wilful or malicious destruction, injury, disfigurement, or defacement of any property, without consent.

POLICY

Principles

Any person who witnesses, or has information regarding an act of graffiti or vandalism should in the first instance report the matter to the nearest police station or should contact the Police Assistance Line (13 14 44). What they need to provide is information such as:

Vandalism

- Time of incident
- Place of incident
- Description of damage
- Possible offenders details
- Photographs

The police will examine the information and may investigate the offence. Should an offender be identified, and either admit guilt or be found guilty, the informant should then write to Council seeking payment of the reward.

Council will, where appropriate, seek compensation for graffiti and vandalism offences where an offender has been identified and admitted or been found guilty.

Rewards

Council will offer a reward on a sliding scale, as determined by Council from time to time, according to the amount of damage occasioned for information provided by the public that leads to a conviction of the perpetrator(s) resulting from damage to public or commercial/retail property. The scale of the reward system is as set out below.

CATEGORY	DAMAGE AMOUNT	REWARD FOR A CONVICTION
1	Up to \$1,000	\$500
2	\$1,001 to \$3,000	\$750
3	\$3,001 to \$5,000	\$2,000
4	\$5,001 to \$10,000	\$3,000
5	\$10,001 to \$20,000	\$4,000
6	\$20,001 and above	\$5,000

Responsibilities

Determination of the reward payable will be at the absolute discretion of the Mayor and General Manager.

Requirements placed upon persons providing information

Persons providing information must be aware that an appearance in a Court to give evidence may be required.

Recordkeeping, confidentiality and privacy

The following documents will arise out of the process:

- letter from applicant claiming reward
- response letter to applicant
- financial transaction records

All documentation held and created in relation to applications held under the scheme and which includes information which indicates the identity of the applicant shall be treated as confidential.

Any person who makes application for a reward under this policy will be deemed a complainant to Council.

For purposes of protecting the safety of individuals, the identity of complainants and public interest, documentation held and created in relation to applications held under the scheme, may not be subject to release to members of the public.

Breaches and sanctions

Vandalism

All applications for the reward will be verified with NSW Police and Mid-Western Regional Council records to ensure compliance with this policy. Fraudulent and/or misleading claims will be ineligible for payment of the reward. Council may seek to recoup the reward and costs associated with this action should an application be found to be fraudulent or misleading.

7.2.9 Gulgong Turf Club

REPORT BY THE GENERAL MANAGER TO 4 SEPTEMBER 2013 COUNCIL MEETING

Gulgong Turf Club

GOV400029, A0100056, A0140201

RECOMMENDATION

That:

1. **the report by the General Manager on the Gulgong Turf Club be received;**
2. **Council makes a contribution of \$500 from the Financial Assistance budget to the camel races at the Gulgong racecourse organised by the Gulgong Turf Club.**

Detailed report

Please find attached a self-explanatory letter from the Gulgong Turf Club who intend to run camel races at their race club on the weekend of 6 October 2013 which will coincide with The Back to Gulgong weekend. The Turf Club is seeking sponsorship from Council. As Council is aware, the Events Management budget for the 2013/14 year is exhausted, albeit that Council may review the amount available in that budget as part of the September Quarterly Budget Review which will occur in November.

The event organisers for these camel races are expecting to attract around 8,000 people. It has been advised to the Events Coordinator that the Back to Gulgong Weekend committee are not prepared to financially support this event. Council has contributed \$5,650 towards the Back to Gulgong event.

This report recommends that a \$500 grant from the Council's Financial Assistance budget be given to this event if it proceeds.

Financial implications

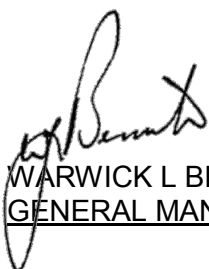
The balance in the Financial Assistance budget is \$11,885.04, however there is a further report to be considered as part of this business paper, but the amount being recommended is minimal.

Strategic or policy implications

This event meets Council's policy for financial assistance.

23 August 2013

Attachment: 1. Letter from Secretary/Treasurer, Gulgong Turf Club Inc. re Camel Races



WARWICK L BENNETT
GENERAL MANAGER

GULGONG TURF CLUB INC.
325 Mebul Rd, Mebul. NSW 2852

President
James Percy Thompson
Ph: 0263740226
Ph/ Fax: 0263740344
Mobile: 0428740226
Email: thompsondm1@bigpond.com
22/8/13

Secretary/Treasurer
Diane Thompson
Mobile: 0428740344

General Manager
Mid-Western Regional Council
Mudgee NSW 2850
Email: warwick.bennett@midwestern.nsw.gov.au

Dear Warwick,

Gulgong Turf Club intend to run Camel Races at the Gulgong Racecourse on the 6th of October 2013 these Races will coincide with the "Back to Gulgong Weekend", but will be run separately from that Committee.

As Sponsorship is very hard to acquire we are requesting the Council assist financially, as the Council Area can't afford not to have this event which we intend to run annually.

We expect to attract around 8,000 people to the event similar to others places that have run such an event

Kind Regards

Diane Thompson
Secretary

URGENT BUSINESS WITHOUT NOTICE

As provided by Clauses 19 & 20 of Council's Code of Meeting Practice (Clause 14 LGMR).

GIVING NOTICE OF BUSINESS

19. (1) The Council must not transact business at a meeting of the Council:
- (a) unless a Councillor has given notice of the business in writing at least two (2) days prior to the day on which the agenda and business paper is prepared and delivered to Councillors; and
 - (b) unless notice of the business has been sent to the Councillors in accordance with Clause 6 of this Code. (see Section 367 LGA & Clause 14(1) LGMR)
- (2) Subclause (1) does not apply to the consideration of business at a meeting if the business:
- (a) is already before, or directly relates to a matter that is already before the Council (see Clause 14(2)(a) LGMR); or
 - (b) is the election of a chairperson to preside at the meeting as provided by Clause 12(1) (see Clause 14(2)(b) LGMR); or
 - (c) is a matter or topic put to the meeting by the chairperson in accordance with Clause 21 (see Clause 14(2)(c) LGMR); or
 - (d) is a motion for the adoption of recommendations of a committee of the Council; (see Clause 14(2)(d) LGMR); or
 - (e) relates to reports from officers, which in the opinion of the Chairperson or the General Manager are urgent;
 - (f) relates to reports from officers placed on the business paper pursuant to a decision of a committee that additional information be provided to the Council in relation to a matter before the Committee; and
 - (g) relates to urgent administrative or procedural matters that are raised by the Mayor or General Manager.

BUSINESS WITHOUT NOTICE

20. (1) Despite Clause 19 of this Code, business may be transacted at a meeting of the Council even though due notice of the business has not been given to the Councillors. However, this can happen only if:
- (a) a motion is passed to have the business transacted at the meeting; and
 - (b) the business proposed to be brought forward is ruled by the Chairperson to be of great urgency. Such a motion can be moved without notice. (see Clause 14(3) LGMR)
- (2) Despite Clause 30 of this Code, only the mover of a motion referred to in subclause (1) can speak to the motion before it is put. (see Clause 14(4) LGMR)

Item 8: Urgent Business Without Notice

Item 9: Open Council