

## Minutes 2 NOVEMBER 2010



Minutes of Extra-Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 2 November 2010, commencing at 5.30pm.

PRESENT: Councillors R. Westbury (Mayor); S. Dover (Deputy Mayor); G. Dingle; C. De Lyall, G. Francis; P. Kafer; K. Jordan; J. Nell; S. O'Brien; S. Tucker, General Manager; Corporate Services Group Manager, Facilities and Services Group Manager; Sustainable Planning Group Manager; Commercial Services Group Manager and Executive Officer.

351	Councillor Peter Kafer Councillor John Nell	It was resolved that apologies from Cr Frank Ward and Cr Bruce MacKenzie be received and noted.
		Cr Geoff Dingle declared a significant non-pecuniary interest in Item 1. The nature of the interest being an association with Cr Bruce MacKenzie and potential financial benefits associated with this road construction. Association with members of the Towers Family. Also personal public threats made by Cr MacKenzie over this matter in the Newcastle Herald on 2 November 2010.

**MINUTES FOR EXTRA ORDINARY MEETING – 2 NOVEMBER 2010**

		<p>Cr Glenys Francis declared a less than significant non-pecuniary interest in Item 1. The nature of the interest being threatened with legal action as a result of leaving the meeting last month.</p> <p>Cr Caroline De Lyall declared a less than significant non-pecuniary interest in Item 1. The nature of the interest being Cr MacKenzie's actions and comments recently in the media.</p> <p>Cr Peter Kafer declared a less than significant non-pecuniary interest in Item 1. The nature of the interest being directly linked to a fellow Port Stephens Councillor MacKenzie – my direct association as a councillor of Port Stephens also the fact that any reasonable and informed person may perceive that I could be influenced when carrying out my civic duty in that Cr MacKenzie has stated in public (Newcastle Morning Herald, 2 November 2010, page 3) that he is "looking at legal action against the councillors and if I can, legal action against individual councillors" – thereby threatening me with legal action in this matter as I was one of the 3 named councillors in this article.</p> <p>It would be difficult for me in this situation of duress to make an unbiased judgement on this issue and therefore will not take part in any debate or vote on this issue.</p>
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Cr Francis requested to make a statement to Council which was granted by the Chair.

"I apologise to Council on my action of leaving when the opening of confidential's was on as I needed to leave the meeting (meeting of 19 October 2010) and remind Peter to tape Packed to the Rafters (TV program) and was still on the phone to him when Sally and Shirley walked in. I assumed that the meeting would be adjourned (for half an hour as is often the case) when I realised that it did not have a quorum. It was no and was put off until this week.

I was not amused when I walked into the committee meeting for a meal when Bruce stared at me and said "wait until all of you get a writ in the mail tomorrow" he continued to stare (glare) at me throughout the meal. I accepted this.

I am not prepared to vote or join in the debate on this issue. I have read a story in the paper today which quotes Cr MacKenzie as saying that he is looking at legal action and that it is gutless and weak to walk out of the meeting.

I do not have a problem with the solution reached. I did intend to be present tonight. I believe threat of legal action and bullying after last meeting to be a code of conduct violation.

I am now not prepared to vote either way as I will not be threatened by anyone as a result of attendance, non attendance and then which way I vote. I have been involved in many hard decisions, in my professional life I make life changing decisions on a daily basis. I am not gutless, nor weak and I will not be bullied. I would have preferred having a discussion with someone and I would have explained my actions."

Cr Glenys Francis and Cr Geoff Dingle left the meeting at 5.32pm. Cr Peter Kafer and Cr Caroline De Lyall left meeting at 5.34pm.

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# MOTIONS TO CLOSE

ITEM NO. 1

FILE NO: PSC2010-00372

## MOTION TO CLOSE MEETING TO THE PUBLIC

REPORT OF: LISA MARSHALL – ACTING EXECUTIVE OFFICER

GROUP: GENERAL MANAGER'S OFFICE

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### RECOMMENDATION:

- 1) That pursuant to section 10A(2)(d)(i) of the Local Government Act, 1993, the Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the agenda namely **Alterations to Boundaries of Public Road Known as Stockton Bight Track at Williamtown.**
- 2) That the reasons for closing the meeting to the public to consider this item be that the report and discussion will include:
  - a) details of commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it.
- 3) That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as it may prejudice the commercial position of the parties with whom Council is in negotiations.
- 4) That the minutes of the closed part of the meeting are to be made public as soon as possible after the meeting and the report is to remain confidential.

### ORDINARY COUNCIL MEETING – 2 NOVEMBER 2010

	<b>Councillor John Nell Councillor Steve Tucker</b>	<b>It was resolved that Council consider the matter in Open session of Council.</b>
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This motion was not put prior to the adjournment.

The Chair adjourned the meeting at 5.35pm for 30 minutes due to the lack of a quorum.

Public access was held during this time. All Councillors declaring an interest were present for public access. Cr Ken Jordan left the chamber prior to public access and did not return.

The Chair opened the meeting at 6.06pm.

Those present at the commencement of the meeting were:

Councillors R. Westbury (Mayor); S. Dover (Deputy Mayor); G. Dingle; C. De Lyall, G. Francis; P. Kafer; J. Nell; S. O'Brien; S. Tucker, General Manager; Corporate Services Group Manager, Facilities and Services Group Manager; Sustainable Planning Group Manager; Commercial Services Group Manager and Executive Officer.

Cr Geoff Dingle declared a significant non-pecuniary interest in Item 1. The nature of the interest being an association with Cr Bruce MacKenzie and potential financial benefits associated with this road construction. Association with members of the Towers Family. Also personal public threats made by Cr MacKenzie over this matter in the Newcastle Herald on 2 November 2010.

Cr Glenys Francis declared a less than significant non-pecuniary interest in Item 1. The nature of the interest being threatened with legal action as a result of leaving the meeting last month.

Cr Caroline De Lyall declared a less than significant non-pecuniary interest in Item 1. The nature of the interest being Cr MacKenzie's actions and comments recently in the media.

Cr Peter Kafer declared a less than significant non-pecuniary interest in Item 1. The nature of the interest being directly linked to a fellow Port Stephens Councillor MacKenzie – my direct association as a councillor of Port Stephens also the fact that any reasonable and informed person may perceive that I could be influenced when carrying out my civic duty in that Cr MacKenzie has stated in public (Newcastle Morning Herald, 2 November 2010, page 3) that he is "looking at legal action against the councillors and if I can, legal action against individual councillors" – thereby threatening me with legal action in this matter as I was one of the 3 named councillors in this article.

It would be difficult for me in this situation of duress to make an unbiased judgement on this issue and therefore will not take part in any debate or vote on this issue.

Cr Geoff Dingle and Cr Glenys Francis left the meeting at 6.07pm.

ITEM NO. 1

FILE NO: PSC2010-00372

## MOTION TO CLOSE MEETING TO THE PUBLIC

REPORT OF: LISA MARSHALL – ACTING EXECUTIVE OFFICER  
GROUP: GENERAL MANAGER'S OFFICE

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### RECOMMENDATION:

- 1) That pursuant to section 10A(2)(d)(i) of the Local Government Act, 1993, the Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the agenda namely **Alterations to Boundaries of Public Road Known as Stockton Bight Track at Williamtown.**
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  - a) details of commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it.
- 3) That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as it may prejudice the commercial position of the parties with whom Council is in negotiations.
- 4) That the minutes of the closed part of the meeting are to be made public as soon as possible after the meeting and the report is to remain confidential.

### ORDINARY COUNCIL MEETING – 2 NOVEMBER 2010

352	Councillor John Nell Councillor Steve Tucker	It was resolved that Council consider the matter in Open session of Council.
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The Confidential report was considered in Open Council following the adoption of the Motion to Close.



ITEM NO. 1

FILE NO: PSC2010-00372

## ALTERATIONS TO BOUNDARIES OF PUBLIC ROAD KNOWN AS STOCKTON BIGHT TRACK AT WILLIAMTOWN

REPORT OF: PETER GESLING - GENERAL MANAGER

GROUP: GENERAL MANAGER'S OFFICE

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### RECOMMENDATION IS THAT COUNCIL:

- 1) Agrees in principle to the proposal for a deviation of Stockton Bight Track within Lot 101 DP 753192 to avoid the existing structures constructed on the road reserve.
- 2) Requires variations to the route of the possible deviation for further investigations agreed to by staff and some affected property owners on site on 24 April 2010, shown as "*Suggested Alternative Road*" on Attachment 1.
- 3) Following acceptance by the affected property owners of the "*Suggested Alternative Road*" (Area 1) detailed in 2 above the diagonal hatched area of road (Area 2) be closed and transferred to the owners of Lot 101 DP 753192 as full compensation for the loss of land contained in Area 1.
- 4) Use the compulsory acquisition process, by agreement of Council and the affected property owners to achieve recommendations 2 and 3 above and seeks the consent of the Minister for Local Government and approval of the Governor to use this process.
- 5) If negotiations in recommendations 2, 3 and 4 above fail to gain agreement by COB on Friday 29 October 2010, Council issues a Direction to Remove Structures under Section 107(1)a & b and (2) of Part 7 Division 3 Roads Act 1993, within 60 days of the date of issue of the Direction.
- 6) Enters into negotiations with the affected property owners through their solicitors, for the acquisition of the shaded area (Area 3) within Lot 76, DP 53192 and the vertical hatched area (Area 5) within Lot 13 DP 753192 for declaration as Public Road.
- 7) Offers to close the sections of road shown by horizontal hatching (Area 4) and dots (Area 6) on Attachment 1, for transfer to the adjoining owners, as full compensation for the acquisition of Areas 3 and 5 within Lots 76 and 13 respectively.
- 8) If negotiations in 6 and 7 above do not result in agreement or cannot be achieved by COB on Friday 29 October 2010, Council seeks the consent of the Minister for Local Government and the approval of the Governor of Areas 3, 4, 5 and 6 in Lots 76 and 13 respectively.

**MINUTES FOR EXTRA ORDINARY MEETING – 2 NOVEMBER 2010**

- 9) Authorises the preparation and lodgement of a survey plan for acquisition purposes of the areas in recommendations 2, 3, 6 and 7 as soon as possible.
- 10) Grants authority for Council's Seal and Signatures to be affixed to transfer documents related to the sections of road once closed for transfer to the affected owners.
- 11) That the owners of the properties wishing to use the section of the public road Stockton Bight Track be responsible for all costs associated with the road boundaries survey, including plan preparation and lodgement as well as construction to meet their requirements.

**ORDINARY COUNCIL MEETING – 2 NOVEMBER 2010**

353	<b>Councillor John Nell</b> <b>Councillor Steve Tucker</b>	It was resolved that Council: <ol style="list-style-type: none"><li>1) Agrees in principle to the proposal for a deviation of Stockton Bight Track within Lot 101 DP 753192 to avoid the existing structures constructed on the road reserve.</li><li>2) Requires variations to the route of the possible deviation for further investigations agreed to by staff and some affected property owners on site on 24 April 2010, shown as <i>"Suggested Alternative Road"</i> on Attachment 1.</li><li>3) Following acceptance by the affected property owners of the <i>"Suggested Alternative Road"</i> (Area 1) detailed in 2 above the diagonal hatched area of road (Area 2) be closed and transferred to the owners of Lot 101 DP 753192 as full compensation for the loss of land contained in Area 1.</li><li>4) Use the compulsory acquisition process, by agreement of Council and the affected property owners to achieve recommendations 2 and 3 above and seeks the consent of the Minister for Local Government and approval of the Governor to use this</li></ol>
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		<p>process.</p> <p>5) If negotiations in recommendations 2, 3 and 4 above fail to gain agreement by COB on Tuesday 14 December 2010, Council issues a Direction to Remove Structures under Section 107(1)a &amp; b and (2) of Part 7 Division 3 Roads Act 1993, within 60 days of the date of issue of the Direction.</p> <p>6) Enters into negotiations with the affected property owners through their solicitors, for the acquisition of the shaded area (Area 3) within Lot 76, DP 53192 and the vertical hatched area (Area 5) within Lot 13 DP 753192 for declaration as Public Road.</p> <p>7) Offers to close the sections of road shown by horizontal hatching (Area 4) and dots (Area 6) on Attachment 1, for transfer to the adjoining owners, as full compensation for the acquisition of Areas 3 and 5 within Lots 76 and 13 respectively.</p> <p>8) If negotiations in 6 and 7 above do not result in agreement or cannot be achieved by COB on Tuesday 14 December 2010, Council seeks the consent of the Minister for Local Government and the approval of the Governor of Areas 3, 4, 5 and 6 in Lots 76 and 13 respectively.</p> <p>9) Authorises the preparation and lodgement of a survey plan for acquisition purposes of the areas in recommendations 2, 3, 6 and 7 as soon as possible.</p> <p>10) Grants authority for Council's Seal and Signatures to be affixed to transfer documents related to the sections of road once closed for transfer to the affected owners.</p> <p>11) That the owners of the properties wishing to use the section of the public road Stockton Bight Track be</p>
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**MINUTES FOR EXTRA ORDINARY MEETING – 2 NOVEMBER 2010**

		responsible for all costs associated with the road boundaries survey, including plan preparation and lodgement as well as construction to meet their requirements.
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A division was called for by Cr John Nell and Steve Tucker.

Those for the Motion: Cr Steve Tucker, Shirley O'Brien, John Nell, Sally Dover and Bob Westbury.

Those against the Motion: Nil.

Abstained: Crs Peter Kafer and Caroline De Lyall.

**BACKGROUND**

The purpose of this report is to advise Council on the status of negotiations in regard to a Public Road matter as resolved by Council at its meeting on 24 August 2010.

In October 2009 property owners wishing to use Stockton Bight Track to access their properties were advised it was the only legal access for them to use. In November they were also advised Council had no plans to construct the road. If they were wanting the access they would have to take responsibility for the definition survey and construction to meet their needs. They agreed to this.

It was during the survey task that the location of the structures relative to the road became known and Council was advised. From that date onward staff have been having negotiations with the structure owners, who also own the adjoining land, seeking a solution to the matter. It was first presented to Council on 23 March 2010 with the result being it was deferred for more consideration by the parties. If negotiations were unsuccessful the matter would be referred to the Local Land Board.

Negotiations have been unsuccessful to date, with the seven affected owners not able to come to a common approach or decision on a possible solution. An application was made to the Local Land Board and there has been no response from it. Staff have been advised that the Board cannot make a decision or direction of a solution for this matter or it may decide not to hold a hearing. The only outcome could be a recommendation to involved parties, which would not be binding. Ultimately, Council, as the Roads Authority under the Roads Act 1993 must make a decision, however a recommendation from the Board would be of assistance to Council.

Since the first discussions last December, various meetings have taken place both with some of the affected property owners or their solicitors but resolution seems no

closer after almost one year. Various owners were clients of different solicitors which made negotiations difficult. Also the owners themselves are unable to agree on a possible outcome or arrive at a united proposal. However, in June one solicitor advised Council he was acting for all seven affected owners.

Council had previously advised all the owners of what staff believed to be a suitable solution by diverting a section of the road around the obstructing structures. This is different to the original recommendation to Council in March. The owners then proposed a further deviation into low lying land over which it would be difficult to construct a road.

Council has reacted to their proposal which the solicitor presented by suggesting a similar deviation with small changes each end. This is the "*Suggested Alternative Road*" (Area 2) shown on Attachment 1 and avoids some of the low lying land. It does not pose any real issues to the existing activities on the property. Council's solicitor forwarded this information to the solicitor for the affected owners. To date no response has been received.

It seems there is a risk negotiations will not succeed and therefore definite actions may be necessary to resolve the issues. Hence the recommendation to issue a Direction to remove the structures from the road reserve. Such a Direction should ensure progress is made to finalise the matter by negotiation or direct action by Council as the Road Authority.

Any costs associated with actions necessary because of the unapproved structures would be the responsibility of the affected property owners, including those who deviate the road in an attempt to preserve the structures. This is because it is only the location of the structures that has caused the entire matter so it is fair for the owners to be responsible. General ratepayers should not be burdened with such costs. Similarly, those wishing to use the road they are entitled to should not be burdened with extra expenses caused by structures constructed on the road.

#### **FINANCIAL/RESOURCE IMPLICATIONS**

These are of a minor nature as the property owners wishing to use the road will fund surveys and construction. All other aspects of the proposal fall within normal staff duties.

#### **LEGAL, POLICY AND RISK IMPLICATIONS**

All actions relative to road activities by Council must fall under the Roads Act 1993. Section 107 under that Act provides for Council's ability to make a direction on the adjoining owners to remove unauthorised or authorised structures from a road, to make it accessible for public use. Section 177 provides for acquisition of land for road purposes within Section 178 providing ability for this to be done under the compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991. Section 41 of the Roads Act provides that a road

acquired by compulsory acquisition ceases to be a public road. It will then remain in Council's name as Operational Land and can be disposed of.

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

In a practical sense nothing will change with the road continuing to be used by haulage trucks however, the number of vehicles will increase.

The recommendations will have little economic impact on Council as it is already the Roads Authority for the road. The proposed acquisition areas for road are over sections of the affected lots that have been previously mined for bulk sand or otherwise disturbed and therefore it seems there will be minor environmental impacts. The new project will increase the number of vehicles using the road each day.

Should Council not accept recommendations 6 & 7 there will be extra costs to all parties to achieve an environmental and economical outcome.

### **CONSULTATION**

The affected property owners and their solicitor's consultant for the approved project as well as a director, Council's General Manager, Group Manager Commercial Services, Civil Assets Engineer and Principal Property Advisor, and Council's solicitor.

### **OPTIONS**

- 1) Accept the recommendations.
- 2) Modify the recommendations

### **ATTACHMENTS**

- 1) Areas proposed to be acquired and declared public road or transferred to adjoining owners.

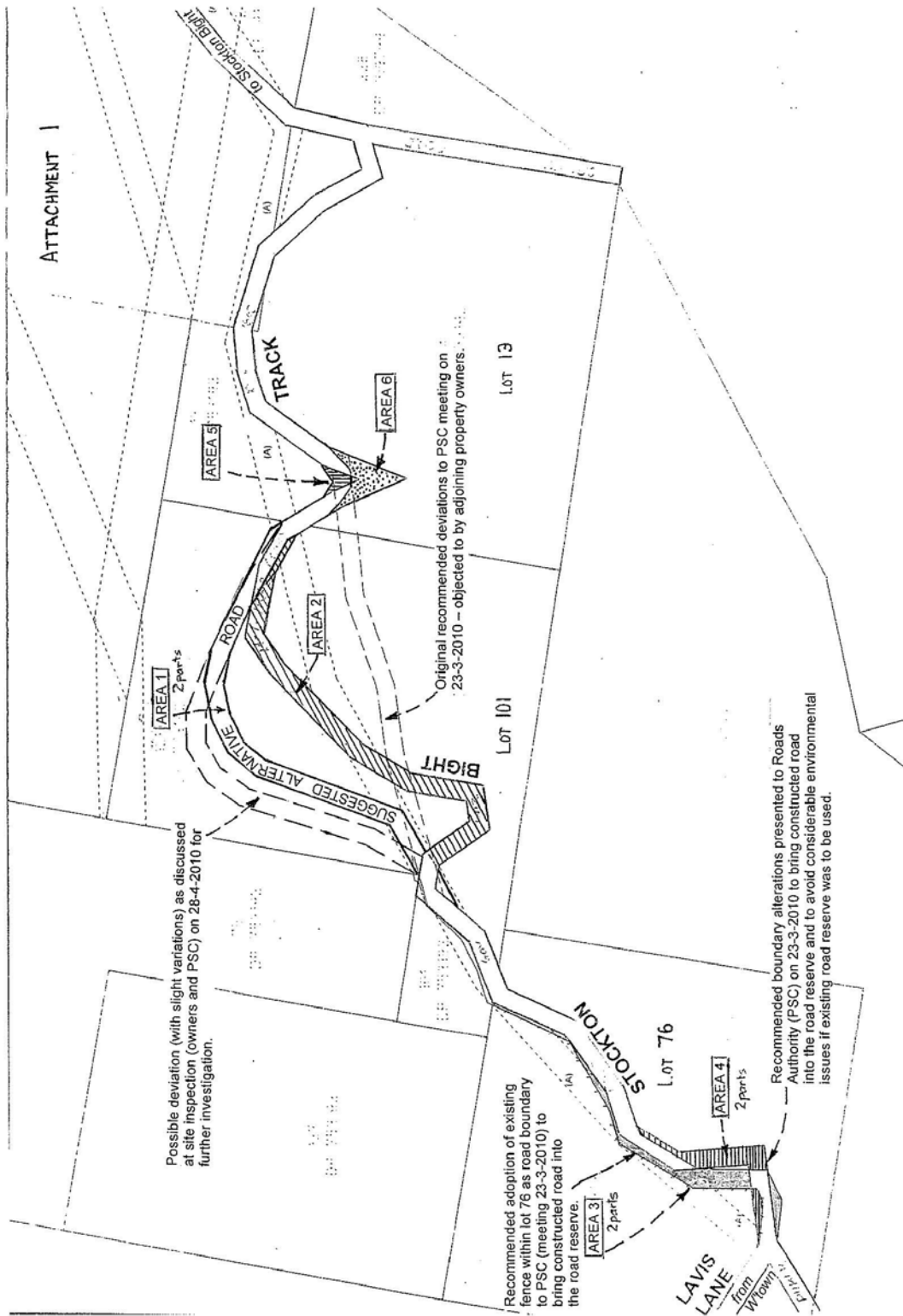
### **COUNCILLORS ROOM**

Nil.

### **TABLED DOCUMENTS**

- 1) Series of maps showing proposed alternative routes to date.

ATTACHMENT 1



There being no further business the meeting closed at 6.35pm.

*I certify that pages 1 to 16 of the Open Ordinary Minutes of Council 2 November 2010 were confirmed by Council at its meeting held on 9 November 2010.*

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**Cr Bob Westbury**  
**MAYOR**