



## Agenda

### Ordinary Meeting

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

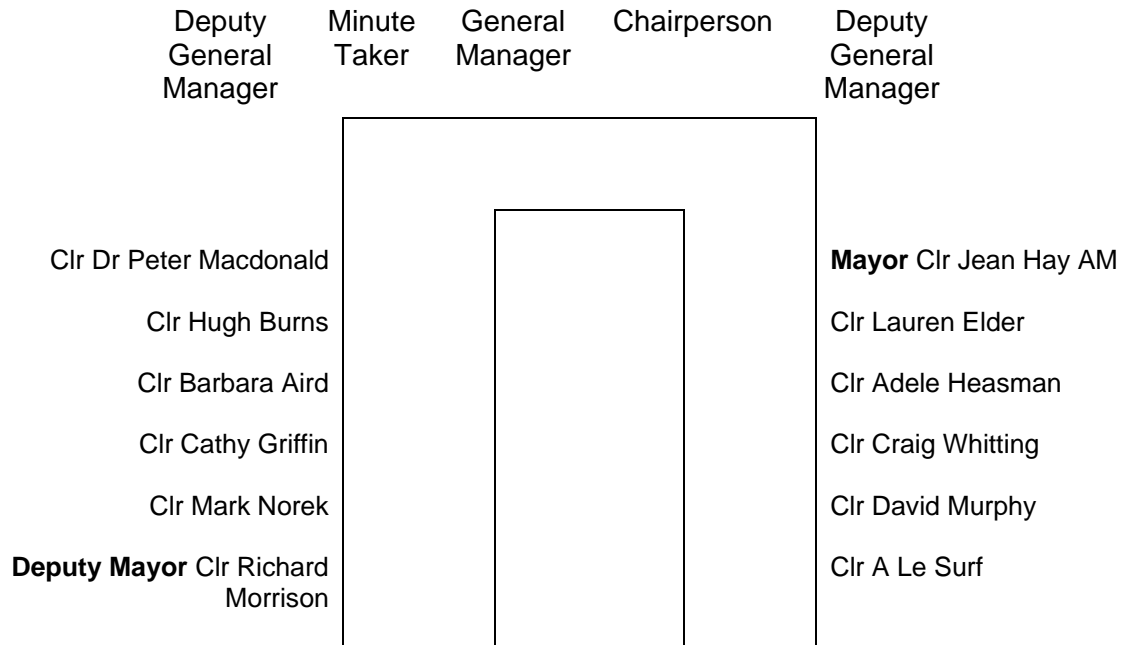
**Monday 9 May 2011**

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

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

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

# Seating Arrangements for Meetings



Press

Public  
Addresses

**Public Gallery**

**Chairperson:** The Mayor, Clr Jean Hay AM  
**Deputy Chairperson:** Deputy Mayor Clr Richard Morrison

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**QUESTIONS WITHOUT NOTICE****MATTERS OF URGENCY**

(In accordance with Clause 241 of the Local Government (General) Regulations, 2005)

**CLOSED SESSION****\*\*\*\*\* END OF AGENDA \*\*\*\*\***

**TO:** Ordinary Meeting - 9 May 2011

**REPORT:** Mayoral Minute Report No. 6

**SUBJECT:** Restoring the entitlement of businesses to have a say at precinct meetings

**FILE NO:**

---

Following a series of workshops with precincts, Council revised its Precinct Guidelines in June 2010. In doing so, the rights and entitlements of businesses to have a vote on local issues at their precincts were extinguished by the new rules.

Prior to the recent changes, business owners in a precinct area had the same voting entitlement as residential owners and renters, and ratepayers of an area, but their entitlement to have a say through the vote was removed by the changes even though businesses is as much a part of our community as residents are. This is highly unfair in my view.

## **RECOMMENDATION**

I move that:

The entitlement of business owners or their representative to have a say about their precinct through the vote be restored with immediate effect and the 2010 Precinct Guidelines be amended accordingly.

## **ATTACHMENTS**

There are no attachments for this report.

OM090511MM\_1

\*\*\*\*\* End of Mayoral Minute Report No. 6 \*\*\*\*\*

**TO:** Ordinary Meeting - 9 May 2011  
**REPORT:** Notice of Motion Report No. 12  
**SUBJECT:** Combating Graffiti  
**FILE NO:**

---

**Councillor Hugh Burns will move:**

Proposal for Manly Council to join Vandaltrak to improve effectiveness in combating graffiti and damage to Council property.

**Recommendation**

- 1) That Manly Council investigate participating in the VandalTrak project to assist its residents acting as agents to report vandal damage, both to their own and council property;
- 2) That Council explore with local Rotary groups participation in the cleaning up and removal of graffiti on private property in the Manly area;
- 3) That Council liaise with local police to explore a coordinated local and regional strategy to report, prosecute and otherwise minimise graffiti;
- 4) That Council investigate electronic integration of reported vandalism to Manly Council property made to the VandalTrak web site being automatically transferred to Council's management systems, to enable staff to check and promptly rectify reported damage logged via this website.
- 5) That a report be brought back to Council within 3 months on these matters, including expected costs and savings to Council and benefits to the community amenity.

More information is at:

<http://www.vandaltrak.com.au/>

Also see article:

<http://www.smh.com.au/technology/technology-news/tag-teams-beat-graffiti-vandals-at-their-own-game-20110413-1de65.html>

**RECOMMENDATION**

That the Notice of Motion be submitted for consideration.

**ATTACHMENTS**

There are no attachments for this report.

OM090511NM\_1

\*\*\*\*\* End of Notice of Motion Report No. 12 \*\*\*\*\*

**TO:** Ordinary Meeting - 9 May 2011  
**REPORT:** Notice of Motion Report No. 13  
**SUBJECT:** Soil Testing - LM Graham Reserve  
**FILE NO:**

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**Councillor Hugh Burns will move:**

That as part of Council's management of the LM Graham Reserve and before carrying out planned upgrading works proposed for the reserve, Council engage a recognised independent and suitably qualified testing firm to take soil samples and check ground water at various depths and location around the reserve, to analyse these and prepare a report on the findings to be presented to Council. The investigation is to check for a range of soil and water contaminants. The tests are to specifically include checking for traces of Atrazine (herbicide).

**RECOMMENDATION**

That the Notice of Motion be submitted for consideration.

**ATTACHMENTS**

There are no attachments for this report.

OM090511NM\_2

\*\*\*\*\* End of Notice of Motion Report No. 13 \*\*\*\*\*

**TO: Ordinary Meeting - 9 May 2011**  
**REPORT: Notice of Motion Report No. 14**  
**SUBJECT: Graffiti**  
**FILE NO:**

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**Councillor Craig Whitting will move:**

That Manly Council considers amending its current Graffiti Policy.

- That Council amend its current Graffiti Policy to provide for the free removal of graffiti from residential properties where the resident affected has reported the crime to the police.
- That the change in policy be implemented within 2011 and 2012 resource allocations for a 12 month trial period to assess the effectiveness and cost of the proposal.
- That the new policy be advertised appropriately along with a general encouragement to the community to report instances of graffiti, whether they occur on private or public property.
- That following the trial, a review is conducted and a report is prepared for council outlining the effectiveness and cost of the proposal.

**Background**

Graffiti vandalism can be upsetting, demoralizing and offensive. While occasionally demonstrating some artistic talent, graffiti is actually an assault on the eyes.

This visual pollution is not wanted and our local community are requesting that Council consider improving the current Graffiti Policy to help provide a solution to the problem.

In recent years there has been an increase in graffiti incidents in Manly, this is particularly noticeable on privately owned buildings. Graffiti vandalism unconstructively impacts our business areas and neighbourhoods.

The unconscious connection between graffiti and more serious crimes leads to decreases in property values and business growth. Some graffiti may affect residents' perception of crime and can discourage tourism.

Removing graffiti sends a message to vandals that people care about the community and are watchful of crime and problems in their neighbourhoods. Rapid and continual removal of graffiti is an effective way to preserve our community image and provide for a sense of security.

**Attachments**

Manly Council Graffiti Management Policy Minute No: 147/09 Adopted: OM 191009

**1. Background**

Graffiti vandalism refers to "illegally defacing private and public property with markings and/or graphics without the owner's consent" (Stop Graffiti Vandalism – Lawlink, NSW Attorney General's website).

**2. Purpose**

Manly Council is committed to rapid removal of graffiti from Council owned and Council managed property, accurate recording of graffiti removal work, encouraging community involvement in



**Notice of Motion Report No. 14 (Cont'd)**

reporting and providing the community with information to help with prevention and removal.

**3. Objectives**

The objectives of Manly Council's Graffiti Management Policy can be summarised as:

Remove  
Engage  
Educate

**4. Legislative requirements**

Manly Council is governed by the following legislation in regard to graffiti management and rewards:

The Graffiti Control Act 2008  
Local Government Act 1993  
Young Offenders Act 1997  
Young Offenders Amendment (Graffiti Offenders) Regulation 2009  
Children (Community Services Orders) Act 1987  
Summary Offences Act 1988  
Crimes Act 1900

**4.1 Policy - Graffiti Removal**

Manly Council removes graffiti from Council owned and Council managed property only. Manly Council may choose to remove graffiti from property without the agreement of the owner or occupier if the graffiti is racist or defamatory and is visible and accessible from a public place.

**4.1.1 Legislation regarding graffiti removal**

The Graffiti Control Act 2008 provides for graffiti removal on other property, without the agreement of the owner or occupier. Part 4, Section 12 of the Graffiti Control Act 2008 applies to graffiti which is visible from a public place, and removal of such graffiti can only be carried out from a public place. Council is to "bear the cost of graffiti removal work", and Council will "give the owner or occupier of the land concerned written notice that the work has occurred". Council "must pay compensation for any damage caused by the council in carrying out graffiti removal work in accordance with this section".

**4.1.2 Legislation requiring the keeping of records in a Graffiti Register**

In accordance with Part 4, Section 13 of the Graffiti Control Act 2008, Council will maintain a Graffiti Register of all graffiti removal work conducted by its painters and contractors, including details which show the owner or occupier of the premises, the nature of the work, and the actual or estimate of cost.

**5. Review of the policy**

This policy will be reviewed on an annual basis. Where legislative, policy or funding impacts on the policy in its current form, the policy will be reviewed and amended accordingly.

**RECOMMENDATION**

That the Notice of Motion be submitted for consideration.

**ATTACHMENTS**

**Notice of Motion Report No. 14 (Cont'd)**

There are no attachments for this report.

OM090511NM\_3

\*\*\*\*\* End of Notice of Motion Report No. 14 \*\*\*\*\*

**TO:** Ordinary Meeting - 9 May 2011  
**REPORT:** Notice of Rescission Report No. 3  
**SUBJECT:** Council Resolution 230/10 - Little Penguins  
**FILE NO:**

---

**Mayor Councillor Jean Hay, Councillor Adele Heasman, and Councillor Lauren Elder will move:**

“That Part 8 of Council’s decision of 13 December 2010 in respect of Resolution 230/10, Little Penguins is hereby rescinded.”

Part 8 of the Resolution passed on 13<sup>th</sup> December 2010 was in the terms of:

“Dogs be prohibited from entering upon the public reserve including the Federation steps.”

If the above Notice of Rescission Motion is carried, it is proposed to move the following alternate Part 8 Motion:

“That Council permit dogs on a leash to access the Federation Point steps.”

## **RECOMMENDATION**

That the Notice of Rescission be submitted for consideration

## **ATTACHMENTS**

There are no attachments for this report.

OM090511NR\_1

\*\*\*\*\* End of Notice of Rescission Report No. 3 \*\*\*\*\*

**TO:** Ordinary Meeting - 9 May 2011  
**REPORT:** Item For Brief Mention Report No. 7  
**SUBJECT:** Items for Brief Mention  
**FILE NO:**

## 1. Report:

This report was dealt with at the Sister Cities Committee meeting of 23 February 2011. The item is hereby submitted to the Ordinary Meeting for formal adoption by Council.

### **7.2 GENERAL BUSINESS Request to Council for a Sister City Relationship with Waikiki, Hawaii**

The Chairman spoke about the letter received from Manly Centre Management requesting Council consider a Sister City Relationship with Waikiki, with points raised on both areas being tourist destinations, having a strong surfing culture and surfing reserve status, the historical link of Duke Kahanamoku introducing surfing to Australia and Manly surfers competing in the Molokai Race.

The Committee discussed this matter and the question was raised about what Manly's surf clubs might think of the prospect; there is relevance with the surfing culture; issues of finance and support bearing in mind resources and budget of the Sister Cities Committee.

After discussion it was decided that there is interest and potential worth looking at.

## 2. Notices of Motion status report.

The following Notices of Motion are currently in progress.

Res No.	Meeting Date	Subject	Resolution	Status
250/10	13 Dec	Investigation of Feasibility of Tri-generation for Manly Council	That following on from Council's recent Kinesis report results, that Manly Council liaise with City of Sydney to produce a report back to Manly Council on the feasibility, (including environmental and cost benefits) of Council following Sydney's lead in embarking on a program of sourcing its electricity from tri-generation plants. An initial focus for investigation should be the Council Chambers and the Swim Centre.	Pending
231/10	13 Dec	Tree Policy	1. That Manly Council develop and publish a Tree Policy to ensure the enhancement, preservation, conservation and increase the number of trees in the Manly LGA. Such a policy would recognise the value of trees in the Manly LGA and guide Council staff, residents, developers and other authorities in the management of trees as an asset in Manly.	Meeting held 03/05/11 - it was aimed that the draft Policy be close to finalising so as to seek final comments from relevant people.
44/10	19 April	Manly Council to Investigate Resuming Provision of Street Lighting in the Manly Municipality	That Council conducts an investigation and produces a report on the feasibility or taking over all or part of the street lighting in the Manly Municipality, currently run by Energy Australia at Council's expense. That such a report include but not be limited to the following items:	Waiting on response from Energy Australia.

## Item For Brief Mention Report No. 7 (Cont'd)

			<ul style="list-style-type: none"> <li>- Identification of possible areas to be taken over including staging options and outlining selection methodology/criteria,</li> <li>- Identification of any additional costs or savings from taking over these assets over say a 20 year term.</li> <li>- Consideration of whether the transfer would assist Council to make the street lighting installation more energy efficient and likely cost savings and environmental benefits from such a change.</li> <li>- Consideration of whether such a transfer would enable Council to place more lighting wiring underground to make selected areas more attractive and the installations less prone to damage.</li> <li>- Consideration of whether there would be further cost savings from undertaking the street lighting on a regional or SHOROC based scale.</li> </ul>	
08/11	14 Feb	Masterplan for the site bounded by Wentworth St, Darley Rd, Victoria Pde and South Steyne	1. That design control guidelines be prepared for the site bounded by Wentworth St, Darley Rd, Victoria Pde and South Steyne from which a development control plan could be developed to address the significant access, parking, urban design, landscape and environmental planning issues on the site which Council has previously identified.	Will be completed May 2011.
20/11	14 Feb	Manly CBD Tramway Loop	That subject to the <i>Manly2015</i> progressing, the Council support the proposed Tram Loop for an initial comprehensive feasibility study as part of the <i>Manly2015</i> vision.	Manly Tramway Working Group has been established and met.
36/11	14 Mar	Seahorse Habitat	That Council investigate and report on a viable seahorse habitat friendly and sustainable replacement for the suspended netting currently used for the swimming enclosure at Manly Cove.	Pending
40/11	14 Mar	Poll of Residents as to preferred location of local Manly Hospital	<p>That Council conducts a survey of residence as part of its community engagement process to ask eligible voters to indicate their preferred location for a new or upgraded hospital. Being:</p> <p>a) a substantially knocked down and reused for aged care and or mental health it remain in the public hands (modernised) Manly Hospital at the existing location on Darley Road North Head (retaining only the original 1929 heritage building).</p> <p>b) a newly-built hospital at Frenchs Forest.</p> <p>That fair and impartial "for" and "against" cases be prepared by Council staff for the two locations and development of facilities proposed above.</p>	Pending

## 3. Documents to be tabled

Date	Author	Subject
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**Item For Brief Mention Report No. 7 (Cont'd)**

29 April 2011	David Swain, NSW Government Premier & Cabinet	Cyclist helmet safety
2 May 2011	Mike Baird, MP	Affordable Housing SEPP
3 May 2011	Kate Foy, NSW Government Transport	Transport issues

**RECOMMENDATION**

1. That Council support in principal the establishment of a Sister City relationship with Waikiki, Hawaii; and that Council seek input from the Manly Chamber of Commerce as to how the relationship would benefit Council and Manly and what the Chamber could provide to progress the relationship with Waikiki.
2. That the information be received and noted.
3. That the information be received and noted.
4. That the items be received and noted.

**ATTACHMENTS**

**AT- 1** Letter David Swain, NSW Government Premier & Cabinet 1 Page  
**AT- 2** Letter Mike Baird, MP 1 Page  
**AT- 3** Letter NSW Government Transport 1 Page

OM090511IBM\_1

\*\*\*\*\* End of Item For Brief Mention Report No. 7 \*\*\*\*\*

ATTACHMENT 1

Item For Brief Mention Report No. 7 - Items for Brief Mention  
Letter David Swain, NSW Government Premier & Cabinet



Premier  
& Cabinet

2011/24040 - CMU

Mr Henry Wong  
General Manager  
Manly Council  
Council Offices  
1 Belgrave Street  
MANLY NSW 2095



29 April 2011

Dear Mr Wong

Thank you for your recent letter to the Premier concerning cyclist helmet safety.

As the matter you have raised concerns the administration of the Minister for Roads and Ports, the Hon Duncan Gay, MLC, your letter has been forwarded to the Minister for attention.

You may be sure that your letter will receive close consideration.

Yours sincerely

David Swain  
for Director General

Item For Brief Mention Report No. 7 - Items for Brief Mention  
Letter Mike Baird, MP



**MIKE BAIRD**  
STATE MEMBER FOR MANLY



Mr Henry Wong  
General Manager  
Manly Council  
PO Box 82  
MANLY NSW 1655

Dear Mr <sup>Henry</sup> Wong

Thank you for your recent letter concerning the Affordable Housing SEPP.

I have read your letter with much interest and appreciate the time you have taken to detail your concerns with its implications for the Manly Local Government Area.

I have forwarded your letter to the Minister for Planning and Infrastructure for his consideration.

I will write to you again once I have received a response from the Minister.

Yours sincerely

Mike Baird MP

Date: 27 APR 2011



ATTACHMENT 3

Item For Brief Mention Report No. 7 - Items for Brief Mention  
Letter NSW Government Transport



Your Ref: 07042011/ANCB

Mr H T Hong  
General Manager  
Manly Council  
PO Box 82  
MANLY NSW 1655

27 April 2011

Dear Mr Hong,

Thank you for your letter of 11 April 2011 regarding transport issues.

The Minister appreciates you bringing your concerns to her attention and has forwarded your letter to the Department of Transport seeking its advice on this matter.

Yours faithfully,

A handwritten signature in blue ink, appearing to read "Kate Foy".

**Kate Foy**  
**A/Director Strategic Coordination**

ML11/01695

18 Lee Street Chippendale NSW 2008  
PO Box K659 Haymarket NSW 1240  
T 8202 2200 F 8202 2209 [www.transport.nsw.gov.au](http://www.transport.nsw.gov.au)  
ABN 11 370 995 518

**TO:** Ordinary Meeting - 9 May 2011

**REPORT:** Report Of Committees Report No. 19

**SUBJECT:** Minutes for adoption by Council - Special Purpose Committees - without recommendations of a substantial nature.

**FILE NO:**

---

The minutes of the following Special Purpose Committee Meetings are tabled at this meeting.

- i) Manly Traffic Committee – 11 April 2011
- ii) Community Environment Committee – 13 April 2011

### **RECOMMENDATION**

That the minutes of the following Special Purpose Committee meetings be adopted:

- i) Manly Traffic Committee – 11 April 2011
- ii) Community Environment Committee – 13 April 2011

### **ATTACHMENTS**

There are no attachments for this report.

OM090511RC\_1

\*\*\*\*\* End of Report Of Committees Report No. 19 \*\*\*\*\*

**TO:** Ordinary Meeting - 9 May 2011  
**REPORT:** Corporate Services Division Report No. 16  
**SUBJECT:** Goods and Services Tax (GST) - Council Compliance Requirements  
**FILE NO:**

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## SUMMARY

Confirmation of Council's compliance with its GST requirements for 2011.

## REPORT

Council has an annual obligation to provide the Division of Local Government, Department of the Premier and Cabinet, with a GST compliance certificate (in accordance with Section 114 of the Commonwealth Constitution) stating the following:

- Voluntary GST has been paid by Manly Council for the period 1 May 2010 to 30 April 2011.
- Adequate management arrangements and internal controls were in place to enable Council to adequately account for its GST liabilities and recoup all GST input tax credits eligible to be claimed.
- No GST non-compliance events by the Council were identified by or raised with the Australian Taxation Office.

The Manager Financial Services confirms:

- Council lodges a monthly Business Activity Statement (BAS) with the Australian Taxation Office (ATO) using the non cash (accruals methodology);
- All returns have been lodged on time;
- All Fringe Benefits Tax (FBT) quarterly instalments have been paid;
- Council's financial system provides sound GST reporting functionality with an accompanying audit trail;
- The ATO has undertaken an audit of Council's accounting system and the preparation of activity statements. GST compliance is also included as part of the annual audit.
- GST collected May 10 to April 11 \$1.65 million  
GST paid May 10 to April 11 \$3.12 million
- Total net refunds to Council May 10 to April \$1.47 million

The certificate is to be signed by the Mayor, the Deputy Mayor (or one other Councillor), the General Manager and the Responsible Accounting Officer, confirming that Council has complied with GST requirements. The certificate is to be signed in accordance with a resolution of Council, and forwarded to the Department by the 31 May.

By 8 June each year, the Commonwealth seeks from members of the GST Administration Subcommittee (GSTAS) advice on voluntary GST payments by local government bodies.

Attached to this report is the Goods and Services Tax (GST) Compliance Certificate for the period 1 May 2010 to 30 April 2011 that meets these requirements.

Statement by Manager Financial Services

**Corporate Services Division Report No. 16 (Cont'd)**

I hereby certify that to the best of my knowledge and belief that all GST required to be paid for the period 1 May 2010 to 30 April 2011 has been paid; that Council has in place management arrangements and internal controls to account for GST liabilities and recoup GST input tax credits; and there are no GST non-compliance issues or events that have been identified or raised by the Australian Taxation Office.

**RECOMMENDATION**

That:

1. The advices be received;
2. The Goods and Services Tax (GST) Compliance Certificate for the period 1 May 2010 to 30 April 2011 be signed by the Mayor, the Deputy Mayor (or one other Councillor), the General Manager and the Responsible Accounting Officer.

**ATTACHMENTS**

**AT- 1** GST Compliance Certificate 1 Page

OM090511CSD\_1

\*\*\*\*\* End of Corporate Services Division Report No. 16 \*\*\*\*\*

## ATTACHMENT 1

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### Corporate Services Division Report No. 16 - Goods and Services Tax (GST) - Council Compliance Requirements GST Compliance Certificate

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#### Manly Council

#### Goods and Services Tax Certificate

For the Year Ended 30 June 2011

#### Payment of Voluntary GST 1 May 2010 to 30 April 2011

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To assist compliance with Section 114 of the Commonwealth Constitution, we certify that:

- Voluntary GST has been paid by Manly Council for the period 1 May 2010 to 30 April 2011.
- Adequate management arrangements and internal controls were in place to enable Council to adequately account for its GST liabilities and recoup all GST input tax credits eligible to be claimed.
- No GST non-compliance events by the Council were identified by or raised with the Australian Taxation Office.

Signed in accordance with a resolution of Council made on 9<sup>th</sup> May 2011.

..... <b>MAYOR</b> Councillor Jean Hay	..... <b>COUNCILLOR</b> Councillor
..... <b>GENERAL MANAGER</b> Henry Wong	..... <b>RESPONSIBLE ACCOUNTING OFFICER</b> Ross Fleming

**TO:** Ordinary Meeting - 9 May 2011  
**REPORT:** Corporate Services Division Report No. 17  
**SUBJECT:** Report on Council Investments as at 31 March 2011  
**FILE NO:**

---

## **SUMMARY**

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

The report must also include certification as to whether or not the Investments have been made in accordance with the Act, the Regulations and Council's Investment Policy.

## **REPORT**

Council is required to report on a monthly basis, all invested funds which have been made in accordance with the Local Government Act 1993, The Local Government (General) Regulation 2005, and Council's Investment Policy.

Attached is the report of the bank balances and investment performance for March 2011.

## **Legislative & Policy Implications**

Manly Council Investment Policy  
Section 625 Local Government Act 1993  
Clause 212 Local Government (General) Regulation 2005  
DLG Circular 10-35 – Ministerial Investment Order  
DLG Circular 10-11 – Investment Policy Guidelines

## **Certification – Responsible Accounting Officer**

I hereby certify that the investments listed in the attached report 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.

The following securities held are currently rated less than the minimum required under the Ministerial Investment Order. Council is permitted to hold securities under the grandfathering clause in the Ministerial Investment Order dated 31 July 2008.

- Flinders CDO currently rated BB
- Parkes CDO currently rated CCC-
- Scarborough CDO currently rated CCC-
- Torquay CDO currently rated CC
- Coolangatta CDO – B+ (unwinding)
- Global Bank Note - B- (unwinding)

## **Investment Performance**

The Investment Report shows that Council has total Investments of \$14,181,669, comprising a combined Bank Balance of \$728,369; and Investment Holdings of \$10,403,300 directly managed and \$3,050,000 externally managed.

**Corporate Services Division Report No. 17 (Cont'd)**

Investments overall performed above the 90 day average Bank Bill Swap Rate (BBSW) for the month providing a return of 5.23% (*Council Benchmark =4.92% - benchmark is 90 day average BBSW*)

The reduced interest returns for March are a result of several investments not paying interest coupons and initiating capital guarantee mechanisms to protect the investment. These include Emu Note (Dresdner Bank), ANZ Climate Change Trust, and Lehman Bros Zircon (Coolangatta) and Beryl (Global Bank Note).

The average rate of return for investments paying interest is 6.16%

**Lehman Brothers Australia (Grange) Portfolio Performance**

Return on Lehman Brothers Australia Limited (Grange) Managed Funds since inception was 3.14%, less than the benchmark UBSWA Index of 5.53% (for the month of March 2011 the monthly return was 0.81% above the benchmark UBSWA Index). Whilst the current market value of these investments (included in the report for information) shows a reduction in the value and the returns reported by Lehman Brothers Australia (Grange) indicate a return below benchmark, it is important to note that the Investments are recorded by Council at their original principal face value, and there would be no erosion of Council's initial capital investment if the investment continues to be held at the present time to maturity.

**Movements in Investments for the Month of March 2011****Investments Made**

<u>Issuer</u>	<u>Particulars</u>	<u>Face Value</u>
Community CPS Credit Union	Term Deposit	\$459,835.00
Community CPS Credit Union	Term Deposit	\$467,528.00
Community CPS Credit Union	Term Deposit	\$500,000.00
Credit Union Australia	Term Deposit	\$500,000.00

**Investments Matured**

<u>Issuer</u>	<u>Particulars</u>	<u>Face Value</u>	<u>Redeemed Value</u>
Community CPS Credit Union	Term Deposit	\$500,000.00	\$500,000.00
Defence Force Credit Union	Term Deposit	\$500,000.00	\$500,000.00

**RECOMMENDATION**

**That:** the statement of Bank Balances and Investment Holdings as at 31 March 2011 be received and noted.

**ATTACHMENTS**

**AT- 1** Investment Report 4 Pages

OM090511CSD\_2

\*\*\*\*\* End of Corporate Services Division Report No. 17 \*\*\*\*\*

# ATTACHMENT 1

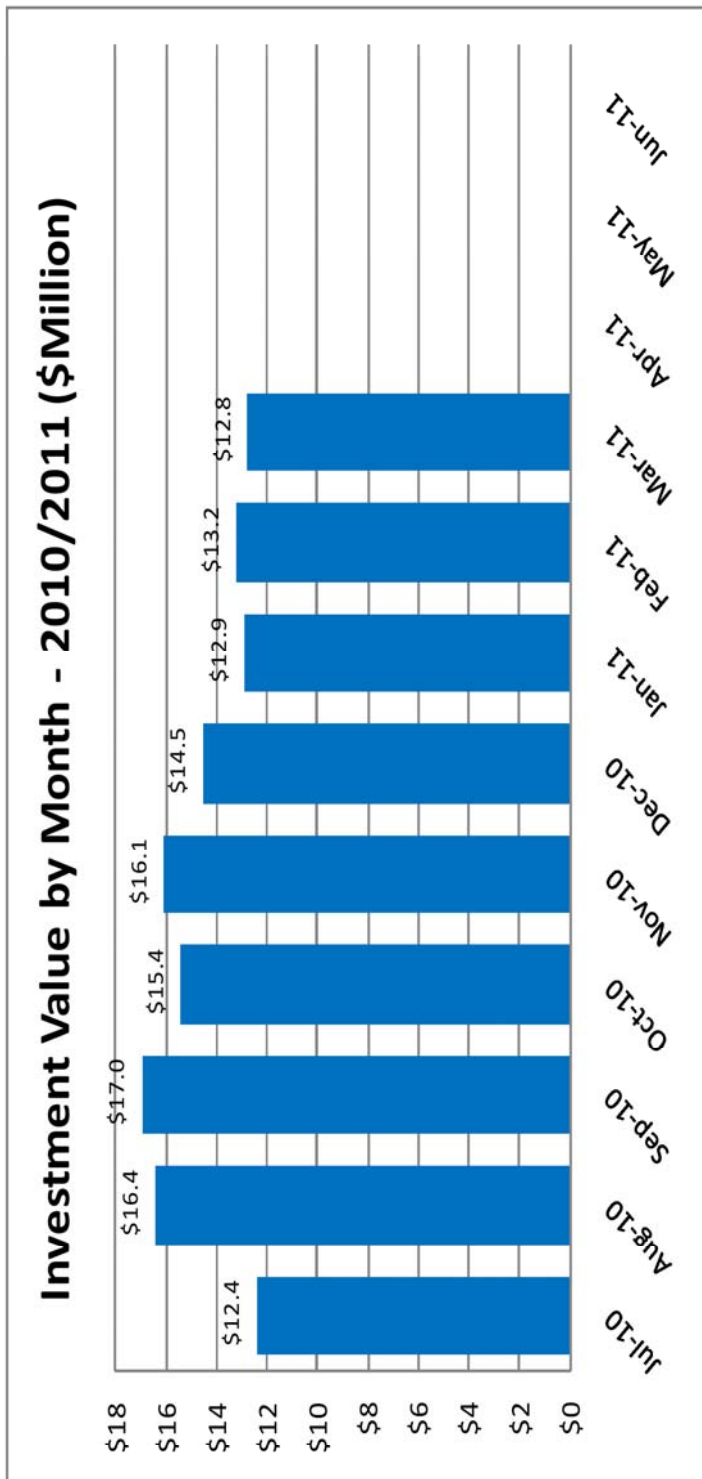
## Corporate Services Division Report No. 17 - Report on Council Investments as at 31 March 2011 Investment Report

MANLY COUNCIL INVESTMENT PORTFOLIO as at 31 March 2011									
Form of Investment	Investment in AU\$	Market Val	Percentage of Portfolio	S & P Rating	Invested Date	Call/Maturity Date	Investment Returns Interest Rate	Interest Accrual YTD	Interest Accrual March 2011
<b>Directly Managed Funds</b>									
<b>Trading Account</b>									
CBA Trading Account	728,369	728,369	5.14%	AA-			3% <sup>(3)</sup>	\$ 35,889	\$ 7,184
<b>Others</b>									
Emu Note - Dresdner Bank	500,000	386,950	3.53%	AAA	25/10/2005	13/12/2012	0.00%	\$ -	\$ -
ANZ Climate Change Trust	500,000	423,310 <sup>(6)</sup>	3.53%	AA	21/12/2007	21/12/2013	0.00%	\$ -	\$ -
Bank of Queensland	500,000	500,000	3.53%	BBB+	5/07/2010	30/06/2011	6.30%	\$ 23,215	\$ 2,675
Adelaide and Bendigo Bank	719,877	719,877	5.08%	BBB+	5/07/2010	30/06/2011	6.20%	\$ 32,893	\$ 3,790
Suncorp Metway	500,000	500,000	3.53%	AA	5/07/2010	30/06/2011	6.30%	\$ 23,215	\$ 2,675
AMP Limited	500,000	500,000	3.53%	A	8/09/2010	8/09/2011	6.31%	\$ 17,633	\$ 2,679
Community CPS Credit Union	459,835	459,835	3.24%	Cr Union	7/03/2011	6/05/2011	6.26%	\$ 1,893	\$ 1,893
Savings & Loans Credit Union	500,000	500,000	3.53%	Cr Union	6/10/2010	5/04/2011	6.11%	\$ 14,731	\$ 2,595
Heritage Building Society	500,000	500,000	3.53%	BBB+	19/10/2010	18/04/2011	6.10%	\$ 13,704	\$ 2,590
Credit Union Australia	500,000	500,000	3.53%	Cr Union	29/11/2010	30/05/2011	6.36%	\$ 10,629	\$ 2,701
Police & Nurses Credit Union	500,000	500,000	3.53%	Cr Union	5/01/2011	5/04/2011	6.00%	\$ 6,986	\$ 2,548
Railways Credit Union Ltd	500,000	500,000	3.53%	Cr Union	17/02/2011	6/05/2011	6.05%	\$ 3,481	\$ 2,873
Community CPS Credit Union	467,528	467,528	3.30%	Cr Union	7/03/2011	6/06/2011	6.21%	\$ 1,924	\$ 1,924
Community CPS Credit Union	500,000	500,000	3.53%	Cr Union	7/03/2011	6/06/2011	6.03%	\$ 2,042	\$ 2,042
Credit Union Australia	500,000	500,000	3.53%	Cr Union	7/03/2011	6/06/2011	6.03%	\$ 1,982	\$ 1,982
Macquarie Cash Management Account	218	218	0.00%	AAA	At call	At call	4.77%	\$ 4,774	\$ 1
AMP Limited	2,561,913	2,561,913	18.06%	A	At call	At call	5.75%	\$ 74,424	\$ 10,943
Commonwealth Bank	193,930	193,930	1.37%	AA-	At call	At call	4.00%	\$ 85,046	\$ 1,366
<b>Total Directly Managed Funds</b>	<b>10,403,300</b>	<b>10,213,560</b>	<b>73.36%</b>						
		<b>11,131,669</b>							
<b>Lehman Brothers Australia (Grange) Managed Funds (All in AU\$)</b>									
<b>Approved Deposit Institutions (Bank)</b>									
HSBC	500,000	502,675	3.53%	AA	20/03/2007	22/09/2011	5.15%	\$ 19,478	\$ 2,334
<b>Interest Bearing Securities (Non Bank)</b>									
Magnolia (Finders)	300,000	267,637	2.12%	BB	20/03/2007	20/03/2012	6.34%	\$ 14,331	\$ 1,675
MAS6-7 (Parkes IIA)	500,000	54,255	3.53%	CCC-	20/03/2007	20/06/2015	8.14%	\$ 16,259	\$ 1,323
Helio308 (Scarborough)	250,000	27,070	1.76%	CCC-	21/06/2007	23/06/2014	6.68%	\$ 9,542	\$ 10
Corsair (Torquay)	500,000	8,375	3.53%	CC	20/03/2007	20/06/2013	6.49%	\$ 12,699	\$ 1,124
Zircon (Coolangatta)	500,000	445,000	3.53%	B+	20/03/2007	20/09/2014	0.00%	\$ -	\$ -
Beryl (Global Bank Note)	500,000	510,000	3.53%	B-	3/04/2007	20/09/2014	0.00%	\$ -	\$ -
<b>Total</b>	<b>2,550,000</b>	<b>1,312,537</b>	<b>17.98%</b>						
<b>Total Grange Managed Funds</b>									
Retired Investments	3,050,000	1,815,212	21.51%					\$ 157,799	\$ 1,199
<b>TOTAL PORTFOLIO</b>	<b>14,181,669</b>	<b>12,757,141</b>	<b>100.00%</b>					\$ 584,569	\$ 52,834
<b>BENCHMARK</b>									
Notes:									
1 Benchmark is 90 day Average BBSW									
2 CDO - Collateralised Debt Obligation									
3 BBSW - Bank Bill Swap Rate									
4 CBA Trading & At Call Investment included in the monthly portfolio return calculation									
5 Valuation as at 31 December 2010									
In 2008 Council's Portfolio was written down from Face Value to its Market Value by \$2.2million. Since then there has been partial recovery of some write downs and overall there has been no further deterioration in Council's Portfolio Market Value									



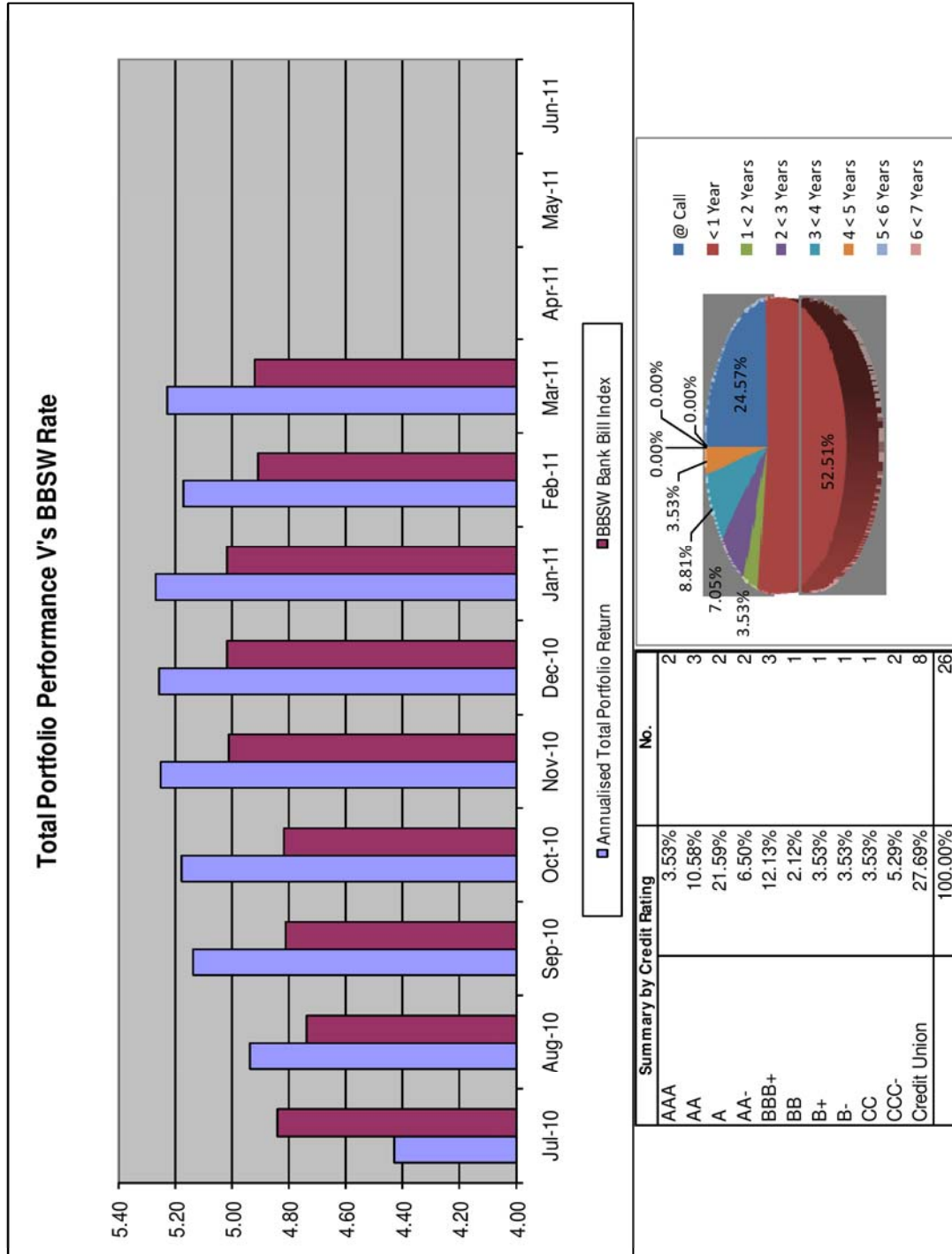
## ATTACHMENT 1

### Corporate Services Division Report No. 17 - Report on Council Investments as at 31 March 2011 Investment Report



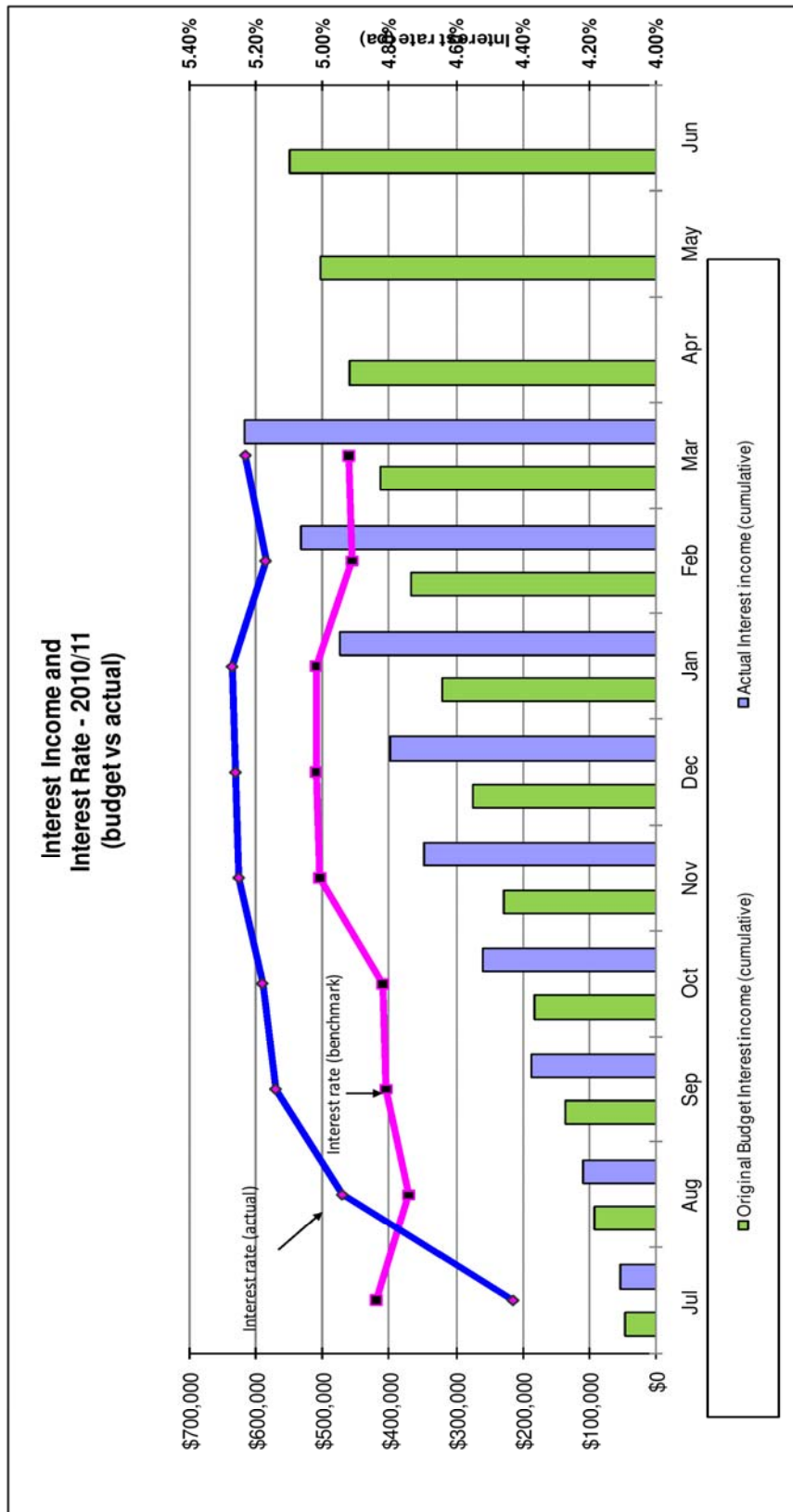
# ATTACHMENT 1

## Corporate Services Division Report No. 17 - Report on Council Investments as at 31 March 2011 Investment Report



# ATTACHMENT 1

## Corporate Services Division Report No. 17 - Report on Council Investments as at 31 March 2011 Investment Report



TO: Ordinary Meeting - 9 May 2011  
 REPORT: Corporate Services Division Report No. 18  
 SUBJECT: March Quarterly Budget Review  
 FILE NO:

## SUMMARY

Council's income and expenditure for the quarter 1 July 2010 to 31 March 2011 has been reviewed, together with a projection of Council's Budget as at 30 June 2011, and a Statement of Variations which have occurred is submitted.

## REPORT

Council is required to prepare a budget review statement each quarter, in accordance with Clause 7 of the Local Government (General) Regulation 2005. This report is prepared in accordance with the clause for the period ended 31 March 2011.

The purpose of these reviews is to ensure that the impact of financial variation, which should only be of a minor nature, is reflected in the forecast of Council's global budgetary position, and the adopted Budget adjusted accordingly.

The following is a summary of Council's adopted Budget for 2010/2011 and revised estimates of Income and Expenditure to 30 June 2011, following the adjustments included in this report.

	Original Budget	Revised Budget At 31/12/2010	Revised Budget At 31/03/2011
Operating Income	-\$62,891,766	-\$63,189,456	-\$63,192,306
Capital Income	-\$17,377,215	-\$18,719,193	-\$18,906,193
Total Income	-\$80,268,981	-\$81,908,649	-\$82,098,499
Operating Expenditure	\$62,839,575	\$63,019,135	\$63,099,885
Capital Expenditure	\$17,706,479	\$19,469,345	\$19,656,345
Total Expenditure	\$80,546,054	\$82,488,480	\$82,756,230
Net Surplus / (Deficit)	<b>(\$277,073)</b>	<b>(\$579,831)</b>	<b>(\$657,731)</b>

Adjustments for the quarter are summarized in the following table which outlines the major changes to program areas in the Budget for the Quarter ended 31 March 2011.

### Financial Review - Period Ending: 31/03/2011

#### Summary of Variations

Program	Item	Revenue	Expenditure	Net Change + / (-)
1.1	Legal services expenditure		+\$50,000	+\$50,000
4.3.4	Shortfall in Fees income -			
	- Vacation Care	-\$4,700		
	- Manly BASC	-\$19,500		
	- Harbourview CCC	-\$105,250		
	Early Childhood Centre - Office Rent (previously subsidised by Stocklands)		+\$11,250	+\$140,700

**Corporate Services Division Report No. 18 (Cont'd)**

5.7.2	Community Partnership Grant Lagoon Playground Project	+\$100,000	+\$100,000	\$0
8.1	Tourist Bus - income Tourist Bus Services - operating expenses- service ceased due to low patronage Hop Skip Bus Services - reduced sponsorship / other income	-\$31,700  -\$20,000	-\$17,500	+\$34,200
8.5	Car park operations	+\$147,000		+\$147,000
	<b>TOTAL VARIATION FOR PERIOD</b>	<b>+\$65,850</b>	<b>+\$143,750</b>	<b>+\$77,900</b>

After adoption of the recommended adjustments the result for the quarter is a deficit of \$77,900 and a forecast deficit at 30 June 2011 of \$657,731.

Appended to this Report is a statement on the projected position of Council Reserves (Restricted Funds) balances at 30 June 2011.

**Statutory Report**

In accordance with Part 9 Division 3 of the Local Government (General) Regulation 2005, Council's Responsible Accounting Officer hereby certifies that the Council's financial position is satisfactory having regard to the original estimates of income and expenditure and projected financial year result.

**RECOMMENDATION**

THAT the 2010/2011 Adopted Budget be varied in terms of this Report.

**ATTACHMENTS**

**AT- 1** Budget Quarterly Review 1 Page

**AT- 2** Budget Variations 2010-2011 Summary 1 Page

OM090511CSD\_3

\*\*\*\*\* End of Corporate Services Division Report No. 18 \*\*\*\*\*

## ATTACHMENT 1

### Corporate Services Division Report No. 18 - March Quarterly Budget Review Budget Quarterly Review

#### Attachment Statement as to position of Council Reserves

SCHEDULE OF CASH RESERVES (PROJECTIONS)				
RESERVE	Estimated Balances 1/07/2010	Transfers to Reserve	Transfers from Reserve	Projected Balance 30/06/2011
<b>EXTERNALLY RESTRICTED:</b>				
S.94 CONTRIBUTIONS PLAN	4,514,508	400,000	-376,000	44,538,508
DOMESTIC WASTE MANAGEMENT RESERVE	180,949	913,100	-960,000	134,049
SPECIFIC PURPOSE UNEXPENDED GRANTS	2,139,138	0	-1,603,113	536,025
MANLY ART GALLERY - THEODORE BATTEN	719,877	0		719,877
<b>TOTAL EXTERNALLY RESTRICTED</b>	<b>7,554,472</b>	<b>1,313,100</b>	<b>-2,939,113</b>	<b>45,928,459</b>
<b>INTERNALLY RESTRICTED:</b>				
ART GALLERY/MUSEUM EXTENSIONS RESERVE	17,702	0	0	17,702
DEPOT REDEVELOPMENT RESERVE	544,983	0	-200,000	344,983
EMPLOYEE LEAVE ENTITLEMENTS	1,210,065	200,000	0	1,410,065
ENVIRONMENT LEVY RESERVE	797,338	1,000,000	-1,000,000	797,338
LOAN BORROWING	0	1,000,000	-1,000,000	0
OFFICE EQUIPMENT REPLACEMENT RESERVE	84,486	0	-50,000	34,486
ROADS MAINTENANCE RESERVE	200,000	0	0	200,000
PREMSURE LIABILITY RESERVE	275,000	0	0	275,000
SHELLY BEACH IMPROVEMENTS RESERVE	9,413	0	0	9,413
UNEXPENDED SPECIFIC PURPOSE CONT'NS	20,243	0	0	20,243
VEHICLE REPLACEMENT RESERVE	0	50,000	-50,000	0
MANLY TOWN CENTRE IMPROVEMENTS	60,000	0	0	60,000
MANLY WHARF FORECOURT RESERVE (NEW)	50,000	0	0	50,000
BALGOWLAH AREA IMPROVEMENTS RESERVE	205,499	83,507	0	289,006
INCOMPLETE CAPITAL OR CONTRACTED WORKS	0	0	0	0
PLANT REPLACEMENT RESERVE	803,380	700,000	-1,213,300	290,080
MANLY YOUTH COUNCIL RESERVE	6,000	0	0	6,000
STORMWATER MANAGEMENT RESERVE	460,994	350,000	-350,000	460,994
INFRASTRUCTURE LEVY RESERVE	285,591	475,900	-760,600	891
PROPERTY ACQUISITION & IMPROV. RESERVE	1,530,760	0	0	1,530,760
CBD & OCEAN BEACH IMPROVEMENTS RESERVE	-4,425,392	1,084,127	-175,240	-3,516,505
INFRASTRUCTURE MAINTENANCE RESERVE	5,600,000	0	0	5,600,000
INTEREST RESERVE	0	250,000	-250,000	0
<b>TOTAL INTERNALLY RESTRICTED</b>	<b>7,736,061</b>	<b>5,193,534</b>	<b>-5,049,140</b>	<b>7,880,455</b>
<b>TOTAL PROJECTED RESTRICTED FUNDS</b>	<b>15,290,533</b>	<b>6,506,634</b>	<b>-7,988,253</b>	<b>13,808,914</b>
(Note: Excludes funds held in Trust such as bonds and security deposits)				

# ATTACHMENT 2

## Corporate Services Division Report No. 18 - March Quarterly Budget Review Budget Variations 2010-2011 Summary

### Summary

Description	Original	2010/2011 Budget Variation						Full Year	
		Council Approved	September Review	Council Approved	December Review	Council Approved	March Review	Council Approved	June Review
<b>Income</b>									
1 Corporate Governance	(2,221,500)	-	(56,000)	-	-	-	-	-	-
2 Corporate Planning & Strategy	(208,500)	-	-	-	37,500	-	-	-	-
3 Human Services & Facilities	(3,687,546)	-	(38,538)	-	-	-	140,700	-	-
4 Recreation & Culture	(2,409,900)	-	-	-	(25,210)	-	-	-	-
5 Environmental Services	(4,152,000)	-	-	-	-	-	-	-	-
6 Public Order & Safety	(50,000)	-	-	-	-	-	-	-	-
7 Urban & Infrastructural Services	(10,096,797)	-	(16,177)	-	-	-	(95,300)	-	-
8 Environmental & Community Amenities	(10,315,803)	-	-	-	(150,000)	-	-	-	-
9 General Purpose Revenues	(28,749,720)	-	(49,265)	(250,000)	-	-	-	-	-
10 Appropriations for Future Expenditure	0	-	-	-	-	-	-	-	-
11	(62,891,769)	(848,268)	(159,980)	(250,000)	(137,710)	-	45,400	-	-
<b>Capital Income</b>									
1 Corporate Governance	(105,000)	-	-	-	(50,000)	-	-	-	-
2 Corporate Planning & Strategy	(3,072,320)	-	-	-	-	-	-	-	-
3 Human Services & Facilities	(420,000)	(797,338)	(366,550)	-	-	-	-	-	-
4 Recreation & Culture	(410,000)	-	(113,828)	-	-	-	(112,000)	-	-
5 Environmental Services	0	-	-	-	-	-	-	-	-
6 Public Order & Safety	0	-	-	-	-	-	-	-	-
7 Urban & Infrastructural Services	(5,896,895)	-	(376,600)	-	(435,000)	-	-	-	-
8 Environmental & Community Amenities	(200,000)	-	-	-	-	-	-	-	-
9 General Purpose Revenues	(7,273,000)	-	-	-	-	-	-	-	-
10 Appropriations for Future Expenditure	0	-	-	-	-	-	-	-	-
11	(17,377,215)	(797,338)	(856,978)	-	(485,000)	-	(112,000)	-	-
<b>Expenditure</b>									
1 Corporate Governance	17,023,466	-	69,100	-	(200,000)	-	50,000	-	-
2 Corporate Planning & Strategy	3,602,233	1,485,606	(20,350)	(17,000)	(123,650)	-	-	-	-
3 Human Services & Facilities	5,691,529	-	4,600	-	-	-	-	-	-
4 Recreation & Culture	9,134,462	-	(20,350)	-	24,110	-	-	-	-
5 Environmental Services	5,117,844	-	-	-	-	-	-	-	-
6 Public Order & Safety	1,117,715	-	-	-	50,750	-	-	-	-
7 Urban & Infrastructural Services	7,641,833	-	-	-	225,000	-	(17,500)	-	-
8 Environmental & Community Amenities	13,510,491	-	-	-	150,000	-	-	-	-
9 General Purpose Revenues	0	-	-	-	-	-	-	-	-
10 Appropriations for Future Expenditure	0	-	-	-	-	-	-	-	-
11	62,839,575	1,485,606	53,350	(17,000)	128,210	-	32,500	-	-
<b>Capital Expenditure</b>									
1 Corporate Governance	1,510,000	-	20,350	-	100,000	-	-	-	-
2 Corporate Planning & Strategy	2,216,320	150,000	-	-	150,000	-	-	-	-
3 Human Services & Facilities	500,000	-	613,038	17,000	-	-	-	-	-
4 Recreation & Culture	1,119,630	-	298,778	-	(4,900)	-	112,000	-	-
5 Environmental Services	25,000	-	-	-	-	-	-	-	-
6 Public Order & Safety	0	-	-	-	-	-	-	-	-
7 Urban & Infrastructural Services	6,383,895	-	150,600	-	435,000	-	-	-	-
8 Environmental & Community Amenities	1,648,100	-	-	-	-	-	-	-	-
9 General Purpose Revenues	0	-	-	-	-	-	-	-	-
10 Appropriations for Future Expenditure	4,293,534	-	-	250,000	-	-	-	-	-
11	17,706,478	150,000	1,082,766	267,000	680,100	-	112,000	-	-
Surplus/(Deficit)	(277,073)	-	(119,158)	-	(183,600)	-	(77,900)	-	-
Net Surplus/(Deficit)	(277,073)	(396,231)	-	(579,831)	-	-	(77,900)	-	-

**TO:** Ordinary Meeting - 9 May 2011  
**REPORT:** Planning And Strategy Division Report No. 8  
**SUBJECT:** Quarterly Update Report on the Management Plan 2010-2013  
for the period 1st January to 31st March 2011  
**FILE NO:**

---

## SUMMARY

This report provides a review of the achievements towards meeting the outcomes set by Council as described in the Management Plan 2010 – 2013 for the period 1 January 2011 to 31 March 2011, in accordance with the requirements of the *Local Government Act, 1993*.

## REPORT

Section 407 of the *Local Government Act, 1993*, requires the General Manager to report periodically *"as to the extent to which the performance targets set by the Council's current management plan have been achieved during each quarter."*

In June 2010, Council adopted the 2010-2013 Management Plan. Contained within this Management Plan are the five (5) Principal Activities undertaken by Council, being:

1. Governance
2. People and Place
3. People Services
4. Infrastructure Services
5. The Environment

The actions matrix derived from Council's Management Plan has been updated for the January to March 2011 quarter, and is circulated under separate cover, along with trend data on the key performance indicators listed in Council's Management Plan 2010–2013. The graphs, displaying data for the 2009 and 2010 calendar years as well as data for 2011 for comparative analysis, are also circulated under separate cover.

This Report provides for the requirement of statutory quarterly reporting on the Council's five Principal Activities in the Management Plan for the period ending 31 March 2011.

Some of the key highlights for the third quarter, being January to March 2011 are as follows.

- Implementation and finalization of recommendations arising from the NSW Ombudsman's report into functions of Manly Council (January - March 2011).
- Completion of the final improvement in landscaping, interior and exterior works for extension to the Roundhouse Childcare centre (January to March) in readiness for April 2011 opening.
- Civic and Urban Services have also progressed with other building and facilities condition audits of childcare centres, the Fairlight pool refurbishment of its public toilets, roof improvements to Manly Oval's sports club storage facilities, and much needed repairs to the Manly Town Hall roof. Parks and Reserves have re-turfed and improved facilities at Clontarf Reserve, and Seaforth Oval (basketball court) in March, the Grove Bike Track (February 2011).



**Planning And Strategy Division Report No. 8 (Cont'd)**

- The Draft Manly (Comprehensive) Local Environmental Plan 2011, in particular the draft instrument and maps are being updated to reflect the Council's resolution of February 2011 regarding 34-40 Stuart Street Manly prior to the pre-lodgement submission of the draft plan to Department of Planning (DoP), as well the **Manly Development Control Plan (Consolidating) 2011 is continuing to be prepared** to accompany the new LEP. It is proposed to be exhibited in tandem with the LEP.
- Completion of the Master Plan for Industrial Zone, including exhibition of the draft master plan commenced on 21 March 2011 for four weeks and will be reported back to Council following review of submissions.
- The dredging phase of the Manly Lagoon Sites One and Two reached a conclusion at the end of March, 2011. This has been a challenging project with Council following the methodology outlined in the REF signed by both Warringah and Manly Councils and concurrence with relevant state agencies.
- Carbon Emissions Reduction Project continuation including staff workshops were held during March 2011 to assist the development of the Manly LGA (Community) Carbon Reduction Strategy and Action and to update and identify implementation actions for the Manly Council Corporate Carbon Reduction Strategy and Action Plan.
- The Manly Cove Coastal Zone Management Plan has been prepared and presented at the Harbour Foreshores & Coastline Management, Manly Scenic Walkway and Access Committees. The Final draft has been circulated to key staff for review and comments. This is now ready for presentation to P&S for public exhibition.
- Ellery's Punt Reserve Landscape Masterplan was presented at different committees during February-March 2011.
- The North Harbour Landscape Masterplan was presented for review to the LMUD committee in February 2011, and this was then reported to Council for adoption in March 2011.
- Implementation of the Sandy Bay Landscape Masterplan, including detailed designs for landscape retaining wall and boat storage are being prepared, Stage 1 Land Contamination Investigation has been completed, and Review of Environmental Factors is being drafted.
- The following Green Up Your Life initiatives were held in February 2011, including Green Cleaning Workshop, Composting and Worm Farming Made Easy Workshop, Recycling and Beyond Workshop, Chullora Waste and Recycling Facility Tour, Green & Groovy Kids Recycled Art educational theme of waste avoidance and organic eating was included with the workshop. Principles of Ecological and Sustainable Living Workshop, including a community workshop was held in an outdoor classroom setting outside the Seaforth Community Centre.
- In the last quarter, the visitation to Manly's Gallery, Library, Beach and Swim centre has shown the normal holiday crowds have lessened and the businesses on the beach and at the Swim centre's patronage has changed to school carnivals and training sessions on the beach.
- A highlight has been the World Food Markets engaging with the community again with the number of families and people enjoying the central location, food and music. Numerous complimentary emails and expressions of support for this popular evening gathering of locals have been received.

**Planning And Strategy Division Report No. 8 (Cont'd)**

- As well, progress continues with the Community Safety strategies such as the Late Night Safety audit, meeting with the Late Night Food operator for their compliance with litter and security and preparation for the draft Crime Prevention Plan to be adopted by Council for public exhibition. The Manly Crime Prevention Plan 2011-2013 was placed on public exhibition together with a strategy for community comment from 7 March 2011.

**RECOMMENDATION**

It is recommended that the report on the third quarterly review of the Management Plan 2010-2013 for the period ending 31 March 2011 be received and noted.

**ATTACHMENTS**

<b>AT-1</b>	Management Plan Matrix Third Quarter Update to 31 March 2011	40 Pages	Circulated Separately
<b>AT-2</b>	PROGRAM KPIs March Quarter 2011	13 Pages	Circulated Separately

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\*\*\*\*\* End of Planning And Strategy Division Report No. 8 \*\*\*\*\*

**TO:** Ordinary Meeting - 9 May 2011  
**REPORT:** Environmental Services Division Report No. 12  
**SUBJECT:** Compliance and Enforcement Policy  
**FILE NO:**

---

**SUMMARY**

This report recommends the adoption of the Compliance and Enforcement Policy following exhibition.

**REPORT**

The Draft Compliance and Enforcement Policy (as attached) and attached was placed on public exhibition for twenty-eight (28) days from 10 March 2011 to 8 April 2011.

There were no public submissions received.

**RECOMMENDATION**

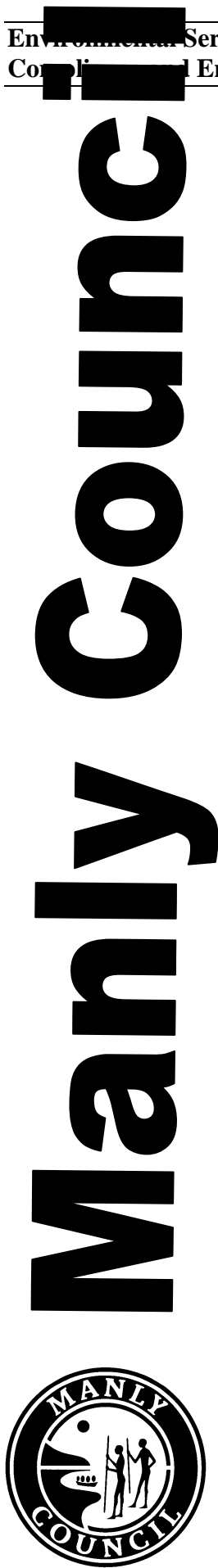
THAT the report be received and noted.

**ATTACHMENTS**

**AT- 1** Compliance and Enforcement Policy 14 Pages

OM090511ESD\_1

\*\*\*\*\* End of Environmental Services Division Report No. 12 \*\*\*\*\*



## **Compliance and Enforcement Policy**

(As amended)  
19 October 2001

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**Environmental Services Division Report No. 12 - Compliance and Enforcement Policy**  
**Compliance and Enforcement Policy**


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## 1. Policy Statement

## Environmental Services Division Report No. 12 - Compliance and Enforcement Policy

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### Compliance and Enforcement Policy

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In accordance with section 8 of the **Local Government Act 1993** Manly Council has an obligation *“to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias, particularly where an activity of the council is affected.”* Council is committed to achieving this objective through the implementation of this Policy.

Council also acknowledges its obligations under the Occupational Health and Safety Act 2000 to provide a safe work environment for its officers.

## 2. Purpose

To assist Council staff and contractors to act promptly, consistently, effectively and without bias in response to allegations of unlawful activity within the Council area.

## 3. Objectives

The aim of this Policy is to establish clear guidelines for the exercise of discretion in dealing with action requests or complaints about unlawful activity within the Council area. It provides workable guidelines on:

- how to assess whether complaints of unlawful activity require investigation;
- options for dealing with unlawful activity;
- how to decide whether enforcement action is warranted;
- the opportunity for public participation with respect to the impacts caused by such activities;
- providing any person responsible for carrying out any unlawful activity an opportunity to make representations to Council in accordance with administrative law principles of ‘procedural fairness’ and ‘natural justice’; and
- providing the community with information and guidance with respect to the Council’s role in the management of unlawful activities.

## 4. Scope

This Policy applies to the investigation and enforcement of complaints about unlawful activity or failure to comply with the terms or conditions of approvals, licences and orders. While primarily directed at the regulation of development activity, the Policy is also applicable to pollution control, regulation of parking and control over keeping animals.

This document applies to all land within the Manly Council Local Government Area as shown on the *Manly Local Environmental Plan 1988 (the ‘MLEP’)* map.

## 5. Definitions

<b>Building Certificate</b>	<p>A building certificate is issued as per the provisions of S 149 of the EPAA and operates to prevent the Council -</p> <p>a. from making an order (or taking proceedings for the making of an order or injunction) under the Environmental Planning &amp; Assessment Act or the Local Government Act requiring the</p>
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### Compliance and Enforcement Policy

	<p><u>building</u> to be repaired, demolished, altered, added to or rebuilt, and</p> <p>b. from taking proceedings in relation to any encroachment by the <u>building</u> onto <u>land</u> vested in or under the <u>control</u> of the <u>Council</u></p>
<b>Development</b>	<p>'development' means:</p> <ol style="list-style-type: none"> <li>the use of land, and</li> <li>the subdivision of land</li> <li>the erection of a building;</li> <li>the carrying out of a work;</li> <li>the demolition of a building or work;</li> <li>any other act, matter or thing referred to in s 26 [of the EPAA] that is controlled by an EPI, but does not include any development of a class or description prescribed by the regulations [<i>Environment Planning and Assessment Regulation</i>, 2000 (NSW)] (the 'EPAR') for the purposes of this definition.</li> </ol>
<b>EPAA</b>	The Environmental Planning & Assessment Act, 1979, sets out the framework for local planning in New South Wales
<b>EPAR</b>	The Environmental Planning & Assessment Regulation supports the general aims of the EP&A Act in the regulatory process.
<b>EPI</b>	Environmental Planning Instrument' ('EPI') is any State Environmental Planning Policy, Regional Environmental Plan or the Manly Local Environmental Plan, 1988 (the 'MLEP').
<b>Exempt Development</b>	Exempt development is development that is of minimal environmental impact and does not require development approval.
<b>MLEP</b>	Manly Local Environmental Plan, 1988 (as amended) is a specific planning control for the Manly area which is administered by Manly Council. This plan applies to all land within the Municipality of Manly as shown on the MLEP map.
<b>POEO</b>	The <i>Protection of the Environment Operations Act 1997</i> (POEO Act) is the key piece of environment protection legislation administered by Council.
<b>PCA</b>	Principal Certifying Authority is an accredited authority who issues certificates for development under the Environmental Planning and Assessment Act 1979
<b>Unlawful activity</b>	<p>An unlawful activity is the doing of any act, matter or thing, or the carrying out of any activity of any kind, that is:</p> <ul style="list-style-type: none"> <li>contrary to a legislative provision regulating a particular activity or work;</li> <li>contrary to an environmental planning instrument that regulates the activities or work that can be carried out on particular land;</li> <li>without a required development consent, approval, permit or licence; and/or</li> <li>contrary to the terms or conditions of a development consent, approval, permit or licence, and includes but is not limited to the carrying out of unlawful development within the meaning of the <i>Environmental Planning and Assessment Act 1979</i> (NSW) (the 'EPAA') and the carrying out of any activity under s 68 of the Local Government Act 1993 (LGA) without the prior approval of Council having been obtained.</li> </ul>

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## 6. What is an unlawful activity

An **unlawful activity** is the doing of any act, matter or thing, or the carrying out of any activity of any kind, that is:

- contrary to a legislative provision regulating a particular activity or work;
- contrary to an environmental planning instrument that regulates the activities or work that can be carried out on particular land;
- without a required development consent, approval, permit or licence; and/or
- contrary to the terms or conditions of a development consent, approval, permit or licence,

and includes but is not limited to the carrying out of unlawful development within the meaning of the Environmental Planning and Assessment Act 1979 (EPAA) and the carrying out of any activity under s 68 of the Local Government Act 1993 (LGA) without the prior approval of Council having been obtained.

The **unlawfulness** of any activity will be determined objectively by reference to the relevantly applicable legislation. In the case of unlawful development, regard is to be had to the EPAA, the EPAA Regulation or any Environmental Planning Instrument (EPI) as to whether such development can only be implemented with or without 'development consent'. Unlawfulness is also determined against the criteria of 'Exempt Development' and 'Complying Development' as prescribed by the MLEP .

## 7. Investigating Unlawful Activity

Not all complaints will warrant investigation. Council will consider a range of factors when deciding whether to investigate. These include:

- Is the matter within the jurisdiction of Council?
- Is the complaint premature e.g. does it relate to some unfinished aspect of work that is still in progress?
- Is the activity or work permissible with or without consent?
- If the activity is permissible with consent, is there a consent in place?
- Is it possible to determine from the information available to Council whether the activity or work is permissible without consent and/or whether all conditions of consent are being complied with?
- Is the complaint trivial, frivolous or vexatious?
- Has too much time elapsed since the events the subject of the complaint took place?
- Is there another body that is a more appropriate agency to investigate and deal with the matter?
- Is the activity having a significant detrimental effect on the environment or does it constitute a risk to public safety?
- Does the complaint indicate the existence of a systemic problem e.g. if the complaint is one of a series, could there be a pattern of conduct or a more widespread problem?



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- Has the person or organisation complained of been the subject of previous complaints?
- Does the complaint have special significance in terms of the Council's existing priorities?
- Are there significant resource implications in relation to an investigation and any subsequent enforcement action?
- Is it in the public interest to investigate the complaint?

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

## **8. Responding to complainants**

All action requests or complaints about alleged unlawful activity should be acknowledged within 2 working days of receipt and advice given to the complainant within 21 days on what action Council has taken or plans to take.

## **9. Anonymous Complaints**

Council will accept and investigate anonymous complaints. However, Council's ability to thoroughly investigate an anonymous complaint may be limited by the inability to obtain further information from the complainant.

## **10. Provision of Information**

The subject of a complaint or the person or persons alleged to be carrying out an unlawful activity will be given all reasonable opportunity to provide any relevant information or other particulars and make appropriate representations regarding the unlawful activity. All such representations must be made in writing. In addition, authorised Council officers have certain powers under relevant legislation to inspect premises and require certain information to be furnished.

A failure by the person(s) to reply to a request for information within the allowed timeframe will be taken into account when determining what enforcement action to take.

## **11. Authorised Officers, Delegated Authority and Lawful Powers of Entry**

Only certain staff have been delegated authority by the General Manager to initiate various levels of enforcement action. Staff must ensure that any enforcement action is only initiated by a person with appropriate authority. All delegations of authority are contained in Council's Delegations Register which is available from Council's Administration Manager.

These delegations include powers for staff to enter private property. Council views the power to enter private property very seriously and will ensure that the exercise of these functions will be strictly in accordance with applicable legislation.

All Council staff or contractors who carry out inspections on private land for regulatory purposes will:

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- Have delegation to enter premises and carry out investigations as specified in Council's delegations; and
- Be Authorised by Council where this is required under specific legislation to permit inspections on private property; and
- Carry photographic identification demonstrating authorisation to enter premises and private lands under each specific Act; and
- Carry documentation or certificates of authority where required by the legislation being implemented.

## **12. Principal Certifying Authority (PCA) and Private Certifiers**

Council will only investigate matters where a Private Certifier is nominated as PCA in relation to development where:

- the PCA fails, or is not able, to appropriately action a matter;
- the PCA has taken all the action available under the legislation but the offence continues or reoccurs despite that action; or
- it is in the public interest to do so.

## **13. Community Input**

Where appropriate, community feedback on the impacts of unlawful activity will be obtained.

Manly Council will approach any investigation of unlawful activity on a 'case by case' basis. Inviting community input will assist Council to assess the impacts of unlawful activity against the public interest and the cost involved to the Council to implement enforcement strategies relative to the benefits to be derived from taking such action.

In inviting community input, care must be taken to respect the privacy and rights of persons alleged to be responsible for the unlawful activity.

## **14. Options for dealing with confirmed cases of unlawful activity**

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

- referring the complaint to an external agency for further investigation or prosecution
- taking no action on the basis of a lack of evidence or for some other appropriate reason
- counselling the subject of the investigation to educate them on the relevant Council requirements
- negotiating with the subject of the investigation and obtaining some undertakings to address the issues of concern arising from the investigation e.g. an application for unauthorised works. Refer to unauthorised works flowchart – page 13
- issuing a letter requiring work to be done or activity to cease in lieu of more formal action

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- issuing a notice of intention to serve an order or notice under relevant legislation, followed by service of an appropriate order or notice (Local Government Act (LGA) ss. 124-128, Environmental Planning & Assessment Act (EPAA) s.121B, and the Protection of the Environment Operations Act (POEO Act) Pts 4.2-4.4 and 8.6)
- issuing a notice requiring work to be done under various legislation
- starting proceedings in the Land & Environment Court for an order to remedy or restrain a breach of the relevant Act or Regulation (s.673 LGA; s.123 EPAA)
- seeking injunctions from the Land & Environment Court or the Supreme Court
- issuing a summons in the local court
- issuing a penalty infringement notice
- taking proceedings for an offence against the relevant Act or Regulation (s.691 LGA, s.125 EPAA; Chapter 5 POEO Act)
- carrying out the works specified in an order under the LGA at the cost of the person served with the order (s.678 LGA).

All enforcement action will be monitored and a decision made in relation to non-compliance within 2 weeks of any deadline imposed.

### **15. Taking enforcement action**

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

#### ***The nature and seriousness of the breach***

Council will have regard to the impact the unlawful activity is causing on amenity or harm to the environment. If action is required, Council will consider what is reasonable in the circumstances and ensure the action is not disproportionate to the level of harm or damage arising from the breach. This should also include consideration of whether action is time critical.

#### ***Balancing of public interest and cost to Council***

Council will weigh up the public interest or benefits that will be served against the cost to the Council, and the community, of taking enforcement action.

In considering the 'public interest' Council will have regard to whether the unlawful activity;

- will impact on a significant number of people;
- will impact on disadvantaged or marginalised groups;
- is indicative of a systemic flaw;
- is individual in nature but often occurs;
- has attracted sustained public attention and no alternative resolution is proposed or likely; and
- flouts Council's authority.

Council will also consider whether more effective means of rectifying an unlawful activity are available before formal legal proceedings are initiated. This may include one or a combination of the following:

- Reporting a breach to a professional association; and
- Use of statutory powers such as;
  - granting consent to a relevant application;
  - making an order under the EPAA, LGA or POEO; or

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- issuing a building certificate under the EPAA.

***The available methods of enforcement***

If formal proceedings are considered to be the best option, the decision on which court to bring proceedings in will be informed by considerations such as the following:

- Likely cost of proceedings;
- Prospects of recovery of those costs from the respondent or defendant;
- Remedies available;
- Available methods of enforcement; and
- Circumstances of each case.

***The circumstances of each case***

Council will in all prosecution and enforcement matters consider the following;

- Whether the unlawful activity has caused a breach which is technical in nature and does not cause harm to amenity or to the environment;
- Whether the unlawful activity is ongoing. If it has ceased, Council must consider the length of time that has expired;
- The impact of the unlawful activity on the natural or built environment and on health, safety and amenity;
- Whether development consent or other approval would have been granted by Council if the appropriate application had been submitted prior to the unlawful activity being undertaken;
- Whether the person(s) who committed the breach has shown contrition and, where possible, has remedied the unlawful activity;
- Whether the person(s) who committed the breach has made submissions to the Council that provide reasonable grounds for the Council to conclude that the person was under a genuine mistaken belief as to a relevant factual or legal matter;
- Whether the person(s) who committed the breach has shown deliberate or wilful conduct in their actions;
- Whether the person(s) who committed the breach should have been aware of their obligations because they have:
  - particular knowledge, e.g., a builder or company that regularly carries out work and is generally aware of the relevant Council or other requirements;
  - received a previous warning; or
  - been subject to previous formal legal action.
- Whether the unlawful activity was unavoidable; and
- Such other matters that may appear to be relevant to the individual case.

**16. Adjudication of Penalty Infringement Notice Appeals (All offences)**

An Adjudication Panel consisting of the Manager Compliance and Enforcement and the Manager Ranger Services will examine Client Representation Schedules received from the NSW State Debt Recovery Office and in some instances representations received directly by Council. The Client Representation Schedules contain representations from persons who have received a penalty infringement notice for an offence.

The Panel will consider the representations made and the circumstances of the case and make a written recommendation to the Deputy General Manager, Land Use and Sustainability who will make a final decision in regards to the appeal.

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**17. Administrative Fees**

Pursuant to Council's Fees and Charges and where illegal works have been completed within the past twenty four (24) months a fee for the assessment of unlawful building works will be charged. This fee will be equivalent to the maximum fee that would have been imposed if the application was for a combined development application / construction certificate application, or a complying development application (whichever is relevant) for the building or part of the building the result of the unauthorised work.

**18. Planning Certificates**

Notwithstanding any decision taken under this document, the Council may, pursuant to s 149(5) of the EPAA and to the extent it sees fit, include advice on a planning certificate with respect to any land where an action or actions have been taken under the Policy.

**19. Record keeping**

Council officers investigating or enforcing unlawful activity must ensure that full and accurate records of the matter are kept and stored in Council's official record keeping system. In addition to all incoming and outgoing correspondence (letters, e-mails, faxes) relating to the matter, Council officers must keep notes of all interviews and inspections in their interview book as well as notes of phone conversations that go beyond a basic exchange of already documented information. Records must also be kept of the reasons why the method for dealing with the unlawful activity was chosen e.g. why Council decided not to issue a notice.

**20. Occupational Health & Safety for Council staff**

Council is required to provide for the health, safety and welfare of all staff including compliance and enforcement staff. In this regard, Council staff will observe safe work practices and comply with safe work method statements when carrying out their duties

**21. Discretion**

One of the main purposes of the Compliance and Enforcement Policy is to provide guidance to Council and the Community on how we will exercise our powers of discretion in matters of compliance and enforcement. In this regard, it is Council policy to support the administrative law principles which require public officials to:

- Use discretionary power in good faith and for a proper purpose. That is, to use the powers honestly and only within the scope of the purpose for which the power was given;
- Base decisions on logically probative material. This means decisions are based on logical reasons, information that proves the issues in question as well as reliable and relevant evidence;
- Consider only relevant considerations and not consider irrelevant considerations;
- Give weight to matters of greater importance and not give weight to matters of lesser importance;

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- Exercise discretion independently and not under the dictation or at the behest of any third party;
- Give proper, genuine and realistic consideration to the merits of each particular case and not apply policy inflexibly; and
- Observe the rules of procedural fairness and natural justice.

It is considered that the principles, positions and special provisions of this policy are in themselves a demonstration of the proper use of discretionary powers.

## **22. Procedures**

The General Manager shall, from time to time, implement procedures for the investigation of complaints and the taking of enforcement action. Such procedures must be consistent with the principles espoused in this Policy.

Such procedures may include, but are not limited to, matters involving:

- Unauthorised building works
- Non-compliance with development consents
- Fire Safety compliance
- Places of public entertainment
- Food safety
- Public health
- Skin penetration
- Brothels
- Residential swimming pool fencing
- Pollution incidents
- Littering and dumped rubbish
- Hours of operation
- Noise

## **23. Monitoring and Breaches**

Regular monitoring of compliance with this Policy, relevant legislation and Manly policies, procedures and guidelines will be undertaken and documented by the responsible officer for this Policy.

Breaches of this Policy by staff will be considered to be breaches of Manly Council's Code of Conduct and therefore invoke the relevant sanctions outlined in that Code. Persons in breach of any legislation may be subject to relevant criminal action.

## **24. Policy review**

This Policy is subject to regular review at a maximum interval of two years.

Any recognised change to relevant legislation; or directives or guidelines issued by agencies including the NSW Ombudsman and the Division of Local Government; or to Manly Council's

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related guidelines and procedures will activate an immediate review of this Policy to ensure it remains current and aligned to best practice policies.

**25. Relevant References & Legislation**

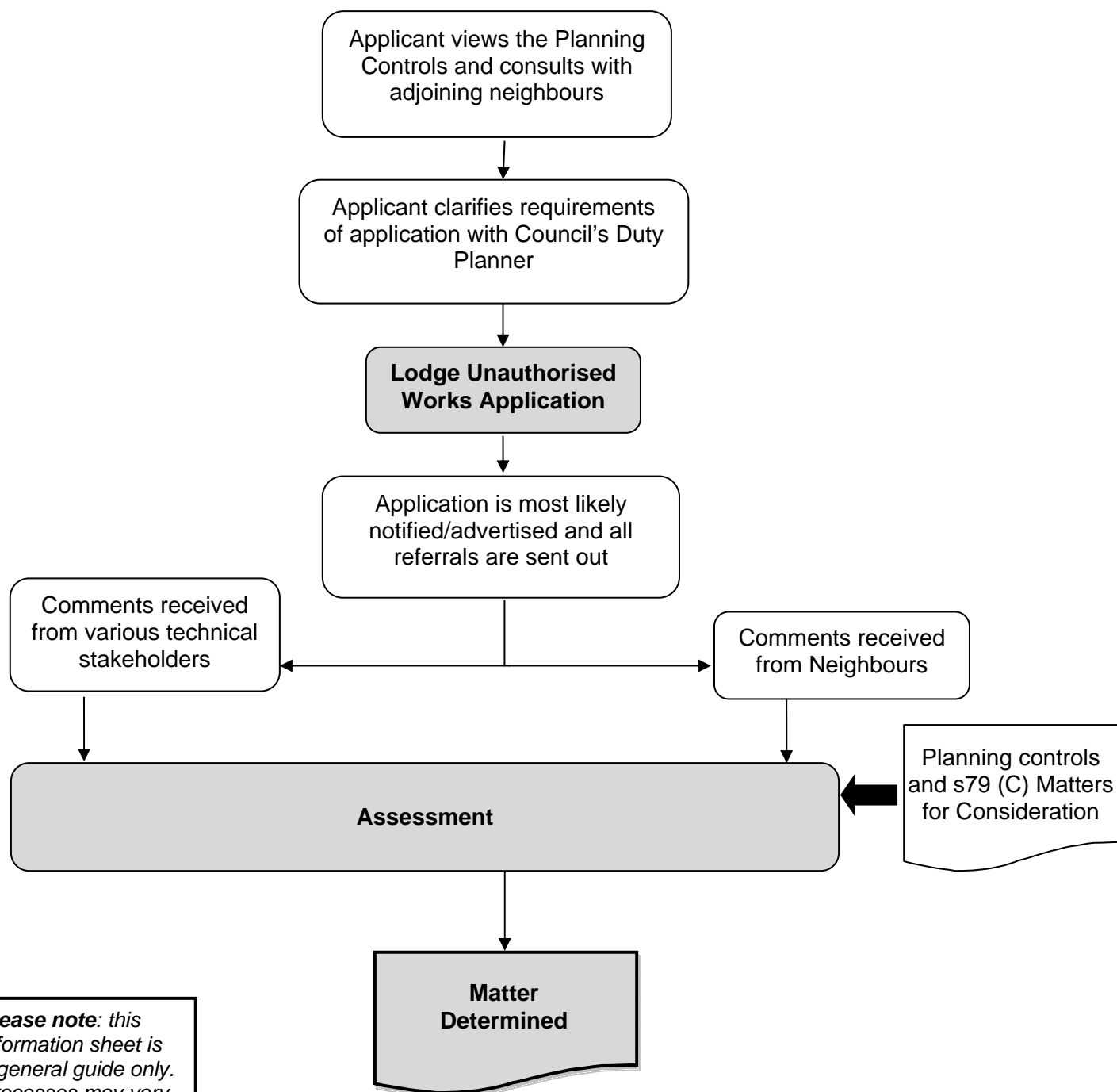
Environmental Planning and Assessment Act 1979 (NSW)  
Environmental Planning and Assessment Regulation, 2000 (NSW)  
Local Government Act 1993 (NSW)  
Manly Local Environmental Plan, 1988 (as amended)  
SEPP (Exempt and Complying Development) 2008  
Protection of the Environment Operations Act, 1997  
NSW Ombudsman's Enforcement Guidelines for Councils June 2002



**Manly Council**

www.manly.nsw.gov.au

## Unauthorised Works Flowchart



**Please note:** this information sheet is a general guide only. Processes may vary slightly on a case by case basis.

### 26. Policy History



**ATTACHMENT 1****Environmental Services Division Report No. 12 - Compliance and Enforcement Policy  
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Minute No	Date of Issue	Action	Author	Checked by
n/a	20 October 2008	First Draft prepared	Consultant Solicitor	Manager Compliance and Enforcement
	13 October 2009	Second Draft	Manager Corporate Governance	
146/09	19 October 2009	Adopted OM 191009.		
n/a	22 October 2009	Added to the Policy Register.	OM, Corporate Services.	Manager, Administration