



# Corporate & Works Committee

**Agenda:** *Corporate & Works Committee*

**Date:** *Tuesday 7 October 2008*

**Time:** *6.00pm*

## **Outline of Meeting Protocol & Procedure:**

- The Chairperson will call the Meeting to order and ask the Committee/Staff to present apologies or late correspondence.
- The Chairperson will commence the Order of Business as shown in the Index to the Agenda.
- At the beginning of each item the Chairperson will ask whether a member(s) of the public wish to address the Committee.
- If person(s) wish to address the Committee, they are allowed four (4) minutes in which to do so. Please direct comments to the issues at hand.
- If there are persons representing both sides of a matter (eg applicant/objector), the person(s) against the recommendation speak first.
- At the conclusion of the allotted four (4) minutes, the speaker resumes his/her seat and takes no further part in the debate unless specifically called to do so by the Chairperson.
- If there is more than one (1) person wishing to address the Committee from the same side of the debate, the Chairperson will request that where possible a spokesperson be nominated to represent the parties.
- The Chairperson has the discretion whether to continue to accept speakers from the floor.
- After considering any submissions the Committee will debate the matter (if necessary), and arrive at a recommendation (R items which proceed to Full Council) or a resolution (D items for which the Committee has delegated authority).

## **Delegated Authority (“D” Items):**

- General financial and corporate management of the Council, except those specifically excluded by statute, by Council direction or delegated specifically to another Committee.
- Note: This not to limit the discretions of nominated staff members exercising Delegated Authorities granted by the Council.
- Quarterly review of Council's Management Plan.
- Finance Regulations, including:-
  - Authorisation of expenditures within budgetary provisions where not delegated;
  - Quarterly review of Budget Review Statements;
  - Quarterly and other reports on Works and Services provision; and
  - Writing off of rates, fees and charges because of non-rateability, bad debts, and impracticality of collection.
- Auditing.
- Property Management.
- Asset Management.
- Traffic Management - Works Implementation.
- Works and Services - Monitoring and Implementations.
- Legal Matters and Legal Register.
- Parks and Reserves Management.
- Infrastructure Management, Design and Investigation.
- To require such investigations, reports or actions as considered necessary in respect of matters contained within the Business Agenda (and as may be limited by specific Council resolution).
- Confirmation of Minutes of its Meeting.
- Any other matter falling within the responsibility of the Corporate and Works Committee and not restricted by the Local Government Act or required to be a Recommendation to Full Council as listed below.

## **Recommendation only to the Full Council (“R” Items):**

- Such matters as are specified in Section 377 and within the ambit of the Committee considerations.
- The voting of money for expenditure on works, services and operations.
- Rates, Fees and Charges.
- Donations
- Matters which involve broad strategic or policy initiatives within responsibilities of the Committee.
- Matters not within the specified functions of the Committee.
- Asset Rationalisation.
- Corporate Operations:-
  - Statutory Reporting; - Delegations.
  - Adoption of Council's Management Plans; - Policies.
  - Quality Service/Communications; - Tenders as per Regulation requirements.
  - Leases.
  - Matters reserved by individual Councillors in accordance with any Council policy on "safeguards" and substantive changes

**Committee Membership:**

6 Councillors

**Quorum:**

The quorum for a Committee meeting is 4 Councillors.

# WOOLLAHRA MUNICIPAL COUNCIL

## Notice of Meeting

29 September 2008

To: His Worship The Mayor, Councillor Petrie, ex-officio  
Councillors      Greg Medcraft      (Chair)  
                         Anthony Boskovitz  
                         Peter Cavanagh  
                         Nicola Grieve  
                         Ian Plater  
                         Isabelle Shapiro

Dear Councillors

### **Corporate & Works Committee Meeting – 7 October 2008**

In accordance with the provisions of the Local Government Act 1993, I request your attendance at a Meeting of the Council's **Corporate and Works Committee** to be held in the **Council Chambers, 536 New South Head Road, Double Bay, on Tuesday 7 October 2008 at 6.00pm.**

Gary James  
General Manager

# **Additional Information Relating to Committee Matters**

## **Site Inspection**

## **Other Matters**

Presentation on Encroachments Policy (Managing Encroachments on Council Road Reserves) by the Director of Technical Services will be made prior to consideration of Item D7.

## Meeting Agenda

<b>Item</b>	<b>Subject</b>	<b>Pages</b>
1	Leave of Absence and Apologies	
2	Late Correspondence	
3	Declarations of Interest	

### **Items to be Decided by this Committee using its Delegated Authority**

D1	Election of Deputy Chairperson	1
D2	Confirmation of Minutes of Meeting held on 1 September 2008	2
D3	Political donation and gift disclosures and requirements of General Managers to report matter to the Director General Department of Local Government – 1191.G	3
D4	Matters to be considered by Council during the next 12 months – 38.G	16
D5	Disclosure of Interest Returns by Councillors and designated persons – 169.G	24
D6	Monthly Financial Report – August 2008 – 349.G	27
D7	Queen Avenue, Vacluse – Proposed action to regularise Encroachment on the Road Reserve – 374. & 1120.G	33

### **Items to be Submitted to the Council for Decision with Recommendations from this Committee**

R1	3 Queens Avenue, Vacluse – Proposed Road closure and sale – 374.3 & 1220.G	62
R2	Statutory review of Policy – Payment of Expenses and Provision of Facilities to The Mayor, Deputy Mayor and Councillors Policy – 18.G	72

**Item No:** D1 Delegated to Committee  
**Subject:** Election of Deputy Chairperson  
**Author:** Les Windle - Manager Governance  
**Reason for Report:** For the Committee to elect a Deputy Chairperson

**Recommendation:**

That Councillor \_\_\_\_\_ be elected as Deputy Chairperson of the Corporate and Works Committee for the ensuing twelve months.

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**Background:**

It has been the practice for the Committee to elect a Deputy Chairperson who can chair the meeting in the absence of the chairperson.

Les Windle  
Manager Governance

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**ANNEXURES:**

Nil

**Item No:** D2 Delegated to Committee  
**Subject:** **Confirmation of Minutes of meeting held on 1 September 2008**  
**Author:** Les Windle, Manager – Governance  
**File No:** See Council Minutes  
**Reason for Report:** The Minutes of the Meeting of Monday 1 September 2008 were previously circulated. In accordance with the guidelines for Committees' operations it is now necessary that those Minutes be formally taken as read and confirmed.

**Recommendation:**

That the Minutes of the Corporate and Works Committee Meeting of 1 September 2008 be taken as read and confirmed.

Les Windle  
Manager - Governance

**Item No:** D3 Delegated to Committee

**Subject:** **Political donation and gift disclosures and requirements of General Managers to report matters to The Director General Department of Local Government**

**Author:** Les Windle - Manager Governance  
Peter Kauter – Executive Planner

**File No:** 1191.G

**Reason for Report:** To advise Councillors of new legislative requirements in relation to political donations and gifts

**Recommendation:**

- A. That the information be noted.
- B. That Council note that the following actions have been taken:
- a link has been provided on Council’s website to the Election Funding Authority website,
  - information is provided for applicants and people making submissions on appropriate parts of Council’s website and by notices in the Wentworth Courier,
  - a disclosure statement form, which incorporates explanatory information, is available for use by applicants and people making submissions,
  - Council’s DA Guide, neighbour notification letters and DA form/check list have been updated,
  - DA assessment report templates have been revised to include details of disclosures,
  - disclosure statements are available on Council’s website,
  - Council’s technical and administrative staff have been briefed on the legislative requirements.

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**Background:**

The *Local Government and Planning Legislation Amendment (Political Donations) Act 2008* was passed by both houses of the NSW Parliament on 30 June 2008 and became effective from 1 October 2008. This Act amends the *Environmental Planning and Assessment Act 1979* and the *Local Government Act 1993*.

The Environmental Planning and Assessment Act is amended in relation to the disclosure of political donations and gifts. The Local Government Act is amended in relation to political donation disclosures and the recording of voting on planning matters.

This report relates to the political donation requirements under changes to both the Environmental Planning and Assessment Act and the Local Government Act. A separate report concerning the voting on planning matters requirements has been submitted to the Development Control Committee on 7 October 2008 and a similar report will be submitted to the Urban Planning Committee on 13 October 2008.

**Proposal:**

Local Government Act requirements

The Local Government Act has been amended by inserting new Sections 328A and 328B. These sections state:

### **328A General manager to keep register of political donation disclosures**

- (1) *The general manager is required to keep a register of copies of current declarations of disclosures of political donations lodged with the Election Funding Authority by or on behalf of councillors of the council concerned (including in their capacity as candidates for election as councillors).*
- (2) *For the purposes of this section, current declarations of disclosures of political donations are declarations lodged under Part 6 of the Election Funding and Disclosures Act 1981 in respect of the relevant disclosure period that includes the date of the last election (other than a by-election) and all subsequent relevant disclosure periods.*

***Note.** Part 6 of the Election Funding and Disclosures Act 1981 makes provision for disclosure by councillors and candidates for civic office (and parties registered in connection with local government elections) of political donations and electoral expenditure.*

### **328B Reference by general manager to Director-General of political donation matters**

- (1) *If the general manager reasonably suspects that a councillor has not complied with the provisions of the code of conduct under section 440 relating to the disclosure of political donations or the manner of dealing with any perceived conflict of interest in relation to political donations, the general manager is to refer the matter to the Director-General.*
- (2) *Any such matter may be referred by the Director-General to the Pecuniary Interest and Disciplinary Tribunal.*
- (3) *Any such matter is taken (for the purposes of this Act) to be referred to the Tribunal under section 440N (but a referral under this section may be made without the councillor concerned having previously been suspended for misbehaviour).*

### **Section 328A requirements**

Council is required to keep a register of all current donations and expenditure declarations lodged with the Election Funding Authority of New South Wales. Recent amendments through the Election Funding Amendment (Political Donations and Expenditure ) Act 2008 places new requirements on political parties, groups, candidates, members of Parliament and councillors to lodge declarations with the Election Funding Authority of donations made or received and electoral expenditure incurred in each 6 month period. The Election Funding Authority is required to publish these declarations as soon as practicable and will publish the declarations on their website.

The Department of Local Government has advised that providing a link on Council's website to the Election Funding Authority website will fulfil the new requirements and has recommended that members of the public be given access to the internet at its offices to allow access to this information if they do not have other internet access facilities available.

Council has provided a link on the Council website and will allow public internet access to this link.

### **Section 328B requirements**

This new section requires that if the General Manager has a reasonable suspicion that a councillor has not complied with the political donation requirements of clauses 7.21 to 7.25 of the Model Code of Conduct, then the General Manager is required to refer the matter to the Director General of the Department of Local Government and not to a conduct review committee or reviewer. Clauses 7.21 to 7.25 of the Model Code of Conduct state:

Political donations exceeding \$1,000

- 7.21 *Councillors should note that matters before council involving political or campaign donors may give rise to a non-pecuniary conflict of interests.*
- 7.22 *Councillors should take all reasonable steps to ascertain the source of any political contributions that directly benefit their election campaigns. For example, councillors should have reasonable knowledge of contributions received by them or their “official agent” (within the meaning of the Election Funding Act 1981) that directly benefit their election campaign.*
- 7.23 *Where a councillor or the councillor’s “official agent” has received “political contributions” or “political donations”, as the case may be, within the meaning of the Election Funding Act 1981 exceeding \$1,000 which directly benefit their campaign:*
- a) from a political or campaign donor or related entity in the previous four years; and*
  - b) where the political or campaign donor or related entity has a matter before council,*
- then the councillor must declare a non-pecuniary conflict of interests, disclose the nature of the interest, and manage the conflict of interests in accordance with clause 7.17(b).*
- 7.24 *Councillors should note that political contributions below \$1,000, or political contributions to a registered political party or group by which a councillor is endorsed, may still give rise to a non-pecuniary conflict of interests. Councillors should determine whether or not such conflicts are significant and take the appropriate action to manage them.*
- 7.25 *If a councillor has received a donation of the kind referred to in clause 7.23, that councillor is not prevented from participating in a decision to delegate council’s decision-making role to council staff or appointing another person or body to make the decision in accordance with the law (see clause 7.20 above).*

Clause 7.23 refers to actions required in accordance with clause 7.17(b) of the Model Code and clause 7.25 refers to actions required in accordance with clause 7.20 of the Model Code. These clauses state:

- 7.17 *If you are a council official, other than a member of staff of council, and you have disclosed that a significant non-pecuniary conflict of interests exists, you must manage it in one of two ways:*
- a) remove the source of the conflict, by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another council official*
  - b) have no involvement in the matter, by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in section 451(2) of the Act apply*
- 7.20 *Despite clause 7.17(b), a councillor who has disclosed that a significant non-pecuniary conflict of interests exists may participate in a decision to delegate council’s decision-making role to council staff, or appoint another person or body to make the decision in accordance with the law. This applies whether or not council would be deprived of a quorum if one or more councillors were to manage their conflict of interests by not voting on a matter in accordance with clause 7.17(b) above.*

It is important that Councillors are aware of their responsibility to take all reasonable steps to ascertain the source of any political contributions that directly benefit their election campaigns (clause 7.23) and, if a donation exceeding \$1,000 has been received, the requirement to have no involvement in the matter before a Council or Committee meeting by absenting themselves from and not taking part in any debate or vote on the matter (clause 7.17b). See Annexure 1 for a Flowchart on the matters to be considered and actions required by Councillors at meetings.

### **Environmental Planning and Assessment Act (EPA Act) requirements**

The EPA Act is amended by introducing a new s.147 *Disclosure of political donations and gifts*.

The object of s.147, as stated in subclause (1), is to require the disclosure of political donations or gifts when planning applications are made to minimise any perception of undue influence. This object is to be achieved by:

- (a) requiring public disclosure of political donations or gifts at the time planning applications (or submissions relating to them) are made, and
- (b) providing the opportunity for appropriate decisions to be made about the persons who will determine or advise on the determination of planning applications

Subclause (1) also provides that political donations or gifts are not relevant to the determination of planning applications and do not provide grounds for challenging their determination.

Subclause (2) gives the meaning of *gift*, *local councillor*, *relevant planning application*, *relevant public submission* and *reportable political donation*.

*Gift* and *reportable political donation* have the same meaning as the *Election Funding and Disclosures Act 1981*. The meaning of *gift* also includes the following note: *A gift includes a gift of money or the provision of any other valuable thing or service for no consideration or inadequate consideration*. The meaning of *reportable political donation* also includes the following note: *Reportable political donations include those of or above \$1,000*.

In relation to Council's activities, *relevant planning application* includes:

- a formal request to initiate the making of an environmental planning instrument or a development control plan in relation to a particular site
- a development application under Part 4 or the EPA Act or an application for the modification of a development consent
- any other application or request prescribed by the regulations to be a relevant planning application – presently there is no such regulation

A *relevant planning application* does not include:

- an application for a complying development certificate or an application to modify a complying development certificate
- an application or request made by a public authority on its own behalf or made on behalf of a public authority
- any other application or request excluded by the regulations – presently there is no such regulation

A *relevant public submission* means a written submission made by a person objecting to or supporting a relevant planning application or any development that would be authorised by the granting of the application.

Subclause (4) provides that a person who makes a relevant planning application to a council is required to disclose:

- (a) all reportable political donations made to any councillor
- (b) all gifts made to any councillor or to any council employee

made by any person with a financial interest in the application within the period commencing 2 years before the application is made and ending when the application is determined.

Subclause (5) provides that a person who makes a relevant public submission to a council in relation to a relevant planning application is required to disclose:

- (a) all reportable political donations made to any councillor
- (b) all gifts made to any councillor or to any council employee

made by him/her or made by any of his/her associates within the period commencing 2 years before the submission is made and ending when the application is determined.

In subclauses (4) and (5) a reportable political donation made to a councillor includes a donation made at the time the person was a candidate for election to the council.

Subclause (6) provides that the disclosure of political donations or gifts is to be made:

- (a) in, or in a statement accompanying, the planning application or submission if the donation or gift is made before the application or submission is made
- (b) if the donation or gift is made afterwards, in a statement made within 7 days after the donation or gift is made

Subclause (7) provides that a person has a financial interest in a planning application if:

- (a) the person is the applicant or the person on whose behalf the application is made, or
- (b) the person is the owner of the site to which the application relates or has entered into an agreement to acquire the site or any part of it, or
- (c) the person is associated with a person referred to in (a) or (b) above and is likely to obtain a financial gain if the development is authorised or carried out (other than a financial gain merely as a shareholder in a company listed on a stock exchange) or
- (d) the person has any other interest prescribed by the regulations – presently there is no such regulation

Subclause (8) provides that persons are associated with each other if:

- (a) they carry on business together in connection with the planning application (in the case of the making of an application) or they carry on a business together that may be affected by the granting of the application (in the case of a relevant planning submission), or
- (b) they are related bodies corporate under the *Corporations Act 2001* of the Commonwealth, or
- (c) one is a director of a corporation and the other is any such related corporation or a director of any such related corporation, or
- (d) they have any other relationship prescribed by the regulation – presently there is no such regulation

Subclause (9) requires the following details to be disclosed for political donations:

- (a) the name of the party or person for whose benefit the donation was made,
- (b) the date on which the donation was made,
- (c) the name of the donor,
- (d) the residential address of the donor (in the case of an individual) or the address of the registered or other official office of the donor (in the case of an entity)
- (e) the amount (or value) of the donation
- (f) in the case of a donor that is an entity and not an individual – the Australian Business Number of the entity.

Subclause (9) also includes the following note: *The above details are the details required to be disclosed of political donations under Part 6 of the Election Funding and Disclosures Act 1981.*

Subclause (10) provides that the following details are to be disclosed for gifts:

- (a) the name of the person to whom the gift was made,
- (b) the date on which the gift was made,
- (c) the name of the person who made the gift
- (d) the residential address of the registered or other official office of the person who made the gift (in the case of an entity)

Subclause (11) provides that:

*A person is guilty of an offence under section 125 in connection with the obligations under this section only if the person fails to make a disclosure of a political donation or gift in accordance with this section that the person knows, or ought reasonably to know, was made and is required to be disclosed under this section. The maximum penalty for any such offence is the maximum penalty under Part 6 of the Election Funding and Disclosures Act 1981 for making a false statement in a declaration of disclosures lodged under that Part.*

Presently the maximum penalty is \$22,000 (200 penalty points) or imprisonment for 12 months, or both.

Subclause (12) requires that we make disclosures available to the public on, or in accordance with arrangements notified on, our website. Disclosures are to be made publicly available within 14 days after they are made.

Subclause (13) stipulates that these provisions apply to planning applications or submissions made after the commencement of s.147 (i.e. 1/10/08). In relation to applications or submissions it extends to political donations or gifts made beforehand.

To facilitate the commencement of these provisions we have:

- provided information for applicants and people making submissions on appropriate parts of our web site and by notices in the Wentworth Courier
- prepared a disclosure statement form, which incorporates explanatory information, available for use by applicants and people making submissions (see annexure 2)
- updated our DA Guide, neighbour notification letters and DA form/check list
- revised our DA assessment report templates to include details of any disclosures
- arranged for making disclosure statements publicly available on our web site
- briefed relevant technical and administrative staff

The submission of disclosure statements is a matter for applicants and for people making submissions. The EPA Act changes do not place any direct obligations on councillors or council employees, i.e. it does not require them to make a disclosure statement on a planning application. However, as discussed earlier, councillors involved in decisions on planning applications need to be aware of provisions of the *Model Code of Conduct* relating to the management of a conflict of interest.

Assessment reports on planning applications will include details of any disclosures made by an applicant or a person making a submission in respect to a particular application. This is to assist in achieving the stated object of the changes. The details included in the report will be taken directly from the disclosure statement (if any) as made by the applicant or the person making a submission. Otherwise, as political donations and gifts are not relevant to the determination of planning applications, assessment reports will contain no discussion on any disclosure.

**Consultation:**

There are no public consultation requirements with the implementation of the new legislation.

**Identification of Income & Expenditure:**

There is no additional expenditure incurred by Council implementing the legislative changes.

It is difficult to predict the number of disclosure statements that we are likely to receive. However, it is anticipated that fulfilment of our obligations, including the necessary ongoing maintenance of our web site to make disclosures publicly available, can be met within existing budget allocations.

Having regard to the objects of the EPA Act changes any consequential changes to the manner of reporting and/or determining planning applications should be monitored for any cost implications.

**Conclusion:**

By legislation commencing 1 October 2008 Council is required to keep a public register of all current donations and expenditure declarations lodged by councillors with the Election Funding Authority of NSW and the General Manager is required to report to the Director General of the Department of Local Government any suspicions that a councillor has failed to comply with his or her obligation to disclose and manage a conflict of interests arising from a political donation. This report advises how Council will implement the legislative requirements in relation to keeping a register of political donations and of the General Managers requirement to report matters to the Director General of the Department of Local Government.

The legislation also has the objective of minimising the perception of undue influence in decisions on planning application. It does this through the introduction of s.147 into the EPA Act. The objective is achieved by requiring people who make planning applications, or who make submissions on them, to disclose political donations and gifts. This report also provides advice on how we have informed the community of these new requirements and how we intend to fulfil our obligations in meeting the legislation's objective.

It is recommended the information and actions taken by Council be noted.

Les Windle  
Manager Governance

Geoff Clarke  
Director Corporate Services

Peter Kauter  
Executive Planner

Allan Coker  
Director – Planning & Development

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**Annexures:**

1. Matters to be considered and actions required by Councillors at meetings.
2. Political donations and gifts disclosure statement – explanatory information and form

**Item No:** D4 Delegated to Committee  
**Subject:** **Matters to be considered by Council during the next 12 months**  
**Author:** Les Windle - Manager Governance  
**File No:** 38.G  
**Reason for Report:** To advise Councillors of matters that will be submitted to the Council in the next 12 months.

**Recommendation:**

That the information be noted.

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**Background:**

The Local Government Act requires each Council to undertake certain reviews within 12 months after an election. Council is also required, as part of its normal operations, to do certain things throughout the year. This report advises of the statutory reviews Council must undertake and the other matters that will be submitted to the Council in the next 12 months.

**Statutory reviews within 12 months of election**

**1. Review of Payment of Expenses and Provision of Facilities Policy**

Section 252 of the Local Government Act requires Councils to adopt, after complying with the 28 day consultation period requirements contained in Section 253 of the Local Government Act, an expenses and facilities policy within 5 months after the end of each financial year. A copy of sections 252 and 253 of the Local Government Act is attached at Annexure 1.

A report concerning the review of this policy is submitted separately to tonight's Corporate and Works Committee meeting.

**2. Review of Delegations**

Section 377 of the Local Government Act allows Council, subject to the restrictions identified in the section, to delegate functions of the Council to the General Manager or any other person or body (not including another employee of the council) and Section 380 requires Council to review those delegations within the first 12 months of each term of office. A copy of sections 377 and 380 of the Local Government Act is attached at Annexure 2.

Council has delegated functions to the following:

- The Mayor,
- The Deputy Mayor,
- The Standing Committees of Council (Development Control, Corporate and Works, Urban Planning, Community and Environment and Strategic and Corporate Committees),
- The General Manager.

### **3. Review of Code of Conduct**

Section 440 of the Local Government Act 1993 requires all New South Wales councils to adopt a code of conduct that incorporates the provisions of a Model Code of Conduct (or is consistent with the Model Code of Conduct) prepared by the Department of Local Government. A copy of section 440 of the Local Government Act is attached at Annexure 3.

Council's current Code of Conduct was adopted by Council on 28 August 2008 following release of a new Model Code of Conduct by the Department of Local Government in June 2008.

Proposed Councillor training on the Code of Conduct is as follows:

- Thursday 23rd October – Joint Councillor Briefing for Woollahra, Waverley and Randwick Councillors that includes a Code of Conduct session (further details to be provided to Councillors prior to the briefing)
- Monday 30<sup>th</sup> March 2009 – Code of Conduct Workshop

The March 2009 Workshop will be conducted by the same external facilitator who will be conducting the October Briefing and will give Councillors an opportunity to ask questions and raise matters that may come to mind after several months as a Councillor which may not have been covered in the October Briefing.

### **4. Re-determine Organisation Structure**

Section 333 of the Local Government Act requires Council to re-determine its organisation structure within 12 months of each ordinary election of the Council. A copy of section 333 of the Local Government Act is attached at Annexure 4.

### **Other matters that will be submitted to the Council in the next 12 months**

#### **1. Annual Financial Reports**

The annual financial reports for the year ended 30 June 2008 were adopted by Council on 8 September 2008 and have been referred for audit. In anticipation of receiving the Auditors Reports, the financial reports will be presented to the public at the Corporate & Works Committee meeting on 20 October 2008.

#### **2. Budget Preparation**

The 2009/2010 budget preparation cycle will commence in December 2008 with a review of Council's Budget Strategy. Working within the strategic framework adopted by Council, staff will prepare a preliminary draft budget for initial consideration by Council in early March. Further consideration is in either Councillor Workshop(s) or the Strategic & Corporate Committee, a Committee of the whole Council.

#### **3. Budget Quarterly Reviews**

The annual budget is reviewed on a quarterly basis, this is the quarters ending September, December and March. A final June quarter, or year end review is submitted to the Committee in conjunction with the annual financial reports. These reviews are required to be submitted to the Committee within eight weeks of the end of each quarter. Depending on meeting dates we try to get the reviews to the first meeting of the months of November, February and May.

#### **4. Management Plan Preparation**

Each year Council must prepare a draft management plan with respect to:

- a) the Council's activities for at least the next 3 years,
- b) the Council's revenue policy for the next year.

The draft management plan must be placed on public exhibition for no less than 28 days with public submissions invited on the draft management plan. Council must adopt a management plan after the public exhibition period taking into consideration any submissions received.

The draft management plan contains the following 9 Principal Activities:

1. Built Environment
2. Natural Environment
3. Road, Traffic and Transport
4. Parks and Public Space
5. Community Services
6. Customer Service and Communication
7. Organisation Support
8. Environmental, Infrastructure and Stormwater Works program.

We will commence preparation of the 2009-2012 draft management plan in February 2009 with reports being submitted to respective committees of Council from April 2009 on each of the Principal Activities. The complete draft management plan will be submitted to Council in early May 2009 for exhibition and submitted to Council in June 2009 for adoption, subject to the submissions received.

#### **5. Management Plan Quarterly Reviews**

Council is required to review the Management Plan Principal Activities within 2 months after the end of each quarter as to the extent to which the performance targets set by the Management Plan have been achieved during that quarter.

Reports will be submitted to respective committees of Council after each quarter detailing the status of each project within the Principal Activities as at the quarter end.

#### **6. State of the Environment Report**

The State of the Environment report forms a part of Council's annual reporting obligations set out in the *Local Government Act 1993*. Council is to prepare a report as to the state of the environment within five months after the end of each year. The report is to cover the following environmental sectors:

- (i) land,
- (ii) air,
- (iii) water
- (iv) biodiversity,
- (v) waste,
- (vi) noise,
- (vii) Aboriginal heritage,
- (viii) Non-Aboriginal heritage.

The draft report is currently being prepared and will be presented to Council in early November 2008, prior to submission to the Department of Local Government by the 30 November 2008.

## **7. Contractual Conditions of Senior Staff**

The General Manager is required, at least once annually, to report to the Council on the contractual conditions of senior staff.

### **Conclusion:**

Council is required to undertake a number of reviews following the election of a new Council and as part of its normal operations, do certain things throughout the year. This report details the reviews required and the matters that will be submitted to the Council in the next 12 months. It is recommended that the information be noted.

Les Windle  
Manager Governance

Geoff Clarke  
Director Corporate Services

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### **Annexures:**

1. Local Government Act Section 252 (Payment of expenses and provision of facilities) and Section 253 (Requirements before policy concerning expenses and facilities can be adopted or amended)
2. Local Government Act Section 377 (General power of council to delegate) and Section 380 (Review of delegations)
3. Local Government Act Section 440 – Codes of conduct
4. Local Government Act Section 333 – Re-determination of organisation structure

**Item No:** D5 Delegated to Committee  
**Subject:** **Disclosure of Interest Returns by Councillors and designated persons**  
**Author:** Helen Tola – Team Leader Governance  
**File No:** 169.G  
**Reason for Report:** To table the returns disclosing Pecuniary Interest of Councillors and designated persons in accordance with legislative requirements.

**Recommendation:**

- A. That Council notes that the Disclosures of Interest Returns of Councillors and Designated Persons are tabled.
- B. That Council notes that the Disclosure of Interest Returns have been submitted in accordance with the requirements of the Local Government Act 1993.

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**Background:**

Councillors and designated persons are required to lodge a disclosure of interest returns within three (3) months of becoming a Councillor or designated person and for each July 1 to June 30 period, during which the person is a Councillor or designated person.

The purpose of this report is to table the Ordinary Returns of the Councillors and Designated Persons who have lodged Ordinary Returns for the period 1 July 2007 to 30 June 2008 and to table Primary (first) Returns of new staff members determined as Designated Persons who were required to submit a return during the period 1 July 2008 to 30 September 2008.

A designated person is described in Section 441 of the Local Government Act as:

*S441 Who are “designated persons”?*

*For the purposes of this Chapter, “designated persons” are:*

- *the general manager*
- *other senior staff of the council*
- *a person (other than a member of the senior staff of the council) who is a member of staff of the council or a delegate of the council and who holds a position identified by the council as the position of a designated person because it involves the exercise of functions under this or any other Act (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the person’s duty as a member of staff or delegate and the person’s private interest*
- *a person (other than a member of the senior staff of the council) who is a member of a committee of the council identified by the council as a committee whose members are designated persons because the functions of the committee involve the exercise of the council’s functions under this or any other Act (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the member’s duty as a member of the committee and the member’s private interest.*

The incumbents of the following Council positions have been determined to be designated persons for the purpose of Section 441 of the Local Government Act:

General Manager	Determined by Local Government Act
Directors	Senior staff of Council
Managers	Deemed to exercise designated persons functions
Executive Planner	Exercises designated persons functions
Team Leaders – Development Control	Exercises designated persons functions
Senior Assessment Officers	Exercises designated persons functions
Assessment Officers	Exercises designated persons functions
Team Leader – Compliance	Exercises designated persons functions
Blg/DA/Hoarding Compliance Officers	Exercises designated persons functions
Senior Building and Compliance Officers	Exercises designated persons functions
Building and Compliance Officers	Exercises designated persons functions
Team Leader – Urban Design	Exercises designated persons functions
Urban Design Planner	Exercises designated persons functions
Team Leader – Strategic Planning	Exercises designated persons functions
Development Engineers	Exercises designated persons functions
Environmental Health Officers	Exercises designated persons functions
Environmental Protection Co-ordinator	Exercises designated persons functions
Fire Safety Officers	Exercises designated persons functions
Strategic Heritage Officer	Exercises designated persons functions
Heritage Officers	Exercises designated persons functions
Coordinator Trees Maintenance	Exercises designated persons functions
Coordinator Parks Maintenance	Exercises designated persons functions
Team Leader – Development Assessment	Exercises designated persons functions
Team Leader – Tree Management	Exercises designated persons functions
Tree Officers	Exercises designated persons functions
Admin Assistant – Printing & Purchasing	Exercises designated persons functions
Resource Management Team Leader	Exercises designated persons functions
Customer and Community Services Library Team Leader	Exercises designated persons functions
Children’s and Young Adult Librarian	Exercises designated persons functions
Branch Librarian	Exercises designated persons functions
Plant and Fleet Co-ordinator	Exercises designated persons functions
Purchasing Co-ordinator	Exercises designated persons functions
Trades Supervisor	Exercises designated persons functions
Co-ordinator Civil Works	Exercises designated persons functions
Project Manager – Open Space	Exercises designated persons functions
Business Centres & Street Cleaning Co-ordinator	Exercises designated persons functions
Consultant Planners	Exercises designated persons functions
Duty Planners	Exercises designated persons functions
Team Leader – Infrastructure Asset Management	Exercises designated persons functions
Landscape Development/Tree Officers	Exercises designated persons functions
Project Manager – Strategic Projects	Exercises designated persons functions
Property Services Co-ordinator	Exercises designated persons functions
Asset Maintenance Officers	Exercises designated persons functions
Property Officers	Exercises designated persons functions
Co-ordinator Regulatory Services	Exercises designated persons functions
Traffic and Development Assessment Engineer	Exercises designated persons functions

The Local Government Act requires, at Section 450A(1), the General Manager to keep a register of returns disclosing the interests of Councillors and designated persons.

Section 450A(2)(a) requires the returns lodged with the General Manager to be tabled at the first meeting held after the last day for lodgement. The due date for the Ordinary Returns (period 1 July 2007 to 30 June 2008) was 30 September 2008.

This report also tables the Primary Disclosure of Interest Returns of eight (8) new designated persons who were required to lodge a return during the period 1 July 2008 to 30 September 2008.

### **Tabling of Returns:**

#### **Councillors:**

All Councillors submitted their returns in accordance with the legislative requirements.

#### **Designated Persons:**

All designated persons (except 2 designated persons on extended Long Service Leave) required to complete Ordinary Returns and eight (8) new designated persons required to complete the Primary Returns during the respective period submitted their Returns in accordance with the legislative requirements.

Two (2) designated persons were unable to submit their Ordinary Returns for the period (1 July 2007 to 30 June 2008) due to being on extended Long Service Leave. These designated persons are due to return in November 2008 and their respective returns shall be completed upon return to work and will be tabled with the next report that is prepared to the Corporate and Works Committee for the return period 1 October 2008 to 31 December 2008.

#### **Planning Consultants:**

One (1) planning consultant submitted a return in accordance with legislative requirements.

#### **Conclusion:**

Councillors, designated persons and planning consultants declarations of Interest Returns are tabled in accordance with the provisions of the Local Government Act 1993. It is recommended that the information be received and noted.

Helen Tola  
Team Leader Governance

Geoff Clarke  
Director Corporate Services

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### **ANNEXURES:**

Nil

**Item No:** D6 Delegated to Committee  
**Subject:** **Monthly Financial Report – August 2008**  
**Author:** Toby Andreassen, Financial Accountant  
Michelle Phair, Team Leader Financial Services  
**File No:** 349G  
**Reason for Report:** To present the monthly financial report for August 2008

**Recommendation:**

A. THAT the monthly financial report for August 2008 be received and noted.

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**Background:**

The Local Government Act and General Regulation require that, on a monthly basis, a report be presented to Council (or the appropriate Committee) listing Council's investments portfolio. This statutory requirement is incorporated into Council's Monthly Financial Report. The reporting of investments is broken into two parts:

- Investment Summary – listing the investments placed by Council directly plus a summary of the investments placed through investment advisors, Lehman Brothers (formerly Grange Securities) and Oakvale Capital which are reported based on technical (mark-to-market) valuations.
- Portfolio Details – listing individual investment securities placed through advisors listing current rating, relevant dates, face values and a trend of recent valuations. Investments placed directly by Council are also included in the portfolio details.

The investments listing is supplemented by a summary of receipts, payments and Council's bank account. This report is provided for information and includes the ten largest receipts and payments (with names of individuals withheld for privacy reasons), any large outstanding cheques and reconciles the bank account to Council's financial records.

The monthly financial report for August 2008 is submitted to the Committee for consideration.

The monthly report includes the following:-

- Summary of Investments
- Summary of Receipts, Payments and Bank Balance

**Discussion:**

*Summary of Investments:*

Investment portfolio returns comprising interest and mark-to-market performance, for Oakvale Capital and Lehman Brothers for the month of August 2008 were -2.39% and 1.70% respectively. The portfolio returns calculated by Council since the portfolio's inception were -2.39% for Oakvale Capital and -6.64% for Lehman Brothers. Current interest rates range from 7.52% to 9.42%.

*CDO Update:*

Council holds Collateralised Debt Obligations (CDOs) which were purchased through investment advisors. Councillors would be aware through the press that, as a result of the credit crisis, the valuations of CDOs has dropped markedly. The face value of Council's CDOs is \$9.9m while the 31 August technical valuation is \$5.06m.

Council has requested a CDO Update report from Grove Research & Advisory and will report to the appropriate Committee when that report is available.

*Investment Working Group:*

The Committee should note there is an Investment Working Group (to be appointed by the Mayor), in consultation with an independent advisor, which is responsible for general oversight of Council's investment portfolio. The terms of reference of the Working Group are:

- To meet as necessary to make decisions on the sale of CDOs (including by telephone);
- To make urgent determinations (where appropriate) on the sale of CDOs and to instruct staff to implement such determinations on an urgent basis; and
- To take any further action on behalf of Council, with any action taken to be reported to the Corporate & Works Committee

*Investment Update:*

Any additional investment updates received with regard to Council's investments will be tabled at the meeting.

Michelle Phair  
Team Leader Financial Services

Toby Andreassen  
Financial Accountant

Don Johnston  
Manager Finance

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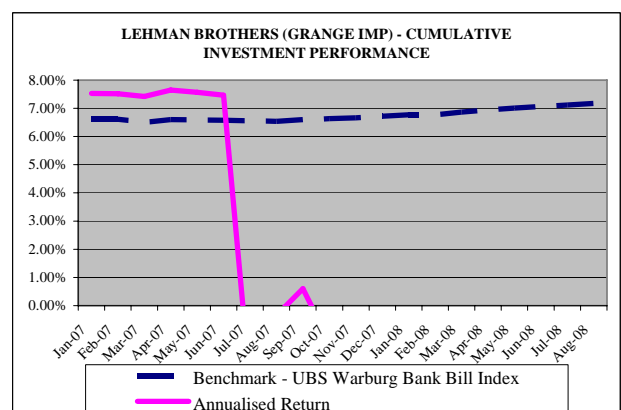
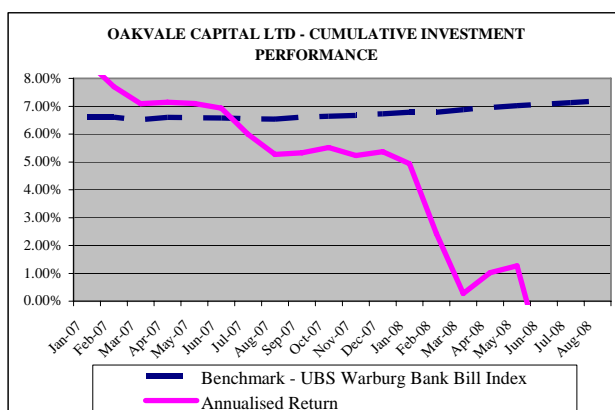
**Annexures:**

Nil.

**INVESTMENTS AS AT 31 AUGUST 2008**

CATEGORY	PURCHASE DATE	MATURITY DATE	DAYS	%	FACE VALUE \$	TOTAL \$
<b>1. WMC INVESTMENTS</b>						
<u><b>BANK WEST</b></u>						
TERM DEPOSIT	03/06/2008	01/10/2008	120	8.17	2,000,000	
<u><b>ST GEORGE BANK LIMITED</b></u>						
TERM DEPOSIT	20/08/2008	17/12/2008	119	7.74	1,000,000	
TERM DEPOSIT	26/08/2008	21/01/2009	148	7.66	2,000,000	
TERM DEPOSIT	15/08/2008	12/12/2008	119	7.74	2,000,000	
<u><b>SAVINGS &amp; LOANS CREDIT UNION</b></u>						
TERM DEPOSIT	25/07/2008	24/11/2008	122	8.39	2,000,000	
TERM DEPOSIT	05/08/2008	10/12/2008	127	8.23	2,000,000	
TERM DEPOSIT	28/08/2008	28/10/2008	61	7.86	1,500,000	
TERM DEPOSIT	29/08/2008	27/11/2008	90	7.89	1,500,000	
<u><b>POLICE &amp; NURSES CREDIT SOCIETY</b></u>						
TERM DEPOSIT	05/08/2008	06/10/2008	62	8.17	2,000,000	
TERM DEPOSIT	28/08/2008	28/01/2009	153	7.85	1,500,000	
<u><b>NATIONAL AUSTRALIA BANK</b></u>						
TERM DEPOSIT	05/08/2008	04/11/2008	91	7.59	1,500,000	
<u><b>IMB Ltd</b></u>						
TERM DEPOSIT	03/06/2008	02/09/2008	91	8.13	2,000,000	
TERM DEPOSIT	03/06/2008	03/12/2008	183	8.39	2,000,000	
<u><b>AUSTRALIA &amp; NEW ZEALAND BANKING GROUP LIMITED</b></u>						
TERM DEPOSIT	26/08/2008	24/09/2008	29	7.30	1,000,000	
<u><b>COMMONWEALTH BANK</b></u>						
ONLINE SAVER A/C					3,453,239	27,453,239

CATEGORY	SINCE INCEPTION RETURN ANNUALISED %	BENCHMARK %	MARGIN	TECHNICAL VALUATION \$	TOTAL \$
<b>2. OAKVALE CAPITAL Limited</b>					
Funds under management	-2.39	7.17	-9.56	4,972,786	4,972,786
* See Annexure 1					
<b>3. LEHMAN BROTHERS (formerly Grange Securities Ltd)</b>					
Funds under management	-6.64	7.17	-13.81	14,860,547	14,860,547
* See Annexure 2					
<b>GRAND TOTAL</b>				<b>47,286,572</b>	



I hereby certify that the above investments have been made in accordance with Section 625 of the Local Government Act 1993, Clause 212 of the Local Government (General) Regulation 2005 and Council's investment policy.

M. Phair  
TEAM LEADER FINANCIAL SERVICES

D. Johnston  
MANAGER FINANCE

Woollahra Municipal Council Portfolio								
Security	Rating @ 31 Aug 08	Purchase Date	Final Maturity Date	Face Value (FV)	Purchase Price	30-Jun-08	31-Jul-08	31-Aug-08
<b>LEHMAN BROTHERES (formerly GRANGE SECURITIES)</b>								
<b>Issued by non-ADIs</b>								
Lehman Global Property Note	AA-	13/06/2007	15/06/2009	60,000	60,000	53,922	53,436	53,400
Herald Limited (Quartz AA)	A-	04/07/2007	20/12/2010	400,000	402,428	269,860	291,508	289,952
BELO (Kalgoorlie AA+)	AA+	27/02/2007	27/02/2012	500,000	500,000	419,785	428,405	419,215
Magnolia (Flinders AA)	AA+	08/06/2007	20/03/2012	500,000	504,950	381,275	395,235	384,190
Omega (Henley AAA)	BB	20/12/2006	22/06/2012	450,000	450,000	304,227	313,551	304,385
Helium (Esperance AA+)	A	04/07/2007	20/03/2013	500,000	500,125	282,605	304,295	290,535
Zircon (Merimbula AA)	BB-	06/06/2007	20/06/2013	250,000	250,000	111,738	101,365	77,998
Corsair (Torquay AA)	AA	04/07/2007	20/06/2013	500,000	500,400	261,135	278,315	266,395
Start (Blue Gum AA-)	AA-	08/01/2007	22/06/2013	400,000	401,316	220,868	223,364	209,944
Corsair (Kakadu AA)	AA-	22/01/2007	20/03/2014	500,000	499,950	234,460	235,550	217,995
Helium (Scarborough AA)	BBB+	17/01/2007	23/06/2014	400,000	400,844	223,740	236,124	225,228
Helium (Scarborough AA)	BBB+	04/07/2007	23/06/2014	500,000	501,320	279,675	295,155	281,535
Helium (Scarborough AA)	BBB+	23/07/2007	23/06/2014	500,000	500,850	279,675	295,155	281,535
Zircon (Coolangatta AA)	B+	20/03/2007	20/09/2014	500,000	500,000	195,310	210,370	168,490
Beryl (AAA Global Bank Note)	AAA	03/04/2007	20/09/2014	100,000	100,000	83,776	81,715	79,740
Zircon (Coolangatta AA)	B+	04/07/2007	20/09/2014	500,000	499,950	195,310	210,370	168,490
Beryl (AAA Global Bank Note)	AAA	04/07/2007	20/09/2014	350,000	349,976	293,216	286,003	279,090
Aphex (Glenelg AA-)	A-	04/07/2007	22/12/2014	500,000	500,145	316,570	319,730	301,285
Aphex (Glenelg AA-)	A-	10/01/2007	22/12/2014	500,000	499,970	316,570	319,730	301,285
MAS6-7 (Parkes IIA 'AA-')	BBB	13/06/2007	20/06/2015	450,000	452,822	122,531	160,529	138,402
MAS6-7 (Parkes IIA 'AA-')	BBB	04/07/2007	20/06/2015	500,000	502,700	136,145	178,365	153,780
Zircon (Miami AA)	BB-	16/04/2007	20/03/2017	50,000	49,996	20,428	21,834	20,929
				8,910,000	8,947,706	5,002,820	5,240,103	4,913,797
<b>Issued by ADIs</b>								
ANZ Principal Protected Yield Curve Note (AA)	AA	17/07/2007	17/07/2017	100,000	100,000	89,930	85,416	88,217
Bank of Queensland (BBB+)	BBB+	04/07/2007	30/10/2008	1,000,000	1,010,620	1,012,800	999,290	1,007,700
Home Building Society FRN (BBB+)	BBB+	10/01/2007	17/08/2009	500,000	506,080	498,370	500,365	492,045
Home Building Society FRN (BBB+)	BBB+	11/01/2007	17/08/2009	500,000	506,070	498,370	500,365	492,045
Royal Bank of Scotland (AA)	AA	04/07/2007	28/10/2009	500,000	502,000	493,385	490,665	493,910
Elders Rural Bank Sub Debt (BBB-)	BBB	04/07/2007	23/03/2010	500,000	503,880	479,915	482,375	482,785
NM Rothschild FRSD (unrated)	NR	09/07/2007	10/08/2010	1,000,000	1,001,310	963,310	968,750	954,190
HSBC Sub Debt (AA-)	AA-	04/07/2007	20/05/2011	500,000	499,950	469,200	488,955	481,000
Suncorp Metway Sub Debt (A)	A+	19/01/2007	22/06/2011	500,000	500,705	476,100	479,485	482,675
St George Bank Sub Debt (A+)	A+	10/01/2007	26/07/2011	1,000,000	1,001,120	968,380	957,510	963,970
HSBC FRN (AA-)	AA-	07/02/2007	22/09/2011	500,000	501,170	469,185	463,140	461,665
CBA FRN (AA)	AA	19/01/2007	28/09/2011	500,000	501,600	479,840	482,895	485,910
CBA FRN (AA)	AA	31/01/2007	28/09/2011	500,000	501,635	479,840	482,895	485,910
CBA FRN (AA)	AA	04/07/2007	28/09/2011	500,000	501,805	479,840	482,895	485,910
Westpac FR Sub Debt (AA)	AA	07/02/2007	24/01/2012	500,000	500,295	483,170	475,850	479,395
Royal Bank of Scotland (AA)	AA	31/01/2007	17/02/2012	1,000,000	1,001,460	939,410	947,130	931,090
Adelaide Bank FRN (BBB+)	BBB+	04/07/2007	28/03/2012	500,000	500,885	481,380	481,370	484,960
				10,100,000	10,141,400	9,762,425	9,769,351	9,753,377
Macquarie Cash Trust (AAA)	AAA			193,373	193,373	42,059	107,656	193,373
				193,373	193,373	42,059	107,656	193,373
<b>Total Lehman Brothers</b>				<b>19,203,373</b>	<b>19,282,479</b>	<b>14,807,303</b>	<b>15,117,109</b>	<b>14,860,547</b>

Security	Rating @ 31 Aug 08	Purchase Date	Final Maturity Date	Face Value (FV)	Purchase Price	30-Jun-08	31-Jul-08	31-Aug-08
<b>OAKVALE CAPITAL</b>								
Aramis (Merrill Lynch) - ABS	B	02/04/2007	20/12/2012	1,000,000	1,000,000	123,341	104,323	110,334
Momentum CDO-Credit Linked Note	BBB	29/06/2007	30/06/2012	1,000,000	1,000,000	876,490	857,080	865,860
Emerald Reverse Mortgage Series 2007-1 Class B	AA	06/07/2007	06/07/2011	1,000,000	1,000,000	995,290	980,490	988,450
Merrill Lynch-Blackrock Diversified Credit Fund	A	05/01/2007		3,000,000	3,000,000	3,029,600	2,970,025	3,008,142
<b>Total Oakvale Capital</b>				<b>6,000,000</b>	<b>6,000,000</b>	<b>5,024,721</b>	<b>4,911,918</b>	<b>4,972,786</b>
<b>WMC Investments</b>								
St George Term Deposit (7.74% 119 days)		20/08/2008	17/12/2008	1,000,000	1,000,000	0	0	1,000,000
St George Term Deposit (7.66% 148 days)		26/08/2008	21/01/2009	2,000,000	2,000,000	0	0	2,000,000
St George Term Deposit (7.74% 119 days)		15/08/2008	12/12/2008	2,000,000	2,000,000	0	0	2,000,000
NAB Bank Bill (7.59% 91 days)		05/08/2008	04/11/2008	1,500,000	1,500,000	0	0	1,500,000
Citibank Term Deposit (8.03% 60 days)		03/06/2008	05/08/2008	0	0	2,000,000	2,000,000	MATURED
Citibank Term Deposit (8.02% 60 days)		04/06/2008	05/08/2008	0	0	1,500,000	1,500,000	MATURED
Citibank Term Deposit (8.14% 92 days)		28/05/2008	28/08/2008	0	0	2,000,000	2,000,000	MATURED
Bank West Term Deposit (8.08% 92 days)		20/05/2008	20/08/2008	0	0	1,000,000	1,000,000	MATURED
Bank West Term Deposit (8.04% 90 days)		28/05/2008	26/08/2008	0	0	1,500,000	1,500,000	MATURED
Bank West Term Deposit (8.17% 120 days)		03/06/2008	01/10/2008	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000
IMB Term Deposit (8.39% 183 days)		03/06/2008	03/12/2008	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000
IMB Term Deposit (8.13% 91 days)		03/06/2008	02/09/2008	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000
Savings & Loans CU (8.32% 33 days)		03/07/2008	05/08/2008	0	0	0	1,000,000	MATURED
Savings & Loans CU (8.39% 122 days)		25/07/2008	24/11/2008	2,000,000	2,000,000	0	2,000,000	2,000,000
Savings & Loans CU (8.23% 127 days)		05/08/2008	10/12/2008	2,000,000	2,000,000	0	0	2,000,000
Savings & Loans CU (7.86% 61 days)		28/08/2008	28/10/2008	1,500,000	1,500,000	0	0	1,500,000
Savings & Loans CU (7.89% 90 days)		29/08/2008	27/11/2008	1,500,000	1,500,000	0	0	1,500,000
Police Dept Employees CU (8.24% 33 days)		03/07/2008	05/08/2008	0	0	0	1,000,000	MATURED
Police & Nurses Credit Society (8.21% 29 days)		07/07/2008	05/08/2008	0	0	0	1,000,000	MATURED
Police & Nurses Credit Society (8.17% 62 days)		05/08/2008	06/10/2008	2,000,000	2,000,000	0	0	2,000,000
Police & Nurses Credit Society (7.85% 153 days)		28/08/2008	28/01/2009	1,500,000	1,500,000	0	0	1,500,000
ANZ Bank Term Deposit (7.30% 29 days)		26/08/2008	24/09/2008	1,000,000	1,000,000	0	0	1,000,000
CBA Online Saver				3,453,239	3,453,239	1,473,338	2,387,584	3,453,239
<b>Total WMC Investment</b>				<b>27,453,239</b>	<b>27,453,239</b>	<b>20,973,338</b>	<b>21,387,584</b>	<b>27,453,239</b>
<b>Total Portfolio</b>				<b>52,656,612</b>	<b>52,735,718</b>	<b>40,805,362</b>	<b>41,416,612</b>	<b>47,286,572</b>

**Summary of Receipts, Payments and Bank Balance**

Cash Book Balance as at 31 July, 2008 - 133,445.37

**Receipts**

Rates 9,943,814.00  
Other 13,506,671.18 23,450,485.18

**Total Receipts**

Description	Amount
S/drs Rates	9,943,814.00
Deposits & Bonds Control Account	445,040.00
Sundry Debtors Control	354,779.00
Financial Assistance Grant	336,410.00
Parking Fines	321,663.00
Other Developer Contributions	230,901.00
Untied Roads Grants	157,468.00
Car Park Leases	123,699.00
Trade Waste Debtors Control	119,268.00
Build/Construction LS Levy Clearing	78,924.00

**Payments - Cheque**

Cheque Payments (981,827.86)  
Cancelled Cheques 11,592.00  
Total Cheque Payments for period (970,235.86)

Cheque No	Cheque Date	Payee	Description	Amount
200488	07/08/2008	Statewide Civil Pty Ltd	General works - Duxford Street	- 149,613.20
200536	14/08/2008	Energy Australia	Street lighting Jul08	- 77,463.85
200460	01/08/2008	Withheld	Refund of security deposit	- 57,600.00
200634	19/08/2008	Withheld	Refund of security deposit	- 41,917.77
200627	19/08/2008	Withheld	Refund of security deposit	- 32,200.00
200712	28/08/2008	Energy Australia	Street lighting Jul08	- 31,828.60
200704	28/08/2008	City Ford, Mascot	Fleet purchases	- 29,714.57
200705	28/08/2008	City of Sydney Council	Rates, 1st instal O'Dea Av Depot	- 23,996.70
200725	28/08/2008	Michael Collins & Associates	Woollahra feasibility study	- 21,518.75
200501	07/08/2008	Withheld	Payment of sewer damage claim	- 17,722.32

**Payments - EFT**

EFT Payments (20,912,307.83)  
Returned EFT Payments 0.00  
Total EFT Payments for period (20,912,307.83)

Reference	EFT Date	Payee	Description	Amount
18507	28/08/2008	StateCover Mutual Limited	Workers Comp Insur - 30/6/08-30/6/09	-325,613.75
18460	21/08/2008	WSN Environmental Solutions	Waste tipping charges Jul 08	-184,262.16
18345	07/08/2008	Volvo Truck & Bus Sydney	Heavy vehicle purchase	-175,780.00
18383	14/08/2008	Local Govt Super Scheme-Div.A	Employer/Employee Super contribs for Jul 08	-170,777.47
518	12/08/2008	AYZ Landscapes Pty Ltd	General works - Bradley Av, Rose Bay	-150,060.56
payg06	11/08/2008	Australian Taxation Office	PAYG 6	-139,755.46
18302	07/08/2008	AYZ Landscapes Pty Ltd	General works - Oxford Street	-109,675.37
18331	07/08/2008	Ozpave (Aust) Pty Ltd	General works - Kambala Place	-99,908.58
wk 8	22/08/2008	Australian Taxation Office	PAYG 8	-95,825.14
WK 7	18/08/2008	Australian Taxation Office	PAYG 7	-95,635.29

**Payments - Direct Debits From Bank A/c**

Payroll (1,444,029.30)  
Bank Charges (13,924.81)  
Credit Cards 0.00  
Councillors' fees (36,478.90)  
Council Rates 0.00  
Total Direct Debits for period (1,494,433.01)

**Total Payments**

- 23,376,976.70

**Cash Book Balance as at 31 August 2008**

- 59,936.89

Unpresented Cheques No. of Cheques: 167 303,085.32  
Outstanding Deposits & Miscellaneous Items 952,194.04

**Reconciled Cash Book Balance as at 31 August 2008**

1,195,342.47

**Bank A/c Balance as at 31 August 2008**

1,195,342.47

**Unpresented Cheques > \$30,000.00**

Cheque No.	Cheque Date	Payee	Amount
200627	19/08/2008	Whiteriver Financial Group Pty Ltd	32,200.00

**Item No:** D7 Delegated to Committee  
**Subject:** **Queens Ave, Vacluse - Proposed action to regularise Encroachments on the Road Reserve**  
**Author:** Anthony Sheedy - Property Officer  
**File No:** 374. & 1220.G  
**Reason for Report:** To recommend actions for the management of encroachments in Queens Avenue, Vacluse

**Recommendation:**

- A. That Council require the owners of Nos. 2, 4, and 9 Queens Avenue to enter into a positive covenant in favour of Council for the encroachments adjoining their properties.
- B. That Council write to the owners of 3a Queens Avenue requiring the removal of part of the encroachment adjoining their property, and requiring them to enter into a positive covenant in favour of Council for the remaining encroachment adjoining their property.
- C. That Council require the owners of 5 & 7 Queens Avenue to apply for an Easement to Permit Encroaching Structures to Remain for the encroachment adjoining their land.
- D. That Council require the owners of 11 Queens Avenue to enter into a Lease, and apply for an Easement to Permit Encroaching Structures to Remain for the area of the encroachment adjoining their land.

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**Background:**

While considering the matter of a request to purchase a parcel of land occupied by a landscaped encroachment at No 3 Queens Avenue, it has come to Council's attention that a number of encroachments exist upon the road reserve in various parts of Queens Avenue and Little Queens Lane, Vacluse.

Encroachments upon the road reserve in Queens Avenue exist in respect of adjoining property numbers 2, 3, 3A, 4, 5, 7, 9 and 11. There is also significant encroachment on the road reserve in Little Queens Lane, involving property numbers 2 and 4 Queens Avenue.

The report to the Corporate & Works Committee of 5 May 2008 contained detail of the encroachments (Annexure 1). It shows aerial views and cadastral diagrams of Queens Ave and Little Queens Lane. Hatched areas on the cadastral diagram describe the extent of the encroachment upon the road reserve. The accompanying site photographs in Annexure 1 also provide information as to the extent and nature of the encroachments.

The Corporate and Works Committee considered this matter on 5 May 2008, where it was resolved:

- A. *That the proposed actions, to regularise and manage encroachments on the road reserve in Queens Avenue, Vacluse, as set out in the report, be advertised for public comment.*
- B. *That the proposal to purchase a portion of road reserve adjoining No 3 Queens Avenue be advertised.*

*C. That further reports be submitted regarding progress with actions taken to implement Resolutions (A) and (B).*

This report addresses parts A & C of the above Corporate and Works Committee resolution. Part B is addressed in a separate report on the agenda of this Corporate and Works Committee meeting.

Council adopted in July 2008 a Policy for managing encroachments on Council Road Reserves. A summary of this policy is reproduced below for your information.

### **Adopted Encroachment Policy**

*The objectives of the policy are to ensure that an encroachment is either*

- *Removed, or*
- *Subject to Council resolution, is permitted to remain by the adjoining owner entering into an appropriate agreement with the Council to ensure public liability and public amenity issues are identified and managed, and that a community benefit results.*

### **Removal**

*Encroachments which reduce public safety or public amenity, or obstruct public access routes, or compromise future road or footpath works which may be contemplated, or which compromise stormwater drainage, will not be considered for continuation.*

### **Retention with conditions**

*Conversely, where it is considered that removal of the encroachment would reduce public safety or amenity, or detract from the character of an historic area or streetscape, or remove a positive contribution to local area built form or landscape character, recommendations will be made to Council for consideration of suitable arrangements to formalise continued occupation.*

*Measures to allow encroachments to remain will be suited to the circumstances. The options will be:*

- 1. A Positive Covenant in favour of Council registered on the adjoining property's Title, or*
- 2. An Easement to Permit Encroaching Structures to Remain granted by the Council, under Section 181 of the Conveyancing Act 1919, and registered on the adjoining property's Title.*
- 3. A Lease, with conditions, under Section 153 of the Roads Act 1993, to the adjoining property owner.*
- 4. Subdivision of the road to excise the area encroached upon, closure of the road parcel and sale of the parcel to the adjoining owner.*

If the encroachment is not to be allowed to remain, and the owner is unwilling to comply with Council's written request to remove the encroachment, Council may serve a Notice under S107 of the Roads Act requiring removal.

## Notification and Advertising

Prior to public advertisement we wrote in the first instance, as a courtesy, to Queens Avenue and Little Queens Avenue land owners with encroachments, advising of Council's resolution and proposed measures to manage and regularise the encroachments. The letter of notice, sent May 2008, sought the property owner's response and agreement to the proposed actions, before proceeding to public advertisement. Despite some delay in obtaining responses most of the adjoining land owners have now provided their agreement to the proposed action, and we subsequently commenced advertisement of the proposals.

The response to Council's letter to the adjoining owners of 2, 3, 3A, 4, 5, 7, 9 and 11 Queens Ave in respect of the encroachments is tabled below:

Address	Description	Response
2 Queens Ave	Positive covenant (PC)	Agreed
3 Queens Ave	Purchase & Positive Covenant	Agreed ( <b>see separate report</b> )
3A Queens Ave	Encroachment Removal	Did not agree
4 Queens Ave	Positive covenant	Agreed
5 Queens Ave	Positive covenant	Requested to purchase
7 Queens Ave	Purchase or removal	Requested to purchase
9 Queens Ave	Positive covenant	Agreed
11 Queens Ave	Road Lease or purchase	Requested to purchase
(2) Little Queens	Positive covenant	Agreed
(4) Little Queens	Positive covenant	Agreed

The advertisement for public comment was placed in the Wentworth Courier of 20 August 2008 calling for any submissions to be made within 28 days of the public notice (closing 17 September 2008). Neighbours within a 50 metre radius of the subject land were also issued a letter and plan detailing Council's proposal to regularise and manage encroachments on the road reserve.

Two responses were received by Council as detailed in the following table:

Receipt Date	Owner Address	Particulars of Objection
9 Sept 2008	1 Little Queens Lane Vaucluse	<p><i>4 Queens Ave, road reserve fronting Little Queens Lane</i></p> <ul style="list-style-type: none"> <li>▪ Objects to the concept of granting positive covenants over road reserve. Subject encroached area of road reserve is not accessible to the public. Retaining wall should be demolished at adjoining owners cost, and reserve area made available to the public to improve the amenity of the area.</li> </ul> <p><i>3 Queens Ave</i></p> <ul style="list-style-type: none"> <li>▪ Objects strongly to proposed sale of road reserve and positive covenant.</li> <li>▪ For safety reasons involving both vehicles and pedestrians it is essential that this land is returned to public use at the current road level.</li> <li>▪ Allowing land to be purchased sets a dangerous precedent in the street and because it is on a corner, it is the most important land to be retained by Council of all the land currently under review in the street.</li> </ul>

16 Sept 2008	3A Queens Ave	<p><i>Queens Ave</i></p> <ul style="list-style-type: none"><li>▪ Complimented Council for developing a consistent approach to encroachments in Queens Ave, Vaucluse.</li></ul> <p><i>3A Queens Ave</i></p> <ul style="list-style-type: none"><li>▪ Objects to their property being treated differently to others with pre-existing encroachments. Others in street invited to formalise encroachment through positive covenant, whereas they have been directed to remove the encroachment forthwith.</li><li>▪ Longstanding encroachment. Request that they be treated consistently with others, and that the unique aspects of the shared encroachment be given proper consideration by Council after an onsite meeting with owner No 3 and No 10 Vaucluse Rd.</li></ul>
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Based on the relatively few responses or objections to the public notices and advertisement, it is suggested that there is broad community support for Council's proposed actions to regularise and manage encroachments in Queens Avenue and Little Queens Lane, as set out below.

The objections received detailed concerns of safety and access, similar to that raised in respect of the advertised proposal to sell unmade road reserve to the adjoining owner of 3 Queens Ave. The following notes are provided to address objector concerns.

### *3 Queens Ave*

Council's Traffic Engineer has inspected the site and in particular, the sight-lines and the road width adjoining 3 Queens Ave. He stated that the low traffic count and vehicle speeds in Queens Avenue acted to reduce any safety risk to drivers. However, in his opinion, the sight-line towards the southern section of Queens Avenue, available at this point to a vehicle turning into Little Queens Lane, was in need of improvement. He recommended that the front boundary of the proposed landscaped area for sale, adjoining No 3, be set back 1.5 metres to provide a clear 40 metre sight-line, so as to improve the safety of vehicles turning into Little Queens Lane (Annexure 3).

Consequently, with the agreement of the owners of 3 Queens Avenue, the area of land advertised as proposed for sale was reduced in size from 62 square metres to an estimated 55 square metres, by setting back the front boundary at the northern end. This is shown in hatched detail on the attached plan view and is the subject of a **separate report** in this evening's meeting Agenda.

Because of the naturally sloping topography and large rock outcrops in the road reserve adjoining No 3; it would be impractical to cut into the slope as requested by one objector "and return the road reserve to public use at the current road level". I note that the existing topography and features form a natural extension to the adjacent Hermitage Reserve, and considerably improves the amenity of the area. Reducing the slope to road level would destroy this continuity.

It is therefore proposed that subject to the Property owner of No 3 purchasing the estimated area of 55 square metres (subject to final survey) comprising landscaping and garden terraces (the subject of previous inspection and resolution) they also enter into a Positive Covenant with Woollahra Council in respect of a further estimated area of 12 square metres of landscaping and garden terraces to protect traffic sight lines. The owner has agreed to enter into said covenant if required by Council.

#### ***4 Queens Ave, fronting Little Queens Lane***

In respect of the landscaping encroachments of 4 Queens Ave fronting Little Queens Lane; Council had received a prior request in 2004 from the owners to purchase a portion of Little Queens Lane reserve. However, Council after due consideration of the matter resolved not to proceed with the proposed sale.

The owner had sought to formalise purchase of the garden landscape areas in Little Queens Lane. Council staff advised that the purchase would have *no material effect on the current functioning of the road*. Due to the narrow nature of the Lane, Council decided to retain ownership in the road reserve to preserve, for the long term, its options for modification of the road to meet unforeseen future needs. A positive covenant would allow for this while requiring the adjoining owner to maintain the landscaping improvements and accept liability.

Again, because the topography of the Queens Avenue and Little Queens Lane road reserve is naturally sloping and has many large rock outcrops, it is impractical to demolish the retaining wall as requested by one objector, and cut back into the slope to make it available to pedestrians. The existing features form a natural extension to the adjacent Hermitage Reserve, which considerably improves the amenity of the area. Reducing the slope to road level would destroy this continuity.

In these circumstances where the road function will *not* be impaired, and the natural topography of the road reserve is a rocky slope which precludes the natural passage of pedestrians, it is appropriate to apply the use of a positive covenant in accordance with Council's encroachment policy. This action has been agreed to in writing by the owners.

#### ***3A Queens Ave***

An encroachment consisting of landscaping, a set of stairs, and garden walls had been created by an adjoining owner of No 3A. Council resolved at its meeting 30 October 1979 to allow the encroachment to stay subject to the adjoining owner of 3A entering into a 'Deed of Indemnity' with Council. This Deed is transferable and binding upon all new owners of 3A. The Deed contains various covenants and importantly states that the 'Covenantor' would remove such encroachment at their cost and expense when requested to do so by Council.

On 21 January 2008 Councillors inspected the footpath adjoining No 3 Queens Avenue including the Queens Avenue site more generally in regards to encroachment upon the road reserve. Council resolved at the Corporate and Works meeting of 5 May 2008 to require that "the owner of No 3A be required to remove the landscaping and low rise walls and restore the footpath access to pedestrians".

A further inspection of the site suggests the possibility that a compromise may be reached where a portion of this encroachment (to 600 mm depth) is removed to provide continuous pedestrian access, and the remaining land is retained by the adjoining owner through entering into a positive covenant in favour of Council.

In accordance with this proposal and the Deed of Indemnity and the Committee resolution, the current owner of No 3A would be directed to remove the encroachment from the footpath to a depth of 600mm, and thus enable continuous pedestrian footway access to be restored along Queens Ave from either side of the encroachment. A positive covenant would operate over the remainder of the encroachment requiring the adjoining owner to maintain the landscaping improvements and accept liability.

In response to the owner No 3A concerns re inconsistent policy application; the Council's Property staff believe that at all times we have acted consistently, and objectively applied the encroachment policy to this property owner when compared to others in Queens Avenue, Vaucluse.

### *Summary detail of Queens Avenue Encroachments*

#### *2 Queens Avenue*

The encroachment is estimated to be 140 square metres within Queens Avenue and some 50 square metres in Little Queens Lane. It comprises landscaping and garden terraces.

#### *3 Queens Avenue*

**See separate report**

#### *3A Queens Avenue*

The encroachment is estimated to be 8.6 square metres in Queens Avenue and comprises landscaping and garden terraces.

#### *4 Queens Avenue*

The encroachment is estimated to be 38 square metres in Queens Avenue and some 45 square metres in Little Queens Avenue. It comprises landscaping and garden terraces. In 2004, the owner had sought to formalise purchase of the garden landscape areas in Little Queens Lane. Council staff advised that the purchase would have no material effect on the current functioning of the road. However, due to the narrow nature of the Lane, Council decided to retain ownership in the road reserve to preserve, for the long term, its options for modification of the road to meet unforeseen future needs. A positive covenant would allow for this while requiring the adjoining owner to maintain the landscaping.

#### *5 Queens Avenue*

The encroachment is estimated to be 54 square metres in Queens Avenue and comprises rock outcrops interspersed with landscaping, garden terraces, and an access stairwell to the property.

#### *7 Queens Avenue*

The encroachment is estimated to be 72 square metres in Queens Avenue and comprises rock outcrops interspersed with landscaping and garden terraces, an access stairwell to the property and a rendered masonry structure.

#### *9 Queens Avenue*

The encroachment is estimated to be 78 square metres in Queens Avenue and comprises large rock outcrops interspersed with landscaping and garden terraces.

#### *11 Queens Avenue*

The encroachment is estimated to be 42 square metres in Queens Avenue and consists of landscaping, garden terraces and an access stairwell to the property. A single car space exists on the road reserve, which appears to be used solely by the property owner of No 11.

#### *10 Vaocluse Rd*

The rear boundary of this property adjoins No 3A Queens Avenue, and the owner has written to Council regarding the proposed treatment of the encroachment adjoining 3A.

## Assessment

Some of the encroaching areas have steeply sloping topography, in particular No's 5, 7 and 9, and contain large rock outcrops, which appear to be associated with the same type of rock formations found in the Hermitage Reserve (part of Sydney Harbour National Park), on the western side of Queens Avenue. In this respect, it is considered to be in the public interest to retain these formations on the eastern side of the road reserve, and not to consider future footpath construction here, as pedestrian usage is low volume and footway access is possible on the western side of Queens Avenue. The Hermitage Reserve is administered by National Parks and Wildlife Service (NPWS) and has a significant Sydney Harbour outlook.

Except where noted below, it is proposed that encroachments which comprise landscaping and garden structures should be allowed to remain but be made the subject of positive covenants in favour of Council noted on the titles of the adjoining properties. A positive covenant allows the adjoining owner to have an improvement on the Council land, subject to a provision that it must be removed if required by Council at a future date, and subject to the adjoining owner accepting liability for and maintaining the improvements.

Where a substantial structure exists a positive covenant is not appropriate, and a lease is not permitted under the Roads Act. A Roads Act lease may be granted, for not more than five years at a time, provided any structure "*comprises a fence or a temporary structure of a kind that can easily be demolished or removed.*" The options remaining in the case of permanent structures are the granting of an easement to allow the encroaching structure to remain (with suitable conditions) or alternatively, agreement by Council to purchase of the land, which requires subdivision, valuation and a road closure.

## Recommendations

In accordance with Council's adopted Policy for Managing Encroachments on Road Reserves and the Corporate and Works Committee meeting resolution of 5 May 2008; it is recommended that the following encroachments with the adjoining owners be formalised as detailed below:

### *2 Queens Avenue & Little Queens Lane*

Property owner to enter into a Positive Covenant with Woollahra Council, in respect of an estimated area of 140 square metres in Queens Avenue, and 50 square metres in Little Queens Lane comprising landscaping and garden terraces, to maintain the landscaping improvements and accept liability .

### *3 Queens Avenue*

Property owner to purchase an estimated area of 55 square metres comprising landscaping and garden terraces (the subject of previous inspection and resolution) and also to enter into a Positive Covenant with Woollahra Council in respect of a further estimated area of 12 square metres of landscaping and garden terraces to protect traffic sight lines. **(See Separate report.)** and maintain the landscaping improvements and accept liability.

### *3A Queens Avenue*

The property owner to remove an estimated area of 1.5 square metres (0.6m x 2.5m) of landscaping and garden terraces, so as to provide a 600mm setback from the road kerb for pedestrian footpath access; and to enter into a positive covenant for the remaining area of 7 square metres, to maintain the landscaping improvements and accept liability.

*4 Queens Avenue & Little Queens Lane*

Property owner to enter into a Positive Covenant with Woollahra Council, in respect of an estimated area of 38 square metres in Queens Ave, and 45 square metres in Little Queens Lane, comprising landscaping and garden terraces, to maintain the landscaping improvements and accept liability.

*5 Queens Avenue*

Property owner to enter into an Easement to Permit Encroaching Structure(s) to Remain with Woollahra Council, in respect of an estimated area of 54 square metres of landscaping, garden terraces, and access stairwell, to maintain the landscaping improvements and accept liability.

Owner has requested to purchase the subject land. This area is not needed for road building, and Council Property staff recommends that a further report be submitted to the Corporate & Works Committee for the closure and sale of this road reserve portion.

*7 Queens Avenue*

Property owner to enter into an Easement to Permit Encroaching Structure(s) to Remain, in respect of an area of 72 square metres of landscaping, garden terraces and access stairwell.

Owner has also requested to purchase the subject land. This area is not needed for road building, and Council Property staff recommends that a further report be submitted to the Corporate & Works Committee for the closure and sale of this road reserve portion.

*9 Queens Avenue*

Property owner to enter into a Positive Covenant with Woollahra Council, in respect of an area of 78 square metres of landscaping and garden terraces.

*11 Queens Avenue*

Property owner to enter into a lease agreement with Council, under the Roads Act, in respect of the car space, and seek an Easement to permit encroachments to remain, being access stair retaining walls and garden landscaping.

Owner has also requested to purchase the subject land. This area is not needed for road building, and Council Property staff recommends that a further report be submitted to the Corporate & Works Committee for the closure and sale of this road reserve portion.

*10 Vaocluse Road*

Council will write to the owner and advise of Council's resolution with respect to the proposed treatment of the encroachment adjoining 3A.

Anthony Sheedy  
Property Officer

Warwick Hatton  
Director Technical Services

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**ANNEXURES:**

1. Copy of Corporate & Works Committee meeting report 5 May 2008.

**Item No:** R1 Recommendation to Council  
**Subject:** **3 Queens Ave, Vaocluse - Proposed Road Closure and Sale**  
**Author:** Anthony Sheedy - Property Officer  
**File No:** 374.3 and 1220.G  
**Reason for Report:** To give consideration to the closure and subsequent sale of unmade roadway adjoining the property.

**Recommendation:**

1. That Council proceed with the road closure, subject to a deposit of \$15,000 being received by Council before the application to close the road is made to the NSW Department of Lands. This amount is to be non-refundable except where the Minister's approval to the closure is not given.
2. That subject to the portion of Road being closed, Council proceed with the sale of unmade roadway adjoining 3 Queens Avenue, Vaocluse with the following conditions:
  - (a) A purchase price of \$2,727 per square metre plus GST; purchase price to be subject to final survey.
  - (b) The balance of the purchase price is to be paid in full upon Gazettal of the road closure and completion of the sale.
  - (c) The owner of 3 Queens Avenue, Vaocluse is to pay all costs, including but not limited to, GST, legal, survey etc associated with the closure and sale.
3. That the Seal of Council be affixed to all necessary documentation to affect the Road closure and sale, i.e. Contract for Sale, Plan of Road Closure, Transfer documents etc.
4. That Council require the owner of 3 Queens Avenue, Vaocluse to enter into a Positive Covenant in favour of Council for the remaining area of the encroachment adjoining their land, in order to maintain the improvements in such a way as to protect traffic sight lines and to accept liability.

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**Background:**

The owner of 3 Queens Avenue is seeking to purchase a road reserve portion adjoining their land, so that they may formalise the existing encroachment; which comprises low rise sandstone terraces and garden landscaping (Annexure 1).

The Corporate & Works Committee on 7 July 2008 considered the owner of 3 Queens Avenue's proposal to purchase the unmade road portion, and the outcome of its public advertisement (Annexure 2). It should be noted that although six objections to the proposal were received, the Councillors were satisfied that resident concerns could be satisfied, and resolved to proceed with valuation of the subject road reserve.

The Council at its meeting of 14 July 2008, resolved as follows:

- A. *That the portion of unmade road reserve adjoining 3 Queens Avenue, Vaocluse be valued for its market sale price.*
- B. *That a further report be submitted, following part A above.*

Pursuant to the 14 July 2008 resolution of Council, the market sale price has now been determined by a registered consultant Valuer. In determining a market sale price value for the unmade road portion, the Valuer assessed the difference the purchase of the land may have to the overall property value of 3 Queens Avenue, should the sale transaction proceed.

The principle valuation method used was the direct comparison approach, with reference to residential market transactions including comparable portions of unmade road that were recently sold in the Woollahra LGA. Considerations were also made in regards to size, shape, topography, location, and position relevant to the adjacent property, and to the fact that the site area of approximately 55 square metres was incapable of being redeveloped in isolation. In making this assessment any improvement to the land has been disregarded, and the valuation is of the land value only.

The current 'add on' market value of the subject land as at 12 August 2008 is considered to be \$2,727 per square metre (exclusive of GST), which equates to \$150,000 subject to final survey for the estimated land parcel size of 55 square metres. GST is payable on all sales of unmade road reserve, and accordingly the adjoining owners of 3 Queens Avenue were advised of Council's sale price valuation and the requirement for GST payment.

On 26 September 2008, the owner of 3 Queens Avenue, Vaocluse wrote to Council and agreed to purchase the said land portion for \$2,727 per square metre (exclusive of GST) subject to final survey.

The next step in the Road closure and sale procedure is for Council to resolve to sell the land. A deposit of \$15,000 (10%) will be required from the purchaser prior to lodging a road closure application with the Minister for the NSW Department of Lands.

Council will further apply to the NSW Department of Lands and arrange for the closing and public Gazettal of the unmade road portion.

#### *Positive Covenant*

Council's Traffic Engineer has previously inspected the site and in particular, observed the sight-lines and the road width adjoining 3 Queens Ave. He stated that the low traffic count and vehicle speeds in Queens Avenue acted to reduce any safety risk to drivers. However, in his opinion, the sight-line towards the southern section of Queens Avenue, available at this point to a vehicle turning into Little Queens Lane, was in need of improvement. He recommended that the front boundary of the proposed landscaped area for sale, adjoining No 3, be set back 1.5 metres to provide a clear 40 metre sight-line, so as to improve the safety of vehicles turning into Little Queens Lane (Annexure 1).

Consequently, with the agreement of the owners of 3 Queens Avenue, the area of land advertised as proposed for sale was reduced in size from 62 square metres to an estimated 55 square metres, by setting back the front boundary at the northern end. This is shown in hatched detail on the attached plan view and is the subject of a separate report in this evenings meeting Agenda.

It is therefore proposed that the Property owner of No 3 purchase an estimated area of 55 square metres (subject to final survey) comprising landscaping and garden terraces (the subject of previous inspection and resolution) and also enter into a Positive Covenant with Woollahra Council in respect of a further estimated area of 12 square metres of landscaping and garden terraces to protect traffic sight lines (**See Separate report**). The owner has agreed to enter into said covenant if required by Council.

**Conclusion:**

Pursuant to the Council's 14 July 2008 resolution, the subject portion of unmade Road has been valued at \$2,727 per square metre (exclusive of GST), being \$150,000 for an estimated 55 square metres parcel size subject to final survey.

The adjoining owner of 3 Queens Avenue, Vaucluse has agreed to purchase the portion for \$2,727 per square metre (exclusive of GST) subject to final survey, to pay any applicable GST including all Council's costs, and has requested Council perform all necessary steps to progress the matter to settlement.

The adjoining owner is seeking to purchase this land so that they may formalise the existing encroachment; comprising landscaping and garden terraces. It is beneficial for them to purchase the said portion, consolidating it with their existing land title and there is a community benefit to the Council in the proceeds from sale of a portion of road, which is not required for road purposes.

It is further recommended that the owner of No 3 be required to enter into a Positive Covenant with Woollahra Council in respect of a further estimated area of 12 square metres of landscaping and garden terraces adjoining their property, so as to protect traffic sight lines in Queens Avenue. The owner has agreed to enter into said covenant if required by Council.

Anthony Sheedy  
Property Officer

Warwick Hatton  
Director, Technical Services

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**ANNEXURE:**

1. Copy of Corporate & Works Committee report 7 July 2008.

**Item No:** R2 Recommendation to Council  
**Subject:** **Statutory review of Policy - Payment of Expenses and Provision of Facilities to the Mayor, Deputy Mayor and Councillors Policy**  
**Author:** Les Windle - Manager Governance  
**File No:** 18.G  
**Reason for Report:** For Council to fulfil its statutory requirement to review and publicly exhibit a proposed policy for the Payment of Expenses and Provision of Facilities to the Mayor, Deputy Mayor and Councillors

**Recommendation:**

- A. THAT Council's current Payment of Expenses and Provision of Facilities to the Mayor, Deputy Mayor and Councillors Policy as contained in Annexure 2 of the report to the Corporate and Works Committee meeting on 7 October 2008 be placed on public exhibition for a period of not less than 28 days as Council's proposed policy for the ensuing twelve months.
- B. THAT a further report be submitted to the Committee at the conclusion of the exhibition period.

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**Background:**

Council adopted the current *Payment of Expenses and Provision of Facilities to the Mayor, Deputy Mayor and Councillors Policy* in November 2007. (Annexure 1)

Section 252 of the Local Government Act requires Councils to adopt, after complying with the 28 day consultation period requirements contained in Section 253 of the Local Government Act, an expenses and facilities policy within 5 months after the end of each financial year. The policy must comply with the guidelines issued under Section 23A of the Local Government Act by the Director General of the Department of Local Government. (Annexure 2)

**Proposal:**

Council must now undertake the yearly review of the Policy.

Council may propose to exhibit the current Policy without change or it may introduce amendments to the Policy. Whichever option Council chooses it still must undertake the full consultation process.

Council's current Policy has been structured in accordance with the format suggested by the Director General Guidelines and contains the following scope and level of expenses and facilities available to the Councillors:

**Conferences and Seminars**

The policy provides for Councillors to attend specified conferences and seminars with Council responsible for registration, travel, accommodation and incidental expenses associated with attendance at the conferences and seminars.

### **Child care costs**

The policy allows Councillors to claim reimbursement of reasonable child/dependant care costs incurred while attending Council meetings, committee meetings, workshops, briefing sessions and site inspections relating to Council's operations to a maximum of \$3,000 per annum per Councillor.

### **Insurance cover**

The policy provides for Council to take out insurance cover for Councillors for:

- personal injury whilst on Council business except for medical expenses,
- professional liability for matters arising out of a Councillor's performance of civic duties or exercise of their functions as a Councillor,
- public liability for matters arising out of a Councillor's performance of civic duties or exercise of their functions under the Local Government Act.

### **Legal expenses and assistance**

The policy provides for Council to indemnify or reimburse Councillors reasonable legal expense for the following:

- a Councillor defending an action arising from the performance, in good faith, of a function under the Local Government Act; or
- a Councillor defending an action in defamation provided the statements complained of were made in good faith in the course of exercising a function under the Act; or
- a Councillor for proceedings before the Local Government Pecuniary Interest Tribunal or an investigative body provided the subject of the proceedings arises from the performance in good faith of a function under the Act and the Tribunal or investigative body makes a finding substantially favourable to the Councillor.

### **Facilities to the Mayor and Councillors**

The policy provides for the following facilities to be made available to the Mayor, Deputy Mayor and Councillors:

- use of Official Stationery
- Typing of Official correspondence
- Postage of official correspondence – all mail is to be directed through the Council's own mailing system. Reimbursement of expenses will only be made where expenses can be verified.
- Meals at Council Meetings, Committee Meetings, working party meetings and workshops
- Transport to official functions (if needed) when deputising for the Mayor
- E-mail Account on Council's IT system

The following additional facilities are provided for use by the Mayor:

- Use of a prestige Council vehicle and Chauffeur for official purposes
- Secretarial services
- Administrative assistance associated with functions, meetings and the like
- Office refreshments
- Mobile telephone
- Mayoral Office
- Light refreshments

### **Reimbursement of expenses incurred by the Mayor, Deputy Mayor and Councillors**

The policy allows Councillors to claim reimbursement of the following expenses:

- Fixed line rental for phone and/or fax lines to a maximum of \$50.00 per month per Councillor,
- Mobile phone calls to a maximum of \$50.00 per month per Councillor,
- Home Internet usage charges to a maximum of \$50.00 per month per Councillor.

### **Funding of additional facilities purchased by the Mayor, Deputy Mayor or Councillors**

The policy recognises that some Councillors may wish to purchase additional facilities to assist them with their civic duties and to aid Councillors with the purchase of the additional equipment which may otherwise place an undue financial disadvantage on a Councillor, Council will, upon written request of a Councillor, purchase the additional equipment with all costs associated with the purchases being repaid to Council through deductions from that Councillors allowance.

Facilities that are able to be funded in this manner include:

- personal or lap top computers,
- printers
- facsimile machines
- mobile telephones
- answering machines
- land lines and/or Internet broadband installation and usage charges

The current policy reflects the deliberations of the previous Council in relation to the level and scope of expenses and provision of facilities to the Mayor, Deputy Mayor and Councillors and has previously been reviewed in May 2005, November 2006 and November 2007.

Council should consider whether the scope or level of facilities or expenses provided to Councillors are considered adequate or should be altered.

### **Consultation:**

Before Council can adopt or amend an expenses and facilities policy it must give public notice of not less than 28 days of the proposed policy. At the conclusion of the exhibition period the Council must consider any submission made to it and if considered necessary, make appropriate changes to the proposed policy. If the changes to the policy are considered substantial, the proposed amended policy will be required to be re-exhibited. If the proposed changes are in the opinion of the Council not substantial then the amended proposal will not need to be re-exhibited.

Following adoption of the policy by Council, the policy together with details of all submissions received and a statement from Council setting out the response to each submission must be forwarded to the Director General of the Department of Local Government.

### **Identification of Income & Expenditure:**

If Council adopts the current policy no additional expenditure will be incurred by Council. If changes are made to the policy, additional expenditure may be incurred depending on the scope and level of the changes made.

**Conclusion:**

Council must review its expenses and facilities policy within five months of the end of the (financial) year and must publicly exhibit any proposed policy, even if it is the existing policy, for a period of not less than 28 days. Should Council consider the existing policy provides a satisfactory scope and level of facilities and expenses to the Mayor, Deputy Mayor and Councillors, the existing policy could be placed on public exhibition and a further report submitted to the Committee following the exhibition period.

Les Windle  
Manager Governance

Geoff Clarke  
Director Corporate Services

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**Annexures:**

1. Adopted Policy – Payment of expenses and provision of facilities to the Mayor, Deputy Mayor and Councillors (November 2007)
2. DLG Director General’s Guidelines for the payment of expenses and the provision of facilities to the Mayor and Councillors for Local Councils in NSW – May 2007