

ITEM NO: 2

SUBJECT: PUBLIC ACCESS TO COUNCIL DOCUMENTS

FILE NO: F03384

Recommendations:

That the Council adopt the Blue Mountains City Council's "Public Access to Council Documents Policy" and the related procedures.

Report by Executive Officer:

Reason for Report

The *Public Access to Council Documents Policy* was adopted April 2003. While there have been no major legislative changes that substantially impact on this policy, a review was considered necessary given the length of time since the policy was adopted.

Background

The *Public Access to Council Documents Policy* provides guidance for Council staff when dealing with requests from the public to access documents held by the Council. Section 12 of the Local Government Act 1993, the Freedom of Information Act 1989 and the Privacy and Personal Information Protection Act 1989 contain the legislative basis for this policy.

The Council holds a wide variety of information, most of which is available to the general public. However, there is some information that is not always available. This information generally relates to:

- private information concerning ratepayers (for example, rate information);
- enforcement information such as the identity of people who provide the Council with information concerning the breach of laws for which the Council has responsibility;
- legal advice; and
- commercial in confidence information.

These are not the only matters where information may be withheld, but are the most common matters where requests for access to information are received by the Council.

Changes made to this draft policy

This draft policy is not essentially different to the 2003 policy. However, two changes have been made which are highlighted in bold and boxed in the text of the policy at Attachment 1. In addition a set of procedures for accessing documents held by the Council are included at Attachment 2.

1. Change 1 - Access to Working Documents

Section 5 clarifies access to working documents. In general, working documents are not automatically considered documents that can be made available on request. This is particularly the case in a situation where a development application or a policy is still in the determination phase. These documents are considered work in progress papers

which outline the “thinking processes” of Council with no final decision or outcome attached and as such may be withheld in the majority of cases from public access.

Section 13.1.3 of the NSW FOI Manual, published by the NSW Premier and Cabinet in August 2007, provides guidance in this respect by recognising the need for governments to have some degree of confidentiality in order to function smoothly and efficiently. The intent of this change is to protect the decision making functions of the Council where effective administration may be impeded by a loss of confidentiality.

2. Change 2 - Fees and charges

Section 10 of Attachment 1, clarifies the fees charged in relation to processing access to information requests. Applications under Section 12 of the Local Government Act to view files only attract no charge. Applications that request staff to search and copy documents attract a fee as outlined in the Fees and Charges Schedule of the Management Plan. FOI applications remain set by the Premiers Department at \$30 including GST (subject to some conditions).

The only other changes to the policy are formatting changes.

Sustainability Assessment (Triple Bottom Line Reporting):

Effects	Positive	Negative
<u>Environmental</u>	Not applicable	Not applicable
<u>Social</u>	Clear guidelines are provided to the general public about accessing a variety of information held by Council which improves the ability of the community to be informed about the decisions of the Council	There is nevertheless information that the general public may want to access that is not available.
<u>Economic</u>	Not applicable	Not applicable

Conclusion

This policy provides guidance for staff of the Council and the community about access to Council documents. While a significant amount of information is available as outlined in Section 4 of Attachment 1, this policy enables Council staff to determine what other types of information can also be made available to the public. The procedures in Attachment 2 provide an outline of how requests will be processed.

* * * * *

Attachment 1



STRATEGIC POLICY:	PUBLIC ACCESS TO COUNCIL DOCUMENTS
STATUS:	DRAFT – December 2007
ADOPTED:	
LAST REVISION:	April 2003
TRIM REF.:	F03384
ISSUED BY:	Executive Services
INQUIRIES:	Team Leader Compliance

1. OBJECTIVE

To facilitate the timely access to Council documents by members of the public.

2. BACKGROUND

In order to comply with the requirements of the Acts and Regulations governing the actions of Local Government, and recognising the complexity of legislation governing the collection, dissemination and use of information gathered and stored by the Council, the following principles will guide decisions on public access to the Council documents.

2.1 The principle of open government is recognised and supported by Blue Mountains City Council through the provision of access to information held by the Council.

2.2 It is recognised that Section 12 of the Local Government Act 1993 guarantees a right of access to everyone, not just residents of the Council area.

2.3 The Council has an obligation to assist applicants in their requests, including, if necessary, assistance with amendments to requests in order to facilitate access.

2.4 It is a function of the Council to provide access to information, not hinder access.

2.5 Access to information is provided throughout the whole organisation and is not the province of any particular section of the Council. However, while information should be provided when is clearly within the authority of the staff member to so, more complex matters should be referred to Executive Services for advice.

2.6 The protection of personal information is an important function of the Council but it is recognised that it can only be one factor in determining whether the public interest is served by the release of information. Sections 12(1) and 12(6) of the Local Government Act 1993 will

override the Privacy and Personal Information Protection Act 1998 with respect to information disclosures to third parties.

- 2.7 An appeals system is in place if an applicant is dissatisfied with a decision to refuse access (refer to Access to Information Procedures).
- 2.8 To facilitate ease of access, Section 12 of the Local Government Act 1993 will be used in preference to the Freedom of Information Act 1989 when a request for access to a Council document is made.
- 2.9 The use of the Freedom of Information Act is a last resort mechanism.
- 2.10 The 'information protection principles' (see the Council PPIPA Management Plan 2003) of PIPPA continue to apply to the Council operations, such as information collection, storage and internal use, regardless of Section 12 of the Local Government Act.

3. RELEVANT LEGISLATION AND POLICIES

Local Government Act 1993 – specifically Section 12.

Freedom of Information Act 1989

Privacy and Personal Information Protection Act 1998

Code of Conduct 2007

Code of Meeting Practice 2007 - draft

Serious and Substantial Complaints Policy 2007 - draft

Dealing with Difficult Customers 2007 – draft

4. WHAT SPECIFIC INFORMATION IS PUBLICLY AVAILABLE?

Section 12(1) of the Local Government Act 1993 entitles everyone to inspect the current version of the specified documents free of charge.

Section 12(5) states, “the Council must allow inspection of versions of the documents other than the current and immediately preceding versions if those other versions are reasonably accessible”.

Section 12 (6) further states, “Council must allow inspection of its other documents free of charge”.

Documents publicly available include:

- The Council Code of Conduct;
- The Council Code of Meeting Practice;
- Annual Report;
- Annual financial reports;
- Auditor’s Report;
- Management Plan;
- EEO Management Plan;
- The Council policy concerning the Payment of Expenses and Provision of Facilities to Councillors, the Mayor and Deputy Mayor;
- The Council Land Register;
- Register of Investments;

- ❑ Register of Pecuniary Interests;
- ❑ Returns as to candidates' campaign donations
- ❑ Agendas and Business Papers for Council and Committee Meetings but not including Business Papers for matters considered when part of a meeting is closed to the public
- ❑ Minutes of Council and Committee Meetings, but restricted (in the case of any part of a meeting that is closed to the public), to the resolutions and recommendations of the meeting;
- ❑ Any codes referred to in the Local Government Act;
- ❑ Register of Delegations
- ❑ Annual Reports of bodies exercising delegated council functions;
- ❑ Applications under Part 1 of Chapter 7 of the Local Government Act for approval to erect a building, and associated documents;
- ❑ Development applications within the meaning of the Environmental Planning and Assessment Act 1979 (EP & A Act) and associated documents;
- ❑ Local policies adopted by the Council concerning approvals and orders;
- ❑ Records of approvals granted, any variation from local policies with reasons for the variation and decisions made on appeals concerning approvals;
- ❑ Records of building certificates under the Environmental Planning and Assessment Act 1979;
- ❑ Plans of land proposed to be compulsorily acquired by the Council;
- ❑ Leases and licences for use of public land classified as community land;
- ❑ Plans of Management for community land;
- ❑ Environmental planning instruments, development control plans and plans made under section 94AB of the Environmental Planning and Assessment Act 1979 applying to land within the Council area;
- ❑ The Statement of Affairs, the Summary of Affairs and the Register of Policy documents required under the Freedom of Information Act 1989
- ❑ Department of Local Government representatives' reports presented at a meeting of the council in accordance with section 433 of the Local Government Act and
- ❑ The Register of Graffiti Removal Work.

5. WHAT OTHER DOCUMENTS ARE PUBLICLY AVAILABLE?

Besides the documents specifically mentioned in Section 12(1) of the Local Government Act, members of the public may inspect or copy any other Council document subject to the constraints outlined in Section 5 and Section 7 of this Policy.

It should be noted that Section 12(1) of the Local Government Act allows:

- inspection of applications under Part 1 of Chapter 7 of the Local Government Act for approval to erect a building, and associated documents; and
- development applications within the meaning of the Environmental Planning and Assessment Act 1979 and associated documents.

Subject to this Policy, "*associated documents*" is taken to mean:

- the application and supporting information submitted with or later as part of the application process;
- plans and specifications (except the internal building configurations);
- letters and advertisements used for public notification of the application;
- objections and submissions received; and
- any notice of determination.

However, the following documents may only to be made available after the Development Application has been finalised.

- **report/s on the application's assessment made to the person or body responsible for the application's determination;**
- **any other internal working document; and**
- **any other document held by the Council created as part of, or in support of, the application process.**

In reference to other policies, procedures and documents developed by the Council, internal working documents may only be available after the document has been finalised.

6. ACCESS TO PUBLIC REGISTERS

Generally information contained in the Public Registers held by the Council will be made available having regard to the Council Privacy Management Plan. The Council holds the following Public Registers:

Act of Parliament	Register / Records
s53 Local Government Act	Council Land Register
s12 Local Government Act	Register of Investments
s12 Local Government Act	Register of Delegations
s12 Local Government Act	Policy Register
s67C Local Government Act (refers to 67A & 67B)	Register of Graffiti Removal
s308 Protection of the Environment Operations Act	Register of Licensed Activities
s100 Environmental Planning & Assessment Act	Register of consents and certificates
s34 Environmental Planning & Assessment Act	Contributions Register
s170 Heritage Act	Heritage and Conservation Register
DCP 9 – Significant Trees	Significant Tree Register

cl.13 Public Health (Skin Penetration) Regulation 2000	Skin Penetration Register
cl.15 Public Health (Microbial Control) Regulation 2000	Cooling Tower Register

7. THE PUBLIC INTEREST TEST

Section 12 of the Local Government Act allows access to other documents except if contrary to the public interest or if specifically exempted. Specific exemptions are information disclosures relating to the following matters:

- personnel matters concerning particular individuals;
- personal hardship of any resident or ratepayer;
- trade secrets;
- a matter the disclosure of which would constitute an offence against an act or found an action for breach of confidence;
- the plans and specifications for any residential parts of a proposed building, other than plans that show its height and its external configuration in relation to the site on which it is proposed to be erected;
- commercial information, if the information would be likely to prejudice the commercial position of the person who supplied it, or to reveal a trade secret; and
- that part of a draft or adopted plan of management that is the subject of a resolution of confidentiality under section 36DA of the Local Government Act.

The Public Officer or his/her nominee will make a determination on documents requiring the public interest test. In essence the test involves weighing, in each particular case, the benefit to the public against any possible adverse effects in allowing inspection, including whether it would have an adverse effect on the Council, with a general preference to allowing access.

The test for public interest will also be made in consultation with any policies and guidelines issued by the Department of Local Government, the Office of the Ombudsman and the NSW Premier’s Department in relation to FOI and access generally. In general it is considered that it might be contrary to the public interest to allow access to the following types of documents:

- any part of a document that contains the name and address of a person (and any other identifiers in the document) who has made a complaint to the Council regarding the activities of another person or organisation;
- any part of a tender document disclosing confidential information;
- any part of a document containing financial or commercial information regarding a person or organisation the disclosure of which could have an unreasonable adverse effect on the person or organisation;

- any document that could have a detrimental effect on law enforcement or public safety;
- any confidential Council reports;
- privileged communications between the Council and its legal advisors;
- any other document (internal or external) marked, or classified as, confidential;
- if the work involved in dealing with the application for access to the document would, if carried out, substantially and unreasonably divert the Council's resources away from their use by the Council in the exercise of its functions. (*There is an obligation to assist the applicant to amend the application to permit access*);
- information which would, if disclosed, prejudice the maintenance of law;
- information which would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business; and
- matters affecting the security of the Council, Councillors, Council staff or Council property.

In relation to the Complaints the Council has a duty of care to protect the identity of complainants, acting in good faith, who draw the attention of the Council to actual or potential breaches of law for which the Council has enforcement responsibilities.

8. PRIVACY AND PERSONAL INFORMATION PROTECTION ACT 1998

In applying the public interest test one must take account of the information protection principles, the *Privacy and Personal Information Protection Act 1998*, the *Privacy Code of Practice for Local Government* and the Council Privacy Management Plan.

The *Privacy and Personal Information Protection Act 1998* and the *Privacy Code of Practice for Local Government* give people right of access to certain personal information.

As a general principle the protection of personal information is a function of the Council. The Council must ensure that breaches do not occur when information is provided but it is recognised that it is only one factor in determining whether the public interest is served in the release of information. Sections 12(1) and 12(6) of the Local Government Act will override the PIPPA with respect to information disclosures to third parties.

The Council Privacy Management Plan refers to the details of the Council implementation and interpretation of the privacy requirements.

9. CAN COPIES OF DOCUMENTS BE TAKEN?

As well as the right to inspect, members of the public have a right to a copy of the document inspected for a fee, except for the following, which cannot be copied:

- (a) the residential roll of electors;
- (b) the resumes of candidates for election;
- (c) building certificates, unless consent of the owner of the building is obtained;
- (d) the plans of buildings and developments, unless the approval of the copyright holder has been obtained, or where the plans of a proposed building show only the height and external configurations of the building in relation to the site; or
- (e) bulk property information such as development consent registers, sales of registers etc unless the information is required by a government agency for statistical or other purposes consistent with the legitimate function of that agency.

10. WHAT FEES ARE INVOLVED?

There is no prescribed charge for the inspection of a Council file and therefore access to a file is free. The Local Government Act allows a Council to charge a reasonable photocopying fee where copies are required. The Council copying charges are contained in the current Fees and Charges Schedule of the Annual Management Plan. The basis and level of fees and charges for photocopying are reviewed annually.

A fee as outlined in the current Fees and Charges Schedule of the Annual Management Plan will be charged for searching files and providing copies.

The fee for processing a Freedom of Information application is set by the Premiers Department and is currently \$30 (GST does not apply).

11. REVIEW OF ACCESS

Section 12A of the Local Government Act sets out the process for reviewing restrictions to access. Where the Council decides access to information should not be given, the applicant must receive written reasons for the restriction as set out in the Act.

The Council is required to carry out further reviews when requested by the applicant. These reviews can occur no sooner than three months after the previous review. Restrictions must be removed if the Council finds that there are no grounds for the restriction or if access to the information has been obtained under the FOI Act. It is not necessary for the Council to review any restriction once it has been removed.

A report on Access to Information applications made under Section 12 of the Local Government Act and applications made under the Freedom of Information Act, will be provided to the Council each quarter.

The report will contain details of restrictions that staff have placed on access to information and the reasons for the restriction. The report will also include details of applications for lifting the restrictions that have been made subsequent to the original three-month review.

12. **REVIEW PERIOD**

The Policy will be reviewed within 12 months after election of a new Council.

ITEM NO: 3**SUBJECT: SCHEDULE OF INVESTED MONIES****FILE NO: C00694**

Recommendation:

That the Schedule of Invested Monies as at 31 October 2007 be received.

Report by Group Manager, Community & Corporate:

This report is submitted for the purpose of financial accountability and in satisfaction of the investment reporting requirements of the Local Government (Financial Management) Regulation 1999 and the Local Government Act, 1993 (Section 625). The report also certifies that Council investments comply with the forms of investment made by order of the Minister under section 625(2) of the Local Government Act 1993. The current Ministerial Order was issued under Council Circular 05-53 on 23 September 2005.

The Schedule of Council Invested Monies as at 31 October 2007 is attached for information.

The increased returns, above budget, on the Council investments are due to a greater than anticipated rise in interest rates and increased cash position for the financial year.

Recent Market Developments

Since July 2007 a significant downturn has occurred in global credit markets. This event has impacted on the mark to market value of some of Council investments. The asset classes most significantly impacted in the Council's portfolio were Credit Linked Notes and Asset Backed Securities.

Global credit markets experienced exceptionally high volatility in July, which is impacting the value of worldwide credit products including Collateralised Debt Obligations (CDOs) that the Council has exposure to within its investment portfolio (i.e. \$6M of the Grange Securities Portfolio which includes \$250k of sub prime). During the period to August/September there was a partial recovery on the Grange Securities Portfolio.

The Council entered into these transactions as part of its long term strategy with the intent of holding them until their respective maturity dates, at which time the Council will redeem the full face value of the security provided there are no defaults in the underlying securities. The Council's cash flow has not been affected as the Council continues to receive interest coupons based on the face value of the security.

The financial impact on the Council's investment portfolio is that the mark to market valuation of the Council's investment securities classified as fair value through profit and loss has been reduced between balance date and 31 October 2007. If the Council was forced to sell these securities for liquidity reasons it could potentially realise a loss based on current market conditions. However, the Council's investment portfolio is structured with adequate diversification to provide sufficient liquidity until the impaired investments mature.

The Council is in regular consultation with its investment advisor and continues to closely monitor the portfolio in the current investment environment to ensure continued compliance and minimal exposure to risk.

* * * * *

SCHEDULE OF INVESTED MONIES - 31 October 2007

<i>Institution and Fund</i>	<i>Return for Month</i>	<i>Investment Valuations</i>	<i>Investment Valuations Previous Month</i>	<i>Comments</i>
Adelaide Bank Managed Funds	6.9%	4,879,725	7,779,725	Funds withdrawn for Cash flow
Bendigo Bank FRN	8.06%	1,000,000***	1,000,000	
CBA – Palladin Portfolio Note	7.8467%	397,500	492,500	Market revaluation
Generator Income Notes (managed by Rim Securities Ltd)	8.45%	905,606**	905,606	
FRN and CDO Investment Managed Portfolio (managed by Grange Securities)	7.45%	10,292,733	10,507,421	Market revaluation
Macquarie Cash Management (managed by Grange Securities)	5.44%	37,106	251,865	Coupon returns and withdrawal for Cash flow
”Averon” Series AF7 Floating Rate Note(managed by ANZ Bank)	0%	444,500***	444,500	
Aberdeen Cash Plus (managed by Grove)	n/a	0	14,512	Fully redeemed
CBA – Equity Linked Note	Variable	976,850	993,000	Market revaluation
CBA – Callable CPI Linked Note	9.0%	873,200	934,400	Market revaluation
Athena Series 1 Camelot Notes (managed by ICAP)	6.74%	518,335	519,332	Market revaluation
Aphex Pacific Capital “Phoenix” Notes (managed by ABN-AMRO Morgans)	8.0%	495,300***	495,300	
CBA – Yield Enhanced Note	7.15%		504,650	Redemption on maturity
CBA – Range Accrual Note	7.55%	979,700	1,000,000	Market revaluation
Total		21,800,555	25,842,811	

BBSW 30 Days 6.71%

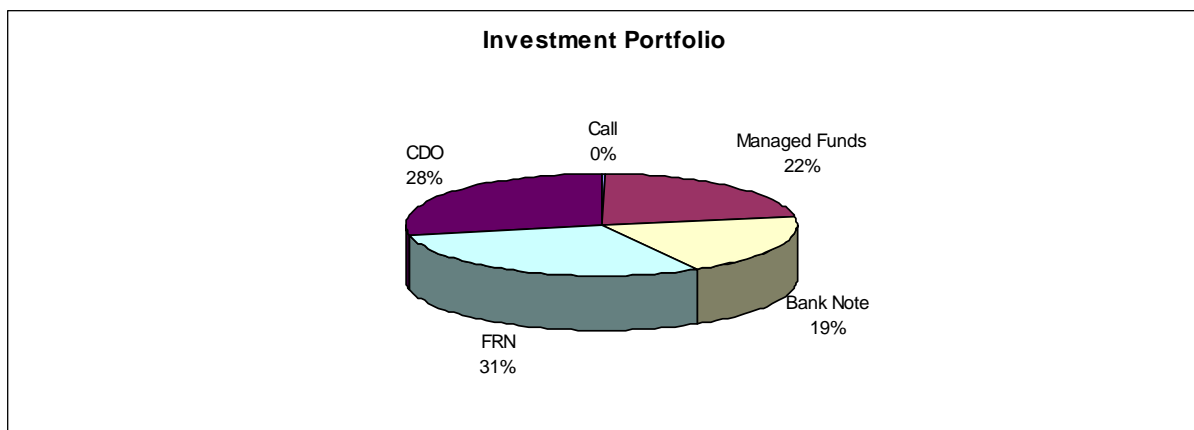
Average Rate of Return for Month 7.35%

The decrease from \$25,842,811 to \$21,800,555 reflects the change in investment valuations and funds invested and/or withdrawn during the month.

The valuations are as at 31 October 2007 unless subsequently further advised. The valuations are indicative with no assurance that trades could be completed at such values.

** Market valuation as at 31 July 2007.

*** Market valuation as at 31 September 2007.



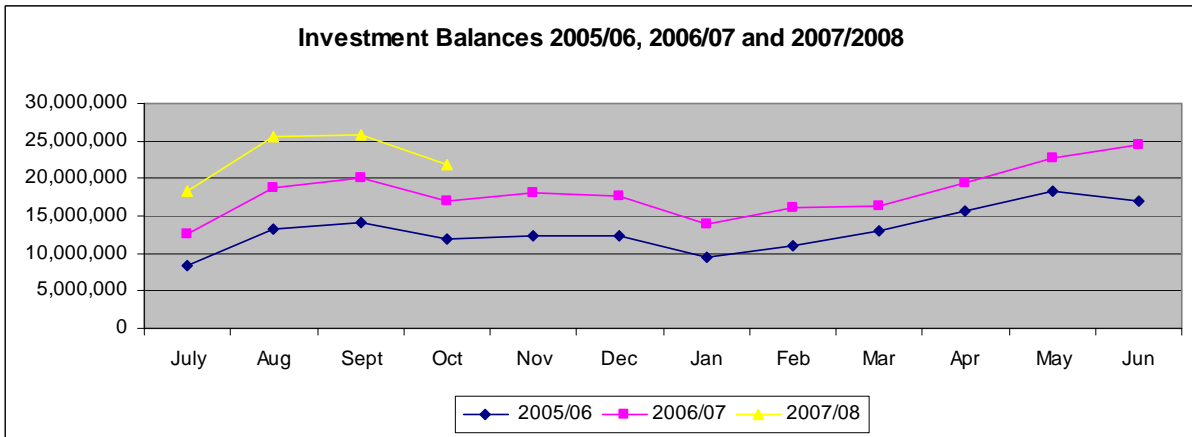
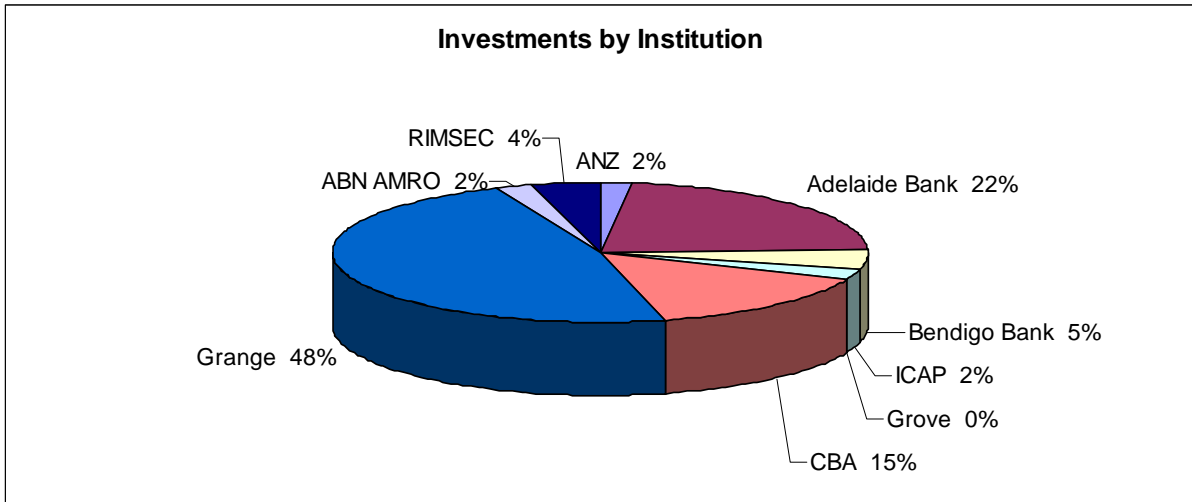
Call – Cash at Call

Managed Funds – Managed Funds

Bank Note – Structured Notes

FRN – Floating Rate Note

CDO – Collateralised Debt Obligation



Interest Income - Budget vs Actual

	Year to Date	Full Year
Original Budgeted Return	\$365,833	\$1,097,500
Revised Budgeted Return	\$365,833	\$1,097,500
Council's Actual Return	\$559,613	\$1097,500 (estimated)

I certify and report that the Schedule of Invested Monies listed above describes all Council's funds invested by virtue of Section 625 of the Local Government Act, 1993. The monies referred to in this Schedule are invested in accordance with the Local Government Act, 1993 (Section 625 and Order of the Minister dated 23/09/2005), and Local Government Regulation 1999 (Clause 16) and Council's Policy.

Neil Farquharson
Responsible Accounting Officer