



Agenda

Ordinary Meeting

Notice is hereby given that a Ordinary Meeting of Council will be held at Council Chambers, 1 Belgrave Street, Manly, on:

Monday 18 September 2006

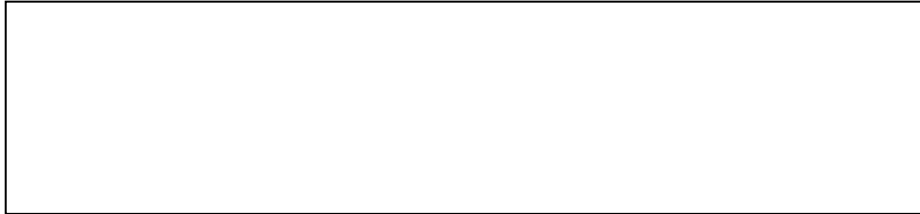
Commencing at 7:30:00 PM for the purpose of considering items included on the Agenda.

Persons in the gallery are advised that the proceedings of the meeting are being taped for the purpose of ensuring the accuracy of the Minutes. However, under the Local Government Act 1993, no other tape recording is permitted without the authority of the Council or Committee. Tape recording includes a video camera and any electronic device capable of recording speech.

*Copies of business papers are available at the Customer Services Counter at Manly Council, Manly Library and Seaforth Library and are available on Council's website:
www.manly.nsw.gov.au*

Seating Arrangements for Meetings

Staff Staff General
Manager Chairperson Staff Minute
Taker



Mayor Dr Peter
Macdonald

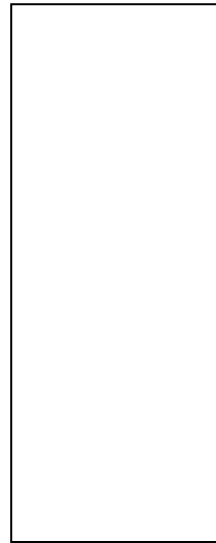
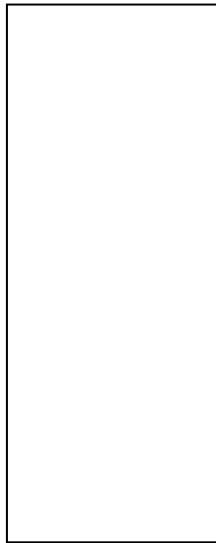
Clr Mark Norek

Clr Joanna Evans

Deputy Mayor
Clr Barbara Aird

Clr Brad
Pedersen

Clr Richard
Morrison



Clr Jean Hay AM

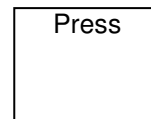
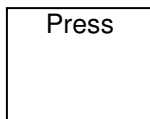
Clr Adele Heasman

Clr Dr Judy Lambert
AM

Clr Simon Cant

Clr David Murphy

Clr Pat Daley



Public
Addresses

Public Gallery

Chairperson: The Mayor, Dr Peter Macdonald
Deputy Chairperson: Deputy Mayor Clr Barbara Aird

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Notice of Rescission regarding General Manager's Report No. 26, Tender Outdoor Dining <i>It is recommended that the Council resolve into closed session with the press and public excluded to allow consideration of this item, as provided for under Section 10A(2) (d) of the Local Government Act, 1993, on the grounds that the report contains commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it; or (ii) confer a commercial advantage on a competitor of the council; or (iii) reveal a trade secret.</i>	

General Managers Division Report No. 28

Kimbriki Recycling and Waste Disposal Centre It is recommended that the Council resolve into closed session with the press and public excluded to allow consideration of this item, as provided for under Section 10A(2) (d) of the Local Government Act, 1993, on the grounds that the report contains commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it; or (ii) confer a commercial advantage on a competitor of the council; or (iii) reveal a trade secret.

QUESTIONS WITHOUT NOTICE**MATTERS OF URGENCY**

(In accordance with Clause 14 of the Local Government (Meetings) Regulations, 1993)

******* END OF AGENDA *******

TO: Ordinary Meeting - 18 September 2006
REPORT: Notice of Motion Report No. 17
SUBJECT: Public Forum regarding binge drinking
FILE NO:

Councillor Pedersen will move:

That council endorse and financially support the proposed public forum in Manly on Binge Drinking.

NOTE:

Preparation is already underway for an educational public forum in Manly on alcohol abuse and binge drinking. The forum date is set for 18 October 2006 and the venue is Stella Maris College. Proposed speakers include representatives from the NSW Police, MDECC, NSW Department of Health, a Salvation Army representative and a local legal expert.

ATTACHMENTS

There are no attachments for this report.

OM180906NM_1

***** End of Notice of Motion Report No. 17 *****

TO: Ordinary Meeting - 18 September 2006
REPORT: Item For Brief Mention Report No. 10
SUBJECT: Items for Brief Mention
FILE NO:

1. Reports:

END OF FINANCIAL YEAR REPORTS – ITEMS FOR END OF YEAR CLEARANCE

Annual Financial Statements Certificate Year Ended 30 June 2006

In accordance with Section 413(2)(c) of the Local Government Act, Council is required to include with its Annual Financial Reports a "Statement" signed under resolution of Council, by the Mayor, one other Councillor, the General Manager and the Responsible Accounting Officer in respect to the General Purpose Annual Financial Statements as well as the Special Purpose Financial Statements.

Council's Auditors will be commencing the audit during September and these "Statements" will enable Council's Auditor to complete the audit and for Council to submit the audited Financial Reports to the Department of Local Government by 7 November 2006. The Annual Financial Reports will be presented to the Council following completion of the audit.

A draft set of Financial Reports for Year Ended 30 June 2006 will be tabled at the meeting.

2. Minutes Of Meetings:

- i. ACCESS COMMITTEE MINUTES OF MEETING HELD ON 17 AUGUST 2006
- ii. MANLY ART GALLERY AND MUSEUM LIAISON COMMITTEE MEETING HELD ON 16 AUGUST 2006.
- iii. MANLY ARTS FESTIVAL COMMITTEE MEETING HELD ON 9 AUGUST 2006.
- iv. MANLY PUBLIC ART COMMITTEE MEETING HELD ON 23 AUGUST JUNE 2006.
- v. MANLY YOUTH COUNCIL MINUTES OF MEETING HELD ON 21 AUGUST 2006
- vi. THE MANLY MEALS ON WHEELS SERVICE COMMITTEE MINUTES OF MEETINGS HELD ON 9 AUGUST 2006
- vii. THE MANLY SISTER CITIES COMMITTEE MINUTES OF MEETING HELD ON 2 AUGUST 2006
- viii. MANLY NEIGHBOURHOOD RENEWAL PROGRAM COMMITTEE HELD ON 6 SEPTEMBER 2006
- ix. SHOROC MINUTES OF MEETING HELD ON 6 SEPTEMBER 2006

Item For Brief Mention Report No. 10 (Cont'd)**RECOMMENDATION**

1. That in respect to Council's General Purpose Annual Financial Statements and Council's Special Purpose Financial Statements for the year ended 30 June 2006, that the Certificates as tabled be signed under resolution of Council by the Mayor, the Deputy Mayor (or one other Councillor), the General Manager and Responsible Accounting Officer.
2. That the recommendations of **Minutes of Meetings, as listed in item 2, being 2 (i) to (ix),** as listed above, be **adopted**.

ATTACHMENTS

There are no attachments for this report.

OM180906IBM_1

***** End of Item For Brief Mention Report No. 10 *****

TO: Ordinary Meeting - 18 September 2006
REPORT: General Managers Division Report No. 29
SUBJECT: Manly Scenic Walkway - West of Bolingbroke Parade Cul-de-sac - Completion of the "Missing Link" and the Issue of Private Vehicle Access
FILE NO:

SUMMARY

- This report arises out of the completion of the deliberations regarding options for establishing the East West Cycleway Link.
- Given that Council has now determined that the East West Cycleway Link will be along Lauderdale Avenue, it is appropriate for Council to now determine how it will resolve the incomplete section of the Manly Scenic Walkway between the end of Bolingbroke Parade and the upgraded foreshore pathway to the west.

REPORT

When Council considered these two matters previously, it resolved to separate the two issues and to call for a Independent Consultant Report on the cycleway issue. That Report was completed by Manidis Roberts in February, 2006 and Council resolved to pursue the East West Cycleway Link via the Lauderdale Avenue option.

Councillors will recall that this matter has a long and protracted history and that properties 53, 55, 61 and 63 Lauderdale Avenue have been using access off the end of Bolingbroke Parade to their private property for many years.

The above properties were apparently built in the 1920's and 1930's gaining access across the Reserve. In 1978 the Council attempted to close the vehicular access and due to representations made by the residents in relation to Fire Brigade access, Ambulance access, etc., no further action was taken.

In 1989 the Council again attempted to close the access and after representations no further action was taken.

In 1999 the Manly Scenic Walkway Committee again raised the vehicular access issue. At that time a suggestion was put forward by the owners that they might be prepared to contribute a sum of \$10,000 to access their property and/or have a parking bay within the Reserve.

Status of the Reserve

Esplanade Park is a Crown Reserve and Council has Care Control and Management of the Reserve. When Council was exploring options in relation to the vehicle access and parking question, a letter was directed to the Crown Lands Office to seek direction and policy advice as to what limitations there may be in relation to Council dealing with this matter.

In writing to the Crown Lands Office, the enquiry was couched in terms that explored Council's latitude in dealing with the matter, such as:-

1. Can Council seek the Department of Lands concurrence that it will take no further action to prevent unauthorised vehicle access.

General Managers Division Report No. 29 (Cont'd)

2. The possibility of adjacent private owners making a contribution of the provision of infrastructure within the Reserve to improve access on the basis that in return the owners receive some form of "authorised right of access or tenure".

By letter dated 20th May, 2005, the Crown Land's Office advised:-

"Esplanade Park is reserved for "public recreation" and the Department's policy in relation to the use of reserved land for private access and parking is quite clear. It is long standing policy that private use of public reserves for such purposes are not acceptable. The Department's policy and management of Crown Reserves stems from a body of case law which essentially requires that:-

- (i) use of the reserve be conducive or ancillary to its public purpose;
- (ii) public use and enjoyment is a right that should not be diminished by private use.

The Department's policy in relation to use of Reserve land for private access and parking is quite clear. It is a long standing policy that private use of Public Reserve for such purposes are not acceptable".

The further guidance offered by the Lands Office at that time was that Council could attempt to proceed to change the status of the land from Crown Reserve to Public Road, but that would involve acquisition of the land from the Crown. The further advice was that this would need to go through due process and would be the subject of a public exhibition and objection process.

It was suggested that there might be broad community opposition to such a proposal to convert the Reserve to a Road for the purpose of access and parking for private vehicles and that even if this obstacle was overcome, there would be the question of the cost of acquisition which would be at "market" valuation commensurate with the value added to the properties serviced. This could be hundreds of thousands of dollars.

Council Resolution of 18th July, 2005

"That the matter relating to Esplanade Park and Bolingbroke Parade be deferred pending a response from the Minister for Local Government regarding the submission from the residents (regarding formalisation of access) and a separate report be provided by Council detailing the following options:-

1. Acquisition of the reserve to be dedicated as a public road.
2. Impact if Council take no action.
3. To proceed with improvements for the walkway for the purposes of allowing access for emergency vehicles."

Each of these points is addressed hereunder:-

1. Response from the Minister for Lands (dated 23rd September, 2005) to Representations made by Local Residents through the Local Member, Mr. David Barr, MP:-

"I refer to your representations on behalf of Mr. Tony Sattler, Sattler and Associates, concerning the provision of vehicular access and parking within Esplanade Park to benefit the owners of properties at Nos. 51, 55, 61 and 63 Lauderdale Avenue, Manly.

General Managers Division Report No. 29 (Cont'd)

Esplanade Park is a Crown Reserve which was created for the notified purpose of public recreation. In that regard the Department of Lands has advised that the use of the reserve for private vehicular parking and access is inconsistent with the purpose of the reservation and alienates the public generally from the use and enjoyment of the reserve. This position stems from a number of common law decisions which guide the management of public lands.

The owners of the properties in question currently have legal access from Lauderdale Avenue. The provision of access or any additional access to freehold properties and subsequent subdivision is the responsibility of the planning and consent authority, in this instance Manly Council. Notwithstanding that the reserve may have been utilised by the relevant property owners for some considerable time, the fact remains that such use has no legal status and there is no basis to alter the situation through the alienation of part of a public park.

It is considered the only option to legitimise the current usage is acquisition of the affected part of the reserve by Council pursuant to the provisions of the Land Acquisition (Just Terms Compensation) Act, 1991. This advice has recently be conveyed to Council.

I am unable to be of any further assistance and suggest that this matter be pursued with Manly Council."

2. Impact if Council takes no Action

This is a difficult matter to address in a report, however, I am not aware of any recent pro-active action from Crown Lands NSW to sanction any Council in similar circumstances. However, there was a concerted action some 20 to 30 years ago to remove all unauthorised encroachments on Crown Reserve and Council was obliged under the terms of the Care Control and Management provisions to ensure that these encroachments were removed.

In the time that this area has been used by property owners to access and park, I am not aware of any proceedings being initiated by the Crown Lands Office. In spite of this, it is incumbent on Council to administer the Reserve in accordance with the Crown Lands Act. It does raise the question of Council's obligation to uphold the law and perhaps even more importantly to be very cautious about a "no action" option, particularly in a situation where this might lead to a heightened risk of public liability exposure (e.g. Council allowing or endorsing vehicles to continue to use the Crown Reserve which is dedicated for Public Recreation Purposes and where private vehicle access and parking is against the terms and spirit of the Law).

3. Proceed with Improvements for the Walkway for the Purpose of Allowing Access for Emergency Vehicles

Emergency vehicles are equipped with appropriate warning devices and in general they have special access through Council boom gates, etc., to allow them to deal with all manner of emergencies. Emergency vehicles frequently traverse reserves for the purpose of fighting bush fires, dealing with sports injuries, dealing with storm damage, etc.

It would be possible and consistent with the Public Reserve status and Crown Land provisions to allow emergency service vehicles access when required (whilst denying private vehicle access).

General Managers Division Report No. 29 (Cont'd)**Discussion of Options****1. OPTION 1 - Acquisition of Reserve to be Dedicated as a Public Road**

It is expected that when this proposal to turn part of the Public Reserve into a Road is publicly exhibited, there would be part of the general community that would see this as inappropriate and I would anticipate that a large number of ratepayers would object to a considerable sum of money being expended to convert Reserve land to a Road for private benefit.

Even if the owners of the adjacent properties were prepared to contribute a very substantial sum of money to acquire the reserve for the purpose of a Road, I would expect that there would be public opposition to the general principal.

2. OPTION 2 - That Council take no Action

As an Officer of Council, I could not recommend that course of action as it requires Council and its staff to fail to administer the area under its Care Control and Management in accordance with the Terms of the Crown Lands Provisions.

I also have a serious concern that in taking this action Council would be potentially exposing itself to an abnormal risk in the event that there was an accident involving a car in this section of the Reserve.

3. OPTION 3 - Proceed with Improvements to the Walkway for the Purpose of Allowing Access for Emergency Vehicles

This option is favoured.

It should be noted that in 1999, Council resolved to approve an on-street car parking design for Bolingbroke Parade that would increase the number of cars (10/12) to be parked in that street and that Council would then implement a "No Access" and "No Parking" in Esplanade Park Policy.

Council conveyed this decisions to the residents in the surrounding area and objections were received in relation to the manner of layout of the additional car parking spaces and there was an expression of support for a Resident Parking Scheme in lieu of the simple introduction of more parking. The argument was that more parking would just cater for the boating fraternity rather than residents.

Councillors will now be aware that a Resident Parking Scheme has been implemented in this area and under this scheme residents have priority parking.

It may be possible that an additional priority could be given to these four properties by providing parking within the cul-de-sac nearest to their frontages and that this could be given a "Special Zone" designation, and so give them a priority over and above other residents in the area. It should be noted that this may have some implications for nearby residents and/or impact on the nearby boat shed.

General Managers Division Report No. 29 (Cont'd)**RECOMMENDATION**

1. That Council proceed with the Option 3 scenario and that Council staff investigate the establishment of a "Special Zone" at the termination of Bolingbroke Parade with a view to giving special priority to the residents who currently access through the Reserve.
2. That Council install bollards to preclude private vehicle access to the Reserve and that the pathway between the end of the cul-de-sac at Bolingbroke Parade and the Foreshore Pathway be upgraded to a standard suitable for emergency vehicle access. Further, that emergency services be provided with the necessary key access.
3. That the Council proceed as soon as possible to upgrade the Foreshore Scenic Pathway to a standard commensurate with the general pathway construction and that the area be landscaped to present as a pedestrian pathway within the Foreshore Reserve and that there be no provision made for private vehicle access or parking in the Reserve as this would be contrary to the advice of the Minister and the Department of Lands.

ATTACHMENTS

There are no attachments for this report.

OM180906GMO_2

***** End of General Managers Division Report No. 29 *****

TO: Ordinary Meeting - 18 September 2006
REPORT: Corporate Services Division Report No. 23
SUBJECT: Accounts - Report on Council Investments as at 31 August 2006
FILE NO:

SUMMARY

Latest accounting statements for the period to 31 August, 2006

1. Statement showing general fund bank account balance as at 31 August, 2006.
2. Cash investments as at 31 August, 2006.

REPORT

1. Statement Showing General Fund Bank Account Balance as at 31 August, 2006

Limit of overdraft arranged with bank	\$400,000.00 Dr
Bank Balance as at 31 August, 2006 ⁽¹⁾	\$1,293,618.67 Cr

2. Details of Council Investments Pursuant to the General Regulation as at 31 August, 2006.

In accordance with clause 212 of the Local Government (General) Regulation 2005, a report setting out the details of money invested must be presented to Council on a monthly basis.

For the information of Councillors, the following cash investments were held by Council as at 31 August, 2006.

Invest Date	Maturity/ Call date	Institution	Term (Days)	Rate	Amount	Interest
15/07/02	15/07/07	HSBC	1826	6.76	1,000,000.00	16,895.75 ⁽²⁾
15/08/02	15/07/07	HSBC	1795	6.76	2,008,481.93	33,791.50 ⁽²⁾
30/07/02	12/12/06	Bendigo Bank	1596	7.95	510,200.00	9,937.49 ⁽³⁾
08/08/02	08/08/07	Bank of Qld	1826	7.48	1,000,000.00	18,691.75 ⁽⁴⁾
02/09/02	28/09/06	Suncorp Metway	1487	6.75	1,005,210.00	33,750.00 ⁽⁵⁾
18/02/03	18/02/08	Macquarie Bank	1826	5.75	1,000,000.00	28,750.00 ⁽⁶⁾
02/04/04	02/04/09	Adelaide Bank	1826	6.54	500,000.00	8,156.72 ⁽⁷⁾
03/12/04	03/12/09	NM R'child & Son (Aust)	1826	7.24	700,000.00	12,635.29 ⁽⁸⁾
15/12/04	15/12/09	Aust Central C/U	1826	7.15	1,000,000.00	17,874.99 ⁽⁹⁾
25/10/05	25/10/06	Emu Structured Note	365	7.00	500,000.00	35,000.00 ⁽¹¹⁾
05/07/06	05/07/12	WBC PP Ethical Note	2192	7.58	500,000.00	18,941.75 ⁽¹²⁾
21/05/04	21/05/07	CBA	1095	6.20	719,877.16	44,632.38 ⁽¹⁰⁾
11/07/06	12/09/06	IMB	63	6.04	1,250,000.00	13,031.51
11/07/06	11/10/06	IMB	92	6.09	1,250,000.00	19,187.67
30/08/06	28/11/06	LGFS	90	6.31	2,000,000.00	31,117.81
		LGFS Ethical Fund	@CALL	6.43	1,052,750.38	
		IMB	@CALL	6.00	5,000.00	
		CBA	@CALL	5.95	<u>2,217,047.71</u>	
					18,218,567.18	

1) Balances in-excess of \$750,000 earns 5.50%pa

2) Interest to 15 October, 2006 only

3) Interest to 12 September, 2006 only

4) Interest to 8 November, 2006 only

5) Interest to 28 September, 2006 only

6) Interest to 18 February, 2007 only

7) Interest to 2 October, 2006 only

8) Interest to 3 December, 2006 only

Corporate Services Division Report No. 23 (Cont'd)

- 9) Interest to 15 September, 2006 only
- 10) Interest to 21 May, 2007 only
- 11) Interest calculated at the guaranteed interest floor of 7.00%pa for the first year
- 12) Interest to 5 January, 2007 only

Except for (5), (6), (10) and (11) interest is calculated at a floating rate, fixed for the duration of each subsequent quarter, based on the prevailing interest rates at the quarterly reset date/s. (12) resets on a semi-annual basis.

Investment Performance	Council	Benchmark*	90 day BBSW**
Returns - August 2006 [%pa]:	6.56	6.44	6.19

* benchmark is 90day BBSW plus 0.25%pa

** 90 day BBSW is the average 90 day bank bill rate for the month.

Certification – Responsible Accounting Officer

The Chief Financial Officer hereby certifies that the investments listed above have been made in accordance with Section 625 of the Local Government Act 1993, clause 212 of the Local Government (General) Regulation 2005 and Council's Investment Policy.

RECOMMENDATION

1. That the statement of General Fund Bank Account balance as at 31 August, 2006 be received and noted.
2. That the certification by the Chief Financial Officer be noted.
3. That details of Council's cash investments as at 31 August, 2006 be received and noted.

ATTACHMENTS

There are no attachments for this report.

OM180906CSD_1

***** End of Corporate Services Division Report No. 23 ***** .