

BLUE MOUNTAINS CITY COUNCIL

ORDINARY MEETING

3 March 2009

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Minutes of the Ordinary Meeting of the Council of the City of Blue Mountains, held in the Council Chamber, Administrative Headquarters, Civic Place, Katoomba on Tuesday, 3 March 2009, commencing at 7:32 pm.

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There were present:

The Mayor (Councillor Searle) in the Chair, and Councillors Clark, Creed, Gibbs, Greenhill, Hamilton, Luchetti, Mays, McCallum, McLaren, Myles, and Van der Kley.

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In attendance:

General Manager, Group Manager BM City Services, A/Group Manager Community & Corporate, Group Manager Environmental & Customer Services, Executive Officer, Manager, Assets and Contracts, Manager, Planning, Health and Enforcement, Manager, Building and Construction, Manager, City Planning, Manager, Environmental Management, Director Cultural Centre, Program Leader Properties and Facilities, Executive Principal Planning, Strategic Planning Specialist Transport, Communications Officer, Team Leader Compliance, Senior Ranger, Ranger

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Prayer / Reflection:

The Prayer / Reflection was read by the Mayor, as was the acknowledgement of the traditional owners, the Darug and Gundungurra people.

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C00679. Apologies

Nil

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MINUTE NO. 67

C00336. Confirmation of Minutes - Ordinary Meeting – 17 February 2009

RESOLVED UNANIMOUSLY on the MOTION of Councillors Hamilton and Greenhill that the Minutes of the Ordinary Meeting of 17 February 2009 be confirmed.

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C00336. Declarations of Interest – Ordinary Meeting, 3 March 2009

Councillor Mays made the following declaration with respect to Item MM1 – Medical Services in Winmalee:

“I have a significant non-pecuniary interest in the Mayoral Minute due to my involvement with the HEAL group in the Blue Mountains LGA, who supported the Balance! Health super clinic”

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MAYORAL MINUTE
MINUTE NO. 68

MM1. F00088. Medical Services in Winmalee

RESOLVED UNANIMOUSLY on the MOTION of Councillor Searle, with Councillor Mays out of the Chamber, **that the General Manager provides a brief report, within 3 months, on the possible ways forward to enable a medical facility to be established, in an appropriate location at Winmalee to service the local community.**

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MINUTE NO. 69

1. F04889. Blue Mountains Cultural Centre and Katoomba Library Advisory Committee

RESOLVED UNANIMOUSLY on the MOTION of Councillors Gibbs and Mays:

1. **That this item be deferred.**
2. **That the Council receive a further report that addresses the original motion which called for a report on options for including Councillor representation on the Committee.**

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MINUTE NO. 70

2. F00088. Response to Notice of Motion - Use of bottled water within Council

A MOTION was moved by Councillors McCallum and Hamilton:

1. **That the Council acquire no more bottled water from overseas.**
2. **That for situations where bottled water is most practicable, that only locally sourced supplies be acquired.**

MINUTE NO. 70 Contd

3. That the Council use existing refrigerators to provide cold water.
4. That the Council provide no further powered filtration systems to provide filtered tap water.
5. That the Council address concerns with water quality with the provider, Sydney Water.
6. That the Council receive a report that explores the possibility of joining the Bottled Water Alliance.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being:

For	Against
Councillors	Councillors
Clark	Creed
Gibbs	
Greenhill	
Hamilton	
Luchetti	
Mays	
McCallum	
McLaren	
Myles	
Searle	
Van der Kley	

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MINUTE NO. 71**3. F04895. Process of developing Wildlife Protection Areas in the Blue Mountains LGA**

The Meeting was addressed by Julia McConnell, Lorraine Bewley, Meredith Brownhill and Greg Smith.

RESOLVED UNANIMOUSLY on the MOTION of Councillors McLaren and Greenhill:

1. That the Council note the report and a further report be brought back to the Council on how the Wildlife Protection Areas (WPAs) are to be implemented within the Management Plan and Budget.
2. That the report on the implementation consider:
 - a) That the Council prepare and exhibit a Wildlife Protection Area Policy by end of 2009/10;
 - b) That the Council phase the introduction of 8 trial WPAs by end of 2010/11;
 - c) That the Council undertakes a review of the WPA Policy and introduction of WPAs by 2011/12;

MINUTE NO. 71 Contd

- d) That the Council ensures that 2 of the 8 trial areas have fauna and pest monitoring to promote the positives of this program and that there be one of each of the Upper and Lower Mountain locations; and
- e) That the Council consult with the indigenous communities in developing this report.

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MINUTE NO. 72

4. F04768. ArtStart 2009 Youth Arts and Skills Festival

RESOLVED UNANIMOUSLY on the MOTION of Councillors Van der Kley and Hamilton:

- 1. That the Council receives and notes this report.
- 2. That the Council affix the Common Seal to the NSW Youth Arts and Skills Festival - ArtStart 2009 Funding Agreement.

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MINUTE NO. 73

5. F02560. Community Assistance / Donations – Recommendations by Councillors

RESOLVED UNANIMOUSLY on the MOTION of Councillors Van der Kley and Hamilton that the council approve the following donations from the Councillors’ Minor Local Projects vote:

Organisation	Amount
The Grow Group	\$500
Lawson Combined Services Social Club	\$100
Blackheath Art Society	\$500

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MINUTE NO. 74**S1. X/410/2008. Development Application No. X/410/2008 for a multi-housing development with twelve (12) dwellings on Lot 48 DP 1052149, Lot 47 DP 1052149, Lot 46 DP 1052149, Lot 45 DP 1052149, 2-6 Great Western Highway, Leura**

The Meeting was addressed by Jamie Brennan.

A MOTION was moved by Councillors Van der Kley and McLaren:

1. That the Development Application No. X/410/2008 for a multi-housing development with twelve (12) dwellings on Lot 48 DP 1052149, Lot 47 DP 1052149, Lot 46 DP 1052149, Lot 45 DP 1052149, 2-6 Great Western Highway, Leura be determined pursuant to S.80 of the Environmental Planning and Assessment Act 1979 by the granting of a deferred commencement consent subject to conditions shown in Attachment 1 to this report.
2. That the General Manager be granted the delegated authority to determine whether the Council is satisfied that the deferred commencement matter (identified in Part 1 of the development consent) pertaining to development consent X/410/2008 for a multi-housing development with twelve (12) dwellings on Lot 48 DP 1052149, Lot 47 DP 1052149, Lot 46 DP 1052149, Lot 45 DP 1052149, 2-6 Great Western Highway, Leura, has been satisfied pursuant to S.80 of the Environmental Planning and Assessment Act 1979 and Cl 95 of the Environmental Planning and Assessment Regulation 2000.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being:

For	Against
Councillors Creed	Councillors Clark
Greenhill	Gibbs
Luchetti	Hamilton
McLaren	Mays
Myles	McCallum
Searle	
Van der Kley	

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MINUTE NO. 75**6. X/883/2008. Development Application No. X/883/2008 for a double storey dwelling on Lot 113 DP 8178, 45 Alexander Avenue, Hazelbrook**

RESOLVED UNANIMOUSLY on the MOTION of Councillors Van der Kley and Hamilton that the Development Application No. X/883/2008 for a part single and part two storey dwelling on Lot 113 DP 8178, 45 Alexander Avenue, Hazelbrook be determined pursuant to S.80 of the Environmental Planning and Assessment Act 1979 by the granting of consent subject to conditions shown in Attachment 1 to this report.

MINUTE NO. 75 Contd**Attachment 1 - Conditions of development consent**

Confirmation of relevant plans	1. To confirm and clarify the terms of consent, the development shall be carried out in accordance with the plans prepared by Masterton Homes numbered 36266, sheet 1 to 6, dated 30 January 2008 and accompanying supportive documentation, except as otherwise provided or modified by the conditions of this consent.
Period of development consent	2. Physical commencement of construction is required within a two year period from the date of this consent. Should this not occur, the development consent will lapse.
Construction certificate (building)	3. A construction certificate is required prior to the commencement of any site or building works. This certificate can be issued either by Council as the consent authority or by an accredited certifier.
BASIX	4. Under clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in each relevant BASIX Certificate for the development are fulfilled. In this condition: <ul style="list-style-type: none"> a) relevant BASIX Certificate means: <ul style="list-style-type: none"> (i) a BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under section 96 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or (ii) if a replacement BASIX Certificate accompanies any subsequent application for a construction Certificate, the replacement BASIX Certificate; and b) BASIX Certificate has the meaning given to that term in the Environmental Planning & Assessment Regulation 2000.
Building Code of Australia	5. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
Home owners warranty insurance	6. It is the responsibility of property owners to ensure that Home Owners Warranty insurance has been obtained in accordance with the Home Building Act 1989. Prior to any works commencing on the site, a copy of the Home Warranty Insurance Certificate for the property is to be submitted to the Principal Certifying Authority. Information on this insurance scheme can be obtained from the Department of Fair Trading.
Signage	7. To ensure that the site is easily identifiable for deliveries and provides information on the person responsible for the site, a sign displaying the following information is to be erected: <ul style="list-style-type: none"> + The statement "<i>Unauthorised access to the site is not permitted</i>". + The names of the builder or another person responsible for the site along with an out of hours contact number. + Lot or Street number.

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- Site management**
8. To safeguard the local amenity, reduce noise nuisance and to prevent environmental pollution during the construction period:
- a) Site and building works (including the delivery of materials to and from the property) shall be carried out Monday to Friday between 7am-6pm and on Saturdays between 8am-3pm. Alteration to these hours may be possible for safety reasons but only on the approval of Council.
 - b) Stockpiles of topsoil, sand, aggregate, spoil or other material shall be stored clear of any drainage path or easement, natural watercourse, footpath, kerb or road surface and shall have measures in place to prevent the movement of such material off site.
 - c) Building operations such as brickcutting, washing tools, concreting and bricklaying shall be undertaken on the building block. The pollutants from these building operations shall be contained on site.
 - d) Builders waste generated under this consent (including felled trees, tree stumps and other vegetation) must not be burnt or buried on site. All waste must be contained and removed to an approved Waste Disposal Depot or in the case of vegetation, with the exception of environmental and declared noxious weeds, mulched for re-use on site.
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- Erosion & sediment controls**
9. To preserve the unique environment of the Blue Mountains and to contain soil and sediment on the property, controls in accordance with Council's *Better Living* Development Control Plan are to be implemented prior to clearing of the site vegetation and the commencement of site works. This will include:
- a) The installation of a sediment fence with returned ends across the low side of the site so that all water flows through. These shall be maintained at no less than 70% capacity at all times. Drains, gutters, roadways etc., shall be kept clean and free of sediment.
 - b) To prevent the movement of soil off site, a single entry/exit point to the property shall be constructed of 40mm blue metal aggregate or recycled concrete to a depth of 150mm. The length must be at least 5 metres with the width at least 3 metres.
- Soil erosion fences shall remain and must be maintained until all disturbed areas are restored by turfing, paving, revegetation.
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- Workers amenities**
10. Before work starts, toilet facilities must be provided for construction personnel on the site on the basis of 1 toilet for every 20 workers. Amenities are to be installed and operated in an environmentally responsible and sanitary manner. Toilets cannot remain on site for any longer than 12 months, without the further approval of Council.
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- Plans on site**
11. A copy of the stamped and approved plans, development consent and the construction certificate are to be on the site at all times.
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- Stormwater drainage**
12. To control rainwater runoff, roof water shall be connected to stormwater drainage lines discharging to:
- a) 15,000 litre rainwater tanks. Overflow to:
 - b) stormwater pits in accordance with the hydraulic detail plan prepared by

Rafeletos Consulting Engineers numbered 29512M, sheet 1, dated 26/09/08.

It is recommended that the drainage system be installed at the same time as the footings/slab. It must, however, be operational as soon as the roof is clad.

Materials & colours

13. To have regard of the amenity of the area, the materials and colours to be used are:
- a) External walls: Boral:- Blue Rio or similar
 - b) Roof: Colorbond Bushland or similar
 - c) Driveway finish: Dark earth tone.

Asset Protection Zone

Rural Fire Service condition

14. The entire property shall be managed as an Inner Protection Area (IPA) as outlined within Section 4.1.3 and Appendix 2 in Planning for Bushfire Protection 2006 as well as the RFS Standards for Asset Protection Zones (available electronically at www.rfs.nsw.gov.au)

The **Inner Protection Area** (IPA) shall comprise the following:

- minimal fine fuel at ground level;
- vegetation that does not provide a continuous path to the building for the transfer of fire;
- shrubs and trees that do not form a continuous canopy;
- vegetation that is cleared into clumps rather than continuous rows;
- species that retain dead material or deposit excessive quantities of ground fuel area to be avoided;
- shrubs and trees are pruned or removed so they do not touch or overhang the building; and
- vegetation is located far away enough from the building so that plants will not ignite the building by direct flame contact or radiant heat emission.

NOTE: Total clearance of all vegetation is not acceptable. Vegetation management undertaken to establish the required Asset Protection zone shall be the absolute minimum level of pruning and/or thinning required to comply with PBP guidelines.

This work is to be completed prior to the issue of an Occupation Certificate. The Asset Protection Zone is to be maintained on a permanent basis.

Independent static water supply

Rural Fire Service condition

15. In recognition of the potentially unreliable reticulated water supply in the locality a 10,000 litre dedicated water supply tank (non combustible or shielded from bushfire hazard) shall be provided. The tank shall be provided with a minimum 3kW (5hp) petrol or diesel powered pump and associated fittings (hoses/nozzles). A 38mm or 65mm storz fitting and ball or gate valve shall be installed in the tank.

Obtain a Static Water Supply (SWS) marker from the Blue Mountains NSW Rural Fire Service as part of the District's Static Water Supply Program once the dedicated tank water supply and storz fittings have been installed.

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|---|--|
| Access
<i>Rural Fire Service condition</i> | 16. Unrestricted access is to be provided around the property for fire fighting personnel. |
| Services
<i>Rural Fire Service condition</i> | 17. Water, electricity and gas are to comply with section 4.1.3 of Planning for Bushfire Protection 2006. |
| Design and construction
<i>Rural Fire Service condition</i> | 18. New construction is to comply with Appendix 3 – Site Bush Fire Attack Assessment of Planning for Bushfire Protection 2006. In this regard the following design standards for construction are to be incorporated into the development: <ul style="list-style-type: none"> ▪ New construction on the east aspect shall comply with Australian Standard AS3959-1999 'Construction of Buildings in bushfire prone areas' Level 3 Construction. ▪ Roofing shall have leafless guttering and valleys which are screened to prevent the build up of flammable material. Screening to be installed in such a manner that permits the removal of fine fuel accumulation within roof gutters and valleys. Any materials used shall have a flammability Index no greater than 5. ▪ Roller doors, tilt-a-doors and the like on the dwelling shall be sealed to prevent the entry of embers into the structure. |
| Landscaping
<i>Rural Fire Service condition</i> | 19. Landscaping to the site is to be carried out in accordance with the approved Concept Landscape Plan prepared by Masterton Homes dated 30/01/08 and with the principles of Appendix 5 of Planning for Bushfire Protection 2006.
NOTE: The existing Eucalypt trees shown on the Landscape Plan are to be retained unless required to be removed in order to establish the asset protection zones. |
| Driveway / access | 20. To ensure adequate access, good sight distance and balance in the site design, the driveway: <ol style="list-style-type: none"> a) must be a minimum of 2.7 metres wide. b) A turning facility is to be located fully within the property to ensure safe forward entry and exit. c) must be finished in an all weather finish. Any construction works are to be completed to Council's adopted standards prior to occupation of the building. |

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MINUTE NO. 76

7. S/11/2008. Development Application No. S/11/2008 for a one into eleven lot Community Title subdivision on Sorensen's Nursery, Lot 1 Dp 867477, No. 8 Herbert Street Leura

A MOTION was moved by Councillors Van der Kley and Myles **that Development Application No. S/11/2008 for a one into eleven lot community title subdivision of Sorensen's Nursery, Lot 1 DP 867477, 8 Herbert Street, Leura be determined pursuant to S.80(3) of the Environmental Planning and Assessment Act 1979 by the granting of Deferred Commencement consent subject to conditions shown in Attachment 1 to this report.**

MINUTE NO. 76 Contd

Upon being PUT to the Meeting there was an equality of votes, with the result that the MOTION was NOT CARRIED, the vote being:

For		Against	
Councillors		Councillors	
	Creed		Clark
	Greenhill		Gibbs
	Luchetti		Hamilton
	McLaren		Mays
	Myles		McCallum
	Van der Kley		Searle

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MINUTE NO. 77

8. A47935E - 09/8249. Acquisition of Lot 5 DP 6564 Iris Street Wentworth Falls by the Council

RESOLVED UNANIMOUSLY on the MOTION of Councillors Van der Kley and Hamilton:

1. That the Council agree to purchase Lot 5 Deposited Plan 6564 being 24 Iris Street, Wentworth Falls for the sum of \$7,500 and that the land be classified as operational.
2. That the land be purchased using funds from the State Government Grant for the purpose of acquisition of environmentally sensitive land.
3. That the land be purchased for the purpose of consolidation and eventual resale with the Council's adjoining land.
4. That following consolidation with adjoining lots and Council approval to sell, a pro-rata amount received from the sale of the consolidated lot be returned to the grant fund for future environmentally sensitive land purchases.
5. That the Common Seal of the Council be affixed to the necessary documents if required.

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MINUTE NO. 78

9. F01179 & C0112/2. Great Western Highway, Mount Victoria – truck parking opposite Caltex Service Station

RESOLVED UNANIMOUSLY on the MOTION of Councillors Mays and Gibbs:

- 1. The Council note this report and the Local Traffic Committee’s considerations.
- 2. That Council continue to pursue the establishment and adoption of a strategic plan with the RTA for heavy vehicle rest areas across the Blue Mountains.
- 3. Given that the RTA considers it is reasonable that heavy vehicle drivers would continue to park along the Great Western Highway opposite the Caltex Service Station, Council initiates discussions with the RTA regarding the option of the RTA purchasing the homes of those residents who have been adversely effected by 24/7 truck noise and anti social behaviour resulting from the truck parking and reports that information back to Council as soon as possible.

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NOTICES OF MOTION

MINUTE NO. 79

10. F00088. Notice of Motion – Green waste power generation at Glenbrook Sewerage Treatment Plant

A MOTION was moved by Councillors McCallum and Gibbs that the Council receive a report on the cost of preparing an externally prepared report outlining the feasibility of using the Glenbrook Sewerage Treatment Plan (STP) site for a ‘green waste power generator’ taking into account both engineering and planning perspectives.

Upon being PUT to the Meeting there was an equality of votes, with the result that the MOTION was NOT CARRIED, the vote being:

For		Against	
Councillors		Councillors	
	Clark		Creed
	Gibbs		Greenhill
	Luchetti		Hamilton
	Mays		McLaren
	McCallum		Searle
	Myles		Van der Kley

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MINUTE NO. 80**11. F00088. Notice of Motion – Community Garden at Warrimoo**

RESOLVED UNANIMOUSLY on the MOTION of Councillors Van der Kley and Hamilton that a report comes to the Council regarding options for a community garden on Terrymont Road at Warrimoo.

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MINUTE NO. 81**12. F00088. Notice of Motion – Parking issues at Florabella St, Warrimoo**

RESOLVED UNANIMOUSLY on the MOTION of Councillors Greenhill and McCallum that a report comes to Council about options for managing parking issues at Florabella St Warrimoo, with a particular focus on the area around the school and at the end of Florabella St, to facilitate turn-arounds and parking.

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MINUTE NO. 82**13. F03480. Precis of Selected Correspondence, 3 March 2009**

RESOLVED UNANIMOUSLY on the MOTION of Councillors Van der Kley and Hamilton that the Précis of Selected Correspondence be received and appropriate letters forwarded where necessary.

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QUESTIONS WITH NOTICE**14. F00544. Question With Notice – Costs for Cultural Centre project****Question with Notice by Councillor Mays:**

Please advise Council's total costs to date (Feb 09) of the Cultural Centre project. Such costs should be itemised and include, but not be limited to:

- Council staffing costs (direct and indirect);
- Consultant costs (external and internal);
- Design and planning costs;
- Any costs incurred by the Cultural Centre and Katoomba Library Advisory Committee; and
- Ancillary costs arising from project advertising, the Cultural Centre project open day, travel, etc.

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15. F00544. Question With Notice – Landscaping and drainage issues in North Leura as a result of highway widening

Question with Notice by Councillor Mays:

Who is currently responsible for the landscaping and drainage outcomes on the north side of Leura resulting from the highway widening? Is it still the RTA or has the RTA handed this area back to Council?

When will outstanding landscaping and drainage issues be fully addressed and completed in the areas of Den Hogan Drive, cnr Britain Street/North Mall and Highland Street Leura?

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16. F00544. Question With Notice – Recognition of previous councillors

Question with Notice by Councillors Greenhill and McLaren:

Could the Council arrange a plaque, trophy or similar token to be presented to Councillors who served on the last Council but are not continuing Councillors and could these awards be presented at a Council meeting or similar formal event? Could this event occur, as a matter of course, after every election?

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MINUTE NO. 83

C00336. Procedural – Closure of Meeting to the public

RESOLVED UNANIMOUSLY on the MOTION of Councillors Mays and Clark **that the Council close the Meeting to the public in accordance with Section 10A(2)(b) of the Local Government Act in order to consider a Matter of Urgency regarding the personal hardship of a ratepayer.**

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MINUTE NO. 84

C00336. Procedural - Matter of Urgency

RESOLVED UNANIMOUSLY on the MOTION of Councillors McCallum and Greenhill **that Council now consider a matter concerning a legal proceeding that is in progress having been ruled by the Mayor to be a Matter of Urgency.**

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MINUTE NO. 85

C00336. Procedural – That the Motion be now put

RESOLVED UNANIMOUSLY on the MOTION of Councillors Greenhill and Creed that the Motion before the Council be now put to the vote.

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MINUTE NO. 86

C00336. Matter of Urgency – Engagement of Third Party to evaluate court decision

A MOTION was moved by Councillors McCallum and Greenhill:

1. That this Council, in conjunction with [name withheld], agree to engage a Third Party to conduct an evaluation of the Judgment dated 17th of September 2004 in the Local Court proceedings No 6653 of 3003.
2. That the council and [name withheld] agree in writing that they will accept and abide by the decision made by the Third Party and that they will share the cost of the Third Party, including paying any amount requested by the Third Party before the completion of the review process.
3. That the Third Party to be retained be Mr Trevor Cork of Messrs McPhee Kelshaw, solicitors.
4. That the procedures for the conduct of the Review be set by Mr Cork and that the Review to be conducted on the basis of a review of the file(s) and the making of written Submissions by the parties.
5. That the Council request WESTPOOL to withhold taking any further enforcement action until completion of the Review.
6. That the results of this process be reported back to Council.

Upon being PUT to the Meeting, the MOTION was LOST, the vote being:

For	Against
Councillors Clark Gibbs Greenhill Mays McCallum	Councillors Creed Hamilton Luchetti McLaren Myles Searle Van der Kley

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MINUTE NO. 87

C00336. Procedural – Return to open meeting

RESOLVED UNANIMOUSLY on the MOTION of Councillors Van der Kley and Creed **that the Council return to being an open Council meeting.**

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MINUTE NO. 88

17. C00336. Procedural – Question that Meeting Close

RESOLVED UNANIMOUSLY on the MOTION of Councillors McLaren and Greenhill **that as there was no further business before the meeting, the Council Meeting now close.**

The ordinary Meeting of the Council closed at 9:50 pm on Tuesday 3 February 2009.

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