

**ITEM NO:** 7**SUBJECT:** NOMINATION AS ENFORCEMENT AGENCY UNDER THE FOOD ACT 2003**FILE NO:** C02066

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**Recommendation:**

*That Council, pursuant to Section 111 (1) of the Food Act 2003, resolve to nominate as a Category B enforcement agency for the purposes of the Food Act 2003.*

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**Report by Group Manager Environmental & Customer Services****Reason for report**

The purpose of this Report is to recommend that the Council formally nominate to the NSW Food Authority (the Authority) the Category that Council intends to operate at, as required by the Food Act 2003, so that the Council can exercise its functions as an enforcement agency.

**Background**

The Council, to protect the local community and to support the tourism economy, has through the City Strategy - Map for Action and the Management Plan placed a high importance on looking after people including their health and welfare.

A fundamental principle of the Food Regulation Partnership (FRP) is that Councils will operate at a level commensurate with their resources, expertise, and capacity and as a continuation of their existing functions.

This report formalises the category that best satisfies the level of importance to the community within our capacity and capability.

The Council's enforcement functions with respect to food premises will be mandated as at 1 July 2008. The New South Wales Food Authority is required by legislative change to appoint Councils as enforcement agencies from that date.

Councillors have previously been advised as to the changes at the Ordinary Meeting of 21 June 2005 (Item 13) where the Discussion Paper from the Authority was considered. A further report was presented to the Ordinary Meeting of 3 April 2007 where a progress report on the NSW Food Regulation Partnership was considered. Council resolved, amongst other things, to give "in principle" support to the concept of the food regulation partnership with the Authority and considered the category that we would initially operate under.

**A summary of the changes**

Food Regulation Role

The Council formally undertakes its food regulation role as an enforcement agency under the NSW Food Act 2003, as amended from 1 July 2008. Protocols and guidelines should ensure there is a clear understanding of the Council’s role. Councils and the Authority will be using the special FRP logo and branding to promote their partnership.

Cost Recovery Capability

Enforcement agencies will have the ability to recover the costs of providing their food regulation function. A new annual administration charge of \$250 is intended for enforcement agencies to recover the indirect costs associated with their function. The current inspection fees are raised under the Local Government Act 1993 and these will continue.

Blue Mountains Council’s current 2007/2008 fee structure inclusive of GST ranges from \$110 for low risk premises on a sliding scale up to \$265 for the highest risk category, with a re-inspection fee of \$110.

The fee structure proposed in the Council’s management plan for 2008-2009 reflects some of the allowable increases. The fee for low risk premises inclusive of GST will remain at \$110 and the highest risk category has been increased to \$365. Whilst there is an increase over the higher risk range of premises the fees are less than the recommended fees of the NSW Food Authority and the reason for this is discussed below.

The table below summarises the fee structure. It should be noted that there are very few premises in high risk Category 3d and that the naming of the various categories will change to reflect the Food Regulation Partnership guidelines.

**Food Premises Inspections fees**

2007/2008	Proposed for 2008/2009
Low Risk = \$110 Medium Risk = \$140 High Risk Category 3a = \$165 High Risk Category 3b = \$185 High Risk Category 3c = \$210 High Risk Category 3d = \$265	Low Risk = \$110 Medium Risk = \$140 High Risk Category 3a = \$165 High Risk Category 3b = \$235 High Risk Category 3c = \$285 High Risk Category 3d = \$365  (Includes an increased administration fee. The fees charged are less than the recommended fees of the NSW Food Authority).

Whilst the fees are currently below actual cost recovery there will be an opportunity to revise the fee structure to enable full cost recovery next financial year. The Council’s fee structure acknowledges a public good will component where the Council’s involvement in food regulation is seen to be a benefit to the community as a whole. It is considered more appropriate to review the proposed new fee structure after the first year of operation. This will enable the operators of food premises to adjust to the new fees and for the Council to measure the impact and actual costs associated with the service provided.

### Support and Assistance from the Food Authority

Support, assistance and training for councils will be provided by the Authority. This will include:

- assistance with high level enforcement;
- assistance with resource support in unforeseen circumstances;
- development of operational guidelines in consultation with council networks;
- assistance with perceived conflicts of interest;
- environmental health officer career promotion;
- special projects grants program;
- facilitation of networks, eg the existing regional food groups and state liaison group;
- providing technical and paralegal advice;
- facilitating a special website for enforcement agencies; and
- maintaining 'real-time' communication with emails and newsletters.

### Reporting Requirements

Each six months the Council will be required to submit a report to the Authority on their resources and activities for the period. The Authority will publish a summary of information from the Council on the Food Regulation Partnership website, when it is launched later this year.

### **Categories of Enforcement Agencies**

A fundamental principle of the Food Regulation Partnership is that councils will operate at a level commensurate with their resources, expertise, capacity and as a continuation of their existing functions. For most councils, including the Blue Mountains City Council, this will mean a Category B nomination as outlined below.

Where councils nominate for a lesser level of involvement at Category A (the minimum level), the regulatory functions will either be carried out by the Authority or their contractor or other party at full cost recovery and Council will not be able to exercise any control over those activities over and beyond Category A.

The categories were reported to the Council previously but are summarised again for information.

**Category A** – this is intended to be the minimum food regulation responsibility level for an enforcement agency. It only covers:

- a) Responding to urgent food safety matters;
- b) Urgent food recall investigations; and
- c) Six-monthly reporting on food regulation activities (s.113).

Councils will be appointed to Category A responsibilities only where they have exhausted other options such as forming alliances with other councils or engaging contractors/consultants. Generally, only the smaller, remote rural councils will be able to fit into this category.

**Category B** – this is the intended standard food regulation responsibility level for an enforcement agency that includes the majority of councils. This category includes Category A responsibilities, and the following:

- a) food recall investigations;
- b) routine inspection and enforcement of the retail and food service sector;
- c) medium and low risk food complaint investigations; and
- d) collaboration on single-case foodborne illness investigations.

**Category C** – this is the higher food regulation responsibility for an enforcement agency. It includes responsibilities for Categories A and B and any other responsibility determined in consultation with the Authority, eg inspection of non-licensed manufacturers and wholesalers. Other responsibilities, eg providing information and training for food handlers, are worthwhile food regulation activities that are encouraged but they will not be compulsory.

To nominate at Category C level would involve an expansion of the Council's current role and that is considered unnecessary for the city and would be beyond our resource capability.

#### Blue Mountains City Council Nomination as an Enforcement Agency

The Food Act 2003 requires the Authority to call for and assess nominations from councils to act as an Enforcement Agency and in this regard they require information as to:

1. The preferred category of function of an enforcement agency (see previous discussion);
2. The food business profile;
3. The skills of officers planned to be engaged in food regulatory work; and
4. Whether or not Councils have an annual inspection program for high and medium food businesses for the 12 month period commencing 1 July 2008.

#### *Category of Enforcement Agency*

This report recommends that Blue Mountains City Council nominates as a Category B Enforcement Agency under the Food Regulation Partnership and the Food Act 2003, as discussed previously in this report. The following information will inform and support this nomination.

#### *Food Business Profile*

Currently, the Blue Mountains local government area has a total of 495 food premises subject to an annual inspection. Food premises are categorised according to risk and 390 food premises are categorised as high risk, 95 premises medium risk, and 10 premises are low risk.

#### *Skills of officers involved in food regulatory work*

This work is undertaken by the Council Environmental Health & Safety Team within the Planning Health & Enforcement Branch. This team includes Principal Environmental Health Officer and Specialist Environmental Health Officer positions. Both officers have appropriate qualifications and demonstrated skills and experience in food regulatory activities. These positions are supported by two technical officers. This team have a range of other environmental health & safety responsibilities, in addition to food safety. It is considered that this team has the capacity and capability to carry out the work at Category B level and still maintain the level of regulatory service for other environmental health functions.

Should a particular emergency arise, such as critical food recall, the Council has further skilled resources of Environmental Health & Building Surveyors who work in development monitoring, land use management and building and construction to call on.

*Planned inspection program*

An inspection program has been planned for high and medium food businesses for the 12 month period commencing 1 July 2008. The Council has undertaken such a program for about 10-15 years.

**Sustainability Assessment**

The table below provides a summary of the significant environmental, social and economic factors.

<b>Effects</b>	<b>Positive</b>	<b>Negative</b>
Environmental	This report recommends a continuation of the current involvement in food surveillance. Food safety is a critical issue for community health and well being.	
Social	There is a social benefit in maintaining a good quality of health and well being.	
Economic	The cost to the broader community for reactive health services is far greater than a proactive role to promote safe food handling and preparation in the first place.	

**Conclusion**

The Food Regulation Partnership is one that the Council has formally indicated in principle support to the NSW Food Authority. A fundamental principle of the Food Regulation Partnership is that councils will operate at a level commensurate with their resources, expertise, capacity and as a continuation of their existing functions for the benefit of the community.

This report recommends that the Council nominate as a Category B Enforcement Agency which closely aligns with the Council’s existing functions.

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**ITEM NO:** 8**SUBJECT:** TENDER FOR THE CONSTRUCTION OF A TOILET BLOCK AT MT VICTORIA PARK MT VICTORIA – RFT NO. 2007-W151**FILE NO:** F02937

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**Recommendations:**

1. *That the Council accept the tender submitted by the Blue Mountains City Services for the construction of a toilet block at Mt Victoria Park, Mt Victoria for the cost of \$202,345.00 (\$183,950.00 + 18,395.00 GST).*
  2. *That the Council approve expenditure of \$222,579.00 (\$202,345.00 plus \$20,234.00 GST) which includes a 10% additional contingency.*
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**Report by Group Manager, Community & Corporate****Reason for Report**

The Council Tendering Policy and the estimated cost of the works determined that tenders should be called for the construction of a toilet block at Mt Victoria Park, Mt Victoria. The Resolution by the Council is required for the preferred tender to be formally accepted based on the recommendations in this report.

**Background**

The new toilet facility will replace an existing facility which is in poor condition, is difficult and expensive to maintain and would require substantial funds to improve. New facilities will provide improved amenities for the community and tourists alike, as well as provide disabled facilities.

The existing toilet facilities will be demolished following completion of the new facility. Development consent and a construction certificate were issued on 21 August 2007 for the proposed works.

**The tender**

Open tenders were called in accordance with the Council Tendering Guidelines. The tender was advertised in the Sydney Morning Herald on 19 February 2008 and 26 February 2008 and in the Blue Mountains Gazette on 20 February 2008 and 27 February 2008.

Tenders closed at 2.00pm on Wednesday 12 March 2008. During the course of the tender period three addenda were issued.

The following tenders were received and are listed in apparent order of price.

<b>Tenderer</b>	<b>Price</b>
Blue Mountains City Services, Katoomba	\$183,950.00 + \$18,395.00 GST
Trevelle Developments Pty Ltd, Revesby	\$187,811.00 + \$15,535.00 GST *
Northcote Constructions, Katoomba	\$188,536.00 + \$18,854.00 GST
Bilas Knight Pty Ltd, Narellan	\$239,544.55 + \$23,954.45 GST

\* The tender from Trevelle Developments Pty Ltd incorrectly nominated the GST component. This did not affect the outcome of the tender assessment process.

### **Tender evaluation**

A Tender Evaluation Panel (TEP) was established to evaluate the submissions in accordance with the assessment criteria and processes specified within the Request for Tender (RFT) documents. The TEP is required to establish which tender offers the most benefit to the Council. The TEP was made up of three Council staff.

The first role of the TEP was to develop a clear understanding of the tender proposals and claims as presented within their tender submissions. Where internal inconsistencies or lack of clarity arose from the tenderer's submitted information and data, the TEP sought clarification from the tenderer and the nominated referees. The TEP also undertook referee checks for feedback on all tenderers' performance on similar contracts.

### **Evaluation criteria**

The following table sets out the evaluation criteria for determining the value for money represented by the tenders. The criteria are those notified to tenderers in the RFT. The TEP applied these criteria to evaluate the tenders.

Evaluation criteria were weighted as follows:

	<b>Description</b>	<b>Rounded Weighting (Sum = 100%)</b>
A	Vendor Profile	11.12%
B	Response to Statement of Requirement	44.44%
C	Compliance Pricing Declaration	44.44%

The various individual components of the vendor profile and response to the statement of requirement were assessed by the TEP for each tenderer.

### **Evaluation of value for money and risks**

Value for money is a comprehensive assessment that takes into account:

- cost represented by the assessment of price;
- value represented by the technical assessment; and
- an assessment of risk in the context of the risk profile presented by the tenderer.

The TEP has assessed each tenderer's risk profile and determined that each tenderer is capable of carrying out the requirements of the contract.

A recent (May 2007) opinion of costs valued the works at \$176,000.00. This opinion and the sum tendered by the three lowest tenderers confirms the validity of the lowest tenderer. The result of applying all evaluation criteria to determine value for money concluded that the tender from Blue Mountains City Services provides best value for money.

**Sustainability Assessment**

<b>Effects</b>	<b>Positive</b>	<b>Negative</b>
Environmental	<ul style="list-style-type: none"> <li>The project includes the installation of a 10,000 litre underground water tank with roof water from the building directed to the tank.</li> <li>This will result in reduced water consumption and will provide an example to the community of the Council’s commitment to efficient water usage.</li> <li>The tank water will be used for toilet flushing, hand washing and cleaning.</li> </ul>	Improved facilities may increase usage of the park and increase marginally impacts such as litter, etc.
Social	<ul style="list-style-type: none"> <li>The toilet block is located centrally within the park and can be viewed from most locations within the park and the adjacent business precinct.</li> <li>An accessible toilet is provided to serve persons with a disability. Twenty-four hour access is available to disabled persons.</li> <li>A dedicated (sealed) parking space for disabled persons is provided in the existing Montgomery Street carpark with wheelchair access to the toilet.</li> </ul>	None envisaged.
Economic	<ul style="list-style-type: none"> <li>Tourists visiting the Mt Victoria township will be provided with modern toilet facilities.</li> <li>These improved facilities are likely to encourage increased patronage of the park, thereby creating inherent spin-off benefits to adjacent local business community.</li> </ul>	None envisaged.

**Financial implications**

The construction of the toilet block is to be funded from the current 2007/2008 Capital Works Program Budget (\$120,000) and the draft 2008/2009 Capital Works Program Budget (\$120,000). In addition, 10% of the contract price for contingencies is also budgeted. The budget also includes the demolishing of the old toilet block and remediation of the land.

The financial implications of not proceeding with the project include probable increased maintenance and cleaning costs due to the deteriorating condition of the asset.

It is not anticipated that any additional revenue will be generated by this project. Recurrent expenditure will not be affected as more efficient cleaning and lesser maintenance costs resulting from the construction of the new facility will be offset by expected increased use of the facility.

**Legal & risk management issues**

The tender process has been conducted in accordance with the Council Procurement Policies. The Tender Review Committee (TRC) has reviewed the tender procedures and is satisfied as to the fairness of the process and that the process has complied with policies. There are no identified legal or risk management issues related to this matter.

**External consultation**

No external stakeholder consultation was undertaken.

**Conclusion**

Based on the assessment of the tenders received, it is recommended that the Council accept the tender submitted by the Blue Mountains City Services for the construction of a toilet block at Mt Victoria Park, Mt Victoria for the lump sum once of \$202,345.00 (\$183,950.00 + 18,395.00 GST).

It is recommended that the Council approve expenditure of \$222,579.00 (\$202,345.00 plus \$20,234.00 GST) which includes a 10% additional contingency.

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**ITEM NO: 9**

**SUBJECT: COMMUNITY ASSISTANCE / DONATIONS – RECOMMENDATIONS  
BY COUNCILLORS**

**FILE NO: C00944**

**Recommendation:**

*That the Council approve the following donations from the Councillors’ Minor Local Projects Vote:*

<u>Organisation</u>	<u>Amount</u>
<i>Mid Mountains Soccer Club</i>	<i>\$200.00</i>
<i>Lawson Amateur Swimming Club</i>	<i>\$100.00</i>

**Report by General Manager:**

On 11 July 2000 the Council adopted a revised Policy for Councillors’ Minor Local Projects allocations for the provision of community assistance/donations. The following recommendations for donation, which appear to fall within the ambit of the Policy, have been received and are submitted for approval.

**Minor Local Projects**

<u>Recommending Councillor</u>	<u>Organisation</u>	<u>Purpose</u>	<u>Amount</u>
Cr Frappell	Blue Mountains Soccer Club	Administration costs	\$200.00
Cr Vanderkley	Lawson Amateur Swimming Club	Towards the purchase of trophies	\$100.00

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