

29 June 2011

His Worship the Mayor & Councillors

I have to advise that a **Policy Committee Meeting** will be held in the Council Chambers on Wednesday, 6 July 2011 commencing at 5.00 pm.



D J Sherley
GENERAL MANAGER

BUSINESS AGENDA

POLICY COMMITTEE

TO BE HELD ON WEDNESDAY, 6 JULY 2011

1. 5PM MEETING COMMENCES
2. APOLOGIES
3. REPORT OF PREVIOUS MEETING
 - * Minutes - Policy Committee Meeting - 1 June 2011
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
 - * Director Environmental Planning & Building Services' Report
 - * Director Corporate Services & Finance's Report
 - * General Manager's Report
6. GENERAL BUSINESS
7. DISCUSSION FORUM - DEVELOPMENT APPLICATION SUBMISSIONS
8. DISCUSSION FORUM OTHER
9. MEETING CLOSE

MINUTE

1 MEETING COMMENCES

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

In attendance: General Manager, Director Corporate Services & Finance, Director Engineering Services, Director Cultural & Community Services, Director Environmental Planning & Building Services, Manager Corporate Governance, Manager Recreation, Manager Environment, Manager Water & Waste.

MINUTE

2 APOLOGIES
MOVED: B Bourke SECONDED: I North

RESOLVED: That the apology from Cr Thompson be accepted and leave of absence granted.

POLICY COMMITTEE
REPORT OF PREVIOUS MEETING

**REPORT OF PREVIOUS MEETING TO THE POLICY COMMITTEE MEETING HELD ON 6
JULY 2011**

General Manager
Bathurst Regional Council

1 MINUTES - POLICY COMMITTEE MEETING - 1 JUNE 2011 (07.00064)

Recommendation: That the Minutes of the Policy Committee Meeting held on 1 June 2011 be adopted with the following amendment:

"Item #7 to reflect that Cr Carpenter requested a report on projects that could be developed for Catchment Management Month."

Report: The Minutes of the Policy Committee Meeting held on 1 June 2011, are attached.

Financial Implications: N/A

MINUTE

3 Item 1 MINUTES - POLICY COMMITTEE MEETING - 1 JUNE 2011 (07.00064)

MOVED: W Aubin SECONDED: G Hanger

RESOLVED: That the Minutes of the Policy Committee Meeting held on 1 June 2011 be adopted with the following amendment:

"Item #7 to reflect that Cr Carpenter requested a report on projects that could be developed for Catchment Management Month."

MINUTES OF THE POLICY COMMITTEE
HELD ON 1 JUNE 2011

5PM MEETING COMMENCES

1 MEETING COMMENCES

Present: Councillors North (Chair), Aubin, Bourke, Carpenter, Hanger, Morse, Thompson, Westman

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

APOLOGIES

2 APOLOGIES

MOVED Cr M Morse

and **SECONDED** Cr W Aubin

RESOLVED: That the apology from Cr Toole be accepted and leave of absence granted.

REPORT OF PREVIOUS MEETING

3 Item 1 MINUTES - POLICY COMMITTEE MEETING - 4 MAY 2011 (07.00064)

MOVED Cr G Westman

and **SECONDED** Cr R Thompson

RESOLVED: That the Minutes of the Policy Committee Meeting held on 4 May 2011 be adopted.

DECLARATION OF INTEREST

4 DECLARATION OF INTEREST 11.00002

MOVED Cr G Hanger

and **SECONDED** Cr R Thompson

RESOLVED: That the Declaration of Interest be noted.

RECEIVE AND DEAL WITH DIRECTORS' REPORTS

Director Corporate Services & Finance's Report

5 Item 1 POLICY - PROTECTED DISCLOSURES (11.00006, 18.00132, 41.00089)

MOVED Cr B Bourke

and **SECONDED** Cr W Aubin

RESOLVED: That Council adopt the amended Protected Disclosures Policy and update the Policy Manual accordingly.

GENERAL BUSINESS

6 NOTICE OF ABSENCE (11.00005)

Cr Hanger - advised he will be absent from 10 June 2011 till 4 July 2011 from Council. He requested that an apology be registered for all meetings

7 CATCHMENT MANAGEMENT MONTH (07.00047)

Cr Carpenter - advised September is Catchment Management month. Suggested a possible tour of Council projects for Councillors, staff and volunteers.

8 AUSTRALIAN INSTITUTE OF ENERGY (14.00007)

Cr Carpenter - referred to half day workshop on energy from waste. Asked how methane project at Waste Management Centre was progressing.

The Director Engineering Services gave an update.

9 LOCAL GOVERNMENT WOMEN'S ASSOCIATION CONFERENCE (18.00008)

Cr Carpenter - gave report on Conference, good speakers. Most Councils had staff at Conference - suggest 1 or 2 staff attend next year. Mentioned Mid Western Regional Council Women's Program, would like Bathurst to look at similar program.

10 LOCAL GOVERNMENT ELECTION (12.00010)

Cr Carpenter - suggested Council should encourage women to stand at the next election. Suggested Council hold a women's breakfast involving staff & community to promote Council - maybe as part of Local Government Week.

11 MOUNT PANORAMA PROMOTION (20.00020)

Cr Thompson - received letter from Eglinton resident re methods for promoting Mount Panorama.

The Deputy Mayor suggested this matter be discussed at a future Working Party.

12 TRAFFIC STRATEGY FOR BATHURST (28.00017)

Cr Westman - asked have Council done a forward planning Traffic Strategy to 2030 for CBD.

The Director Environmental, Planning & Building Services gave an update and advised that the 1997 Bathurst City Traffic Study was still relevant

13 PLANNING LAWS (02.00018)

Cr Westman - requested an update on planning law changes in relation to building matters.

The Director Environmental Planning & Building Services advised that a Working Party could be held on this matter.

14 TRAFFIC - HOWICK STREET (25.00006)

Cr Morse - spoke to traffic problems in Howick Street
- cars crossing footpath at Stockland entry - a hazard for pedestrians
- can Council publicise safety issues

The Director Engineering Services responded and will review possible strategies that could be implemented at this site.

15 COMMUNITY GROUPS - INFRASTRUCTURE ON COUNCIL LAND (04.00034)

Cr Morse - spoke to arrangements in place when community groups install

infrastructure on Council land. For example, the Rotary Memorial which has issues with its condition. Requested a report on arrangements between groups and Council.

16 **LOCAL GOVERNMENT WOMEN'S CONFERENCE (18.00008)**

Cr Morse - advised Conference agenda indicated Conference was not worthwhile, and did not attend.

17 **MEDIA POLICY (11.00003)**

Cr Aubin - asked if there was a Policy for Councillors making comments to media

The General Manager advised Media Policy has previously been provided to Councillors and will be resent.

18 **PIGEONS (14.00009)**

Cr Bourke - believes money in budget for study is a waste. Need to take some action. Mentioned Melbourne's response.

The Deputy Mayor advised Council will contact Melbourne for information.

Cr Morse - need to encourage the community to become involved as many buildings in CBD are privately owned.

Cr Carpenter - mentioned Blacktown Council hire traps to the community.

19 **MEDIA INTERVIEWS (08.00009)**

Cr Hanger - advised that 2BS were conducting interviews with Councillors on Friday afternoons.

MEETING CLOSE

20 **MEETING CLOSE**

The Meeting closed at 5.35 pm.

CHAIRMAN: _____

Date: _____ **(15 June 2011)**

MINUTE

- 4** **DECLARATION OF INTEREST 11.00002**
MOVED: B Bourke **SECONDED: M Morse**

RESOLVED: That the Declaration of Interest be noted.

POLICY COMMITTEE
DIRECTOR ENVIRONMENTAL PLANNING & BUILDING SERVICES' REPORT
6 JULY 2011

**DIRECTOR ENVIRONMENTAL PLANNING & BUILDING SERVICES' REPORT TO THE
POLICY COMMITTEE MEETING HELD ON 6 JULY 2011**

General Manager
Bathurst Regional Council

1 ENFORCEMENT POLICY (03.00142 & 41.00088)

Recommendation: That Council :

- a) place the draft Enforcement Policy on public exhibition for a period of 28 days;
- b) note if no submissions are received, the draft Enforcement Policy will be adopted; and
- c) note if submissions are received, a further report will be prepared for Council's consideration.

Report: In order to provide guidance to staff in considering enforcement matters, an Enforcement Policy was prepared for Council.

Council at its Policy meeting on 7 May 2008 resolved:

"That Council adopt the draft Enforcement Policy as exhibited"

Since its adoption, amendments have been gazetted to the *Fines Act 1996* (the Act) with regard to issuing of "cautions" instead of Penalty Infringement Notices (PINs) by officers in certain circumstances. The NSW Attorney General issued new "Caution guidelines under the *Fines Act 1996* " in 2010, a copy of which is at **attachment 1**.

In order to ensure that Council officers consider the discretionary use of cautions, it is appropriate to amend Council's Enforcement Policy to reflect the NSW Attorney General's recommendations (and therefore provide a single point of reference for Council officers in considering enforcement matters). The NSW Ombudsman has also recommended that all Councils make use of the aforementioned guidelines when considering representations in relation to PINs.

The draft Enforcement Policy has been amended to include a new section describing the use of "cautions" in certain circumstances, a copy of which is at **attachment 2**. No other changes are suggested at this time.

Financial Implications: No significant impact on Revenue.

MINUTE

5 Item 1 ENFORCEMENT POLICY (03.00142 & 41.00088)

MOVED: G Westman SECONDED: W Aubin

RESOLVED: That Council :

- a) place the draft Enforcement Policy on public exhibition for a period of 28 days;
- b) note if no submissions are received, the draft Enforcement Policy will be adopted; and
- c) note if submissions are received, a further report will be prepared for Council's consideration.

Yours faithfully



D R Shaw
DIRECTOR
ENVIRONMENTAL, PLANNING & BUILDING SERVICES

POLICY COMMITTEE
DIRECTOR CORPORATE SERVICES & FINANCE'S REPORT
6 JULY 2011

**DIRECTOR CORPORATE SERVICES & FINANCE'S REPORT TO THE POLICY
COMMITTEE MEETING HELD ON 6 JULY 2011**

General Manager
Bathurst Regional Council

1 POLICY - CODE OF MEETING PRACTICE (07.00064, 07.00065, 41.00089)

Recommendation: That Council adopt the amended Code of Meeting Practice and update the Policy Manual accordingly.

Report: Council has reviewed its Code of Meeting Practice and identified an update to Section 16 - Pecuniary Interest - Councillors and Staff, as shown below in bold.

"16. Pecuniary Interest - Councillors and Staff

- (i) *Councillors or staff, in matters before Council or Committee meetings, who have a pecuniary interest must disclose the interest and the nature of the interest to the meeting, **in accordance with Council's adopted Code of Conduct**, when the declarations of interest are requested.*

- (ii) *Councillors or staff must, when the matter is being considered, redeclare their interest and the nature of the interest and leave and be out of sight of the meeting room while the matter is being determined.*

Councillors and staff should refer to Council's Code of Conduct for more detailed information."

It is recommended that Council adopt the amended Code of Meeting Practice and update the Policy Manual accordingly. The revised Policy is shown at **attachment 1**.

Financial Implications: N/A

MINUTE

6 Item 1 POLICY - CODE OF MEETING PRACTICE (07.00064, 07.00065, 41.00089)

MOVED: B Bourke SECONDED: I North

RESOLVED: That Council adopt the amended Code of Meeting Practice and update the Policy Manual accordingly.

**2 2015 BICENTENARY CELEBRATION COMMITTEE - ADOPTION OF LOGO
(20.00153)**

Recommendation: That Council:

- (a) approve the use of the logo for all promotion of the 2015 Bicentenary Celebrations
- (b) seek to register the logos as a Trademark.

Report: The 2015 Bicentenary Celebration Committee at its last meeting considered the adoption of a logo for use in correspondence and promotion of the Committee's activities. A copy of the adopted logos are shown at **attachment 1**.

It is recommended that council approve the use of the logo for all promotion of the 2015 Bicentenary Celebrations and that Council seek to register the logos as a Trademark.

Financial Implications: Funding for this item is contained within existing budgets.

MINUTE

7 Item 2 2015 BICENTENARY CELEBRATION COMMITTEE - ADOPTION OF LOGO (20.00153)

MOVED: M Morse SECONDED: T Carpenter

RESOLVED: That Council:

- (a) approve the use of the logo for all promotion of the 2015 Bicentenary Celebrations
- (b) seek to register the logos as a Trademark.

3 AUDIT & RISK MANAGEMENT COMMITTEE - DELEGATES (07.00009)

Recommendation: That Council appoint an alternate Councillor delegate to the Audit & Risk Management Committee.

Report: At the Audit & Risk Management Committee Meeting held on 23 March 2011 it was resolved to request Council to nominate an alternate Delegate to the Committee.

Council at its meeting of 15 July 2009 appointed the Mayor of the day (Cr Toole) and one other Councillor, being the Deputy Mayor (Cr North) as delegates to the Audit & Risk Management Committee. The Committee includes two independent external members (Andrew Fletcher - Chair and Graham Marchant). The Internal Auditor, a representative from Council's external auditor and relevant staff also attend the meetings.

The Committee has met quarterly since March 2010. As the Committee only has 4 voting members, it has been requested that an alternate Councillor Delegate be appointed to represent the Mayor or Deputy Mayor when they are unable to attend due to other Council commitments.

Financial Implications: Nil.

MINUTE

8 Item 3 AUDIT & RISK MANAGEMENT COMMITTEE - DELEGATES (07.00009)

Council did not consider this report at this meeting and it will be the subject of a further report.

**4 REPORT OF AUDIT AND RISK MANAGEMENT COMMITTEE - 22 JUNE 2011
(07.00096)**

Recommendation: That the information be noted.

Report: The minutes of the Bathurst Regional Council Audit and Risk Management Committee Meeting held on 22 June 2011 are shown at **attachment 1**,

Financial Implications: Nil.

MINUTE

9 Item 4 REPORT OF AUDIT AND RISK MANAGEMENT COMMITTEE - 22 JUNE 2011 (07.00096)

MOVED: I North SECONDED: W Aubin

RESOLVED: That the information be noted.

Yours faithfully



R Roach
DIRECTOR
CORPORATE SERVICES & FINANCE

POLICY COMMITTEE
GENERAL MANAGER'S REPORT
6 JULY 2011

**GENERAL MANAGER'S REPORT TO THE POLICY COMMITTEE MEETING HELD ON 6
JULY 2011**

General Manager
Bathurst Regional Council

1 COUNCIL MEETING (WEDNESDAY) 17 AUGUST 2011 (11.00005)

Recommendation: That Council hold the August 2011 Ordinary Meeting on Tuesday 16 August 2011.

Report: Council has received advice that the Division of Local Government - Premier & Cabinet is co-ordinating a conference/workshop of all Mayors and General Managers on 17 and 18 August 2011 in Dubbo. The workshop titled "Local Government - Destination 2036" is to be held to discuss and consider options for the future of Local Government in NSW.

Council's Ordinary Meeting for August is scheduled to be held on 17 August 2011. Given the request from the Division of Local Government and the fact that a number of senior staff and Councillors will be absent on Wednesday, it is recommended that Council alter the timing of the August meeting to Tuesday 16 August 2011, commencing at 6 pm.

Financial Implications: Nil

MINUTE

10 Item 1 COUNCIL MEETING (WEDNESDAY) 17 AUGUST 2011 (11.00005)

MOVED: T Carpenter SECONDED: M Morse

RESOLVED: That Council hold the August 2011 Ordinary Meeting on Tuesday 16 August 2011.

Yours faithfully



D J Sherley
GENERAL MANAGER

POLICY COMMITTEE
GENERAL BUSINESS

MINUTE

11 PIGEONS 14.00009

Cr Bourke - Spoke to previous dealings on the matter.

The Director Environment Planning & Building Services advised of status and that discussions have been held with the Games Council.

MINUTE

12 BUS STOP COLVILLE STREET 25.00138

Cr Bourke - asked if the bus stop on Colville Street could be relocated closer to the retirement village.

MINUTE

13 TRUNKEY CREEK GRAVE SITE 09.00035

Cr North - asked for update on returned soldier grave site at Trunkey Creek.

The Manager Recreation responded

MINUTE

14 JOHN MATTHEWS TENNIS CENTRE 04.00013-06

Cr North - asked have we completed job and answered the centre operators issues.

The Director Corporate Services & Finance explained seeking more detailed information from operators, lights almost completed.

MINUTE

15 MUSEUMS REVIEW 21.00086

Cr North - Requested a working party to be held to develop a strategic plan for museums.

MINUTE

16 COMMUNITY CONSULTATIVE COMMITTEE KIRKCONNELL 18.00230

Cr North - advised he attended meeting of the Community Consultative Committee at Kirkconnell. Governor advised interested in doing more works with Council. Could staff advise of possible projects.

MINUTE

17 BOLLARDS AT EGLINTON PARK NEAR BRIDGE 04.00075

Cr North - Thanked Council for installing these.

MINUTE

18 WASTE 2 ART 14.00007 / 23.00026

Cr Morse - spoke to recent competition that was held and would like Council to continue to support this event.

MINUTE

19 STOCKLAND BIG W CARPARK ENTRANCE 22.00046

Cr Morse - recently spoke to issues at the entrance to car park. Thanked Council for actions taken to date.

MINUTE

20 LIGHTS ON CAR PRIORITY CROSSINGS 28.00014

Cr Morse - asked who is responsible for lights on car priority crossings.

The Director Engineering Services explained that Council owns these, but Essential Energy carries out works on Council's behalf.

MINUTE

21 ROADSIDE MEMORIALS 04.00032

Cr Westman - asked does Council have a policy on roadside memorials.

The Director Engineering Services explained that it hasn't been a issue to date. The RTA has a policy, officers are currently reviewing and will report to Council.

MINUTE

22 TOWN SQUARE COMMITTEE EXHIBITION 20.00107

Cr Carpenter - Exhibition opened at Australian Fossil and Mineral Museum on Sunday, it is a great photographic exhibition.

MINUTE

23 NAIDOC WEEK 09.00031

Cr Carpenter - noted flag raising occurred this week, it went very well.

MINUTE

24 KEPPEL STREET 25.00039

Cr Carpenter - Spoke to concerns with condition of pavement in Keppel Street.

MINUTE

25 CATHEDRAL PAVEMENTS CONDITION 25.00002

Cr Carpenter - Thanked Engineers for following up concerns of residents in this area so promptly.

MINUTE

26 KEPPEL STREET TRAFFIC LIGHTS 25.00039

Cr Bourke - asked as to the status of the proposal to alter traffic lights at Stewart and Keppel Streets at.

Councillor Aubin noted RTA advised they are investigating this matter.

MINUTE

27 CREMATORIUM PROJECT 36.00246

Cr Bourke - Spoke to meeting with Norwood last week in Canberra. The meeting was positive and went well, Norwood are looking at a staged process.

MINUTE

28 EMERGENCY SERVICE LEVIES 18.00233

Cr North - Spoke to costs being imposed on Council and the need to have rate increase to meet the additional charges, due to 24/7 Fire Station and the new proposed Rural Fire Service facility.

MINUTE

29 POWER SUPPLY AND COMPUTER BACKUP 21.00036

Cr Morse - queried what is current situation with power backup for Council's computer systems.

The Director Corporate Services & Finance spoke to incident that occurred on the weekend.

MINUTE

30 LANDCARE AWARDS COMMITTEE 23.00096

Cr Toole - requested Council nominate a delegate to act on the determination committee

MINUTE

31 LANDCARE AWARDS COMMITTEE 23.00096

MOVED: W Aubin SECONDED: I North

RESOLVED: Cr Carpenter be appointed Councils representative.

MINUTE

32 MEETING CLOSE

The Meeting closed at 5.30 pm.

CHAIRMAN: _____

Date: _____ **(20 JULY 2011)**

POLICY COMMITTEE
ATTACHMENTS TO THE
DIRECTOR ENVIRONMENTAL PLANNING & BUILDING SERVICES' REPORT
6 JULY 2011

Caution Guidelines under the *Fines Act 1996*

These Guidelines are issued by the Attorney General under section 19A(3) of the *Fines Act 1996*. Officers who issue penalty notices under the *Fines Act 1996* must have regard to these Guidelines in deciding whether to give a person a caution for a penalty notice offence.

The Guidelines are to assist officers in exercising their discretion. They do not create any right or obligation to give a caution. These Guidelines do not apply if the officer is a police officer, or the officer is employed or engaged by an agency that has issued its own guidelines for the use of cautions.

In the event of any inconsistency between these guidelines and the *Fines Act 1996*, the *Fines Act 1996* prevails.

Essential Summary

Officers who issue penalty notices may give cautions instead.¹ The *Fines Act 1996* states that a caution may be given if the officer believes:

- on reasonable grounds that a person has committed an offence under a statutory provision for which a penalty notice may be issued; and
- it is appropriate to give a caution in the circumstances.

The matters that should be taken into account when deciding whether it is appropriate to give a person a caution instead of a penalty notice include:

- (a) The offending behaviour did not involve risks to public safety, damage to property or financial loss, or have a significant impact on other members of the public;
- (b) The person is homeless;
- (c) The person has a mental illness or intellectual disability;
- (d) The person is a child (under 18);
- (e) the person has a special infirmity or is in very poor physical health;
- (f) The offending behaviour is at the lower end of the seriousness scale for that offence;
- (g) The person did not knowingly or deliberately commit the offence;
- (h) The person is cooperative and/or complies with a request to stop the offending conduct;
- (i) It is otherwise reasonable, in all the circumstances of the case, to give the person a caution.

¹ Section 19A, *Fines Act 1996*

Table of Contents

1	Scope	3
2	Purpose	3
3	Definitions	3
4	When may a caution be given instead of a penalty notice?	4
	The offence is one for which a penalty notice may be issued	4
	There are reasonable grounds to believe that an offence has been committed	4
	It is appropriate to give a caution in the circumstances	4
5	When a caution must not be given	6
6	Do cautions have to be recorded?	7
7	What if a caution is given by mistake?	7
8	Agency roles and responsibilities	8

1 Scope

- 1.1 Officers who issue penalty notices (other than police officers) must have regard to applicable guidelines in deciding whether to give a person a caution instead of a penalty notice. The applicable guidelines will be these Guidelines, unless the officer is employed by, or acts on behalf of, an agency that has issued its own guidelines.
- 1.2 Agencies may make their own caution guidelines with additional detail to suit their operational environment. However, to ensure minimum standards and consistency across Government, agency guidelines must not be inconsistent with these Guidelines.²
- 1.3 These Guidelines relate to the giving of cautions. Officers are expected to comply with their agency's policies and procedures in relation to the issue of penalty notices.
- 1.4 Nothing in these Guidelines limits officers' existing discretion to deal with minor breaches, in accordance with the policy and practice of the issuing agency.

2 Purpose

- 2.1 The purpose of these Guidelines is to ensure that officers exercise good judgment and take into account relevant considerations when deciding whether to give a caution for a penalty notice offence.

3 Definitions

Offence means an offence under a NSW law for which a penalty notice may be issued.

Issuing officer means a person (other than a police officer) authorised to issue a penalty notice for an Offence.

Issuing agency means the agency that has employed or engaged the officer who issued the penalty notice or the caution.

² See 19A(3)(b) of the *Fines Act 1996* (NSW)

4 When may a caution be given instead of a penalty notice?

Overview

- 4.1 A caution may be given if:
- (a) The offence is one for which a penalty notice may be issued;
 - (b) The issuing officer has reasonable grounds to believe that an offence has been committed; and
 - (c) The issuing officer believes it is appropriate to give a caution in the circumstances.
- 4.2 In deciding whether to give a person a caution, the officer must exercise his or her discretion based on the facts of each individual case, and having regard to these Guidelines or other applicable agency guidelines.

The offence is one for which a penalty notice may be issued

- 4.3 Schedule 1 of the *Fines Act 1996* and the *Fines Regulation 2005* identify most of the laws under which penalty notices may be issued.

There are reasonable grounds to believe that an offence has been committed

- 4.4 An issuing officer or agency must only give a caution if there are reasonable grounds to believe that an offence has been committed. This is the same test used when deciding whether or not to issue a penalty notice.
- 4.5 Every element of the offence must appear to be present and there must be sufficient evidence to prove the offence. For example, when an officer intends to issue a caution for travelling on a train without a valid ticket, the officer must be satisfied that there is sufficient evidence to prove all of the following in the same manner as if he or she were intending to issue a penalty notice:
- (a) that the person travelled on a train,
 - (b) without possessing a valid ticket (either personally or with someone else on their behalf), and
 - (c) the person did not have a lawful excuse.

It is appropriate to give a caution in the circumstances

- 4.6 The decision to give a caution, rather than issue a penalty notice, requires the exercise of good judgement, involving an assessment of all the circumstances.

Ensure you have the latest version before using this document.

- 4.7 Without limiting the discretion to give a caution, the matters that should be taken into account when deciding whether it is appropriate to give a person a caution instead of a penalty notice include:
- (a) The offending behaviour did not involve risks to public safety, damage to property or financial loss, or have a significant impact on other members of the public;
 - (b) The officer has reasonable grounds to believe that the person has a mental illness or intellectual disability;
 - (c) The officer has reasonable grounds to believe that the person is homeless;
 - (d) The officer has reasonable grounds to believe that the person is under 18;
 - (e) The officer has reasonable grounds to believe that the person has a special infirmity or is in very poor physical health;
 - (f) The offending behaviour is at the lower end of the scale of seriousness for that offence or is minor in nature. For example, where there are signs prohibiting eating and drinking in a train carriage, and a person is observed eating a meal in a sensible and tidy manner.
 - (g) The person claims on reasonable grounds that they did not knowingly or deliberately commit the offence;
 - (h) The person admits the offending behaviour and shows remorse; The person is cooperative and/or complies with a request to stop the offending conduct. For example, a person stops in a no parking zone for longer than the required time but does not leave the vehicle unattended and agrees to move the vehicle when directed.
 - (i) There are other reasonable grounds for giving a caution in all the circumstances of the case. For example, the offence was committed because of a medical or other serious emergency, or the person is a visitor from interstate or overseas and was not aware that their conduct constituted an offence.
- 4.8 The fact that one or more of these factors is present does not mean that the officer is obliged to issue a caution. All the circumstances of the case should be taken into account to determine whether a caution is an appropriate and reasonable response to the offence.

Ensure you have the latest version before using this document.

- 4.9 In considering whether there are reasonable grounds to believe that a person has a mental illness, intellectual disability, special infirmity, is in very poor physical health or is homeless, officers should form their own judgment having regard to all the circumstances, including the appearance, speech and behaviour of the person. Any documentary evidence produced by the person may also be taken into account.
- 4.10 In deciding whether to issue a caution, it may be relevant to consider whether the person has been issued with a caution for the same or similar offence before. However, the fact that someone has been issued with a caution previously does not mean that they cannot be given another caution.

5 When a caution must not be given

- 5.1 An issuing officer must not give a person a caution if they are not able to issue the person with a penalty notice for the same behaviour.
- 5.2 For example, an issuing officer must not give a caution if:
- 5.2.1 he or she does not have reasonable grounds to believe that an offence has been committed, or
 - 5.2.2 each element of the offence is not present, or
 - 5.2.3 there is insufficient evidence to prove the offence, or
 - 5.2.4 the person has a lawful excuse. For example, under section 4 of the *Rail Safety (Offences) Regulation 2008*, a lawful excuse for travelling on a train without a valid ticket is where a person does not have a ticket because the ticket machine was broken and no alternative facilities were available at their station to enable them to purchase one before getting on the train.
- 5.3 An officer must not give a person a caution if the offence has been identified in the issuing agency's own caution guidelines as one for which cautions may not be given (eg. offences which involve risks to public safety).
- 5.4 There are very few and exceptional circumstances in which a person under the age of 14 may be issued with a penalty notice or a caution (eg. offences under the *Fisheries Management Act 1994* and regulations). In cases where more guidance is required, please consult the relevant agency's guidelines.

6 Do cautions have to be recorded?

- 6.1 Where practical, the fact that a caution has been given to a person should be recorded.
- 6.2 The method of record keeping will vary from agency to agency, and may include notebook or computer entries.
- 6.3 Where a record is made, it should include, if practical :
 - (a) The date of the caution;
 - (b) The name of the officer who gave the caution;
 - (c) The offence for which the caution was given;
 - (d) The name and address of the person given the caution; and
 - (e) The date, place and approximate time that the offence was alleged to have been committed.

7 What if a caution is given by mistake?

- 7.1 The *Fines Act 1996* makes it clear that giving a caution in relation to an offence does not affect the power of the issuing agency to take other action it would otherwise be allowed to take in respect of an offence.
- 7.2 This provision is intended to be a safeguard so that alternative action can be taken by the issuing agency instead of a caution if it later becomes apparent, having regard to applicable guidelines, that a caution was not the most appropriate response.
- 7.3 For example, if the issuing agency later discovers that a person's conduct was, in fact, so serious that a caution was not the most appropriate response, it could issue a penalty notice or commence court proceedings instead of the caution. Any other action must take place within the applicable statutory limitation period (eg. further action would have to be taken within 6 months of the date of the alleged offence for summary offences, or 12 months for traffic-related offences).
- 7.4 Similarly, if an issuing agency discovers that a person's conduct was lawful and that a caution should not have been given, it must update any record of the caution accordingly.
- 7.5 An agency should have good reasons for taking alternative action after an issuing officer has already cautioned a person for an offence.

Ensure you have the latest version before using this document.

- 7.6 It is **not** intended that a person should receive both a caution and a penalty notice for the same offence. Officers should decide which is the most appropriate response in all the circumstances of the case.

8 Agency roles and responsibilities

- 8.1 Agencies should ensure that all Issuing officers
- (a) have a good understanding of the actual offences for which they are authorised to issue penalty notices and cautions.
 - (b) are aware of these Guidelines, and
 - (c) receive regular and appropriate training to assist in the interpretation and use of these Guidelines, tailored to meet their particular needs and areas of responsibility.

(End)

9 Document history

Version	Date	Reason for Amendment

10 Approval by Attorney General

(John Hatzistergos)

POLICY: **ENFORCEMENT POLICY**

DATE ADOPTED: Director Environmental, Planning & Building Services
Report #1
Policy 7 May 2008
Council 18 June 2008
Minute Book No. 10443

ORIGINAL ADOPTION: N/A

FILE REFERENCE: 03.00142 & 41.00088

OBJECTIVE: To establish guidelines for the enforcement of unlawful activities

1. PREFACE

In recognition of the increase in the regulatory role of all Councils, the NSW Ombudsman in June 2002 published "Enforcement Guidelines for Councils" including a Model Enforcement Policy. That model Enforcement Policy forms the basis of this Bathurst Regional Council Policy.

In April 2007, the Department of Local Government conducted a review of Council under its "Promoting Better Practice" program. Amongst the recommendations of the Department was that Council prepare a formal enforcement and prosecutions policy.

The Enforcement Policy reflects the need for the decision making process of the Council authorised officers to be carried out in a transparent, efficient, fair and consistent manner having regard to all the circumstances.

The inclusion of Appendices A and B at the rear of the policy can be interpreted as a guide to indicate the relative level of seriousness of some offences and therefore, from a consistency viewpoint, to determine whether or not the Council may issue a warning prior to some level of formal action.

2. TITLE

Bathurst Regional Council Enforcement Policy.

3. PURPOSE

The purpose of this policy is to:

- (1) Enable the Council to acknowledge its obligation under Section 8 of the Local Government Act 1993 to ensure that the regulatory powers are carried out in a consistent manner and without bias, and

- (2) Provide a proactive policy statement regarding the enforcement of compliance with legislation and/or condition/s of development consent, and
- (3) Foster prompt, consistent and effective action by the Council in response to allegations of unlawful activity whilst ensuring that the principles of natural justice are respected.

4. POLICY OBJECTIVES

The aim of this policy is to establish clear guidelines for the exercise of discretion in dealing with proactive regulatory action by the Council and customer service requests or complaints about unlawful activity. It provides workable guidelines on:

- (1) How to assess whether complaints of unlawful activity require investigation;
- (2) Options for dealing with unlawful activity;
- (3) How to decide whether enforcement action is warranted.

5. ENFORCEMENT PRINCIPLES

Bathurst Regional Council is committed to:

- (1) Acting in the interest of protecting community health / safety and or the environment;
- (2) Acting consistently, fairly and impartially;
- (3) Preventing discrimination on the basis of race, religion, sex, national origin, political association or other personal reason/s;
- (4) Ensuring the proposed enforcement action is in keeping with the relative severity of the offence/s;
- (5) Ensuring enforcement action is taken against the right person for the correct offence;
- (6) Ensuring that any actual or potential conflict of interest situations are managed in a fair, consistent and impartial manner;
- (7) Disclosing all evidence relevant to the alleged offence/s;
- (8) Assisting the Court by providing all necessary information whether or not that information is in favour of the Council case;
- (9) Issuing cautions to the alleged offender/s, where necessary;
- (10) Making cost effective decisions concerning enforcement action having regard to the likely outcome at court;

(11) Ensuring action is instigated within the specified time limits.

6. APPLICATION

This policy applies to the investigation and enforcement of complaints about unlawful activity or failure to comply with the terms or conditions of approvals and orders.

While primarily directed at the regulation of development activity, the policy is also applicable to pollution control, regulation of parking, control over animals, unauthorised development including buildings, non-compliance with development consent conditions, food safety, public health and safety issues, tree/s removal and land clearing.

7. RESPONSIBILITY

All the Council staff (in accordance with delegations) who deal with the proactive enforcement of relevant legislation in addition to written and verbal action requests or complaints alleging unlawful activity are responsible for implementing these policy guidelines.

All notifications of alleged unlawful activity should be appropriately recorded by the Council.

8. DEFINITIONS

“Unlawful activity” is any activity or work that has been or is being carried out:

- (1) Contrary to the terms or conditions of a development consent, approval, permission or other written authorisation from the Council;
- (2) Contrary to an environmental planning instrument that regulates the activities or work that can be carried out on particular land;
- (3) Contrary to a legislative provision regulating a particular activity or work;
- (4) Without a required development consent, approval, permission or the like;
- (5) Contrary to New South Wales legislation for which the Council is the appropriate regulatory authority.

9. INVESTIGATING UNLAWFUL ACTIVITIES

All complaints and matters regarding unlawful activities will be reviewed to determine whether the matter requires enquiry or investigation. Further enquiries/investigation will not be initiated where:

- (1) The matter has already been investigated and resolved, or

- (2) The Council has no jurisdiction (for example, NSW WorkCover issues on building sites or amusement devices or an internal matter within strata buildings or where the Department of Environment and Climate Change is the Appropriate Regulatory Authority etc), or
- (3) The activity is determined to be lawful without an investigation.

In considering whether a complaint will warrant enquiry or investigation the Council will consider a range of factors.

These include:

- (1) Is the matter within the jurisdiction of the Council?
- (2) Is the complaint premature e.g. does it relate to some unfinished aspect of work that is still in progress?
- (3) Is the activity or work permissible with or without consent?
- (4) If the activity is permissible with consent, is there a consent in place?
- (5) Is it possible to determine from the information available to the Council whether the activity or work is permissible without consent and/or whether all conditions of consent are being complied with?
- (6) Is the complaint trivial, frivolous or vexatious?
- (7) Has too much time elapsed since the events the subject of the complaint took place?
- (8) Is there another body that is a more appropriate agency to investigate and deal with the matter?
- (9) Is the activity having a significant detrimental effect on the environment, or does it constitute a risk to public safety?
- (10) Does the complaint indicate the existence of a systemic problem e.g. if the complaint is one of a series, could there be a pattern of conduct or a more widespread problem?
- (11) Is there a history of related complaints against this person or organisation?
- (12) Does the complaint have special significance in terms of the priorities of the Council?
- (13) Are there significant resource implications in relation to an investigation and any subsequent enforcement action?
- (14) Is it in the public interest to investigate the complaint?

(15) The effective use of resources having regard to the circumstances of the case.

If a decision is made not to investigate a complaint, this decision must be recorded with the reasons for that decision and the complainant so advised.

10. RESPONDING TO COMPLAINTS

Every effort will be made to ensure that all Customer Service Requests or complaints about alleged unlawful activity are actioned within the 'service standard' time allowed for resolving the category of complaint as indicated in the Customer Service Request system.

Priority for action will be based on the following priorities:

- (1) Urgent and life threatening matters should be actioned as soon as possible following receipt of the complaint. Examples include unsafe building works, dangerous awnings, collapsed building/wall, serious pollution, food safety issues and public health and safety matters, etc.
- (2) General compliance matters will be dealt with on a priority basis having regard to the relative seriousness of the matter. These examples include works not in accordance with consent or construction without consent, illegal use, noise and food complaints.
- (3) Nuisance matters- examples include domestic noise matters, minor non-compliance such as overgrown land or other matters in which there are no likely immediate health or safety implications.

Note that response times may vary depending on staff and other resources.

CONFIDENTIALITY OF COMPLAINANTS

The Council will respect the privacy and confidentiality of information received. However due to its statutory obligations and other requirements, confidentiality cannot always be guaranteed. In cases where the release of information is considered to be necessary the person who made the complaint will be consulted before such a decision is made. The complainant's identity may be disclosed where:

- (1) the person consents in writing to the disclosure of that information; or
- (2) the principles of natural justice dictate that information be disclosed to the person who is the subject of the complaint, which may enable the complainant to be identified; or
- (3) the Council is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively.

ANONYMOUS COMPLAINTS

Council will not accept anonymous complaints from the public (unless there is an immediate risk to public health and safety) for the following reasons:

- (1) Additional information may be necessary in relation to the nature and extent of the complaint.
- (2) It protects against frivolous and vexatious complaints.
- (3) Council may need to support any action through legal proceedings which may need to be supported by witnesses.

11. OPTIONS FOR DEALING WITH CONFIRMED CASES OF UNLAWFUL ACTIVITIES

The Council will try to use the quickest and most informal option to deal with unlawful activity wherever possible unless there is little likelihood of compliance with such options.

Approaches to be considered will include:

- (1) Referring the complaint to an external agency for further investigation or prosecution.
- (2) Taking no action on the basis of a lack of evidence or for some other appropriate reason.
- (3) Counselling the subject of the investigation to educate them on the relevant Council requirements.
- (4) Negotiating with the subject of the investigation and obtaining some undertakings to address the issues of concern arising from the investigation e.g. an application for modification of development consent.
- (5) Referring the parties for mediation with the Community Justice Centre or alternatively for private mediation.
- (6) Issuing a letter requiring work to be done or activity to cease in lieu of more formal action.
- (7) Issuing a notice of intention to serve an order or notice under relevant legislation, followed by service of an appropriate order or notice (Local Government Act (LG Act) ss. 124-128, Environmental Planning & Assessment Act (EP&A Act) s. 121B, and the Protection of the Environment Operations Act (POEO Act) Pts 4.2-4.4 and 8.6).
- (8) Issuing a notice requiring work to be done under various legislation.
- (9) Starting proceedings in the Land & Environment Court for an order to remedy or restrain a breach of the relevant Act or Regulation (s.673 LG Act; s.123 EP&A Act).

- (10) Seeking injunctions from the Land & Environment Court or the Supreme Court.
- (11) Issuing a Court Attendance Notice in the local court.
- (12) Issuing a penalty infringement notice.
- (13) Taking proceedings for an offence against the relevant Act or Regulation (s. 691 LG Act, s.125 EP&A Act, Chapter 5 POEO Act).
- (14) Carrying out the works specified in an order under the LG Act at the cost of the person served with the order (s.678 LG Act).

12. TAKING ENFORCEMENT ACTION

From an operational perspective the Council has a range of enforcement options including, but not limited to the following:

- (1) The issuing of a verbal warning;
- (2) The issuing of a written warning;
- (3) The service of a Notice of Intention to issue an Order;
- (4) The service of written or oral Notices/Orders/Directions;
- (5) The issuing of a penalty infringement notice/s;
- (6) The recommendation to instigate legal action;
- (7) The waiving of certain fees and the granting of an extension of time for compliance;
- (8) The revocation of an approval;
- (9) The removal/ impounding of goods or items;
- (10) The refusal of an application.

When deciding whether to take enforcement action, the Council will consider the circumstances of the case. These include:

- (1) Has the Council created an estoppel* situation? * A bar preventing one from making an allegation or a denial that contradicts what one has previously stated as the truth.
- (2) Is the breach a technical breach only?
- (3) When was the unlawful activity carried out and for how long?

- (4) How has the unlawful activity affected the natural or built environment and the health, safety and amenity of the area?
- (5) Would consent have been given if it had been sought?
- (6) Can the breach be easily remedied?
- (7) Does the person in breach show contrition?
- (8) Are there any particular circumstances of hardship affecting the complainant or the person the subject of the complaint?
- (9) Has the person the subject of the complaint received a previous warning or other non-coercive approach or has formal legal action been taken?
- (10) Would an educative approach be more appropriate than a coercive approach?
- (11) What are the costs and benefits of taking formal enforcement action as opposed to taking informal or no action?
- (12) Is there sufficient evidence to establish a prima facie case? Is there some doubt over the evidence or offence/s?
- (13) Has Council staff acted appropriately in investigating the matter and were standard procedures followed including officers having appropriate authorisation and delegation?
- (14) What are the chances of success if the proposed enforcement action was challenged in court?
- (15) Is there a draft planning instrument on exhibition that would make the unauthorised use legal?
- (16) What action would be reasonable and proportionate in this case?
- (17) Is it in the public interest including there being a reasonable prospect of success?
- (18) Has the alleged offender been given an opportunity, if appropriate, to provide information as to why enforcement action should not be instituted?
- (19) Has the alleged offender been advised, if appropriate, that no response to a show cause letter will result in the commencement of enforcement action?
- (20) What is the likely length and net expense of the legal action.

The Council will ensure that the principles of natural justice are adhered to prior to a decision being made. The following principles will be addressed and implemented by the Council:

- (1) Whoever is the subject of concern must know all the allegations in relation to their action;
- (2) All parties to the complaint must have the right to be heard;
- (3) All relevant submissions and evidence must be considered;
- (4) Matters which are not relevant must not be taken into account;
- (5) The person who makes the complaint must not determine the matter;
- (6) The decision-maker must be fair and just.

The Council will ensure that it gives due consideration to the NSW Attorney General's "Caution Guidelines under the *Fines Act 1996*" when deciding whether or not to take enforcement action which involves the issuing of a Penalty Infringement Notice. The matters that should be taken into account when deciding whether it is appropriate to give a person a caution instead of a Penalty Infringement Notice include:

- (1) The offending behaviour did not involve risks to public safety, damage to property or financial loss, or have a significant impact on other members of the public;
- (2) The person is homeless;
- (3) The person has a mental illness or intellectual disability;
- (4) The person is a child (under 18);
- (5) The person has a special infirmity or is in very poor physical health;
- (6) The offending behaviour is at the lower end of the seriousness scale for that offence;
- (7) The person did not knowingly or deliberately commit the offence;
- (8) The person is cooperative and/or complies with a request to stop the offending conduct;
- (9) It is otherwise reasonable, in all the circumstances of the case, to give the person a caution.

13. DELEGATIONS FOR ENFORCEMENT ACTION

Council staff delegated to initiate various levels of enforcement action is set out in the Council Delegation Manual. The legislation applicable to the delegations is as follows:

- (1) The Australian Road Rules
- (2) Roads Act 1993
- (3) Impounding Act 1993
- (4) Companion Animals Act 1998
- (5) Food Act 2003 (see Compliance and Enforcement: Food Safety Policy)
- (6) Public Health Act 1991
- (7) Swimming Pools Act 1992
- (8) Noxious Weeds Act 1993
- (9) Rural Fires Act 1997
- (10) Contaminated Land Management Act 1997
- (11) Environmental Planning and Assessment Act 1979
- (12) Local Government Act 1993
- (13) Protection of the Environment Operations Act 1997 and the various Regulations made there under.

APPENDIX A

As a guide the following offences may result in a prior warning being given before any enforcement action in the form of the service of an order or notice or penalty infringement notice or court action is undertaken.

- Annual Fire Safety Statement - non submission by owner
- Advertising signs without approval or unsightly
- Air pollution – smoky chimney
- Barking / Roaming dog, unregistered dog
- Commercial swimming pool not properly maintained
- Development / Activity without consent or not in accordance with a condition/s of consent
 - Minor development or old unauthorised development
 - Minor breach of consent condition/s
- Erosion & sediment control matters (owner builder/no prior warning) involving no imminent risk of pollution.
- Fire hazard of a less serious nature.
- Noise pollution
 - Air conditioner*
 - Intruder alarm*
 - Musical instrument and sound equipment*
 - Power tools*
 - Motor vehicle on residential premises*
 - Use of refrigeration equipment fitted to motor vehicle*
- Non compliance with an Order/Notice/Direction- work partly done or other mitigating circumstances
- Obstruction of Public Place / Road – (minor matters)
- Revocation of an approval (eg footpath dining/ place of public entertainment).

* Mandatory warning required by legislation

Note that the above list of offences is an indication only and any offences not listed will be considered on their individual merits.

APPENDIX B

As a guide the following offences may result in NO prior warning being given before any enforcement action in the form of the service of an order or notice or penalty infringement notice or court action is undertaken.

- Dangerous Dog Order/Attacking Dog/Restricted Dog
- Dangerous building/awning
- Dangerous waterhole
- Deposit litter from vehicle
- Development not in accordance with consent/risk to health & safety/bush fire protection/notice of Intention issued by PCA
- Deposit litter/Dumped Rubbish
- Development without consent – unsatisfactory explanation/no explanation/repeat offender/prohibited development/risk to health & safety or environment
- Dilapidated building
- *Environmental damage of a significant nature*
- Erosion & sediment control matters
- Fire hazard threatening an asset.
- Failure to pay Clean Up/Prevention Notice fee
- Failure to comply with order/notice/cease use of premises/failure to comply with order regarding development consent/demolish remove unlawful building/threatening life/public safety/environment/amenity protection/fence land/keeping of birds and animals/remove object from public place/contravene noise control notice/noise pollution.
- *Land clearing of a significant nature*
- Littering
- Noise abatement direction
- Noise pollution generally after prescribed mandatory warning
- Not comply with condition of development consent/approval to operate
- Nuisance Dog Order
- Obstruction of road/public place involving safety.
- Obstruction/intimidation/assault of a Council officer
- Open burning without approval *or not in accordance with an approval or cause excessive smoke.*
- Pollute Waters
- Parking offences
- Pollution Incident – Failure to notify
- Remove and/or damage tree/s
- Swimming Pool fencing/gates/open
- Street Trading without consent/approval

Note that the above list of offences is an indication only and any offences not listed will be considered on their individual merits.

POLICY COMMITTEE
ATTACHMENTS TO THE
DIRECTOR CORPORATE SERVICES & FINANCE'S REPORT
6 JULY 2011

POLICY:	CODE OF MEETING PRACTICE
DATE ADOPTED:	Director Corporate Services Report # Policy 6 July 2011 Council Minute Book No. General Manager's Report #3 Extraordinary Meeting 2 October 2008 (Governance) Minute Book No. 10495 Director Corporate Services & Finance Report #2 Policy 4 April 2007 Council 18 April 2007 Minute Book No. 10111 General Manager's Report # 1 Council 19 April 2006 Minute Book No. 9831 Director Corporate Services & Finance Report # 2 Policy 1 March 2006, Council 15 March 2006 Minute Book No. 9799 Director Corporate Services & Finance Report # 2 Policy 28 September 2005, Council 19 October 2005 Minute Book No. 9684
ORIGINAL ADOPTION:	Administrator's Minute #3 Council 16 June 2004 Minute Book No. 9251
FILE REFERENCE:	07.00064, 07.00065
OBJECTIVE:	To establish set guidelines for the conduct of Council's Meetings

Introduction

This Code of Meeting Practice has been established by Council pursuant to Section 360(2) of the Local Government Act 1993 (The Act). The Code is supplementary to the Act and Regulations, which cover most aspects of meeting procedure.

1. Council Meetings

Ordinary meetings of Council will commence at 6.00 pm on the third Wednesday of each month, except that the December meeting will be held

on the second Wednesday in December, and the January meeting will be held on the first Wednesday in February.

An Ordinary Meeting of Council will be held, if required, on the first Wednesday of each month. This Meeting will commence at 6.00 pm or immediately following the Policy Committee and will include matters considered urgent by the Mayor, Councillors or General Manager and Reports of Officers to facilitate decision making.

Council may change the time or date of any particular meeting, by resolution at a preceding meeting, without prior notice being given.

2. Notice of Meetings:

- (a) See Section 367

3. Extra-ordinary Meetings

- (a) Call by Councillors for Extraordinary meetings - See Section 366.
- (b) The Mayor may, if he/she is of the opinion that a situation exists which warrants the holding of an extraordinary meeting, at short notice, call such a meeting.

The period of notice for such a meeting shall be at the Mayor's discretion [367(2)].

4. Quorum

- (a) Council meetings - See Section 368
- (b) Committees - The quorum for a meeting of a Council Committee shall be three unless determined by Council at the formation of such a Committee.
- (c) Non member Councillors in attendance - See Local Government (General) Regulation 2005, Clause 263.
- (d) A meeting of a Council must be adjourned if a quorum is not present:
 - (i) within half an hour after the time designated for the holding of the meeting;
 - (ii) at any time during the meeting.

In either case, the meeting must be adjourned to a time, date (including later that evening) and place fixed:

- (i) by the Chairperson; or
- (ii) in his or her absence – by the majority of the Councillors present; or
- (iii) failing that, by the General Manager.

The General Manager must record in the Council's Minutes the circumstances relating to the absence of a quorum (including the reasons for the absence of a quorum) at or arising during a meeting of the Council, together with the names of the Councillors present. See Local Government (General) Regulation 2005, Clause 233.

5. Voting Entitlements

- (a) Council meetings - See Section 370
- (b) Committee meetings - Each Committee member has one vote. The Chairperson of the Committee will have a casting vote as well as an ordinary vote, unless this matter is determined at the first meeting of the Committee following its establishment by Council. See Local Government (General) Regulation 2005, Clause 265.

6. Rescinding or Altering Resolutions

- (a) See Section (372)
- (b) Effect will not be given to any resolution of the Council until 12 noon on the day after the date of the Ordinary or Extraordinary meeting, at which the resolution was passed.
- (c) Council will not accept a Rescission Motion after noon on the day following the Ordinary Meeting or Extraordinary Meeting of Council.

7. Lodgement of Notices of Motion

Form of giving Notice of Motion

Every Notice of Motion relating to any new subject or matter not already before the Council, distinctly stating the precise object proposed, shall be submitted in writing to the General Manager duly signed by the member of the Council by 4.30 pm on the Monday of the week prior to the meeting at which the matter is to be taken into consideration. See Local Government (General) Regulation 2005, Clauses 241 and 249.

Order of Notices of Motion

All Notices of Motion shall be dated and numbered as received and shall be entered by the General Manager, subject to Local Government (General) Regulation 2005, Clause 240(2), upon the agenda paper in the order in which they are received and except by the permission of the Council, all such Notices of Motion shall be taken and considered in the order in which they appear on the agenda paper.

The Mayor may call over the Notices of Motion on the business paper in the order in which they appear thereon; and if objection not be taken to a Motion being taken as a formal Motion, it may, without discussion, be put to the vote.

Referral of Notices of Motion to a Committee of Council

If a lawful Notice of Motion is lodged in the prescribed form for inclusion in the ordinary meeting agenda, the Mayor may nevertheless determine in the first instance to refer that Notice of Motion to a Committee of Council for subsequent report and recommendation to Council.

Limitation of Notices

A member shall not have more than three Notices of Motion on the Agenda Paper at the same time.

8. Questions Without Notice

See Local Government (General) Regulation 2005, Clause 249.

9. Standing Orders:

The general order of business at every Ordinary Meeting of the Council (with the exception of the Ordinary Meeting after the Policy Committee) shall be:

1. Meeting commences at 6.00 pm
2. Public Question Time (6.00 – 6.15 pm)
3. Opening Prayer
4. Apologies
5. Confirmation of Minutes
6. Declaration of Interest
7. Minutes from the Mayor
8. Receive and deal with Department Heads' reports
9. Reports of Other Committees
10. Notices of Motion
11. Rescission Motions
12. Councillors/Delegates reports
13. Resolve into Confidential Committee of the Whole to deal with Confidential Reports (public submissions permitted – 1 minute per speaker, maximum of 5 minutes)
14. Resolve into Open Council
15. Adopt Report of the Committee of the Whole
16. Close

provided that Council may, after the confirmation of the Minutes of the previous meeting, make a variation of the order of the business to accord precedence to any matter set down on the business paper for consideration.

The general order of business at every Ordinary Meeting of Council following the Policy Committee shall be:

1. Meeting commences at 6.00 pm or immediately following the Policy Committee
2. Apologies
3. Declaration of Interest
4. Receive and deal with the Mayor's and Department Heads' Report
5. Close

provided that Council may enter Confidential Committee in accordance with Section 10A(2) of the Local Government Act 1993, if required.

The General order of business at each Policy Committee shall be:

1. Meeting commences at 5 pm
2. Apologies
3. Report of Previous Meeting
4. Declaration of Interest
5. Mayor's Report (if any)
6. Department Heads' Reports (if any)
7. General Business
8. Discussion Forum
 - Development application Submissions (if any)
 - Topic (if any)
9. Meeting close

provided that Council may enter Confidential Committee in accordance with Section 10A(2) of the Local Government Act 1993, if required.

10. Method of Adoption of Reports

Reports are considered "seriatim".

The Mayor shall call for adoption of the Report of the Committee Meeting of (Date).

The Mayor invites Councillors to call the item number of any report which a Councillor wishes excluded from the general resolution adopting that report.

The Mayor then calls for a mover and seconder to the resolution in the following manner:

"That the Committee report be adopted with the exception of item ".

The excluded numbers are then called "seriatim" calling on the Councillors who requested the exclusion to move the resolution. The Councillors then either:

- (a) move a resolution in conflict with the Committee recommendation; or
- (b) move adoption of the Committee recommendation and seeks further information from the Mayor or Officers for the purpose of clarification.

Councillors always speak to a Motion. No debate is allowed on any item without a motion having first been moved and seconded.

11. Motions of Dissent - See Local Government (General) Regulation 2005, Clause 248.

12. News Media and public attendance at Council and Committee Meetings

The news media and members of the public are invited to attend all Council and Standing Committee Meetings, subject to the right of Council and Committees, pursuant to Section 10A(2), to resolve to exclude the news media and public during consideration of any particular item or items on the business paper. All resolutions to exclude press and public from meetings shall state the reason for the resolution and this must be recorded in the minutes.

Prior to distributing the business paper for any Council or Committee meeting, the General Manager will determine, in accordance with Local Government (General) Regulation 2005, Clause 240 if any items in the business paper come within the provisions of this Section and will mark any such items "CONFIDENTIAL".

Business papers for all Council and standing Committee meetings will be made available for public perusal at the library as soon as reasonably practicable after distribution of the business paper to members of Council. A limited number of business papers will also be placed in the gallery for members of the public at/or before the opening of the Ordinary Meeting or standing Committee meetings. All business papers made available to the public will exclude those reports marked "CONFIDENTIAL" in the terms of the above.

Any public discussion on Committee reports and recommendations is on the basis that no such report or recommendation has any standing until it is adopted by a full meeting of Council.

13. Annual Election of Mayor, Deputy Mayor, and Members of Standing Committees and Subcommittees

Election of the Mayor by the Councillors - See Local Government (General) Regulation 2005, Division 12.

The agenda for the Council meeting which deals with the election of the Mayor will include the following business, in the following order:

1. Apologies
2. The election of the Mayor.
2. The election of the Deputy Mayor for the same period as the Mayoral term.
3. The appointment of Council's representatives on outside organisations.
4. The appointment of members on Council's standing Committees and Subcommittees.
5. The appointment of citizen representatives to Council's Committees and Subcommittees.
6. Consideration of General Manager's Report.

14. Committee Membership election procedure

1. The Mayor will invite nominations for the Committees in the order they appear on the Agenda.
2. Immediately following announcement by the General Manager of nominations received, any Councillor may withdraw his/her nomination.
3. If no more than the number of nominations required are accepted for Committee, the General Manager shall forthwith declare those persons elected to that Committee.
4. If more than the number of nominations required are accepted for that Committee, the General Manager shall conduct a ballot by the system determined by Council, provided that Council may agree to the number of Councillors nominated being elected to the Committee.
5. Extraordinary vacancies in any standing Committee shall be filled by the Council.
6. Election of Committee Chairs - see See Local Government (General) Regulation 2005, Clause 267.
7. In the event of any vacation of the office of Chair, the Committee shall elect a new Chair to hold office for the residue of his/her predecessor's term.
8. In the absence of a Chair, the Committee shall elect a Chair to preside at that meeting. See Local Government (General) Regulation 2005, Clause 267.

15. Taping of Council Meetings

That the media be permitted to tape (video/audio) Council proceedings, other than Confidential Council or Committee, and that enrolled journalism students make application to the General Manager, for submission to Council, for approval to tape Council proceedings.

16. Pecuniary Interest - Councillors and Staff

- (i) Councillors or staff, in matters before Council or Committee meetings, who have a pecuniary interest must disclose the interest and the nature of the interest to the meeting, in accordance with Council's adopted Code of Conduct, when the declarations of interest are requested.
- (ii) Councillors or staff must, when the matter is being considered, redeclare their interest and the nature of the interest and leave and be out of sight of the meeting room while the matter is being determined.

Councillors and staff should refer to Council's Code of Conduct for more detailed information.

17. Committees

17.1 Appointment and Purpose (Charter)

A Council may appoint or elect such Committees as it considers necessary [Section 355 (b) and (c) Local Government Act and Local Government (General) Regulation 2005, Clause 260]. Council will specify the **charter** of each of its Committees when the Committee is appointed or elected, but may from time to time amend those charters.

Note: Committees are an extension of Council into a specialised area. They derive any powers they may have from Council and can exercise these powers through Council by making recommendations which Council can adopt, or by acting in accordance with a specific delegation of powers. Council's Committee structure can vary from time to time in accordance with a specific Council resolution. A list of Council's Committees is available from the General Manager's Office.

Each Committee shall regulate its own procedures, subject to compliance with the Local Government Act 1993, Regulations and the Code of Meeting Practice. See Local Government (General) Regulation 2005, Clause 265.

17.2 Responsibilities

- * to consider agenda items, and make recommendations to Council (or decisions, if holding delegated authority from Council);
- * to observe requirements of The Local Government Act (1993), Local Government (General) Regulation and the Code of Meeting Practice.
- * to observe requirements of the Charter given by Council;
- * to represent the views of the organisations you represent (if any) on Council's Committee;

Note: Should a Committee wish to recommend to Council on a matter outside its charter, it should do so by acknowledging this, then recommend Council refer such matter to the appropriate Committee, for consideration and recommendation.

17.3 Procedural Matters

- (i) Agendas for Committee meetings will be circulated to members and all Councillors at least three days before the meeting. See Local Government (General) Regulation 2005, Clause 262.
- (ii) Committees having citizen representatives as members will have listed on agendas, a report of the last meeting of the Committee, for noting.
- (iii) The Agenda will include advice as to whether such previous report was adopted by Council, amended and adopted, or rejected.
- (iv) Advice - an appropriate employee will attend Committee meetings to advise on agenda matters, if required.

18. Absence From Committee Meetings

See Local Government (General) Regulation 2005, Clause 268.

19. Election of Chairs of Committees

- (a) See Clause 267 of the Local Government (General) Regulation 2005.
- (b) The Chair's responsibility is to ensure that the Committee's charter is implemented and to chair meetings in accordance with the Act, Regulations and Code. The Chair is accountable to the Council, through the Mayor.

20. Record of Meetings

The General Manager or his/her representative will attend all meetings and will keep an accurate record of proceedings in accordance with section 375(1) of the Local Government Act and the Local Government (General) Regulation 2005, Clause 254:

- (i) Council meetings; see Local Government (General) Regulation, Clause 260
- (ii) Council Committees; see Local Government (General) Regulation, Clause 260.
- (iii) Community Committees [Section 355(c)], all committee recommendations, for submission to Council.
- (iv) Minutes are to be kept and presented to Council for all meetings of Committees.

21. Petitions

When a petition is received, it shall be considered having regard to:

- * The Corporate Plan
- * Existing policy
- * Accepted Council practice

If, after reviewing the above, it is possible to satisfy the petitioners' complaint by executive action, this should be done.

If it is not possible to resolve the matter, where the petition is of a general nature, details should be referred to the next meeting of the Council, but where it specifically addresses an issue of direct concern to another particular Committee, the petition should be referred directly to that Committee for its consideration.

22. Reports by Councillors to Meetings

All reports by Councillors to the Council Meeting must be with the General Manager by 4.30 pm on the Monday of the week prior to the meeting, and any reports received after that time, will be held over to the next meeting.

Guidelines for preparing Delegates Reports:

1. Circumstances

- 1.1 It is expected that councillors will provide a written report to Council on:
 - (a) The consideration before the body to which the councillor is a delegate/member that deals with a policy issue with respect to the provision of services in the region in accordance with Council's Management Plan and the Charter of Council under the LGA 1993;
 - (b) Any matter with a financial or potentially financial impact for Council;
 - (c) Any matter of significance for Council.
- 1.2 Councillors will at their discretion provide a written report to Council on matters of interest for Council arising out of meetings attended.
- 1.3 If more than one councillor is appointed to a particular body, the report may, but need not necessarily be, a joint report.

2. Subject Matter

The report should identify:-

- 2.1 The date time and place of the meeting of the subject organisation.
- 2.2 Matters of significance for Bathurst Regional Council arising out of the matter.
- 2.3 Any matter with a financial or potential financial impact for BRC.
- 2.4 Subject to obligations of confidentiality any matter of adverse or potentially adverse financial impact upon the organisation to which the councillor is a delegate.
- 2.5 The policy issue with respect to the provision of services in the region in accordance with Council's Management Plan and Charter of Council under the LGA 1993.
- 2.6 Matters of interest for Bathurst Regional Council arising out of the meeting.

2.7 Minutes of the meeting upon which the councillor is providing a report.

3. *Format*

The report shall:-

3.1 Be concise.

3.2 Preferably be in point form.

3.3 Objectively provide advice on the business conducted.

3.4 Be informative.

3.5 Where appropriate, contain recommendations to Council on further action.

3.6 Where desirable, seek direction from Council on the approach to be taken by the delegate in representing Council.

3.7 Not contain extraneous, argumentative, offensive or defamatory material.

4. *Presentation of Report*

4.1 Reports are to be delivered to the General Manager prior to the close of the business paper for the next ordinary meeting.

4.2 The Councillor should indicate whether the report is routine or urgent.

4.3 The General Manager will review the report before publication.

4.4 It is not a part of the role of the General Manager to vet the contents of the report to seek to identify and to exclude from publication material which breaches this policy.

4.5 If, in the opinion of the General Manager, the report is inappropriate to include in the business papers due to its failure to comply with this policy, the General Manager will:-

(a) not publish the report;

(b) refer the report to the Mayor who will report the matter to Council at the next ordinary meeting;

(c) advise the councillor of that action.

4.6 The report is not a notice of motion for the purposes of the LGA, Regulations and Council's Code of Meeting Practice.

4.7 The report is to be provided in a manner which is consistent with obligations under Council's Code of Conduct.

23. Closed Meetings – Public Submissions

Council, or a committee of the council of which all the members are councillors, may close to the public so much of the meeting as comprises a motion to close another part of the meeting to the public [S.10A(3)].

Members of the public must be given the opportunity immediately after a resolution to refer the matter into Confidential Committee has been moved or seconded, to make representations on whether a matter should be dealt with in Confidential Committee or not. The time permitted for each speaker will be one minute and an overall maximum of five minutes (five speakers). See Local Government (General) Regulation 2005, Clause 252.



BATHURST

2000

1815-2015



2000

1815-2015

MINUTES OF THE AUDIT & RISK MANAGEMENT COMMITTEE
HELD ON 22 JUNE 2011

MEETING COMMENCES - 1 pm

1 MEETING COMMENCES

Present: Andrew Fletcher (Chair), Cr Ian North, Grahame Marchant

In attendance: Leanne Smith (Morse Group), Shephard Shambira (Internal Auditor), David Sherley (General Manager), Brian Dwyer (Manager Corporate Governance)

APOLOGIES

2 APOLOGIES

MOVED G Marchant

and **SECONDED** Cr I North

RESOLVED: That the apologies from Cr P Toole and the Director Corporate Services & Finance be accepted and leave of absence granted.

DECLARATION OF INTEREST

3 DECLARATION OF INTEREST 11.00002

MOVED Cr I North

and **SECONDED** G Marchant

RESOLVED: That the Declaration of Interest be noted.

REPORT OF PREVIOUS MEETING

4 Item 1 MINUTES - AUDIT & RISK MANAGEMENT COMMITTEE - 23 MARCH 2011 (07.00096)

MOVED G Marchant

and **SECONDED** Cr I North

RESOLVED: That the Minutes of the Audit & Risk Management Committee Meeting held on 23 March 2011 be adopted with the amendment that Leanne Smith be listed as "In attendance" not "Present".

RISK MANAGEMENT

5 Item 1 ENTERPRISE RISK MANAGEMENT (DIRECTOR CORPORATE SERVICES & FINANCE) (07.00096)

MOVED Cr I North

and **SECONDED** G Marchant

RESOLVED: That

(a) the information be noted.

(b) a presentation be provided to the next ARMC meeting on the Enterprise Risk Management Plan.

to advise if there were any legislative changes that would impact on Council's compliance requirements.

11 **SITE VISITS OF COUNCIL FACILITIES**

A Fletcher - requested that the Committee set aside approximately 40 minutes each meeting to conduct site visits of Council facilities. Suggested Store and Depot could be first.

12 **ALTERNATE COUNCIL DELEGATE TO COMMITTEE**

A Fletcher - asked whether Council had appointed an alternate delegate.

Manager Corporate Governance advised report being submitted to July Policy Meeting.

A Fletcher - asked to be advised of result.

13 **MEETING OF BOD ALLIANCE COUNCILS**

A Fletcher - noted that minutes of last Committee meeting detailed a meeting between Bathurst, Orange & Dubbo Council to discuss a standard agenda and reporting format. Advised meeting had not yet been held.

14 **SURVEY ON AUDIT COMMITTEE OPERATIONS**

A Fletcher - advised had circulated a survey to Committee members and will hold discussions with each member to address any particular issues raised. Advised BRC members generally happy.

MEETING CLOSE

15 **MEETING CLOSE**

The Meeting closed at 3.25 pm.