



**muswellbrook
shire council**

Muswellbrook Shire Council
**EXTRA ORDINARY COUNCIL
MEETING**

BUSINESS PAPER
26 JULY 2017



EXTRA ORDINARY COUNCIL MEETING, 26 JULY 2017

MUSWELLBROOK SHIRE COUNCIL

P.O Box 122
MUSWELLBROOK
21 July, 2017

Councillors,

You are hereby requested to attend the Extra Ordinary Council Meeting to be held in the CHAMBERS, Administration Centre, Muswellbrook on **26 July, 2017** commencing at 6.00pm.

Steve McDonald
GENERAL MANAGER

Order of Business

ITEM	SUBJECT	PAGE NO
1	ACKNOWLEDGEMENT OF COUNTRY	4
2	CIVIC PRAYER	4
3	APOLOGIES AND LEAVE OF ABSENCE	4
4	DISCLOSURE OF ANY PECUNIARY AND NON-PECUNIARY INTEREST	4
5	PUBLIC PARTICIPATION	4
6	ENVIRONMENTAL SERVICES	5
6.1	STRATEGIC HERITAGE PROJECTS UPDATE	5
7	CORPORATE AND COMMUNITY SERVICES	8
7.1	RESERVE TRUST MANAGEMENT OF SKELLATAR TRAVELLING STOCK ROUTE	8
8	NOTICES OF MOTION / RESCISSION	11
8.1	DOMESTIC WASTE FUND - COLLECTION SERVICES	11
9	ADJOURNMENT INTO CLOSED COUNCIL	14
10.1	ADDITIONAL SHORT TERM BORROWING FACILITIES AND ACCEPTANCE OF OFFERS OF LOAN FUNDING <i>Item 10.1 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.</i>	
10.2	MARKETPLACE - TENDER FOR SHOPPING CENTRE LEASING <i>Item 10.2 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.</i>	
10	CLOSED COUNCIL	14
11	RESUMPTION OF OPEN COUNCIL	15
12	CLOSURE	15



MUSWELLBROOK SHIRE COUNCIL

AGENDA

1 ACKNOWLEDGEMENT OF COUNTRY

2 CIVIC PRAYER

3 APOLOGIES AND LEAVE OF ABSENCE

4 DISCLOSURE OF ANY PECUNIARY AND NON-PECUNIARY INTEREST

Section 451 of the Local Government Act requires that if a councillor or member of a council or committee has a pecuniary interest in any matter before the council or committee, he/she must disclose the nature of the interest to the meeting as soon as practicable and must not be present at, or in sight of, the meeting, when the matter is being discussed, considered or voted on.

A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of financial gain or loss (see sections 442 and 443 of the Local Government Act).

A non-pecuniary interest can arise as a result of a private or personal interest which does not involve a financial gain or loss to the councillor or staff member (eg friendship, membership of an association, or involvement or interest in an activity). A councillor must disclose the nature of the interest to the meeting as soon as practicable.

Council's Model Code of Conduct now recognises two forms of non-pecuniary conflict of interests:

- Significant
- Less than significant

A Councillor must make an assessment of the circumstances and determine if the conflict is significant.

If a Councillor determines that a non-pecuniary conflict of interests is less than significant and does not require further action, they must provide an explanation of why it is considered that the conflict does not require further action in the circumstances.

If the Councillor has disclosed the existence of a significant non-pecuniary conflict of interests at a meeting they must not be present at, or in sight of, the meeting, when the matter is being discussed, considered or voted on.

5 PUBLIC PARTICIPATION

6 ENVIRONMENTAL SERVICES

6.1 STRATEGIC HERITAGE PROJECTS UPDATE

Attachments:	Nil
Responsible Officer:	Fiona Plesman - Director - Planning, Community & Corporate Services
Author:	Pathum Gunasekara - Acting Manager, Planning & Regulatory Services
Community Plan Issue:	<i>Plan liveable and sustainable urban areas</i>
Community Plan Goal:	<i>Sustainable planning, design and regulation support community needs</i>
Community Plan Strategy:	<i>Improve strategic Planning Processes and Deliverables</i>

PURPOSE

The purpose of this report is to provide an update on the current status of proposed strategic heritage projects for 2017-2018.

OFFICER'S RECOMMENDATION

1. Cr Rush be appointed as Councillor Spokesperson for Innovation, Land Use Planning and Heritage and removed as Councillor Spokesperson for Integrated Planning; and
2. The title of Councillor Spokesperson for Finance and Corporate Services be amended to Councillor Spokesperson for Finance, Corporate Services and Integrated Planning.
 - a. That Council establish the Innovation, Industry, Land Use Planning and Heritage Committee with the function of guiding Council's work in the area of Innovation, Industry, Land Use Planning and Heritage, with the following membership:
 - b. Councillor Spokesperson for Innovation, Industry, Land Use Planning and Heritage (as Chair);
 - c. Councillor Spokesperson for Finance, Corporate Services and Integrated Planning;
 - d. Councillor Spokesperson for Sustainability;
 - e. Councillor Spokesperson for Community Engagement;
 - f. Councillors _____ and _____ and _____ (should there be other interested Councillors); and
 - g. Such Council staff officers as the General Manager may wish to appoint (as advisors).
3. That a Heritage sub-Committee of the Innovation, Industry, Land Use Planning and Heritage Committee be established to be chaired by the Councillor Spokesperson for Innovation, Industry, Land Use Planning and Heritage; and
4. That Council seek expressions of interest for members of the Heritage sub-Committee.

Moved: _____ Seconded: _____

BACKGROUND

At its ordinary meeting on 11 July 2017, Council considered a report in relation to strategic heritage project update for 2017/2018. In noting the report, the Council resolved that:

1. *This matter be deferred to an extra-ordinary Council meeting to be held on 26 July, 2017.*

At the initial briefing to councillors, it was discussed that currently there is no dedicated councillor spokesperson for heritage matters, and heritage was considered as a part of planning portfolio in past. Therefore, it was suggested to appoint a councillor spokesperson to heritage and nominate two councillors (including Council spokesperson for heritage) to heritage committee.

Within the principal activities of Heritage Management in Council's Operational Plan 2017/18 the following actions are identified:

16.1.3 Support the conservation and restoration of the Shire's heritage items and require protection of Heritage items listed in the LEP in accordance with the OEH Heritage Protection Guidelines.

16.3.1 Funding allocation for heritage conservation and restoration is made available annually through the Local Heritage Grants Fund.

A Heritage Strategy for Muswellbrook Shire was developed early in 2014 to set the future direction for heritage initiatives. In 2016 Council endorsed the revised Muswellbrook Shire Heritage Strategy 2014-2017 to meet the requirements of the NSW Office of Environment and Heritage (OEH) in association with the three year funding agreement to support heritage management in Muswellbrook. As a condition of heritage funding, Council must prepare or update a heritage strategy to guide heritage management in the Muswellbrook Shire. Office of Environment and Heritage recently distributed new guidelines for preparation of Heritage Strategies and as such Council's current strategy is required to be reviewed to ensure it is in line with current guidelines.

REPORT

The Heritage Committee has played a significant role in the Heritage Management of Muswellbrook since its inception in the 1990's but has not recommenced meetings since the last Council election. The Heritage Committee 2016 consisted of four community members (Michelle Williams, Linda McIntosh, Rob Tickle & Jeff Wolfgang) one member of Council staff, the Heritage Advisor (engaged by Council) and two Councillors, one of whom chaired the meeting. The frequency of meetings varied from monthly to quarterly.

Council in the past has advertised when it wished to fill a vacancy on the committee and it is intended to readvertise all positions and contact previous committee members to determine if they are interested in continuing their service (many served for over 10-20 years).

The first step in re-establishing the heritage committee would be to revise and confirm the terms of reference of the committee and activate the committee so that it can provide guidance to Council in regard to:

- The Muswellbrook Shire Heritage Strategy – the review of the strategy to ensure it is in line with the new guidelines.
- Seek \$100K funding from the OEH 'Heritage Near Me' incentives program to review the LEP Heritage Inventory (in 2009 Department of Planning strongly recommended that we needed to update our heritage inventory completed in 1996. This has yet to be completed. The Muswellbrook Heritage Inventory can be viewed on Councils website <https://muswellbrook.nsw.gov.au/index.php/heritage-information/heritage-items-inventory>.)

Given the inventory is over 20 years old it is likely that some items have been modified or there is scope to include as yet unidentified and non-scheduled items from throughout the Shire.

- Undertake an agreement with School of Architecture and the Built Environment at the University of Newcastle

Advice received from the OEH 'Heritage Near Me' staff officers indicated that applications showing a collaborative approach to Heritage Management within the wider community are considered more favourably. Accordingly in addition to re-establishing the Heritage Committee, Council Staff have been in liaison with the School of Architecture and the Built Environment from the University of Newcastle (UON) in regards to establishing mutual beneficial arrangements between the Council and architectural heritage research students whom may assist with and inventory field research where appropriate as part of the Heritage Near Me project & LEP Heritage Inventory update.

- Heritage Advisory Services

Council has applied for continued funding from OEH for Heritage Advisory Services for 217/2018 and received funding of up to \$6k if matched \$1:\$1 by council contribution equating to funding of \$3k OEH \$3k Council). Based on the professional fees of the existing Heritage Advisor this equates to only 6 monthly visits (one business day per 2 months). Accordingly it is recommended that Council commences negotiations for more flexible options for an 'as needs' project based service to maximize budgetary limits of OEH funding.

CONCLUSION

At the time Council resolved upon the allocation of Councillor Spokesperson roles, no appointment was made with respect to Innovation, Land Use Planning and Heritage. It is recommended that Cr Rush be appointed to the new role and that he be relieved of the responsibility of Integrated Planning and that it be combined with the Finance and Corporate Services portfolio.

Council Officers recommend the re-establishment of the Heritage Committee; formal collaboration with the School of Architecture and the Built Environment at Newcastle University to contribute to a number of projects for example revision and upgrade of the Heritage Inventory; applying for grant funding under the OEH 'Heritage Near Me' (for the Heritage inventory) and re-negotiation of the Heritage Advisory Service to allow for more flexible arrangements within the allocated budget.

SOCIAL IMPLICATIONS

A well-managed heritage programme has positive indirect social implications through the preservation of a sense of place and a link to the past. This helps support local resilience and community values.

FINANCIAL IMPLICATIONS

Failure to have an up to date Heritage strategy risks the loss of support funding from the NSW Heritage Office.

POLICY IMPLICATIONS

The Heritage Strategy is the primary policy document for Council in managing heritage.

STATUTORY IMPLICATIONS

Not applicable.

LEGAL IMPLICATIONS

Not applicable.

OPERATIONAL PLAN IMPLICATIONS

The strategy will include actions identified above as a part of the Operational Plan for 2017/2018.

RISK MANAGEMENT IMPLICATIONS

Not applicable.

7 CORPORATE AND COMMUNITY SERVICES

7.1 RESERVE TRUST MANAGEMENT OF SKELLATAR TRAVELLING STOCK ROUTE

Attachments:	Nil
Responsible Officer:	Fiona Plesman - Director - Planning, Community & Corporate Services
Author:	Nicholas Alexander - Sustainability Officer - Land Care
Community Plan Issue:	<i>Plan liveable and sustainable urban areas</i>
Community Plan Goal:	<i>Protect our natural environment</i>
Community Plan Strategy:	<i>Protect and maintain the environment in a sustainable manner</i>

PURPOSE

To seek Council approval to become the reserve trust manager for land forming part of the historic Skellatar Travelling Stock Route from Muswellbrook Indoor Sports Centre to Adams Street.

OFFICER'S RECOMMENDATION

Council agree to be appointed as reserve trust manager for part of reserve 752449 as identified in the report.

Moved: _____ Seconded: _____

BACKGROUND

The subject area of Crown land is part of reserve 752449 for Future Public Requirements. Historically it formed part of the Skellatar Travelling Stock Route which was revoked in 1980 when most of the reserve was acquired for public road. There is currently no appointed reserve trust manager for the site. It is not subject to any lease or licence or Aboriginal Land Claim at the date of writing. Existing use of the site is limited to passive recreation and vehicular access, and it is already on Council's maintenance register routinely mown under Council's passive mowing contract.

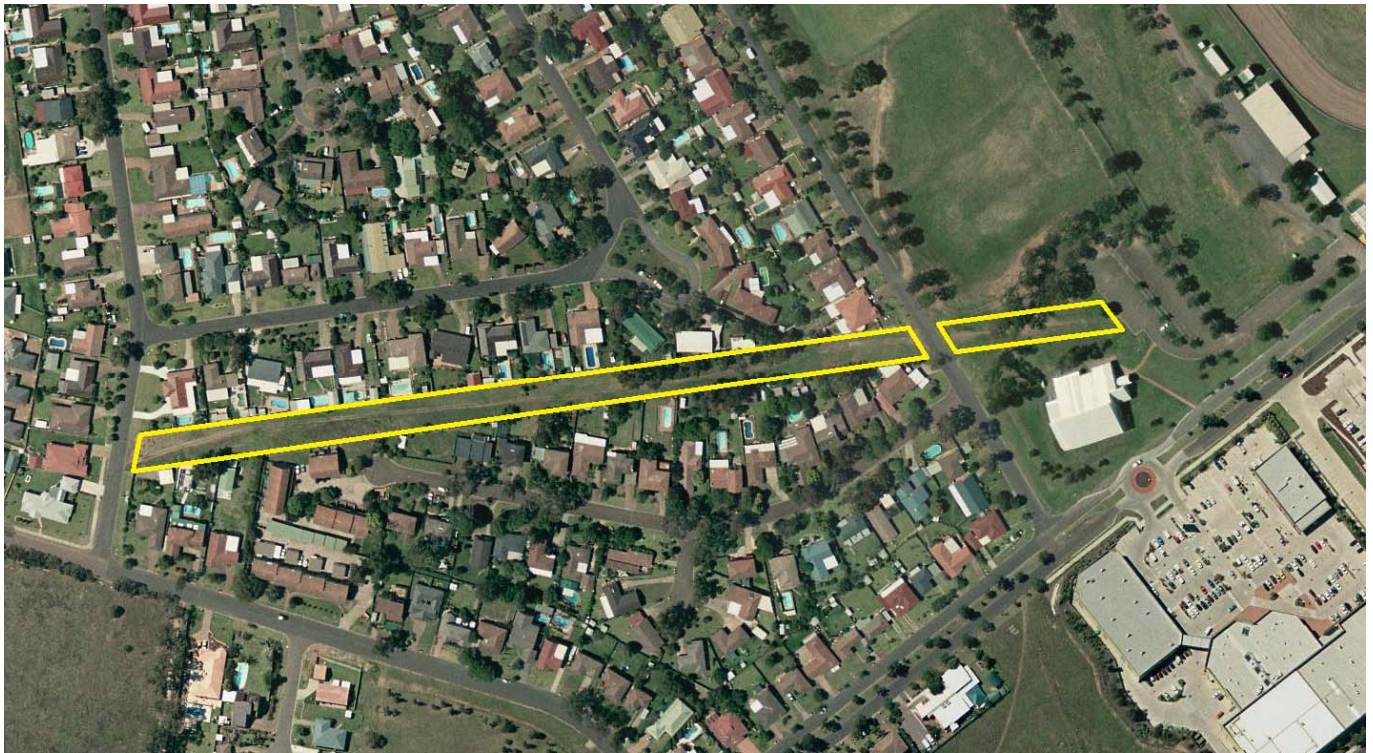


Fig 1. Location of the Crown land reserve

CONSULTATION

External

Natural Resource Management Project Officer (NSW Department of Industry)

Internal

Manager, Property and Building Services

Works Coordinator, Parks

Executive Services Coordinator

Director of Planning, Community and Corporate Services

Acting Manager, Planning and Regulatory Services

Manager Community Services

CONSULTATION WITH COUNCILLOR SPOKESPERSON

Cr Rod Scholes

REPORT

It is proposed to include this site as part of an application for the Australian Government's "20 Million Trees Program" Grant Round 3. The aim of the grant project will be to enhance the environmental values of a range of sites in Muswellbrook through the establishment of native forest and woodland, specifically Central Hunter Valley Eucalypt Forest and Woodland, which is an endangered ecological community, in an effort to create habitat for the critically endangered Swift Parrot.

Whilst the Department of Industry is generally supportive of the proposal they seek formalisation of Council's management of the site under the Crown Lands Act 1989 to authorise the proposed works and ongoing maintenance. This requires written advice to Crown Lands of Council's resolution in agreeing to be appointment as reserve trust manager.

The Department would then further investigate the option to reserve the site consistent with the proposed activity, e.g. for environmental protection and public recreation. This would provide Council

with some autonomy over future management actions and decisions and provide greater security for works such as those being proposed.

The new Crown Land Legislation which commences in 2018 would enable council to appropriate this land however the grant requires council to be official managers by the grant closure date of 15 August 2017.

OPTIONS

- 1) Agree to the appointment as reserve trust manager of the site, which will enable the site to be part of the "20 Million Trees" grant project; or
- 2) Not agree to the appointment as reserve trust manager of the site, and the site will be removed from the proposed "20 Million Trees" project.

CONCLUSION

In order to be able to include the part of reserve 752449 in a project under a "20 Million Trees Project" grant, council have to be appointed reserve trust manager. Once council provides written approval for this, the Department of Industry can then create the reserve and appoint Council as the Reserve Trust Manager.

SOCIAL IMPLICATIONS

Quality passive and native recreation areas contribute to the public amenity of the suburban environment.

FINANCIAL IMPLICATIONS

As the site is already managed under council's passive mowing contract, there will be no financial implications with an opportunity to reduce costs over time.

POLICY IMPLICATIONS

Not applicable

STATUTORY IMPLICATIONS

Crown Lands Act 1989

LEGAL IMPLICATIONS

Not applicable

OPERATIONAL PLAN IMPLICATIONS

'12.1 Support Landcare initiatives and programs to enhance native vegetation connectivity across the Upper Hunter', *Operational Plan 2017 -2018*

RISK MANAGEMENT IMPLICATIONS

Not applicable

8 NOTICES OF MOTION / RESCISSION

8.1 DOMESTIC WASTE FUND - COLLECTION SERVICES

Attachments: A. Legal Advice Received - Confidential

Responsible Officer: Fiona Plesman - Director - Planning, Community & Corporate Services

Councillor Martin Rush has indicated his intention to move the following motion at the next Ordinary Meeting (or such other meeting as the giving of notice by this email may facilitate), as follows:

MOTION

That:

1. The General Manager prepare, in consultation with such others as he/or she may determine -- provided that such consultation include Upper Hunter Shire Council -- a business case for the administration of Domestic Waste Collection Services (and such further or other waste collection services as he/or she thinks fit) by Council's Infrastructure Work's Business Unit directly;
2. The Business Case, so prepared, be reported confidentially to Council -- the reasons for which are:
 - a) that the Business case, if disclosed, would adversely impact upon the value-for-money received by the community through an open bid process; and
 - b) Disclose the community's confidential information, entrusted to Council, which, if disclosed, would provide an unfair commercial advantage to third parties.

Moved: _____ **Seconded:** _____

COMMENT BY DIRECTOR PLANNING COMMUNITY AND CORPORATE SERVICES

Legal advice was sought from Local Government Legal in relation to any conflicts of interest in relation to development of a business case for in-sourcing of domestic waste services. The advice provided states:

(d). there are in fact three possible outcomes as a result of the preparation of a business case. After considering the business case the council could decide to:

- i. provide the service in-house and not call for tenders;
- ii. call for tenders and Council submits an in-house bid;
- iii. call for tenders and council does not make an in-house bid.

(e). So as to ensure best practice in tendering, the process for preparing a business case must be carried out on the basis that the Council may ultimately make an in-house bid.

Funds have been made available to undertake a business case for the administration of Domestic Waste Collection Services by Councils Infrastructure Division and will be allocated from the Domestic Waste Account as suggested by the Chief Financial Officer (as stated below).

It is noted that the current waste and recoverables collection and recycling contracts expire July 2018 and as such it is imperative that preparation for the development of the waste tender and specifications for a contract be prepared without delay. It is recommended that a Business Case for in-house resourcing of this service is prepared while the waste tender is developed.

COMMENT BY DIRECTOR COMMUNITY INFRASTRUCTURE

Staff will generally only provide factual information on such motions to assist in the discussion of the motion if requested by the councillor. It is not appropriate for staff to comment on the merits of the motion in the Council.

The current waste and recoverables collection and recycling contracts expire July 2018.

Council considered a report on the matter at its meeting of February 2017. The report explained that Council needed to immediately commence preparations for the development of a new Tender specification to facilitate a smooth transition to a new Waste Contract after July 2018. The report sought Council to make available funds to engage a consultant to assist with the development of the new waste tender specifications.

Council resolved as follows;

That:

1. Council allocate \$40,000 from the Domestic Waste Fund, in the 2016-17 Budget, to fund the development of the waste tender and specifications for a contract for collection of waste and recoverable resources to commence post July 2018.
2. Council accept the recommendations made in the Shire Waste Management Sunset Review Committee report as to the content of the specifications.

Work is in progress to formulate the contract specifications and tender documents with a view to calling tenders as soon as possible in collaboration with Upper Hunter Shire Council. So, very limited time is available to develop the business case.

Preparation of a complex business case of this nature has not been anticipated nor budgeted for. So, the resolution should allocate sufficient funds to have this work done.

Being a major commitment for probably 10 to 14 years a thorough review of all aspects is warranted. Eg: What would be done in-house and what would need to be sub-contracted; Business model options, competitive neutrality, staffing, industrial relations matters, environmental management requirements, WH&S, plant procurement, depot improvements eg plant washing booth/bay, plant servicing, backup for staff and plant (reliability); risk assessment, advice and assistance in formulation of a tender etc. The tender is expected to be extremely complex.

Staff with the required knowledge are employed in the Waste area and they will have to be kept at arm's length in a competitive tender process. Therefore, Council will need to engage suitable expertise to be able to develop a tender that will be realistically competitive (that is, competitive from a base of knowledge that will enable satisfactory delivery of the contract within budget) against tenders from businesses who have been specialising in this field for many years.

Cost Implications

It is not known precisely what such professional/specialist advice would cost.

Preliminary estimated budget for professional/technical assistance is:

- Stage 1 - Feasibility

Preparation of preliminary feasibility, scope and preliminary business case; and estimate of cost for stage 2

~\$40,000;

- Hold – Report to Council for decision
- Stage 2 – Pre-tender and tender phases

Review business model and sub-contracts in light of council decision and again after actual tender document requirements are known; and

Tender formulation, procurement processes; negotiation with suppliers/sub-contractors; tender submission; responding to clarifications and requests for information.

~\$120,000 - \$160,000

- Hold awaiting determination of tender

A funding source would need to be identified.

Policy Implications

This report is prepared in accordance with Council's Code of Meeting Practice "When a notice of motion is placed on the Agenda, it must be accompanied by a staff report on the subject of the notice of motion.

Conclusion

It is recommended that a preliminary budget be allocated and that an additional motion/recommendation be inserted between 1 and 2:

2. That a preliminary budget be allocated for Stage 1 of \$40,000, with the source of funds to be identified as part of the September Budget Review.

COMMENTS FROM CHIEF FINANCE OFFICER

The initial work requested is for a business case to provide Domestic Waste services using in-house resources. No budget exists for the required \$40,000 so a new allocation has been requested. The funds will need to be sourced from another budget allocation or from reserves.

The cost of domestic waste collection is funded from the Domestic Waste Annual Charge and the legislation specifically states that "a council must not apply income from an ordinary rate towards the cost of providing domestic waste management services". The costs of investigations relating to the possible provision of the service using in-house resources should be able to be funded from the Domestic Waste Account, as part of "the provision of domestic waste services". If part of the service relates to trade waste services there should be a percentage apportionment between the General Fund (ordinary rate funded) and Domestic Waste Annual Charge reserve.

If council does proceed to deliver the service in house there will be set up costs additional capital expenditure will be required. The quantum of cost is dependent on the nature of any services delivered in-house as opposed to by sub contract. Full costings on the set up costs and funding requirements will be needed as part of the business case.

9 ADJOURNMENT INTO CLOSED COUNCIL

In accordance with the Local Government Act 1993, and the Local Government (General) Regulation 2005, in the opinion of the General manager, the following business is of a kind as referred to in Section 10A(2) of the Act, and should be dealt with in a Confidential Session of the Council meeting closed to the press and public.

RECOMMENDATION

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:

10.1 ADDITIONAL SHORT TERM BORROWING FACILITIES AND ACCEPTANCE OF OFFERS OF LOAN FUNDING

Item 10.1 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.

10.2 MARKETPLACE - TENDER FOR SHOPPING CENTRE LEASING

Item 10.2 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.

Moved: _____ **Seconded:** _____

10 CLOSED COUNCIL

11 RESUMPTION OF OPEN COUNCIL

12 CLOSURE