

# Ordinary Meeting Minutes

Held on Tuesday 26 May 2009

at the Council Chambers, Bega commencing at 2.02 pm

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**PRESENT** Councillor Allen (CHAIRPERSON) and Councillors Britten, Campbell, Hede, Hughes, Pincini, Sandrey, Seckold and Wykes

**IN ATTENDANCE** Ms Leanne Barnes – Acting General Manager, Mr Andrew Woodley – Group Manager Planning and Environment, Mr Jim Collins Acting Group Manager Infrastructure Waste & Water, Ms Michelle Preo – Minute Secretary

## 1. Confirmation of minutes

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152/09 RESOLVED on the motion of Crs Britten and Campbell

That the Minutes of the Ordinary Meeting of 5 May 2009, as circulated, be taken as read and confirmed.

**IN FAVOUR:** Crs Allen, Britten, Campbell, Hede, Hughes, Pincini, Sandrey, Seckold and Wykes

**AGAINST:** Nil

**ABSENT:** Nil

## 2. Apologies

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There were no apologies.

## 3. Declarations

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### **Conflict of interest**

Cr Pincini declared a conflict of interest regarding Item 5 of the Finance and Infrastructure Committee, on the basis that he is a local bus operator. A signed declaration form was tabled by Cr Pincini for inclusion in the Register.

## 4. Deputations (by prior arrangement)

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There were no requests to address Council.

## 5. Petitions

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There were no petitions.

## 6. Mayoral Minutes

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There were no Mayoral Minutes.

## 7. Adjournment into Standing Committees

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153/09 RESOLVED on the motion of Crs Britten and Seckold

That the Ordinary Meeting of the Council be adjourned for the purpose of dealing with staff reports to Standing Committees.

2.02 pm The Ordinary meeting adjourned and formed in the committee, reconvening at 4.10 pm.

## 8. Adoption of reports from Standing Committees

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### CORPORATE MANAGEMENT COMMITTEE

#### 1. Confirmation of minutes

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##### RECOMMENDATION

That Council note that the Minutes of the Corporate Management Committee meeting held on 5 May 2009, as circulated, were taken as read and confirmed with the following amendment:-

Cr Hughes was the Chairperson of the Corporate Management Committee Meeting on 5 May 2009 and not Cr Campbell as stated in the draft Minutes.

154/09 RESOLVED on the motion of Crs Hughes and Campbell that Item 1 of the Corporate Management Committee as reported be adopted.

IN FAVOUR: Crs Allen, Britten, Campbell, Hede, Hughes, Pincini, Sandrey, Seckold and Wykes

AGAINST: Nil

ABSENT: Nil

## 2. Apologies

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There were no apologies.

## 3. 2008-09 Third Quarter Review

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### RECOMMENDATION

That the report circulated to Councillors on 19 May 2009 and considered at the Council meeting of 26 May 2009, on the extent to which programs, actions and performance targets set by the Operational Plan for the period ending 31 March 2009 have been achieved, be noted.

155/09 RESOLVED on the motion of Crs Hughes and Campbell that Item 3 of the Corporate Management Committee as reported be adopted.

IN FAVOUR: Crs Allen, Britten, Campbell, Hede, Hughes, Pincini, Sandrey, Seckold and Wykes

AGAINST: Nil

ABSENT: Nil

### FINANCE & INFRASTRUCTURE COMMITTEE

## 1. Confirmation of minutes

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### RECOMMENDATION

That Council note that the Minutes of the Finance and Infrastructure Committee meeting held on 5 May 2009, as circulated, were taken as read and confirmed.

156/09 RESOLVED on the motion of Crs Britten and Campbell that Item 1 of the Finance & Infrastructure Committee as reported be adopted.

IN FAVOUR: Crs Allen, Britten, Campbell, Hede, Hughes, Pincini, Sandrey, Seckold and Wykes

AGAINST: Nil

ABSENT: Nil

## 2. Apologies

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There were no apologies.

### 3. Federal Government Regional and Local Community Infrastructure Program Funding

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#### RECOMMENDATION

That Council note the status report on the Regional Local Community Infrastructure Program projects.

157/09 RESOLVED on the motion of Crs Britten and Campbell that Item 3 of the Finance & Infrastructure Committee as reported be adopted.

IN FAVOUR: Crs Allen, Britten, Campbell, Hede, Hughes, Pincini, Sandrey, Seckold and Wykes

AGAINST: Nil

ABSENT: Nil

### 4. Bermagui Surf Life Saving Club Building Stage 1

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#### RECOMMENDATION

1. That Council offer an interest free loan agreement for \$90,000 over 10 years to the BSLSC, recognising the annual opportunity costs as an annual donation to the club until the loan is repaid.
2. Council support future applications for government grants to complete the projects.

158/09 RESOLVED on the motion of Crs Britten and Campbell that Item 4 of the Finance & Infrastructure Committee as reported be adopted.

IN FAVOUR: Crs Allen, Britten, Campbell, Hede, Hughes, Pincini, Sandrey, Seckold and Wykes

AGAINST: Nil

ABSENT: Nil

### 5. Canning Street, Bega – establish *Bus Zone*

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#### Conflict of interest

Cr Pincini declared a conflict of interest on the basis that he is a local bus operator and departed the meeting room, taking no part in debate or voting on this item.

**RECOMMENDATION**

That, as per the attached Plan "A", 17.0 metres of *Bus Zone* be established on the west side of Canning Street, Bega. This zone is to extend from Jauncey Lane to 17.0 metres south of Jauncey Lane, and operate between the hours of 7:00 am and 5:30 pm Monday to Friday and 8:00 am and 4:00 pm Saturday.

159/09 RESOLVED on the motion of Crs Britten and Campbell that Item 5 of the Finance & Infrastructure Committee as reported be adopted.

IN FAVOUR: Crs Allen, Britten, Campbell, Hede, Hughes, Sandrey, Seckold and Wykes

AGAINST: Nil

ABSENT: Cr Pincini

Cr Pincini returned to the meeting room.

## **6. Wandella Road, Cobargo – establish *No Stopping* zone on school service road**

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**RECOMMENDATION**

1. That, as requested and as per the attached plan, 60.0 metres of *No Stopping* zone be established on the south side of the Wandella Road service road to Cobargo Public School. This is to be opposite the school bus zone, extend from the east exit of the service road on Wandella Road to 60.0 metres west of that exit, and operate 8.30am to 9.30am and 2.30pm to 3.30pm on school days as per existing bus zones.
2. That the *No Stopping* zone and parent parking issue be monitored.
3. That Cobargo Public School, in conjunction with the RTA school road safety unit at Wollongong, develop and implement a behavioural program to address road safety concerns outside the school.

160/09 RESOLVED on the motion of Crs Britten and Campbell that Item 6 of the Finance & Infrastructure Committee as reported be adopted.

IN FAVOUR: Crs Allen, Britten, Campbell, Hede, Hughes, Pincini, Sandrey, Seckold and Wykes

AGAINST: Nil

ABSENT: Nil

## 7. Fencing Issue – Lookout reserve, Tathra

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### RECOMMENDATION

That Council defer this matter pending a further report to Council on other options available for the reserve.

161/09 RESOLVED on the motion of Crs Britten and Campbell that Item 7 of the Finance & Infrastructure Committee as reported be adopted.

IN FAVOUR: Crs Allen, Britten, Campbell, Hede, Hughes, Pincini, Sandrey, Seckold and Wykes

AGAINST: Nil

ABSENT: Nil

## 8. Acquisition of land for stormwater drainage work in Victoria Street, Bega

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### RECOMMENDATION

1. That the land acquisition of 140 square metres within Lot 15 DP 906 is approved for \$3,500.
2. Authority is given to the Mayor and General Manager to sign the required documents.

162/09 RESOLVED on the motion of Crs Britten and Campbell that Item 8 of the Finance & Infrastructure Committee as reported be adopted.

IN FAVOUR: Crs Allen, Britten, Campbell, Hede, Hughes, Pincini, Sandrey, Seckold and Wykes

AGAINST: Nil

ABSENT: Nil

## 9. Proposal for the development of a sportsground at Evans Park, Kalaru

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### RECOMMENDATION

That Council:

1. confirm support in principle for the project and grants its agreement as landowner to the establishment of a sports field with supporting facilities and that this be included in the Recreational Strategy;

2. assist applications for funding;
3. seek further advice from the community group in relation to project capital cost estimates and a facility maintenance cost strategy.

163/09 RESOLVED on the motion of Crs Britten and Campbell that Item 9 of the Finance & Infrastructure Committee as reported be adopted.

IN FAVOUR: Crs Allen, Britten, Campbell, Hede, Pincini, Sandrey, Seckold and Wykes

AGAINST: Cr Hughes

ABSENT: Nil

## PLANNING AND ENVIRONMENT COMMITTEE

### 1. Confirmation of minutes

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#### RECOMMENDATION

That Council note that the Minutes of the Planning and Environment Committee meeting held on 5 May 2009, as circulated, were taken as read and confirmed.

164/09 RESOLVED on the motion of Crs Campbell and Britten that Item 1 of the Planning & Environment Committee as reported be adopted.

IN FAVOUR: Crs Allen, Britten, Campbell, Hede, Hughes, Pincini, Sandrey, Seckold and Wykes

AGAINST: Nil

ABSENT: Nil

### 2. Apologies

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There were no apologies.

### 3. DA No. 2008.0207: Staged concessional lot subdivision – Princes Highway, Frogs Hollow

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#### RECOMMENDATION

1. That Development Application 2007.0261 for the staged subdivision of land to create eight concessional lots and one residue allotment on Lots 1-5 DP910032,

Lots 9, 30, 89, 167, 168, 169, 170 & 232 DP750211, Lots 11, 14, 16 & 17 DP787822, Lot 1 DP772257, Lot 1 DP772316, Lot 10 DP740849, Lots 1 & 2 DP772310, Lots 1, 2 & 3 DP772305, Lot 1 DP772315, Lot 1 DP245789 and Lot 1 DP1100637 – Princes Highway, Frogs Hollow, be approved in accordance with the report submitted to Council on 26 May 2009 and the draft consent attached to the report, subject to condition 12 being amended to include:

c) That any future dwelling house shall be constructed to comply with AS2021- 2000 'Acoustics – Aircraft Noise Intrusion – Building Siting and Construction'.

2. That Council add the 1.4km section of Crown public road, from the Princes Highway to its road maintenance schedule.

165/09 RESOLVED on the motion of Crs Campbell and Britten that Item 3 of the Planning & Environment Committee as reported be adopted.

IN FAVOUR: Crs Allen, Britten, Campbell, Hede, Pincini, Sandrey, Seckold and Wykes

AGAINST: Cr Hughes

ABSENT: Nil

#### 4. **DA No. 2008.0215: Five lot subdivision – Lot 41 DP739306, 1291 Upper Brogo Road, Upper Brogo**

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##### **RECOMMENDATION**

1. That Development Application 2008.0215 for the five lot subdivision of Lot 41 DP739306, 1291 Upper Brogo Road, Upper Brogo be approved subject to the conditions outlined in the draft consent submitted to Council on 26 May 2009.
2. That Policy 4.1.1(q) "Extension of Council Maintained Roads" be varied to permit a gravel road standard.
3. That Council add that 125m section of Crown Public Road, from its intersection with Upper Brogo Road to the boundary of proposed Lot 5 in the subdivision of Lot 41 DP 739306, Upper Brogo Road, Upper Brogo to its road maintenance schedule.

166/09 RESOLVED on the motion of Crs Campbell and Britten that Item 4 of the Planning & Environment Committee as reported be adopted.

IN FAVOUR: Crs Allen, Britten, Campbell, Hede, Pincini, Sandrey, Seckold and Wykes

AGAINST: Crs Hughes

ABSENT: Nil

## 5. DA No. 2008.0416: Multi unit housing development – Lot 2 DP18927, Beach Street, Tathra

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### RECOMMENDATION

1. That Development Application 2008.0416 for multi unit housing development and strata subdivision in two stages on Lot 2 DP18927, No. 2 Beach Street, Tathra be approved subject to the conditions outlined in the attached Draft Development Consent with alterations to the conditions as follows:-
  - a) A new condition be added that the balcony of Unit 1 shall be increased to a minimum area of 50m<sup>2</sup>. Amended plans shall be submitted for approval of the Group Manager Planning and Environment prior to issue of the Construction Certificate by the Principal Certifying Authority.
  - b) Condition 5 be amended to read:

The landscape concept plan shall be amended to include screen planting along the eastern boundary for the length of the proposed building. The purpose of the planting is to provide visual privacy to the rear yards of the dwellings to the east from the east facing dining room window.

The amended plan shall provide a detailed description of the plantings proposed including maturity at height and growth time to maturity and be submitted for approval of the Group Manager Planning and Environment prior to issue of the Construction Certificate by the Principal Certifying Authority.
  - c) Condition 10 be amended to include:

Or

Each Unit be provided with a heat operated mechanical dryer.
  - d) Condition 18 be deleted.
  - e) Condition 16 be deleted.
  - f) Condition 44(a) be deleted.
2. That those persons who made a submission be formally notified of Council's determination.

167/09 RESOLVED on the motion of Crs Campbell and Britten that Item 5 of the Planning & Environment Committee as reported be adopted.

IN FAVOUR: Crs Allen, Britten, Campbell, Hede, Hughes, Pincini, Sandrey, Seckold and Wykes

AGAINST: Nil

ABSENT: Nil

## **6. Request for nominations for the Joint Regional Planning Panels**

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### **RECOMMENDATION**

That in accordance with the request from the Minister for Planning, The Hon. Kristina Keneally, Council:

- (a) nominate Councillors Campbell and Britten to be members of the Joint Regional Planning Panel for a period of six months;
- (b) nominate Councillor Allen as the first alternative and Councillor Pincini as the second alternative, should the nominated members referred to in (a) above be unavailable to attend a Joint Regional Planning Panel meeting;
- (c) formally advise the Minister for Planning of Council's decision.

168/09 RESOLVED on the motion of Crs Campbell and Britten that Item 6 of the Planning & Environment Committee as reported be adopted.

IN FAVOUR: Crs Allen, Britten, Campbell, Hede, Pincini, Sandrey and Seckold

AGAINST: Crs Hughes and Wykes

ABSENT: Nil

## **7. Exhibition of Eurobodalla Shire Council Draft Local Environmental Plan**

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### **RECOMMENDATION**

That the exhibition of the Eurobodalla Draft Local Environmental Plan be noted and that the Eurobodalla Shire Council be congratulated for the significant work they have undertaken.

169/09 RESOLVED on the motion of Crs Campbell and Britten that Item 7 of the Planning & Environment Committee as reported be adopted.

IN FAVOUR: Crs Allen, Britten, Campbell, Hede, Hughes, Pincini, Sandrey, Seckold and Wykes

AGAINST: Nil

ABSENT: Nil

## 9. Rescission/alteration motions

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There were no rescission/alteration motions.

## 10. Notices of Motion

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There were no notices of motion.

## 11. Urgent business (not elsewhere included)

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There were no items of urgent business.

## 12. Questions on notice

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**Question 12 - Cr Campbell** asked if the provisions of the State Environmental Planning Policy (Infrastructure) 2007 (SEPP) apply to the proposals for:

- a) Tathra Wharf Ring Road and
- b) Evans Park, Kalaru

So that development consent is not required and Council or community groups can proceed under the SEPP to construct and complete such projects. If so, will Council as landowner or trustee of the land agree to allow community groups associated with the projects to proceed to apply for grants?

The question was taken on notice by the Group Manager Planning and Environment who has provided Councillors with a response via memo prior to this Council meeting.

In summary:-

- a) Pursuant to Clause 94 of the SEPP, development for the purpose of road infrastructure facilities may be carried out by or on behalf of a public authority without consent on any land.

The proposed Tathra Wharf Ring Road would fall within the definition of road infrastructure facilities.

- b) Pursuant to clause 65(3) of the SEPP development for the purposes of outdoor recreational facilities, including playing fields, but not including grandstands may be carried out by or on behalf of a Council on a public reserve land or land vested in Council without the need for development consent. Amenity facilities are also permitted without the need for development consent.

In answer to the question the provisions of State Environmental Planning Policy – Infrastructure would apply to both proposals.

Whilst development consent would not be required Council would still be required to carry out a review of environmental factors (REF) under Part 5 of the Environmental Planning and Assessment Act 1979. In a practical sense the studies and investigations required to prepare a REF are not dissimilar to the work required to prepare a development application.

The remainder of the question relates to Council's role as asset owner/manager and has for Evans Park been addressed in the report to Council of 26 May 2009. The Tathra Wharf Ring Road proposal is currently subject to feasibility, investigation and design and will be reported to Council following that work.

**Question 2 - Cr Wykes** asked who is responsible for the cost of damage caused by a golf ball hitting the windscreen of a resident's vehicle whilst he was driving it on a Council maintained road adjacent to the golf course.

The question was taken on notice by the Group Manager Infrastructure Waste and Water who has provided Councillors with a response via memo prior to this Council meeting.

In summary:-

There is no definitive answer to this question. However, the following general principles apply. Firstly we must assume that entities such as Golf Clubs and Councils in fact carry public liability insurance. Following on from this assumption, if a vehicle is damaged then the owner may reasonably seek damages from the Club on the basis that the damage occurred as a result of an activity carried out on the Club land or land managed by the Club. The owner may also seek damages from Council on the somewhat tenuous basis that the golf ball was for a period of time on our land and somehow under our control.

The legal pathway then depends on how the Golf Club and Council view their actual negligence. The Club or the Council may independently take the view that they have some negligence in the matter and choose to settle it as an insurance claim or by direct payment. Alternatively they may choose to deny any liability.

If the Golf Club and Council were to deny any liability, then the aggrieved party is able to have the matter dealt with by the Courts. If the aggrieved party was successful at Court, then damages typically would be awarded based on an apportionment of

negligence or perhaps on a capacity to pay. The appeals process could then run its course.

### 13. Questions without notice

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**Cr Hede** asked the Acting Group Manager of Infrastructure Waste & Water regarding the standards that must be adhered to in relation to lighting and the distance between lights. He asked that an assessment of the lighting in Beach Street in Merimbula be carried out.

The Acting Group Manager of Infrastructure Waste & Water advised that it was a matter that Council liaised with Country Energy about, but there were standards that needed to be adhered to and that Council would request that an assessment of Beach Street in Merimbula be undertaken by Country Energy to ensure compliance.

**Cr Pincini** asked the Group Manager of Planning & Environment regarding the availability of industrial land in the Bega Valley.

The question was taken on notice by the Group Manager of Planning & Environment.

**Cr Hede** asked the Acting General Manager a question regarding item 14 of the Ordinary Agenda which resolves to declassify reports considered in closed session and whether the Woolworths reports that were considered in closed session could now be made available to the public.

The Acting General Manager advised that following the execution of documents and final probity reports are received, a report will then be presented to open Council to release reports and documents not declared "commercial in confidence".

### 14. Resolutions to declassify reports considered in closed session

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There were no resolutions to declassify reports considered in previous closed sessions.

### Closure

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There being no further business, the Chairperson closed the meeting at 4.18 pm.

CONFIRMED .....

CHAIRPERSON

Chairperson of the meeting of the Bega Valley Shire Council held on  
at which meeting the signature hereon was subscribed.