

**MINUTES OF THE ORDINARY COUNCIL MEETING OF THE MUSWELLBROOK SHIRE COUNCIL
HELD IN THE CHAMBERS, ADMINISTRATION CENTRE, MUSWELLBROOK ON TUESDAY 23
FEBRUARY, 2021 COMMENCING AT 6.00PM.**

PRESENT: Cr R.W. Scholes, Cr M. Bowditch (VC), Cr J.F. Eades, Cr J.P. Foy (VC),
Cr J.L. Ledlin, Cr G.T. McNeill, Cr S.M. Reynolds, Cr S.J. Ward and
Cr B.N. Woodruff.

IN ATTENDANCE: Ms F. Plesman (General Manager), Mr D. Finnigan (Deputy General Manager),
Mr M. Plumridge (Chief Financial Officer), Ms S. Pope (Executive Manager –
Planning & Environment), Mr P. Chambers (Chief Engineer), Mr M. Lysaught
(Manager – Works, Property & Building Services), Mrs M. Sandell-Hay (PA to
General Manager), 3 people in the public gallery and 1 person via Video
Conferencing.

1 ACKNOWLEDGEMENT OF COUNTRY

The Acknowledgement of Country was read by the General Manager.

2 CIVIC PRAYER

The Civic Prayer was read by Cr Reynolds.

3 APOLOGIES AND LEAVE OF ABSENCE

227 RESOLVED on the motion of Crs Eades and Reynolds that:

The apologies for inability to attend the meeting submitted by Cr M. Rush be ACCEPTED and
the necessary Leave of Absence be GRANTED.

4 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

228 RESOLVED on the motion of Crs Woodruff and Ledlin that:

The Minutes of the Ordinary Meeting held on 22 December 2020, and the Extra Ordinary
Meeting held on 2 February 2021, a copy of which has been distributed to all members, be
taken as read and confirmed as a true record.

5 DISCLOSURE OF ANY PECUNIARY AND NON PECUNIARY INTEREST

Cr J. Eades – declared a pecuniary interest in item 11.1. Cr Eades advised Council that her
employer is mentioned in the report.

Cr S. Reynolds – declared an insignificant non-pecuniary interest in Item 13.1. Cr Reynolds
advised the meeting that his daughter attends Muswellbrook Public School which is mentioned in
the minutes.

Cr B. Woodruff – declared a non-pecuniary interest in Item 19.4. Cr Woodruff advised Council
that he owns a neighbouring property.

Cr M. Bowditch - declared a pecuniary interest in Item 11.2. Cr Bowditch advised Council that
his employer undertakes work for the applicant.

Cr M. Bowditch – declared a pecuniary interest in Item 11.4. Cr Bowditch advised Council that is
employer undertakes work for the applicant.

6 PUBLIC PARTICIPATION

Mr Lindsay Kaynes – Spoke in support of 10.1.

Mr Robert Green – Spoke in support of Item 10.1

Mr Stephen Collins – Spoke in opposition to Item 10.1.

7 MAYORAL MINUTES

Nil

8 GENERAL BUSINESS

Nil

9 BUSINESS ARISING

Nil

10 ENVIRONMENTAL SERVICES

10.1 DA 2020-89 SERVICE STATION, 31-33 MAITLAND STREET, MUSWELLBROOK

MOTION:

Moved By Cr McNeill and Cr Ward

Council approves Development Application No. 2020/89, involving the establishment of a service station at Lot 3 DP 364391, Lot 4 DP 364391 and Lot B 36439, 31-33 Maitland Street, Muswellbrook, subject to the recommended conditions of consent in Attachment B, which includes a condition limiting the 24 hour 7 day a week operating hours proposed to a 12 month trial and subject to the following amendments to the conditions:

Amend condition 62 to read as follows

The premises may operate 24 hours, 7 days a week on a trial basis for a period of 1 year. The date for the commencement of this trial period is to be taken to be a date nominated in writing by the applicant to Council prior to the issue of an Occupation Certificate for the premises and the date on which 24-hour operation of the premises is to commence. If no correspondence is received to nominate the commencement date for the trial period, the date of issue for the Occupation Certificate is to be taken to be the nominated date for the commencement of the trial period.

The 24-hour operation of the premises is not permitted on any days preceding the nominated date for the commencement of the 24-hour, 7 day a week operating trial period.

At the conclusion of the 1-year trial period the premises must revert to utilising the night time pay Window only between the hours of 11pm-5am, unless a Section 4.55 modification has been lodged with Council for the continuation of the 24 hour, 7 day per week operation of the premises.

Where a Section 4.55 modification is lodged in line with the above, the development may continue to operate 24 hours, 7 days a week without the use of the night time pay window until that application is determined.

If the Section 4.55 modification is refused by Council or withdrawn the premises must utilise the night time pay window between the hours of 11pm - 5am, 7 days per week.

The use of the night time pay window is to be undertaken in accordance with the Store's:

- Locked Door Policy; and
- Night Pay Window Policy

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Note: the assessment of any application for the continuation of 24 hour a day operating times will be carried out in accordance with the relevant requirements of the Environmental Planning and Assessment Act 1979. Council will be particularly interested in any performance data from the 1 year trial period, compliance with the development consent requirements, outcomes of any noise monitoring, and complaints received by the operator, Council or NSW Police.

Include a new condition to read as follows

Operation Audit

Twelve months from commencement of the premises operation an environmental audit in relation to the premises, with a focus on its late night early morning trading, is to be carried out.

The audit is to be carried out by a suitably qualified professional or team of professionals with experience in town planning, crime risk management, acoustic assessment and light pollution. Prior to the conclusion of the twelve month trial period, details of the personnel engaged to complete the audit are to be provided to Council along with a reasonable anticipated timeline for its completion and submission to Council. If the person(s) nominated to complete the audit is not duly qualified to complete the audit or is not sufficiently independent Council may request an alternate person be engaged.

The audit must:

- i. Assess and report on the development's compliance with the conditions of consent;
- ii. Review the development's complaint register to ensure that it is being kept up to date and that appropriate action is being taken to resolve complaints and environmental impacts where they arise;
- iii. Review the effectiveness of noise, lighting and crime risk management strategies and make any recommendations around improvements to the site's function;
- iv. Conduct interviews with adjoining residents to identify any adverse environmental impacts being experienced as an outcome of the development. The audit report should recommend measures to address any issues identified through this consultation;
- v. Provide recommendations around any actions required to be implemented, ensure that the development operates to a high environmental standard and in line with best practice into the future.

A copy of the audit report is to be submitted to Council for review and approval. All recommendations put forward by the audit are to be implemented by the development and maintained into the future following its endorsement by Council.

Additional at all times condition restricting access via the rear of the site

site access

At all times no vehicle or pedestrian access to the rear of the site is permitted via the premises north of the site at 27 Maitland Street

THE MOTION WAS WITHDRAWN BY THE MOVER AND SECONDER

FURTHER MOTION

MOVED BY CR McNeill and Ward

This matter be deferred to the March Ordinary Council Meeting to enable Councillors to be provided with further information on the noise monitoring standards.

THE MOTION WAS WITHDRAWN BY THE MOVER AND SECONDER

229 RESOLVED on the motion of Crs Scholes and Ward that:

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If the Section 4.55 modification is refused by Council or withdrawn the premises must utilise the night time pay window between the hours of 11pm - 5am, 7 days per week.

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Include a new condition to read as follows

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- ii. Review the development's complaint register to ensure that it is being kept up to date and that appropriate action is being taken to resolve complaints and environmental impacts where they arise;
- iii. Review the effectiveness of noise, lighting and crime risk management strategies and make any recommendations around improvements to the site's function;
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- v. Provide recommendations around any actions required to be implemented, ensure that the development operates to a high environmental standard and in line with best practice into the future.

A copy of the audit report is to be submitted to Council for review and approval. All recommendations put forward by the audit are to be implemented by the development and maintained into the future following its endorsement by Council.

Additional at all times condition restricting access via the rear of the site

site access

At all times no vehicle or pedestrian access to the rear of the site is permitted via the premises north of the site at 27 Maitland Street

In Favour: Crs J. Eades, J. Foy, J. Ledlin, R. Scholes, S. Ward and B. Woodruff.

Against: Crs M. Bowditch, G. McNeill and S. Reynolds.

10.2 PLANNING AND ENVIRONMENTAL SERVICES

230 RESOLVED on the motion of Crs Reynolds and Ledlin that:

The information contained in this report be noted.

11 COMMUNITY INFRASTRUCTURE

11.1 WOLLOMBI PARK AND HUNTER PARK CONCEPT PLANS

Disclosure of Interest

Cr Eades declared a pecuniary interest in this item. Cr Eades advised Council that her employer is mentioned in the report. At 6:51pm Cr Eades left the Council Chambers and therefore took no part in discussion or voting on this matter.

231 RESOLVED on the motion of Crs Scholes and Reynolds that:

Council:

1. Place the draft concept plans for Wollombi Park and Hunter Park on public exhibition for a minimum period of 28 days;
2. A community engagement forum be held at Hunter Park; and
3. A further report be submitted to Council following public exhibition.

At 6:53pm Cr Eades returned to Council Chambers.

11.2 PROPOSED ROAD CLOSURE PART LOGUES LANE

Disclosure of Interest

Cr M. Bowditch declared a pecuniary interest in this Item. Cr Bowditch advised Council that his employer undertakes work for the applicant. At 6.54pm Cr Bowditch left the Meeting and therefore took no part in discussion or voting on this item.

232 RESOLVED on the motion of Crs McNeill and Reynolds that:

Council:

1. Approves, subject to the relevant statutory processes and negotiation of the relevant agreement(s), the closure and sale of a small section of Logues Lane as identified in the report;
2. Approves staff to proceed with the road closure process in accordance with Division 3 Part 4 of the *Roads Act 1993* including advertising the proposal;
3. Deems that construction has taken place on Logues Lane and as such the land remains vested in Council upon closure, in accordance with s. 38E (2) (a) of the *Roads Act 1993*;
4. In accordance with s.43 *Roads Act 1993* money received from the proceeds of the sale of the land is to be set aside and only used for acquiring land for public roads or for carrying out road works on public roads;
5. Subject to resolution 1 above, delegates to the General Manager:
 - (a) the negotiation of the commercial terms of the contemplated sale of the roads; and
 - (b) the execution of all relevant documents required to carry out the road closure and sale process.

At 6.55pm Cr Bowditch returned to Meeting.

11.3 MAJOR PROJECTS STATUS REPORT

233 RESOLVED on the motion of Crs Ward and Ledlin that:

Council notes the information contained in the report.

11.4 WYBONG ROAD REHABILITATION DESIGN SUMMARY REPORT

Disclosure of Interest

Cr M. Bowditch declared a pecuniary interest in this Item. Cr Bowditch advised Council that his employer undertakes work for the applicant. At 6.55pm Cr Bowditch left the Meeting and therefore took no part in discussion or voting on this item.

234 RESOLVED on the motion of Crs Eades and Ledlin that:

Council notifies MACH Energy that they are satisfied in principle with the Draft Issued For Construction design plans within the scope of works outlined in the "Rail Overbridge and Works Deed".

At 6.56pm Cr Bowditch returned to Meeting.

**11.5 PRELIMINARY DESIGN FOR THE PLANNED UPGRADE OF THE INTERSECTION OF
DENMAN ROAD AND THOMAS MITCHELL DRIVE, MUSWELLBROOK**

235 RESOLVED on the motion of Crs McNeill and Reynolds that:

Council notes the preliminary design provided by BHP Mt Arthur Coal for the planned upgrade of the intersection of Denman Road and Thomas Mitchell Drive, Muswellbrook, and that Council continues to liaise with the proponent and Transport for NSW for a preferred "seagull" intersection.

**11.6 REVIEW OF MUSWELLBROOK WASTE AND RECYCLING FACILITY LANDFILL
CLOSURE PLAN**

236 RESOLVED on the motion of Crs Woodruff and Ward that:

Council allocates \$60,000 from the Waste Reserve for the carrying out of a review of the Muswellbrook Waste & Recycling Facility Landfill Closure Plan and the team be congratulated for the work undertaken.

**11.7 WATER AND WASTEWATER LEVELS OF SERVICE FOR THE SECOND QUARTER OF
2020 - 2021**

237 RESOLVED on the motion of Crs Woodruff and Eades that:

Council notes the information contained in the report.

12 CORPORATE AND COMMUNITY SERVICES

12.1 2020-2021 OPERATIONAL PLAN 30 DECEMBER QUARTERLY REVIEW

238 RESOLVED on the motion of Crs Woodruff and Ledlin that:

The 2020/21 Operational Plan Review dated 30 December 2020 be noted.

12.2 DECEMBER 2020 MONTHLY FINANCIAL REPORT

239 RESOLVED on the motion of Crs Ledlin and Woodruff that:

The Financial Report for the month ending 31 December 2020 be noted.

12.3 JANUARY 2021 MONTHLY FINANCIAL REPORT

240 RESOLVED on the motion of Crs Ledlin and Woodruff that:

The Financial Report for the month ending 31 January 2021 be noted.

12.4 REPORT ON INVESTMENTS HELD AS AT 31 DECEMBER 2020

241 RESOLVED on the motion of Crs Ledlin and Woodruff that:

Information showing Council's investments as at 31 December 2020 be noted.

12.5 REPORT ON INVESTMENTS HELD AS AT 31 JANUARY 2021

242 RESOLVED on the motion of Crs Ward and Ledlin that:

Information showing Council's investments as at 31 January 2021 be noted.

12.6 REPORT ON COUNCIL GRANT FUNDING FEBRUARY 2021

243 RESOLVED on the motion of Crs Scholes and Ledlin that:

The report be noted.

12.7 COMMUNITY SERVICES

244 RESOLVED on the motion of Crs Eades and McNeill that:

The information contained in this report be noted.

12.8 DECEMBER BUDGET REVIEW 2020

245 RESOLVED on the motion of Crs Ledlin and Woodruff that:

Council adopt the list of proposed changes and incorporate them into the 2020/21 Budget.

13 REPORTS FROM COMMITTEES

13.1 LOCAL TRAFFIC COMMITTEE – 9 FEBRUARY, 2021

Disclosure of Interest

Cr S. Reynolds declared an insignificant non-pecuniary interest in this item. Cr Reynolds advised Council that his daughter attends Muswellbrook Public School who are mentioned in the Minutes. At 7.01pm Cr Reynolds left the Council Chambers and therefore took no part in discussion or voting on this matter.

246 RESOLVED on the motion of Crs Woodruff and Ledlin that:

The Minutes of the Local Traffic Committee Meeting held on Tuesday 9 February 2021 be received and the recommendations contained therein ADOPTED subject to the following amendment:

Cr Reynolds be removed from the Minutes of the meeting as he was not in attendance.

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HELD IN THE CHAMBERS, ADMINISTRATION CENTRE, MUSWELLBROOK ON TUESDAY 23
FEBRUARY, 2021 COMMENCING AT 6.00PM.**

At 7.32pm Cr Reynolds returned to Council Chambers.

13.2 FINANCE REVIEW AND ADVISORY COMMITTEE – 11 FEBRUARY, 2021

247 RESOLVED on the motion of Crs Scholes and Ledlin that:

The minutes for the Finance Review and Advisory Committee meeting held on Thursday 11 February 2021 be ADOPTED.

14 NOTICES OF MOTION / RESCISSION

Nil

15 QUESTIONS WITH NOTICE

15.1 AUSTRALIA DAY EVENTS

Cr Woodruff had inquired as to why all Councillors had not been invited to the Australia Day 2021 events held in Denman.

Ms Plesman advised that there was a limited number of occupants to the Events due to COVID-19. Mrs Sandell-Hay further advised that all invitations to Australia Day 2021 events and ceremonies were via calendar invite due to COVID Health requirements and that invitations to all Councillors were extended via the General Managers Office.

Cr Woodruff further advised that he did not receive an email.

Ms Plesman advised that this will be investigated with IT.

16 COUNCILLORS REPORTS

16.1 AUSTRALIA DAY 2021 EVENTS

Cr Jacinta Ledlin advised Council that she had attended the 2021 Australia Day Awards night held on 25 January, 2021 which was a small COVID safe event and the Citizenship Ceremony at the Denman Pool followed by a Fun Day on 26 January, 2021.

Cr Ledlin thanked staff and Councillors involved for co-ordinating well run Australia Day Events.

16.2 OPENING OF DENMAN MEMORIAL PARK

Cr Rod Scholes advised Council that he had attended the Opening of the Denman Memorial Park Playground today and congratulated Council Officers on the work undertaken.

Cr Scholes also advised Council that he toured Kings Gap, Yarrowa Road, with Mr Michael Johnsen where \$5m is going to be spent on upgrading the road.

16.3 MUSWELLBROOK AQUATIC CENTRE

Cr Stephen Reynolds advised Council that he has utilised the Outdoor Pool at the Muswellbrook Aquatic Centre and congratulated staff for the work undertaken on the Outdoor Pool at the Muswellbrook Aquatic Centre.

17 QUESTIONS FOR NEXT MEETING

17.1 IRONBARK ROAD FOOTPATH

Cr Graeme McNeill inquired whether funding for the footpath along Ironbark Road by State Government Grants had been applied for?

Mr Finnigan advised that Council had applied for \$250,000 for construction of this footpath.

Cr McNeill further inquired whether there were any timelines for when this work would be completed?

Mr Finnigan advised Council that this work is a high priority and would be actioned once funding had been confirmed.

18 ADJOURNMENT INTO CLOSED COUNCIL

248 RESOLVED on the motion of Crs Reynolds and Ledlin that:

Council adjourn into Closed Session and members of the press and public be excluded from the meeting of the Closed Session, and access to the correspondence and reports relating to the items considered during the course of the Closed Session be withheld unless declassified by separate resolution. This action is taken in accordance with Section 10A(2) of the Local Government Act, 1993 as the items listed come within the following provisions:

19.1 REQUEST TO REMOVE WASTE MANAGEMENT CHARGE FROM ASSESSMENT

Item 19.1 is classified CONFIDENTIAL under the provisions of Section 10A(2)(d)(i) of the local government act 1993, as it deals with commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it, and Council considers that discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

19.2 TENDER 2020-2021-0452 DESIGN AND CONSTRUCTION OF ANIMAL SHELTER AND ASSOCIATED WORKS

Item 19.2 is classified CONFIDENTIAL under the provisions of Section 10A(2)(c) of the local government act 1993, as it deals with information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business, and Council considers that discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

19.3 TENDER 2020-2021-0439 - WATER MAIN REPLACEMENT MUSWELLBROOK - REVISED

Item 19.3 is classified CONFIDENTIAL under the provisions of Section 10A(2)(d)(ii) of the local government act 1993, as it deals with information that would, if disclosed, confer a commercial advantage on a competitor of the council, and Council considers that discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

19.4 REQUEST TO REMOVE WASTE MANAGEMENT CHARGE FROM ASSESSMENT

Item 19.4 is classified CONFIDENTIAL under the provisions of Section 10A(2)(d)(i) of the local government act 1993, as it deals with commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it, and Council considers that discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

19 CLOSED COUNCIL

19.1 REQUEST TO REMOVE WASTE MANAGEMENT CHARGE FROM ASSESSMENT

249 RESOLVED on the motion of Crs McNeill and Eades that:

Council authorises removal of the Waste Management Service Charge from Assessment Number 49049 and instructs the Waste Services Contractor to remove any Council-issued mobile garbage bins from the premises.

19.2 TENDER 2020-2021-0452 DESIGN AND CONSTRUCTION OF ANIMAL SHELTER AND ASSOCIATED WORKS

250 RESOLVED on the motion of Crs Woodruff and Reynolds that:

Council accepts the tender from Dalski Construction Pty Ltd for the tendered fee of \$2,324,277.44, exclusive of GST, for Contract 2020-2021-0452 Design and Construction of Animal Shelter and Associated Works.

A further report is to be submitted to Council providing information relating to flood mitigation measures to be carried out by the successful tenderer.

At 7.17pm Cr Bowditch left the Meeting.

19.3 TENDER 2020-2021-0439 - WATER MAIN REPLACEMENT MUSWELLBROOK - REVISED

251 RESOLVED on the motion of Crs Ward and Reynolds that:

Council:

1. Approves the tender from TCM Civil Pty Ltd for Contract 2020-2021-0439 Water Main Replacement Muswellbrook, for the amount of \$622,262.41, exclusive of GST; and
2. Approves the contingency amount detailed in the Financial Implications section of the report.

19.4 REQUEST TO REMOVE WASTE MANAGEMENT CHARGE FROM ASSESSMENT

Disclosure of Interest

Cr B. Woodruff declared an insignificant non-pecuniary interest in this item. Cr Woodruff advised Council that he owns a neighbouring property. At 7.17pm Cr Woodruff left the Council Chambers and therefore took no part in discussion or voting on this matter.

252 RESOLVED on the motion of Crs Reynolds and McNeill that:

Council authorises removal of the Waste Management Service Charge from Assessment Number 81240 and instructs the Waste Services Contractor to remove any Council-issued mobile garbage bins from the premises.

At 17.17pm Cr Woodruff returned to Council Chambers.

20 RESUMPTION OF OPEN COUNCIL

253 RESOLVED on the motion of Crs Reynolds and Eades that:

The meeting return to Open Council.

21 CLOSURE

The meeting was declared closed at 7.18pm.

THE MINUTES OF THE MEETING (PAGES 1 TO 13) WERE CONFIRMED AT THE
ORDINARY COUNCIL MEETING OF THE MUSWELLBROOK SHIRE COUNCIL HELD ON
TUESDAY 30 MARCH, 2021 AND ARE A FULL AND ACCURATE RECORD OF
PROCEEDINGS OF THE MEETING HELD ON TUESDAY 23 FEBRUARY, 2021

.....
Ms F. Plesman
General Manager

.....
Cr R. Scholes
Chairperson