

26 May 2010

His Worship the Mayor & Councillors

I have to advise that a **Policy Committee Meeting** will be held in the Council Chambers on Wednesday, 2 June 2010 commencing at 5.00 pm.



D J Sherley
GENERAL MANAGER

BUSINESS AGENDA

POLICY COMMITTEE

TO BE HELD ON WEDNESDAY, 2 JUNE 2010

1. 5PM MEETING COMMENCES
2. APOLOGIES
3. REPORT OF PREVIOUS MEETING
 - * Minutes - Policy Committee Meeting - 5 May 2010
4. DECLARATION OF INTEREST
 - To assist the Councillors and committee members in their correct consideration of business before them at the meeting, please give consideration to Section 451 of the Local Government Act, in relation to Declaration of Interest at meetings.
5. RECEIVE AND DEAL WITH DIRECTORS' REPORTS
 - * General Manager's Report
6. GENERAL BUSINESS
7. DISCUSSION FORUM - DEVELOPMENT APPLICATION SUBMISSIONS
 - * Development Application No. 2010/0461 – Demolition Of Commercial Building At 66-68 George Street. Applicant: Bolam Property Investments Pty Ltd. Owner: Bolam Property Investments Pty Ltd.
 - * Sunny Corner - Contaminated Land Policy
8. DISCUSSION FORUM OTHER
9. MEETING CLOSE

MINUTE

1 MEETING COMMENCES

Present: Councillors Toole (Chair), Aubin, Bourke, Hanger, Morse, Thompson, Westman.

In attendance: General Manager, Director Corporate Services & Finance, Director Environmental Planning & Building Services, Director Engineering Services, Director Cultural & Community Services, Manager Corporate Governance, Manager Recreation, Manager Water & Waste, Manager Technical Services, Manager Environment, Manager Economic Development, Senior Development Control Planner, Development Control Planner.

MINUTE

2 APOLOGIES

MOVED: B Bourke SECONDED: W Aubin

RESOLVED: That the apologies from Crs Carpenter & North be accepted and leave of absence granted.

POLICY COMMITTEE
REPORT OF PREVIOUS MEETING

**REPORT OF PREVIOUS MEETING TO THE POLICY COMMITTEE MEETING HELD ON 2
JUNE 2010**

General Manager
Bathurst Regional Council

1 MINUTES - POLICY COMMITTEE MEETING - 5 MAY 2010 (07.00064)

Recommendation: That the Minutes of the Policy Committee Meeting held on 5 May 2010 be adopted with the following amendments.

- General Business - Minute #5 - Poplars - Cr Thompson - requested item be reworded to state, "thinning the poplars to provide an opportunity for re-establishment".
- General Business - Minute #4 - Art Development - Cr Carpenter - requested the item should be reworded to state "Public Art".

Report: The Minutes of the Policy Committee Meeting held 5 May 2010, are attached.

Financial Implications: N/A

MINUTE

3 Item 1 MINUTES - POLICY COMMITTEE MEETING - 5 MAY 2010

MOVED: G Westman SECONDED: M Morse

RESOLVED: That the Minutes of the Policy Committee Meeting held on 5 May 2010 be adopted with the following amendments.

- General Business - Minute #5 - Poplars - Cr Thompson - requested item be reworded to state, "thinning the poplars to provide an opportunity for re-establishment".
- General Business - Minute #4 - Art Development - Cr Carpenter - requested the item should be reworded to state "Public Art".

MINUTES OF THE POLICY COMMITTEE
HELD ON 5 MAY 2010

5PM MEETING COMMENCES

1 5PM MEETING COMMENCES

PRESENT: Councillors Toole (Chair), Aubin, Bourke, Carpenter, Hanger, Morse, North, Thompson, Westman.

In Attendance: General Manager, Director Corporate Services & Finance, Director Engineering Services, Director Environmental Planning & Building Services, Manager Community Services, Manager Corporate Governance, Manager Strategic Planning, Manager Recreation, Manager Technical Services, Parks Operations Manager, Operations Manager Water & Wastewater, Development Control Planner.

APOLOGIES

2 APOLOGIES

Nil.

REPORT OF PREVIOUS MEETING

3 Item 1 MINUTES OF THE POLICY COMMITTEE MEETING HELD 7 APRIL 2010 (07.00064)

MOVED Cr I North and **SECONDED** Cr B Bourke

RESOLVED: That the Minutes of the Policy Committee Meeting held on 7 April 2010 be adopted.

DECLARATION OF INTEREST

4 DECLARATION OF INTEREST

MOVED Cr I North and **SECONDED** Cr W Aubin

RESOLVED: That the Declaration of Interest be noted.

RECEIVE AND DEAL WITH DIRECTORS' REPORTS

General Manager's Report

5 Item 1 DEPARTMENT OF LOCAL GOVERNMENT - PROMOTING BETTER PRACTICE REVIEW REPORT (NOVEMBER 2006) (03.00142)

MOVED Cr B Bourke and **SECONDED** Cr G Westman

RESOLVED: That Council note the updated report (as at May 2010) of the Department of Local Government, PBP Review of November 2006.

GENERAL BUSINESS

6 **ART DEVELOPMENT (11.00006)**

Cr Carpenter - request Council consider including an Art Policy component in major works.

The Mayor advised will refer to a Working Party.

7 **POPLARS ON ROAD (13.00019)**

Cr Thompson - advised were knocked down and now there are a lot of suckers. Can we look at these for clearance.

The Director Engineering Services will review this matter.

8 **CRICKET PITCHES (04.00034)**

Cr Aubin - advised that synthetic cricket pitches can become unplayable during the year due to condition of approaches. Can we look at putting extensions onto the pitches. With the turf pitches, in wet weather often get a lot of water pooling, may be due to age, can we look at building them up.

The Director Engineering Services will investigate these matters and spoke to maintenance works undertaken.

9 **ANTI GRAFITTI DAY (20.00045)**

Cr Bourke - advised was held last Sunday. Would like to do another day in the future, but co-ordinated with the Council. PCYC would like to come on board. Request Council advise what is spent on graffiti by Council.

10 **MEETING ADJOURNMENT**

The meeting adjourned at 5.10 pm as interested persons had been advised the Discussion Forum was 5.30 pm.

The meeting reconvened at 5.30 pm.

DISCUSSION FORUM - DEVELOPMENT APPLICATION SUBMISSIONS

Director Environmental Planning & Building Services' Report

11 **Item 1 PUBLIC HEARING - DRAFT BATHURST REGIONAL (INTERIM) LOCAL ENVIRONMENTAL PLAN 2005 (AMENDMENT NO. 3) AND DRAFT BATHURST LOCAL ENVIRONMENTAL PLAN (CLASSIFICATION AND RECLASSIFICATION OF PUBLIC LAND) 1997 (AMENDMENT NO. 4) (20.00155)**

MOVED Cr G Westman and **SECONDED** Cr R Thompson

RESOLVED: That the report be noted.

The Director Environmental Planning & Building Services gave an introduction in the proposed amendment to the Interim LEP.

Discussion included:

Mark Bayliss - 97 Boundary Road - Have a rear access to their property through the site. When RTA undertook works on Boundary Road it caused problems. RTA gave rights to use access point and then Council has queried this. Spoke to his submission.

MEETING CLOSE

12 **MEETING CLOSE**

The Meeting Closed at 5.35 pm.

CHAIRMAN: _____

Date: _____ **(19 May 2010)**

MINUTE

4 DECLARATION OF INTEREST

MOVED: B Bourke SECONDED: G Westman

RESOLVED: That the Declaration of Interest be noted.

POLICY COMMITTEE
GENERAL MANAGER'S REPORT
2 JUNE 2010

**GENERAL MANAGER'S REPORT TO THE POLICY COMMITTEE MEETING HELD ON 2
JUNE 2010**

General Manager
Bathurst Regional Council

**1 REVIEW OF CODE OF CONDUCT PROCEDURES- UNREASONABLE
COMPLAINANT BEHAVIOUR (11.00024 41.0089)**

Recommendation: That Council:

- (a) Adopt the amended Code of Conduct Complaints - Principles and Procedures Policy;
- (b) Note the report on experiences with the Code of Conduct.

Report: INTRODUCTION

Council has in place an adopted Code of Conduct. This has been operating for some time now and it is considered appropriate to review its operations in light of current experiences.

The Ombudsman and the Department of Local Government have also released guidelines on Unreasonable Complainant Behaviour, refer Department of Local Government Practice Note 9, Complaints Management in Councils (July 2009) and the Ombudsman - Managing Unreasonable Complaint Conduct - Practice Manual (1st Edition: June 2009). This review has been informed by these documents.

REPORT

1. Code of Conduct

Bathurst Regional Council has in place a Code of Conduct (**attachment 1**) which contains the following purpose and key principles:

"3 PURPOSE OF THE CODE OF CONDUCT

The Code of Conduct sets the minimum requirements of conduct for Council officials in carrying out their functions. The Code is prescribed by regulation.

The Code of Conduct has been developed to assist Council officials to:

- * understand the standards of conduct that are expected of them
- * enable them to fulfil their statutory duty to act honestly and exercise a reasonable degree of care and diligence (section 439)
- * act in a way that enhances public confidence in the integrity of local government

4 KEY PRINCIPLES

This Code of Conduct is based on a number of key principles. It sets out standards of conduct that meet these principles and statutory provisions applicable to local government activities. The principles underpin and guide these standards and may be

used as an aid in interpreting the substantive provisions of the Code, but do not themselves constitute separate enforceable standards of conduct.

4.1 Integrity

You must not place yourself under any financial or other obligation to any individual or organisation that might reasonably be thought to influence you in the performance of your duties.

4.2 Leadership

You have a duty to promote and support the key principles by leadership and example and to maintain and strengthen the public's trust and confidence in the integrity of the Council. *This means promoting public duty to others in the Council and outside, by your own ethical behaviour.*

4.3 Selflessness

You have a duty to make decisions in the public interest. You must not act in order to gain financial or other benefits for yourself, your family, friends or business interests. *This means making decisions because they benefit the public, not because they benefit the decision maker.*

4.4 Impartiality

You should make decisions on merit and in accordance with your statutory obligations when carrying out public business. This includes the making of appointments, awarding of contracts or recommending individuals for rewards or benefits. *This means fairness to all; impartial assessment; merit selection in recruitment and in purchase and sale of Council's resources; considering only relevant matters.*

4.5 Accountability

You are accountable to the public for your decisions and actions and should consider issues on their merits, taking into account the views of others. *This means recording reasons for decisions; submitting to scrutiny; keeping proper records; establishing audit trails.*

4.6 Openness

You have a duty to be as open as possible about your decisions and actions, giving reasons for decisions and restricting information only when the wider public interest clearly demands. *This means recording, giving and revealing reasons for decisions; revealing other avenues available to the client or business; when authorised, offering all information; communicating clearly.*

4.7 Honesty

You have a duty to act honestly. You must declare any private interests relating to your public duties and take steps to resolve any conflicts arising in such a way that protects the public interest. *This means obeying the law; following the letter and spirit of policies and procedures; observing the code of conduct; fully disclosing actual or potential conflict of interests and exercising any conferred power strictly for the purpose for which the power was conferred.*

4.8 Respect

You must treat others with respect at all times. *This means not using derogatory terms towards others, observing the rights of other people, treating people with courtesy and recognising the different roles others play in local government decision-making."*

The Code also facilitates the handling of complaints made with respect to the conduct of

Councillors, members of staff of Council, members of Council Committees and Delegates of Council.

2. Code of Conduct: Principles & Procedures

To assist in the implementation of the Code of Conduct, Council also adopted a series of principles and procedures (see **Attachment 2**) which helped to establish a mechanism for the handling of complaints relating to alleged breaches of the Council's Code of Conduct.

Within the principles there are a number of criteria, in particular the following:

"Criteria

1. Any approach to the defining of access rights of people to the Code of Conduct – Reporting of Breaches, Complaint Handling Procedures and Sanctions process, must begin with the understanding that:
 - (a) criticism and complaints are a legitimate and necessary part of the relationship between Councils and their customers or communities, and may be dynamic forces for improvement within Councils, and,
 - (b) nobody, no matter how much time and effort is taken up in responding to his or her complaints or concerns, should be unconditionally deprived of the right to have those concerns addressed.

As Councils also have an obligation to use resources efficiently and effectively, at some point it may be necessary and reasonable for the Council to decide to limit the nature or scope of its responses to difficult complainants. However, these situations should be the exception rather than the rule.

2. Any allegations that the Code of Conduct Committee/Reviewer is unlawfully constituted because it does not give notice of its meetings and permit Councillors who are not members of the Committee/Reviewer to attend in breach of the Local Government Act have no foundation in law and will not be acted upon (refer General Manager's Ordinary Report #6, 15 March 2006).
3. A complaint that deals with the same subject matter as a previous complaint that has been dealt with under the Code of Conduct process, and does not provide substantive new information shall not be reconsidered (Refer Code of Conduct Committee/Reviewer Report #3, 19 April 2006 and Report #1, 21 June 2006).
4. It is not a matter for the Code of Conduct to stifle debate, even if it is robust debate. Debate in the Chamber is a matter for control at the meeting (Refer Code of Conduct Committee/Reviewer Report #3, 19 April 2006).
5. Matters outside the jurisdiction of the Council will not be investigated.
6. There will sometimes be occasions where a complaint which might otherwise justify investigations should not or cannot be pursued; eg where issues raised in the complaint occurred a long time ago (in such cases it may be difficult to track witnesses and/or documents, recollections of events will be limited and evidence unavailable as a result of the passage of time).

Consideration of such factors can be taken into account when considering complaints.

7. Complaints that do not raise substantive issues but are a vehicle of abuse of Councillors, members of staff and delegates, will not be referred to the Code of Conduct Committee/Reviewer.

8. Where a person's behaviour becomes so unreasonable the Code of Conduct process will have regard to the following behavioural triggers.

It is important to note that the mere fact that a complainant is persistent, makes demands or may be angry does not mean that their conduct is unreasonable. "Unreasonableness" needs the conduct to go beyond the norm of situational stress that many complaints experience (Refer also to Criteria 1).

Unreasonable persistence includes for example:

- (a) persisting with a complaint even though it has been comprehensively dealt with and even where all avenues of review have been exhausted.
- (b) repeated refusal to accept the final decision by an independent body.
- (c) reframing a complaint when previous attempts to get it taken up have failed.

Unreasonable demands includes for example:

- (a) insisting on outcomes that are unlawful, unattainable or absurd (eg abolishing a Council Department);
- (b) demanding an apology or compensation when there is no reasonable basis for expecting such outcomes.
- (c) seeking what is not possible or appropriate, for example names and contact details of other complainants or whistleblowers.

Unreasonable lack of co-operation includes for example:

- (a) presenting a large quantity of information which requires the recipient to organise, sort, classify or summarise, where the complainant is clearly capable of doing this.
- (b) refusing to define the issues of complaint, again where the complainant is clearly capable of doing this.
- (c) focusing on "asserted ideals" rather than substantive issues – truth, justice and the common good."

Council will also recall as part of the Code of Conduct process, Council appointed a Conduct Review Committee; refer to Policy Committee Report No 3, 2 July 2008.

Clause 12.18 of the Code states:

"12.18 The Conduct Review Committee/Reviewer operating guidelines (Section 14) are the minimum requirements for the operation of conduct review committee/reviewers. Council may supplement the guidelines, but any additional

provisions should not be inconsistent with the guidelines."

Further, Clause 14.6 includes inter alia:

"14.6 Procedures of the Conduct Review Committee/Reviewer

The Conduct Review Committee shall determine the procedures governing the conduct of its meetings provided such procedures are consistent with these operating guidelines."

and Clause 14.10 states:

"14.10 Amendment of the operating guidelines

The Conduct Review Committee/Reviewer guidelines may be added to and any additional requirements may be further amended or repealed by resolution of the Council."

After discussions with representatives of the Conduct Review Committee/Reviewer, it has been requested that the following procedures be adopted by the Council and included in the Principles and Procedures Policy:

"Conduct Review Committee/Reviewer

1. *The Committee/Reviewer (subsequently shown as CRC) resolved that the procedures by which it will conduct itself are:*
 - 1.1 *Council's Code of Conduct.*
 - 1.2 *Guidelines for the Model Code of Conduct for Local Councils in NSW published by Department of Local Government October 2008, or as amended.*
 - 1.3. *The following additional procedures are proposed by the CRC:*
 - 1.3.1 *Upon receipt of a complaint referred by the General Manager or the Mayor, the Committee will meet to determine whether investigation of the complaint is warranted.*
 - 1.3.2 *If the Committee determines that investigation is warranted, both the Complainant and the Respondent will be notified of the complaint and the procedure to be adopted by the CRC.*
 - 1.3.3 *Subject to variation on a case by case basis having regard to the nature of the issues and the complexity, the time frame delivery of material by the Complainant and the Respondent will be as follows:-*
 - (a) *The Complainant will have 14 days within which to provide all evidence and submissions*
 - (b) *The Respondent will be provided with a copy of the evidence and submissions from the Complainant and will have 14 days within which to provide all evidence and submissions.*
 - (c) *Any response from the Respondent will be provided to the Complainant who will have 14 days to provide any comment or submissions regarding that material (and only in response to that material).*
 - 1.3.4 *The CRC will meet to review the written material, to determine whether any additional investigation is required and in the event that there is a request by the Respondent to address the CRC in person to set a date, time and place for such an opportunity.*
 - 1.3.5 *The CRC will notify the Complainant and the Respondent of the date, time and place for verbal presentations if any [(See Clause 14.7(c) and (d)].*
 - 1.3.6 *At verbal presentations the Respondent will have the opportunity to make submissions*

followed by the Complainant who will have the opportunity to comment on anything said by the Respondent with the Respondent to have a right of reply. That is, the complainant will only be afforded the opportunity to address the CRC in person where the Respondent has chosen to exercise his/her right to address the CRC.

- 1.3.7 At verbal presentations the CRC may ask any questions of the Respondent or Complainant which it considers to be appropriate.
- 1.3.8 The CRC will keep record of all material provided to it in relation to a complaint but no electronic record or transcript will be taken of the presentations.
- 1.3.9. Time limits set for the delivery of material by the CRC are to be adhered to and extension of time will only be granted in special circumstances and upon the written request of a person made before the deadline providing reasons for such an extension.
- 1.3.10 Where an adverse comment is to be included in the Report to Council the person affected will be given an opportunity to comment beforehand. Such comments will be considered by the CRC before the Report is finalised.
- 1.3.11 As soon as practical after the investigation process has been concluded the CRC will deliberate and prepare its Report which will be provided to the General Manager, or Mayor in the case of a complaint against the General Manager.
- 1.3.12 Correspondence with the CRC is to be addressed to the General Manager or in the case of a complaint against the General Manager to the Mayor.
- 1.3.13 Copies of all correspondence to and from the CRC will be provided to the General Manager or Mayor in the case of a complaint against the General Manager.
- 1.3.14 If during the course of any consideration or investigation, it appears to the CRC that the matter involves an allegation of:-

- (a) A breach of pecuniary interest the matter will be reported to the Director General of the Department of Local Government and will not be dealt with by the CRC.
- (b) Corrupt conduct the matter will be reported to the Independent Commission Against Corruption and will not be dealt with by the CRC.
- (c) A substantial breach in accordance with the Local Government Amendment (Discipline) Act 2004, the matter will be reported to the Independent Commission Against Corruption however the CRC will continue to deal with the matter.

2. The Committee notes the provisions contained in section 731 Local Government Act 1993 as follows: -

*"A matter or thing done by the Minister, the Director-General, a council, a councillor, a **member of a committee of the council** or an employee of the council or any person acting under the direction of the Minister, the Director-General, the council or a **committee of the council** does not, if the matter or thing was done in good faith for the purpose of executing this or any other Act, and for and on behalf of the Minister, the Director-General, the council or a **committee of the council**, subject a councillor, a **member**, an employee or a person so acting personally to any action, liability, claim or demand."*

(Emphasis added)

- 3 The Committee members note that the Guidelines for the Model Code of Conduct indicate that "the Report will generally be dealt with in open session of Council. Council can only close a meeting to the public if the matter is one that meets the requirements of section 10A(2) of the Act. In most cases, a Report from the Conduct Review Committee/Sole Conduct Reviewer will not meet those requirements."
- 3.1 The primary role of the Conduct Committee is to establish the facts of the allegation and it is required to make findings of fact and to make recommendations (Guidelines section 14.5)
- 3.2 The Committee notes that it is a matter for resolution of the Council to move into closed session and that the Committee will have no control in relation to the publication of the Report once it is provided to the Council.
4. The initial meeting of the Committee regarding a complaint will be held on a date suitable to the Council General Manager or Mayor (in the case of a complaint against the General

Manager). The General Manager or Mayor may be requested to be present in person or by teleconference. "

These Procedures would replace a number of the Clauses contained within Council's Policy: Code of Conduct Complaints - Principles and Procedures. At **attachment 3** is a copy of an amended policy.

The existing policy requires some minor amendments in line with Council's Code of Conduct; these are:

Various Items

The Principles/Procedures document regularly refers to the Code of Conduct Committee or Committee. This will be altered to Conduct Review Committee/Reviewer or CRC throughout the document.

Procedure Item No 7

Currently reads:

"All parties will be heard by written documents and not by oral submissions except in exceptional circumstances. If either party considers exceptional circumstances exist they should make a written submission to the Conduct Committee/Reviewer as to those reasons and can do so at any point in the process prior to the hearing. The Conduct Committee/Reviewer will consider the application prior to the hearing and if it determines to allow or not allow oral representations will notify both parties."

Amend to read:

"All parties will be heard by written documents and **generally** not by oral submissions except in exceptional circumstances, **having regard to Clause 14.7 of the Code of Conduct**. If either party considers exceptional circumstances exist they should make a written submission to the Conduct Committee/Reviewer as to those reasons and can do so at any point in the process prior to the hearing. The Conduct Committee/Reviewer will consider the application prior to the hearing and if it determines to allow or not allow oral representations will notify both parties."

Procedure Item No 8

Deleted as covered by CRC requested changes.

Procedure Item No 13

Reference to the Government Information (Public Access) Act 2009 now included.

It is recommended that the Policy: Code of Conduct Complaints - Principles and Procedures, be amended to reflect these changes.

3. Unreasonable Complainant Behaviour - Ombudsman and Department of Local Government Guidelines

Whilst Council has in place its Code of Conduct, there are other supporting documents that assist in how to deal with complainants. The Department of Local Government with the NSW Ombudsman, has produced *Practice Note No 9, Complaints Management in*

Councils(July 2009) and the Ombudsman has produced the *Managing Unreasonable Complainant Conduct Practice Manual* (1st Edition - June 2009).

The Ombudsman's *Managing Unreasonable Complaint Conduct Practice Manual* includes a section on the categories of unreasonable complainant conduct. The various types of complainant conduct that have been identified as unreasonable have been grouped into five categories. These are:

1. Unreasonable Persistence
2. Unreasonable Demands
3. Unreasonable Lack of Co-operation
4. Unreasonable Arguments
5. Unreasonable Behaviour

Of these categories, persistence, demands and lack of co-operation are reflected in Council's adopted Principles and Procedures for Code of Conduct complaints.

Indicative triggers for each of these categories are listed in the Ombudsman's Practice manual as follows:

1. Unreasonable Persistence:

- persisting with a complaint even though it has been comprehensively considered by an agency, and all avenues of review have been exhausted.
- reframing a complaint in an attempt to get it taken up again.
- showing an inability to accept the final decision.
- insisting that a particular solution is the correct one in the face of valid contrary or alternative arguments.
- persisting in interpreting the law or policy in a way that is not in accordance with generally accepted or expert views on the issue and insisting that action be taken accordingly.
- persisting in wanting to know where to go next, when it has been explained that there is nowhere else to go.
- demanding a review because it is available, but not arguing a case for a review.
- making an issue out of anything.
- getting gratification from the process of regular contact with the case officer, possibly including inventing unnecessary reasons for having such contact.

2. Unreasonable Demands:

- insisting on outcomes that are unattainable.
- insisting on a "moral" outcome, eg justice in the community interest, when really a personal interest is at stake.
- demanding an apology or compensation when no reasonable basis for expecting such outcomes exists.
- wanting revenge, retribution.
- wanting what is not possible or appropriate, eg copies of sensitive documents, names and contact details of staff, other complainants or whistleblowers.
- issuing instructions and making demands about how a complaint should be handled.
- providing supporting details that are extraordinarily detailed when such detail is not relevant to the complaint.
- making unreasonable resource demands, out of proportion to the seriousness of issue.
- wanting regular and lengthy phone contact where this is not warranted.
- showing reactions or demand for action that are out of proportion to the

- significance of the issue.
- moving the goal posts - changing the desired outcome.
- shopping for a sympathetic ear in the agency - demanding to talk to a supervisor or the Manager personally.
- placing the agency on an extensive email copy list and expecting responses to these emails.
- consistently creating complexity where there is none.
- presenting as overly needy or dependent (eg wanting to transfer responsibility for their well-being to the complaint handler or agency).

3. Unreasonable lack of co-operation:

- presenting a large quantity of information which is not organised, sorted, classified, summarised, where the complainant is clearly capable of doing this.
- presenting information in dribs and drabs - refusing to present all information at the outset.
- refusing to define issues of complaints "the attached (usually a large quantity of information) speaks for itself" - where the complainant is clearly capable of doing this.
- focusing on principles rather than substantive issues.
- changing the complaint and raising new issues while the complaint is in the process of being considered.
- displaying unhelpful behaviour, eg withholding information, being dishonest, misquoting others, swamping the agency with documents.

4. Unreasonable arguments:

- holding irrational beliefs, eg seeing cause and effect links where there are clearly none.
- holding what is clearly a conspiracy theory unsupported by any evidence.
- interpreting facts in a clearly irrational/unreasonable way and insisting this interpretation is the correct one.
- insisting on the importance of an issue that is clearly trivial.
- arguing the clearly bizarre.

5. Unreasonable behaviour:

- displaying confronting behaviour, eg rudeness, aggression, threats or harassment.
- sending rude, confronting or threatening letters.
- making threats of self harm.
- making threats of harm to others.
- displaying manipulative behaviour (overly ingratiating, tears or veiled threats).

It is recommended that Council's policy on Code of Conduct Complaints - Principles and Procedures, be amended to include the five categories listed in the Ombudsman's Practice Manual.

4. Code of Conduct Complaints

Generally, since 2005, Council has had in place a procedure whereby complaints concerning the Code of Conduct can be made to Council. These are then processed according to Industry and State Government developed guidelines.

The following details some of Council's experience in Code of Conduct complaints:

1. Report to Council 20 June 2007 (**attachment 4**); complaints 2005/2007.

2. Report to Council 1 July 2009, (**attachment 5**); complaints 2008/2009.
3. Code of Conduct complaints - 1 July 2009 to 31 March 2010, present the following profile, as referred to in Clause 12.33 of the Code of Conduct.

Number of Complaints Received: 66

Nature of Issues Raised by Complainants:

- Councillor payments
- Response times to a complaint
- Amalgamation costs
- UMCC matters
- Mayoral Election
- Code of Conduct Committee Procedures
- Financial irregularities
- Debate in the Chamber
- Pecuniary and non-pecuniary interest allegations
- Notices of Meeting and meeting procedures
- Legal judgements
- TV interviews
- Shopping Centre Development
- Electoral Signage
- Auditors Reports and Declarations of Interest
- Councillor Obligations
- Parking permits and signage
- Traffic Committee reports
- Management Plan submissions
- Pensioner rebates
- Safe Working Environment
- Failure to give notice at meetings
- Issuing of Notices and Enforcement

Many of the complaints have created a drain on Council resources. The complaints are often repetitive and have displayed behaviour that clearly falls within the indicative triggers of various behaviours including:

1. Unreasonable persistence (eg persisting with a complaint where dealt with, inability to accept final decision, reframing complaints, making issues out of anything)
2. Unreasonable demands (eg insisting on outcomes that are unattainable, making unreasonable resource demands, demanding outcomes where no reasonable basis exists) issuing instructions and making demands as to how a complaint should be handled
3. Unreasonable arguments (eg holding irrational beliefs, holding a conspiracy theory unsupported by evidence, interpreting facts in an unreasonable way)
4. Unreasonable behaviour (eg confronting behaviour- threats)

Outcomes of Complaints:

Complaints, when they are assessed by the General Manager and Mayor, have regard to

the following grounds in accordance with Clause 13.1 of the Code of Conduct:

"The General Manager or Mayor, in the case of a complaint about the General Manager, will assess a complaint alleging a breach of the Code of Conduct to determine if the matter should be referred to the Conduct Review Committee/Reviewer. In assessing the complaint, the General Manager and Mayor will have regard to the following grounds:

- (a) whether there is any prima facie evidence of a breach of the code of conduct;*
- (b) whether the subject matter of the complaint relates to conduct that is associated with the carrying out of the functions of civic office or duties as General Manager;*
- (c) whether the complaint is trivial, frivolous, vexatious or not made in good faith;*
- (d) whether the conduct the subject of the complaint could reasonably constitute a breach of the code of conduct;*
- (e) whether the complaint raises issues that require investigation by another person or body, such as referring the matter to the Department of Local Government, the NSW Ombudsman, the Independent Commission Against Corruption or the NSW Police;*
- (f) whether there is an alternative and satisfactory means of redress;*
- (g) how much time has elapsed since the events the subject of the complaint took place;*
- (h) how serious the complaint is and the significance it has for Council;*
- (i) whether the complaint is one of a series indicating a pattern of conduct."*

In accordance with the above criteria, 51 complaints were found to fall within the parameters of 13.1(c).

It is noted that none of the complaints finalised (59 at this time) were referred to Council's Conduct Committee. All were either handled by the General Manager or Mayor, as appropriate.

Financial Implications: The estimated cost of dealing with Code of Conduct complaints for the period 1 July 2009 to present is in excess of \$35,000.

MINUTE

5 Item 1 REVIEW OF CODE OF CONDUCT PROCEDURES- UNREASONABLE COMPLAINANT BEHAVIOUR

MOVED: G Westman SECONDED: G Hanger

RESOLVED: That Council:

- (a) Adopt the amended Code of Conduct Complaints - Principles and Procedures Policy;
- (b) Note the report on experiences with the Code of Conduct.

Yours faithfully



D J Sherley
GENERAL MANAGER

POLICY COMMITTEE
GENERAL BUSINESS MINUTES

MINUTE

6 ECONOMIC DEVELOPMENT FORUM (07.00090)

Cr Thompson – congratulated Economic Development Department for setting up the Forum, which is being held this week.

to the Policy Meeting 02/06/2010

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7 OFF TRACK EVENTS - V8 (04.00073)

Cr Thompson – congratulated Council on the review. Opportunity to get Farmers Markets involved is exciting.

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8 SYDNEY FESTIVAL (23.00026)

Cr Morse – advised that Bathurst was represented in the Macquarie Visions Light Show at the Sydney Festival - it was excellent,

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9 ADJOURNMENT (23.00026)

The meeting adjourned at 5.05 pm for the Discussion Forum to be held at 5.15 pm.

The meeting reconvened at 5.15 pm.

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POLICY COMMITTEE
DIRECTOR ENVIRONMENTAL PLANNING & BUILDING SERVICES' REPORT
2 JUNE 2010

**DIRECTOR ENVIRONMENTAL PLANNING & BUILDING SERVICES' REPORT TO THE
POLICY COMMITTEE MEETING HELD ON 2 JUNE 2010**

General Manager
Bathurst Regional Council

**1 DEVELOPMENT APPLICATION NO. 2010/0461 – DEMOLITION OF COMMERCIAL
BUILDING AT 66-68 GEORGE STREET. APPLICANT: BOLAM PROPERTY
INVESTMENTS PTY LTD. OWNER: BOLAM PROPERTY INVESTMENTS PTY LTD.
(2010/0461)**

Recommendation: That the information be noted.

Report: Council has received a Development Application (DA) for demolition at 66-68 George Street, described as Lot A DP 164538. A location plan is provided at **attachment 1**.

The site currently contains a two storey masonry commercial building. The site also contains a small single storey masonry building at the rear.

The proposal involves the demolition of the existing building only and does not include any infill development at this stage. Council is however aware that a Development Application will be lodged in the near future for the erection of a replacement commercial building should the existing building be demolished.

The subject land is located within the Heritage Conservation Area under Clause 23 of Bathurst Regional (Interim) Local Environmental Plan 2005. Whilst the site does not contain a listed heritage item, the building is of heritage significance.

In accordance with Clause 26 of Bathurst (Interim) Local Environmental Plan 2005 (Advertising of heritage applications) the Development Application required advertising as it involves demolition within the Heritage Conservation Area.

The Development Application was advertised and notified to adjoining property owners in accordance with Clause 10 of Bathurst (Interim) Local Environmental Plan 2005 for a period of 14 days from 12 April 2010 to 26 April 2010.

During the advertising and notification period a total of 2 submissions were received (see **attachment 2**).

Issues raised in the submissions included the following:

- The building is one of the earliest commercial buildings in Bathurst.
- The existing building complements the existing Georgian streetscape in lower George Street.
- Support partial reuse of the existing building.
- Noise generated from building works on weekends and Public holidays affecting the amenity of the area.

Following this Discussion Forum a report will be prepared for the June Council Meeting.

Financial Implications: Nil.

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10 Item 1 DEVELOPMENT APPLICATION NO. 2010/0461 – DEMOLITION OF COMMERCIAL BUILDING AT 66-68 GEORGE STREET. APPLICANT: BOLAM PROPERTY INVESTMENTS PTY LTD. OWNER: BOLAM PROPERTY INVESTMENTS PTY LTD.

Discussion included:

Ian McPherson (National Trust)

There are 200 members of the Trust in Bathurst. People are concerned about Bathurst Heritage. We need constant vigilance about this heritage. Heritage is a tourism asset. Councillors are the custodian of community assets. Bathurst is Australia's oldest inland city and we need to protect evidence of this. Often have to argue on Bathurst Heritage and seem to keep losing. There is pressure on the CBD with growth, we are seeing incremental loss, often by neglect. We need to be brave about saving existing buildings. Adaptive re-use is an option, demolition should occur rarely. Streetscape of key CBD streets is very important. Where replacements occur we must ensure it is appropriate; colour, roof, pitch, etc.

Margaret Glen (National Trust)

Would like to reinforce what Ian McPherson said. Councillors need to be aware of heritage uses. Spoke to National Trust submission. This is a significant building built in 1853. Notes that engineers' report says building is unsound. The National Trust does not want to see demolition. If it does happen, then National Trust asks that consultation occur on the replacement building. The Trust Committee objects to total demolition, requests facade be retained where possible. Any replacement building should be 21st Century, reminding us of elements that have been lost.

Henry Bialowas (Heritage Architect - representing Developer)

Supports Heritage conservation, but spoke to issues involved with the building. Raised the concept of redundancy and the building structure with weight load down onto the bricks. The bricks (1850's) have issues with consistency and strength, and then eventual erosion of the bricks. The mortar is loose lime style and has issues with holding the bricks together. The building began as a hotel and after 1 year ceased trading and became shops/stores. Structural needs of these two structures are very different and many internal walls downstairs have been removed. The building may last a while but who knows? There has also been termite attacks of the building and the size of some floor beams have been compromised. The front wall is leaning into George street by 125mm. Spoke to heritage nature of the building and whether it is significant, just because it is 157 years old, does not in its own right make it significant. Referred to heritage assessments done on the building and site.

David Pennells (Builder - representing the Developer)

Undertook an assessment of the building. Has seen both Heritage assessments (Donaldsons & Calare Civil) and reviewed them. Spoke to costings if tried to restore, building scaffolding would cost \$175,000. Building cost would be double new structure. Noted issues with walls, termites etc. Replacing timbers would cost over \$500,000. Rising

damp is very bad and significant failure has occurred. To comply with Australian Standards can only occur through demolition. The building has sick building syndrome due to rising damp, mildew, poor air quality (lack of ventilation). Can only recommend that the building be demolished. To repair to first class standard, would be more than double new building cost.

Bruce Bolam (Purchaser)

Considers himself to be a builder of businesses and property in Bathurst. Spoke to building works he has already done in Bathurst. As a long term business holder they need to be economically viable and add to the charm and style of Bathurst. Has an understanding of the heritage nature of Bathurst. Will soon be submitting a Development Application on Tindall's corner that will be sympathetic to the nature of Bathurst. Has done a lot of work to restore and revive the George and Howick Streets area in Bathurst. There is a significant problem with 66-68 George Street. In its current form, can never be economically viable. The building structurally is unsafe.

Bob Triming (Chairman, Bathurst Regional Access Committee)

In regards to the building in question, there has long been access problems. The law was changed last year that tenants must provide equal access to all persons. There is no way that the existing building can be altered to provide this. Further, next year greater access requirements will be brought in.

2 SUNNY CORNER - CONTAMINATED LAND POLICY (13.00008 & 41.00089)

Recommendation: That the information be noted.

Report: Council at its Ordinary Meeting held 18 February 2009 resolved to prepare a policy in relation to contaminated land in the Sunny Corner area following occurrences as outlined in this report (see Draft Policy at **attachment 1**).

As Council would be aware, mining activities have occurred in the Sunny Corner area for more than one hundred years. In 2003 community concerns over the possibility of heavy metal contamination on residential lots in the village and surrounds resulted in the Premiers Department awarding a grant of \$50,000 to the community for soil testing on residential lots. The former Evans Shire Council (ESC) agreed to coordinate the testing on behalf of the community.

In response to the risk of land contamination the former ESC received advice as to their notification obligations under section 149 of the Environmental, Planning and Assessment Act 1979. On the basis of the advice received from the Local Government and Shires Association, the former ESC placed a notation on the section 149 planning certificates in the Sunny Corner area, noting the possibility of heavy metal contamination in the area.

In mid 2007 Council representatives met with the residents and landowners in Sunny Corner to seek feedback on whether the community wished to implement the project. From the meeting all residents were asked to complete a feedback sheet determining whether or not they wished to participate in the project. The grant from the Premiers Department required that the community reach a consensus on the implementation of the project. Feedback was also sought from the Department of Environment, Climate Change and Water (DECCW) regarding the implementation and results of the project, in response to a number of questions from the community.

Twenty-eight landholders agreed to participate in the project. In mid-2008 Council engaged Barnson Pty Ltd to undertake the soil testing project. Over a period of several months, a "Preliminary Site Investigation" was undertaken on each participating property in accordance with the DECCW guidelines. In December 2008 each landowner received a report detailing the results for their property.

Council has sought advice from its solicitors in regard to the status of the notation on the section 149 planning certificates. Council's Solicitor has recommended that a policy be prepared specifically for the Sunny Corner area in relation to land contamination. This is also consistent with the Department of Planning guidelines in relation to contaminated land. In essence the policy should define the appropriate notation for land in three basic categories:

- Land which has been tested and no contamination has been found.
- Land which has been tested and contamination has been found.
- Land which no testing has been undertaken.

The policy was placed on public exhibition on 6 February 2010 and closed on 8 April 2010. Council received two submissions during the exhibition period (see **attachment 2**).

The issues raised by the submissions are summarised as follows:

- Amend the policy to incorporate guidelines for "Living with the existing contamination" where there is no intention for development and implement the recommendations made by the Mid Western Area Health Service.

- Develop general conditions of consent for developments that will disturb surface soils and provide a standardised Remediation Action Plan (RAP) to the community for dealing with excavated (potentially) contaminated soils.
- Reword the document such that “contaminant concentrations exceeding health investigation levels” is used rather than “elevated”.
- Qualify statement “No contamination has been found” or amend to “Land where soil testing has been carried out and concentrations of arsenic and lead did not exceed HILS”.
- The legal terminology in the draft policy such as “Contamination”, “Development Restrictions” and “Site Validation Report” is likely to cost landholders a great deal of money.

Council should note that the terminology utilised within the draft policy is consistent with the terminology within the Contaminated Land Management Act 1997, as amended. All Council policies should utilise the terminology within the overriding legislation. The policy can be amended to include definitions of terms such as “contamination”, to be taken from the Contaminated Land Management Act 1997.

Following this Discussion Forum a report will be prepared to Council for consideration of the policy.

Financial Implications: Nil.

MINUTE

11 Item 2 SUNNY CORNER - CONTAMINATED LAND POLICY

The Director Environmental Planning & Building Services gave history on this matter at Sunny Corner, and the implementation of the notation on S:149 Certificates by the former Evans Shire Council and the grant of \$50,000 from the State Government to undertake soil testing. Advised legal advice has been received on the development of a contaminated land policy. Tests were only on arsenic and lead levels. If people wish to live there and do no works on their properties, will not be required to undertake remediation.

Discussion included:

Alvin Lawson (1317, Lot 2 Mitchell Street, Sunny Corner)

Has been subject to testing by Barnson's. The report advises no contamination detected on site and properties either side were below problem levels. It does not appear lead is a problem in Mitchell Street. The site is suitable for residential use and does not pose significant risk of harm. Is there any reason a residential dwelling cannot be permitted and can either S:149 (2) or (5) Certificates be issued?

The Director Environmental Planning & Building Services spoke to legal advice and that only lead and arsenic were tested for. If a new dwelling is to be established, Council would want a site audit statement to say site OK for residence, as Council believes Sunny Corner is a contaminated area.

B Ingham (West Mitchell Road - 3 miles outside village)


Do not understand why involved in this, as outside the village. There is one hot spot on her property, cannot understand why, has had testing undertaken, area has been ploughed, still hotspot there. Cannot find subsequently any contamination at this site. Why is farmland included in the study area? Queried how sampling occurred.

The Manager Environment spoke to testing regime put in place and how measured. At this time, would need to take on notice the question why property was included in the study area.

Alvin Lawson (1317, Lot 2 Mitchell Street, Sunny Corner)

Spoke to significant risk of harm issue in Barnson's report. Why do residents need a 2nd report, surely Barnson's report is sufficient?

Yours faithfully



D R Shaw
**DIRECTOR
ENVIRONMENTAL, PLANNING & BUILDING SERVICES**

MINUTE

12 MEETING CLOSE

The Meeting closed at 6.25 pm.

CHAIRMAN: _____

Date: _____ **(16 June 2010)**

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