

Minutes 24 MAY 2011



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 24 May 2011, commencing at 5.30pm.

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

172	Councillor Peter Kafer Councillor Caroline De Lyall	It was resolved that the apology from Cr MacKenzie, Cr O'Brien, Cr Tucker and Cr Jordan be received and noted.
173	Councillor Geoff Dingle Councillor Caroline De Lyall	It was resolved that the Minutes of the Ordinary meeting of Port Stephens Council held on 10 May 2011 and the Extra-Ordinary Meeting held on 17 May 2011 be confirmed.
		No Declaration of Interest were received.

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MOTIONS TO CLOSE

ITEM NO. 1

FILE NO: T03-2011

MOTION TO CLOSE MEETING TO THE PUBLIC

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION IS THAT COUNCIL:

- 1) That pursuant to section 10A(2)(d) 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 Ordinary Council agenda namely **T03-2011; Tender for the supply of two (2) 22.5 tonne single cab truck/chassis.**

- 2) That the reasons for closing the meeting to the public to consider this item be that:
 - i) The report and discussion will include details of commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the tenderers; and
 - ii) In particular, the report includes confidential pricing information in respect of the **T03-2011; Tender for the supply of two (2) 22.5 tonne single cab truck/chassis.**

- 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 disclosure of the confidential commercial information could compromise the commercial position of the tenderers and adversely affect Council's ability to attract competitive tenders for other contracts.

- 4) That the report of the closed part of the meeting is to remain confidential and that Council makes public its decision including the name and amount of the successful tenderer in accordance with Clause 179) of the Local Government (General) Regulation 2005.

ORDINARY COUNCIL MEETING – 24 MAY 2011

174	Councillor John Nell Councillor Peter Kafer	It was resolved that the recommendation be adopted.
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ITEM NO. 1

FILE NO: T04-2011

MOTION TO CLOSE MEETING TO THE PUBLIC

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION IS THAT COUNCIL:

- 1) That pursuant to section 10A(2)(d) of the Local Government Act, 1993, the Council resolve to close to the public that part of its meetings to discuss Confidential Item 2 on the Ordinary Council agenda namely **Tender T04-2011 Supply of Labour Hire Services**.
- 2) That the reasons for closing the meeting to the public to consider this item be that:
 - i) The report and discussion will include details of commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the tenderers; and
 - ii) In particular, the report includes confidential pricing information in respect of the **Tender T04-2011 Supply of Labour Hire Services**.
- 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 disclosure of the confidential commercial information could compromise the commercial position of the tenderers and adversely affect Council's ability to attract competitive tenders for other contracts.
- 4) That the report of the closed part of the meeting is to remain confidential and that Council makes public its decision including the name and amount of the successful tenderer in accordance with Clause 179) of the Local Government (General) Regulation 2005.

ORDINARY COUNCIL MEETING – 24 MAY 2011

175	Councillor John Nell Councillor Peter Kafer	It was resolved that the recommendation be adopted.
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**COUNCIL
COMMITTEE
RECOMMENDATIONS**

ITEM NO. 1

FILE NO: 2007-1204

DRAFT NELSON BAY 2030 STRATEGY

REPORT OF: DAVID BROYD – GROUP MANAGER
GROUP: SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the revised draft Nelson Bay 2030 Strategy (Attachment 1 under separate cover);
- 2) Note the information contained in this report, particularly the findings of the Nelson Bay Town Centre; Modelling the Development Capacity of the Town Centre Report (Attachment 2); and
- 3) Prepare a revised draft Development Control Plan C4 and Traffic Management Study to support the revised Nelson Bay 2030 Strategy.

COUNCIL COMMITTEE MEETING – 17 MAY 2011
RECOMMENDATION:

	<p>Councillor John Nell Councillor Shirley O'Brien</p>	<p>That Council direct the Group Manager Sustainable Planning to resubmit the Draft Nelson Bay 2030 Strategy with the following amendments:</p> <ol style="list-style-type: none"> 1) A provision that Council will explore variations to controls for height and density that seek to provide incentives to amalgamate sites in certain sectors in Nelson Bay – particularly where property sizes are relatively small and/or frontage widths are relatively small; 2) Amend figure (page 45) to show a critical view between the Visitor Information Centre looking north-east to Town Beach; 3) Include a provision to the effect that development on the foreshore should be limited to three levels and/or 13 metres only and that there should be no development on the eastern carpark; 4) Incorporate into Strategic Planning Principle No. 10 (page 34) that Council
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MINUTES FOR ORDINARY MEETING – 24 MAY 2011

		<p>will support up to 8-10 storeys at the western end of the foreshore on the basis that the building height will not intrude upon views from existing residential properties above, on the escarpment;</p> <p>5) Amend the diagrams on site coverage on page 53 to ensure that there is no depiction of any development on Apex Park;</p> <p>6) Provide confirmation and clarification on pages 15 and 16 – figures 3 and 4 that the extension of Stockton Street to the foreshore is for pedestrian use only and not for any vehicular traffic;</p> <p>7) Note the information contained in this report, particularly the findings of the Nelson Bay Town Centre; Modelling the Development Capacity of the Town Centre Report (Attachment 2);</p> <p>8) Prepare a revised draft Development Control Plan C4 and Traffic Management Study to support the revised Nelson Bay 2030 Strategy;</p> <p>9) Council accept the attachments 1 and 2 as replacement pages for pages 42 and 48 respectively in the Draft Nelson Bay 2030 Strategy as provided in the Supplementary Information;</p> <p>10) Inclusion of planning controls such as setbacks and podiums to prevent canyoning effect of buildings in the business sector of Nelson Bay;</p> <p>11) That the revised Strategy be placed on public exhibition for a period of five weeks.</p>
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In accordance with Section 375A, of the Local Government Act 1993, a division is required for this item.

Those for the motion: Crs Ken Jordan, Bruce MacKenzie, John Nell, Bob Westbury, Caroline De Lyall, Shirley O'Brien, Frank Ward and Sally Dover.

Those against the motion: Crs Peter Kafer and Geoff Dingle.

ORDINARY COUNCIL MEETING – 24 MAY 2011

	<p>Councillor John Nell Councillor Sally Dover</p>	<p>That Council direct the Group Manager Sustainable Planning to resubmit the Draft Nelson Bay 2030 Strategy with the following amendments:</p> <ol style="list-style-type: none"> 1. A provision that Council will explore variations to controls for height and density that seek to provide incentives to amalgamate sites in certain sectors in Nelson Bay – particularly where property sizes are relatively small and/or frontage widths are relatively small; 2. Amend figure (page 45) to show a critical view between the Visitor Information Centre looking north-east to Town Beach; 3. Include a provision to the effect that development on the foreshore should be limited to three levels and/or 13 metres only and that there should be no development on the eastern carpark; 4. Incorporate into Strategic Planning Principle No. 10 (page 34) that Council will support up to 8-10 storeys at the western end of the foreshore on the basis that the building height will not intrude upon views from existing residential properties above, on the escarpment; 5. Amend the diagrams on site coverage on page 53 to ensure that there is no depiction of any development on Apex Park; 6. Provide confirmation and clarification on pages 15 and 16 – figures 3 and 4 that the extension of Stockton Street to the foreshore is for pedestrian use only and not for any vehicular traffic; 7. Note the information contained in this report, particularly the findings of the Nelson Bay Town Centre; Modelling the
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MINUTES FOR ORDINARY MEETING – 24 MAY 2011

		<p>Development Capacity of the Town Centre Report (Attachment 2);</p> <ol style="list-style-type: none"> 8. Prepare a revised draft Development Control Plan C4 and Traffic Management Study to support the revised Nelson Bay 2030 Strategy; 9. Council accept the attachments 1 and 2 as replacement pages for pages 42 and 48 respectively in the Draft Nelson Bay 2030 Strategy as provided in the Supplementary Information; 10. Inclusion of planning controls such as setbacks and podiums to prevent canyoning effect of buildings in the business sector of Nelson Bay; 11. Critical View 11 be included from Apex Park west across the Marina to Broughton Island; 12. Draft strategy control the heights to preserve these views and; 13. That the revised Strategy be placed on public exhibition for a period of five weeks.
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AMENDMENT

<p>176</p>	<p>Councillor Geoff Dingle Councillor Peter Kafer</p>	<p>It was resolved that Council:</p> <ol style="list-style-type: none"> 1. Withdraw the draft Nelson Bay Strategy 2030. 2. The adjustments and recommendations made by Councillors be included and the Strategy be returned for consideration of Council. 3. That a table be prepared with responses to submissions received and; 4. Prepare a cost of the draft Nelson Bay Strategy 2030.
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

MINUTES FOR ORDINARY MEETING – 24 MAY 2011

Those for the Motion: Crs Peter Kafer, Glenys Francis, Caroline De Lyall, Geoff Dingle, John Nell, Frank Ward, Sally Dover and Bob Westbury.

Those against the Motion: Nil.

The amendment on being put became the motion and was carried.

In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Peter Kafer, Glenys Francis, Caroline De Lyall, Geoff Dingle, John Nell, Frank Ward, Sally Dover and Bob Westbury.

Those against the Motion: Nil.

MATTER ARISING

177	Councillor John Nell Councillor Glenys Francis	It was resolved that Council adopt, in principle, the Draft Licensed Premises Policy tabled this evening subject to consultation with statutory authorities and a further review at the Council Committee meeting of 7 June and Ordinary Council meeting of 14 June 2011.
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ITEM NO. 2

FILE NO: PSC2008-4149

DRAFT AMENDMENT NO. 35 TO THE PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2000 – ANNA BAY TOWN CENTRE

REPORT OF: **SALLY WHITELOW - ENVIRONMENTAL AND DEVELOPMENT PLANNING,
ACTING MANAGER**
GROUP: **SUSTAINABLE PLANNING**

RECOMMENDATION IS THAT COUNCIL:

- 1) Resolve to proceed with draft *Port Stephens Local Environmental Plan 2000 (Amendment No. 35)* to rezone Lots 478-482 and Lots 567-569 in DP 17775 from 2(a) Residential to 3(a) General Business and request that the Minister for Planning make the plan under *Section 59 of the Environmental Planning and Assessment Act 1979*.

COUNCIL COMMITTEE MEETING – 17 MAY 2011

RECOMMENDATION:

	Councillor Bruce MacKenzie Councillor Shirley O'Brien	That the recommendation be adopted.
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In accordance with Section 375A, of the Local Government Act 1993, a division is required for this item.

Those for the motion: Crs Ken Jordan, Bruce MacKenzie, John Nell, Bob Westbury, Caroline De Lyall, Shirley O'Brien, Frank Ward Peter Kafer, Geoff Dingle and Sally Dover.

Those against the motion: Nil.

ORDINARY COUNCIL MEETING – 24 MAY 2011

178	Councillor John Nell Councillor Geoff Dingle	It was resolved that the recommendation be adopted.
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

MINUTES FOR ORDINARY MEETING – 24 MAY 2011

Those for the Motion: Crs Peter Kafer, Glenys Francis, Caroline De Lyall, Geoff Dingle, John Nell, Frank Ward, Sally Dover and Bob Westbury.

Those against the Motion: Nil.

ITEM NO. 3

FILE NO: A2004-0217

RAYMOND TERRACE MEN'S SHED S355C COMMITTEE

**REPORT OF: SALLY WHITELAW - ENVIRONMENTAL & DEVELOPMENT PLANNING,
ACTING MANAGER**

GROUP: SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Rescind resolution of 23 November 2010 Item 2, minute 368 that Council support the formation of a 355C Committee for the purpose of organising a Men's Shed in the Raymond Terrace Area with a review of the Committee in 12 months.
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COUNCIL COMMITTEE MEETING – 17 MAY 2011**RECOMMENDATION:**

	Councillor Bruce MacKenzie Councillor Peter Kafer	That the recommendation be adopted.
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ORDINARY COUNCIL MEETING – 24 MAY 2011

179	Councillor Glenys Francis Councillor Peter Kafer	It was resolved that the recommendation be adopted.
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ITEM NO. 4

FILE NO: PSC2006-1228

GOODS AND SERVICES TAX CERTIFICATE

REPORT OF: DAMIEN JENKINS - FINANCIAL SERVICES, MANAGER
GROUP: COMMERCIAL SERVICES GROUP

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve the submission to the Division of Local Government of the Goods and Services Tax Certificate at Attachment 1.

COUNCIL COMMITTEE MEETING – 17 MAY 2011
RECOMMENDATION:

	Councillor John Nell Councillor Caroline De Lyall	That the recommendation be adopted.
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ORDINARY COUNCIL MEETING – 24 MAY 2011

180	Councillor Frank Ward Councillor Sally Dover	It was resolved that the recommendation be adopted.
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GENERAL MANAGER'S REPORT

PETER GESLING
GENERAL MANAGER

ITEM NO. 1

FILE NO: PSC2005-1096

**DEED OF AGREEMENT FOR EASEMENT – 49 WILLIAM STREET
RAYMOND TERRACE NSW**

**REPORT OF: CARMEL FOSTER – COMMERCIAL PROPERTY MANAGER
GROUP: COMMERCIAL SERVICES**

RECOMMENDATION IS THAT COUNCIL:

- a. Authorise the General Manager to execute the Deed of Agreement for Easement and affix the Council Seal; and
- b. Further authorise the General Manager to negotiate compensation as determined in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

ORDINARY COUNCIL MEETING – 24 MAY 2011

181	Councillor John Nell Councillor Frank Ward	It was resolved that the recommendation be adopted and that the cover page and page 2 of the Deed document be replaced with the pages included in the Supplementary Information.
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BACKGROUND

The purpose of this report is to recommend that Council execute a Deed of Agreement for an easement over Council owned Land being Lot 3 in Deposited Plan 880718, known as 49 William Street (Best and Less building). Lot 3 comprises the land upon which the building sits and the land to the rear of the building which for all practical purposes forms the roadway and on-street car parking between 18A Sturgeon Street (former leisure centre) and the rear of shops fronting William Street and extending in a north westerly direction to the Marketplace Shopping Centre.

The Easement, being the subject of the Deed is required to accommodate electrical supply cables already present in the land and which extend from the road reserve adjacent running to a substation located at the rear elevation of the Best and Less building.

FINANCIAL/RESOURCE IMPLICATIONS

There are no financial implications aside from the issue of Compensation payable to Council. Compensation will be determined in accordance with the Land Acquisition (Just Terms Compensation) Act 1991 and will be payable to Council on registration of the easement.

LEGAL, POLICY AND RISK IMPLICATIONS

It is not envisaged that there would be any Legal, Policy or Risk implications arising from the recommendation.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The Easement is being acquired to legally formalise an interest in Council's land over existing cables to the new Police Station at Raymond Terrace. No environmental implications are anticipated.

CONSULTATION

Commercial Property, Group Manager Commercial Services, Acting General Manager, Civil Assets.

OPTIONS

- 1) Accept the recommendation
- 2) Reject the recommendation.

ATTACHMENTS

- 1) Deed of Agreement for Easement.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

- 1) Annexure A from Deed – Draft Plan(s).

ATTACHMENT 1



**Deed of Agreement
for Easement**

Ausgrid Project: SC00335
Raymond Terrace Police Station
William Street Raymond Terrace NSW 2324

Lot 1 DP647914 Sturgeon Street Raymond Terrace NSW 2324

Instructions for completion

- Ausgrid recommends you obtain legal advice before signing this document.
- Complete Items 1, 2 and 3 of the Reference Schedule on pages 2 and 3.
- Select the appropriate execution clause in Item 5 of the Reference Schedule on pages 4, 5 and 6 and execute the document.
- Attach a draft plan of the proposed easement site behind the Annexure A cover sheet on page 16.
- An interested party (for example a mortgagee or caveator) must provide their consent to this document by providing a letter on their letterhead on the same terms as the draft letter in Annexure B on page 17. Generally, if the property is subject to a lease, the lessee's consent to this document is not required, however, may be required to register the easement.

What must be returned to Ausgrid

- Deed of agreement for easement:
 - if the contracting party is the owner of the property – return 2 copies of the deed signed by the contracting party;
 - if the contracting party is not the owner of the property – return 3 copies of the deed signed by the contracting party and the landowner.
- Letter of consent signed by mortgagee and caveator (if any).
- If clause 5.2 applies the Deed of agreement for easement in respect of Works on Other Land.

1 November 2007

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Reference Schedule

ITEM 1 Parties details	
	Ausgrid
Name	Ausgrid
ABN	ABN 67 505 337 385
Address	570 George Street, Sydney NSW 2000
Facsimile	02 49101842
Representative	Philip Bellamy
	Contracting Party¹
Name	
ABN/ACN	
Address	
Facsimile	
Representative	
Note:	
¹ In this document, the Contracting Party is the developer/customer that signs the Agreement. If the Contracting Party is not the owner of the Property, then the owner of the Property must be joined as a party to this deed and the owner's details will be inserted below under the heading 'Landowner'.	
² If the Contracting Party is the owner of the Property, then the 'Landowner' section below should be struck out.	
	Landowner²
Name	
ABN/ACN	
Address	
Facsimile	
Representative	
ITEM 2 Property details	
Address	Lot 1 DP647914 Sturgeon Street Raymond Terrace NSW 2324
Title Particulars	Folio Identifier: 1/647914

ITEM 3	Agreement	
	Definition of Agreement	ES9 Agreement
<p>Note: If an ES9 Agreement will be entered into at the same time as this deed, the words "Conditions and Arrangements Letter" should be struck out. If a Conditions and Arrangements Letter will be entered into at the same time as this deed, the words "ES9 Agreement" should be struck out.</p>		
ITEM 4	Date	
	Date of this deed	
ITEM 5	Execution clauses	

Ausgrid

Signed sealed and delivered for and on behalf of **Ausgrid** by its Attorney, who declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:

Signature of Attorney

Signature of Witness

Name of Attorney in full

Name of Witness in full

Power of Attorney Book No.

Contracting Party

Note: If the Contracting Party is an individual use the execution clause below and if not, the clause should be struck out.

Signed sealed and delivered by

.....
[Note: insert name of Contracting Party above]

in the presence of:

Signature

Signature of Witness

Name of Witness in full

Note: If the Contracting Party is a corporation use the execution clause below and if not, the clause should be struck out.

Executed by

.....
[Note: insert name of Contracting Party above]

in accordance with section 127 of the *Corporations Act* by or in the presence of:

Signature of Director or Sole Director and Secretary

Signature of Secretary/other Director

Name of Director or Sole Director and Secretary in full

Name of Secretary/other Director in full

Note: If the Contracting Party signs under power of attorney use the execution clause below and if not, the clause should be struck out.

Signed sealed and delivered for

.....
[Note: insert name of Contracting Party above]

under power of attorney in the presence of:

Signature of attorney

Signature of witness

Name

Name

Date of power of attorney

Landowner

Note: If the Landowner is a party to this deed (in addition to the Contracting Party) and the Landowner is an individual use the execution clause below and if not, the clause should be struck out.

Signed sealed and delivered by

.....
[Note: insert name of Landowner above]

in the presence of:

Signature

Signature of Witness

Name of Witness in full

Note: If the Landowner is a party to this deed (in addition to the Contracting Party) and the Landowner is a corporation use the execution clause below and if not, the clause should be struck out.

Executed by

.....
[Note: insert name of Landowner above]

in accordance with section 127 of the *Corporations Act* by or in the presence of:

Signature of Secretary/other Director

Signature of Director or Sole Director and Secretary

Name of Secretary/other Director in full

Name of Director or Sole Director and Secretary in full

Note: If the Landowner is a party to this deed (in addition to the Contracting Party) and the Landowner signs under power of attorney use the execution clause below and if not, the clause should be struck out.

Signed sealed and delivered for

.....
[Note: insert name of Landowner above]

under power of attorney in the presence of:

Signature of attorney

Signature of witness

Name

Name

Date of power of attorney

Deed of Agreement for Easement

Details

- A. The Contracting Party has the right to carry out certain works on the Property as contemplated by the Agreement.
- B. Ausgrid and the Contracting Party have entered, or will enter, into the Agreement.
- C. The Agreement requires the Contracting Party to procure the carrying out and completion of the Works which are to be transferred to Ausgrid upon Electrification of the Works.
- D. Electrification of the Works by Ausgrid will only occur once Ausgrid, acting reasonably, is satisfied that it has an enforceable interest in the Easement Site and, if Works On Other Land are required, in the Other Land.
- E. The Landowner as the registered proprietor of the Property has agreed to grant the Easement on the terms of this deed.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

Unless otherwise specified in this clause 1.1, in this deed a capitalised term is to have the same meaning as given to that term in the Agreement and otherwise, in this deed:

"Agreement" means either:

- (a) if the words "ES9 Agreement" appears in Item 3, the meaning given to "ES9 Agreement" in this clause 1.1; or
- (b) if the words "Conditions and Arrangements Letter" appears in Item 3, the meaning given to "Conditions and Arrangements Letter" in this clause 1.1.

"Agreement for Lease" means Ausgrid's standard pro-forma document entitled 'Agreement for Lease'.

"Authority" means a government, semi government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body or authority.

"Business Day" means a day, not being a Saturday, Sunday or public holiday, on which banks are generally open for business in New South Wales.

"Conditions and Arrangements Letter" means the letter from Ausgrid to the Contracting Party setting out the conditions and arrangements for the provision of connection services accepted by the Contracting Party on or about the date of this deed.

"Consent Letter" means a letter entered into by a mortgagee or other interested person as contemplated by clause 6, in the form, or substantially in the form, of the Draft Letter of Consent.

"Contracting Party" means the person described as the 'Contracting Party' in Item 1 of the Reference Schedule.

"Draft Plan" means the draft plan annexed to this deed as Annexure A which generally describes the Proposed Easement Site.

"Draft Letter of Consent" means the pro-forma letter attached as Annexure B.

"Easement" means the easements, restrictive covenants, rights of way or other rights or entitlements to be granted or created pursuant to this deed on the terms of the Instrument.

"Easement Site" means that part of the Property over which the Easement is to be granted to Ausgrid under the Instrument.

"Ausgrid" means the entity described as Ausgrid in Item 1 of the Reference Schedule.

"ES9 Agreement" means the agreement entitled "ES9 Agreement for Connection of Developments" between Ausgrid, the Contracting Party and others dated on or about the date of this deed.

"Interested Person" has the meaning given in clause 6.1.

"Instrument" means the transfer granting easement, section 88B instrument or any other instrument by which the Easement is granted to Ausgrid over the Easement Site under this deed, the terms of which will include those set out in registered memorandum number AC289041S and any other terms required by Ausgrid under clause 2.3(b).

"Landowner" means the registered owner of the Property being either:

- (a) the person described as the 'Landowner' in Item 1 of the Reference Schedule; or
- (b) the person described as the 'Contracting Party' in Item 1 of the Reference Schedule, if the Contracting Party is the owner of the Property.

"LPI" means Land and Property Information NSW.

"Other Deed" has the meaning given in clause 5.2.

"Other Land" means that part of the Property or that part of the Other Landowners land on which the Works On Other Land will be or are located together with such additional land as Ausgrid requires consistent with its usual operating requirements.

"Other Landowners" means the owners of land (other than the Landowner) on which the Works On Other Land will be or are located.

"Property" means the land described in Item 2 of the Reference Schedule.

"Proposed Easement Site" means the land shown in the Draft Plan as the land intended to be the Easement Site, as adjusted by the Site Boundary Adjustments.

"Site Boundary Adjustment" means those adjustments, alterations or enlargements of the Proposed Easement Site required by Ausgrid under clause 2.2(a).

"Works" means the works subject to the Agreement between the parties.

"Works On Other Land" means those parts of Ausgrid's distribution system or electricity works that are or will be located on land not part of the Easement Site in order to provide Customer Connection Services to the Property.

1.2 Interpretation

Unless expressed to the contrary, in this deed:

- (a) words importing:
 - (i) the singular include the plural and vice versa; and
 - (ii) any gender includes the other genders;
- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) a reference to:
 - (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes its legal personal representatives, successors and assignees;
 - (iii) legislation, a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (iv) a right includes a benefit, remedy, discretion, authority or power;
 - (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligations includes a breach of warranty or representation;
- (d) the Reference Schedule of this deed is binding on the parties and forms part of this deed; and
- (e) notes and instructions for completion are included for guidance only and do not form part of this deed.

2. Draft Plan, Survey Plan and Subdivision

2.1 Acknowledgement

The parties acknowledge and agree that:

- (a) the Draft Plan generally describes the Proposed Easement Site;
- (b) it is intended that some or all of the Works will be carried out on the Proposed Easement Site; and
- (c) Ausgrid may require, acting reasonably, the Proposed Easement Site to be altered, adjusted or enlarged, having regard to the actual location of the Works and the use of the Easement Site contemplated by the Instrument.

2.2 Preparation of Survey Plan

- (a) This clause 2.2(a) and clause 2.2(b) only apply if the words "ES9 Agreement" appear in Item 3 of the Reference Schedule. The parties acknowledge and agree that:
 - (i) prior to the Contracting Party procuring preparation of the Survey Plan, the Contracting Party must enquire, by written notice, if Ausgrid requires a Site Boundary Adjustment; and
 - (ii) if Ausgrid confirms within 10 Business Days after receipt of the Contracting Party's enquiry under clause 2.2(a)(i) that it requires a Site Boundary Adjustment, then the Contracting Party must ensure the adjustment required by Ausgrid is incorporated into the Survey Plan.
- (b) In accordance with the Agreement, the Contracting Party must engage a Registered Surveyor to prepare and provide to Ausgrid:
 - (i) a Survey Plan of the Proposed Easement Site;
 - (ii) prior to electrification a copy of the Survey Plan showing in red ink Ausgrid's assets including poles and the centre line of the electricity cables (or cable ducts if used) as installed with offsets to the Easement, signed by the Registered Surveyor; and
 - (iii) a statement (addressed to Ausgrid) accompanying the copy of the Survey Plan referred to in clause 2.2(b)(ii) certifying that that Survey Plan is correct and that the information shown in red ink on that plan has been accurately located to the Registered Surveyor's satisfaction.
- (c) This clause 2.2(c) only applies if the words "Conditions and Arrangements Letter" appear in Item 3 of the Reference Schedule. Ausgrid must procure at its cost the preparation of a survey plan of the Proposed Easement Site.

2.3 Pro-forma Instrument

- (a) At the same time as Ausgrid is provided with the Survey Plan under clause 2.2(b) or when requested by Ausgrid, the Contracting Party must provide to Ausgrid a draft of the form of Instrument the Contracting Party proposes to be granted to Ausgrid.
- (b) Promptly after receiving the draft form of Instrument, Ausgrid agrees to advise the Contracting Party if the draft form of Instrument is acceptable and if it requires any changes, provide details of those changes to the Contracting Party.

2.4 Landowner Consent

The Landowner must, promptly after any request from the Contracting Party or Ausgrid, sign any document or do any thing required of the owner of the Property to carry out, complete or perfect any thing contemplated under this deed, including without limitation, signing any application as landowner to be submitted to any Authority.

3. Easement

3.1 Grant of Easement

The Landowner must grant to Ausgrid the Easement, within five Business Days after the later of:

- (a) the date Ausgrid confirms its approval of (or otherwise provides details of changes required to) the draft form of Instrument as contemplated in clause 2.3(b); and
- (b) the date that all the requirements set out in either the Conditions and Arrangements Letter or clause 4.4 of the ES9 Agreement (whichever ever is applicable) (other than those requirements which relate to the granting of certain leases and easements) have been satisfied in relation to Electrifying the Works.

3.2 Execution of Instrument

- (a)

In accordance with the times stipulated in clause 3.1, the Contracting Party must execute (if it is the owner of the Property), or procure execution of the Instrument by the Landowner, and give Ausgrid two original copies (duly executed) of the Instrument (such Instrument must have been completed by the Contracting Party as contemplated in clause 3.2(c)).
- (b) Not more than 10 Business Days after Ausgrid receives the executed Instrument from the Contracting Party, Ausgrid must return both original copies of the Instrument executed by Ausgrid.
- (c) Ausgrid authorises the Contracting Party to insert into the Instrument:
 - (i) any amendments required by Ausgrid under clause 2.3(b);
 - (ii) all details necessary to complete the Instrument so that after execution and stamping it is in registrable form; and
 - (iii) title particulars of the Easement Site and attach, where relevant, a plan in registrable form identifying the land intended to be the Easement Site for the purposes of the Instrument.
- (d) Promptly following execution of the Instrument by all the relevant parties, the Contracting Party must procure registration of the Instrument with the LPI and, if relevant, stamping of the Instrument by the NSW Office of State Revenue.

3.3 Easement binding

The Landowner and Ausgrid are bound by the Easement from and including the date that the Easement must be granted under clause 3.1 even though the Easement may not have been executed, stamped or registered at that date.

3.4 Return documents to Ausgrid

Promptly following registration and stamping of the Instrument, the Contracting Party must return one original copy of the Instrument to Ausgrid and provide evidence of its registration.

4. Ausgrid may lodge caveat

4.1 Caveat - the Property

- (a) The Contracting Party (and if applicable, the Landowner) acknowledge and agrees that upon execution of this deed by the parties, Ausgrid has a caveatable interest in the Property and the Contracting Party (or if applicable, the Landowner) will not do anything or omit to do anything that will impede those rights.
- (b) The Contracting Party (and if applicable, the Landowner) acknowledges that Ausgrid may lodge a caveat against the Property after the date of this deed to give notice of its rights under this deed.
- (c) If after the Survey Plan has been prepared and provided to Ausgrid, the Contracting Party requests in writing that Ausgrid partially withdraw the caveat for any part of the Property other than the Easement Site (and provide Ausgrid with such documentation required to effect that partial withdrawal), then Ausgrid agrees to promptly sign and return any such documentation
- (d) If a caveat is lodged under this clause 4.1, Ausgrid agrees to promptly consent to any dealing which relates to the Property which does not adversely affect Ausgrid's interest in the Property.

5. Compulsory Acquisition and Works On Other Land

5.1 Compulsory acquisition

The parties agree that:

- (a) if
 - (i) any Works On Other Land are proposed to be or are located on any Other Land, and if Ausgrid compulsorily acquires any estate or interest in that land; or
 - (ii) Ausgrid compulsorily acquires any estate or interest in the Proposed Easement Site and the Contracting Party is in breach of its obligations under this deed,

then the Contracting Party must reimburse Ausgrid for all costs, expenses or payments associated with that compulsory acquisition promptly after written demand from Ausgrid;

- (b) the Contracting Party is liable for, and indemnifies Ausgrid against, any liability, loss, claim, damages, costs and expenses arising from or incurred in connection with the compulsory acquisition of any land that is compulsorily acquired as provided for in clause 5.1(a); and
- (c) Ausgrid makes no representation or warranties in relation to whether or not it may compulsorily acquire any land and is under no obligation to compulsorily acquire any land.

5.2 Other Land

Despite any other clause in this deed, if at any time it becomes apparent that Works On Other Land are to be located on Other Land, then (as applicable):

- (a) the Contracting Party must (at its cost and risk) enter into an Agreement for Easement upon the basis that the "Easement Site" for the purposes of such Agreement for Easement will be determined by Ausgrid taking into account the location and nature of the Works On Other Land and on a basis consistent with its usual operating requirements; or
- (b) the Contracting Party (at its cost and expense) must procure the Other Landowner to either enter into:
 - (i) a deed substantially on the same terms and conditions as this deed (except that the Draft Plan shall be deemed to be such plan as Ausgrid requires, taking into account the location and nature of the Works on Other Land and on a basis consistent with its usual operating requirements); or
 - (ii) enter into an Agreement for Easement upon the basis that the "Easement Site" for the purposes of such Agreement for Easement will be determined by Ausgrid taking into account the location and nature of the Works On Other Land and on a basis consistent with its usual operating requirements,

or in each case, on such other terms and conditions as Ausgrid reasonably requires ("Other Deed").

6. Consent required

6.1 Consent of mortgagee and interested persons

- (a) If, at the date of this deed, the Property is subject to a mortgage or if any person has an interest in the Property (whether or not it is noted or registered on the title to the Property) ("Interested Person"), the Contracting Party must, on or before the date of this deed:
 - (i) obtain the mortgagee's or the Interested Person's (as applicable) consent to the granting to Ausgrid of rights under this deed and to the proposed Instrument;
 - (ii) procure the mortgagee or the Interested Person (as applicable) to sign a Letter of Consent substantially in the form of the Draft Letter of Consent; and
 - (iii) provide to Ausgrid any Letter of Consent required under this clause signed by the mortgagee or the Interested Person (as applicable).
- (b) If, after the date of this deed, the Landowner proposes to grant a mortgage or otherwise encumber the Property or if the Contracting Party becomes aware of any person having an interest in the Property after the date of this deed, then promptly

upon becoming aware of such a person or prior to such dealing (as applicable) the Landowner or Contracting Party (as applicable) must:

- (i) obtain Ausgrid's consent (acting reasonably);
- (ii) procure any mortgagee or interested person (as applicable) to sign a Letter of Consent substantially in the form of the Draft Letter of Consent; and
- (iii) provide to Ausgrid any Letter of Consent required under this clause signed by the mortgagee or interested person (as applicable).

7. General

7.1 Notices

All communications (including notices, consents, approvals, requests and demands) under or in connection with this deed:

- (a) must be in writing; and
- (b) must be addressed as shown in Item 1 of the Reference Schedule to this deed (or as otherwise notified by that party to each other party from time to time).

7.2 Governing law

This deed is governed by and must be construed according to the law applying in New South Wales.

7.3 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 7.3(a).

7.4 Expenses

- (a) Subject to clauses 7.4(b) and 7.4(c), each party must pay their own costs, charges and expenses (including legal costs) in relation to preparing, negotiating and executing this deed.
- (b) The Contracting Party must pay any costs, charges and expenses in connection with:
 - (i) everything it must do under this deed, unless this deed expressly says otherwise;
 - (ii) obtaining all consents (including without limitation Ausgrid's consent) in relation to this deed;

- (iii) lodging any partial withdrawal of caveat contemplated under clause 4.1(c);
 - (iv) if applicable, everything the Landowner must do under this deed unless the Landowner and Contracting Party agree otherwise; and
 - (v) all costs associated with the Other Deed.
- (c) The cost and lodgement fees of withdrawing the caveat referred to in clause 4.1 together with all related incidental costs will be borne by the Contracting Party.
- (d) Each party agrees to promptly pay (after written demand) to the other party any costs payable by that party.

7.5 Amendments

This document may only be varied or replaced by a document duly executed by the parties.

7.6 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

7.7 Consents

A consent required under this deed from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.

7.8 Parties acknowledgement

The parties acknowledge that no relationship of agency, partnership or joint venture shall arise under this deed.

7.9 Entire understanding

No oral explanation provided by any party to another shall:

- (a) affect the meaning or interpretation of this deed; or
- (b) constitute any collateral agreement warranty or understanding between any of the parties.

7.10 Waiver

Failure (or delay) to exercise, or partial exercise of a right, power or remedy provided by law or under this deed by a party, does not preclude the exercise of that or any other right, power or remedy provided by law or under this deed. A waiver or consent under this deed must be in writing.

Annexure A - Draft Plan
(clause 1.1)

Page 16 of 17

Annexure B - Draft Letter of Consent
(clause 6)

[ON LETTERHEAD OF INTERESTED PARTY]

Ausgrid
570 George Street
SYDNEY NSW 2000

Dear Sir/Madam

Consent to easement to Ausgrid
Property: *(insert address of property)*

[Insert details of Interested Party] consents to the grant to Ausgrid of the Easement as contemplated in the Deed of Agreement for Easement between Ausgrid and *[Insert details of Contracting Party and if applicable, the Landowner]* dated *[Insert Date]* and acknowledges the rights of Ausgrid under the Deed of Agreement for Easement.

[Insert details of Interested Party] agrees to sign or do anything to facilitate registration of the Easement.

Signed by an Authorised Representative

Dated

NOTICES OF MOTION

NOTICE OF MOTION

ITEM NO. 1

FILE NO: A2004-0217/PSC2005-3684

RAYMOND TERRACE COMMUNITY MARKETS

COUNCILLOR: FRANCIS

THAT COUNCIL:

- 1) Accept a variation of fees as advertised to allow the Raymond Terrace Community Markets sustainability. This fee needs to be set at the rate of 25% of the gross stall income until they reach their maximum allowed stalls of 40.
-

ORDINARY COUNCIL MEETING – 24 MAY 2011

182	Councillor Glenys Francis Councillor Peter Kafer	It was resolved Council accept a variation of fees as advertised to allow the Raymond Terrace Community Markets sustainability. This fee needs to be set at the rate of 25% of the fees paid by the stall holders to the operator until they reach their maximum allowed stalls of 40.
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BACKGROUND REPORT OF: JASON LINNANE – GROUP MANAGER FACILITIES & SERVICES

BACKGROUND

They are a new business and are having trouble attracting stalls. Negotiations with the Manager of Facilities and Services were held and an outcome, based on 25% of gross stall income until maximum capacity is reached, was endorsed.

This approach will allow for this venture to grow and for Council's income to increase accordingly.

The site is an appropriate venue for the markets and has Development Approval.

NOTICE OF MOTION

ITEM NO. 2

FILE NO: A2004-0217

ELECTRONIC RECORDING OF ORAL PROCEEDINGS AT COUNCIL MEETINGS

COUNCILLOR: NELL

THAT COUNCIL:

Call for a report on the following matters:

- 1) The recording of oral proceedings of its Council meetings electronically.
 - 2) Allow the recording of oral proceedings of its Committee and Council meetings by the members of the public and the press electronically.
 - 3) Allow members of the public and the press to take photographs at its Committee and Council meetings.
 - 4) That any recording of proceedings and the taking of photographs is done unobtrusively, so as not to interfere with the proceedings of meetings.
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ORDINARY COUNCIL MEETING – 24 MAY 2011

183	Councillor John Nell Councillor Glenys Francis	It was resolved that the Notice of Motion be adopted.
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BACKGROUND REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

BACKGROUND

Currently the Local Government Act 1993, makes provision for Council to electronically record their meetings subject to the provisions contained with the adopted Code of Meeting Practice. The current Code of Meeting Practice requires consent to be sought from either the Mayor and General Manager conjointly, or by Council resolution for any electronic recording to take place at a Council meeting.

A report has been prepared for consideration by Council for its Committee meeting to be held on 7 June 2011, addressing the issue of recording the Council meetings following this matter being raised previously by Cr Kafer.

CONFIDENTIAL ITEMS



In accordance with Section 10A, of the Local Government Act 1993, Council can close part of a meeting to the public to consider matters involving personnel, personal ratepayer hardship, commercial information, nature and location of a place or item of Aboriginal significance on community land, matters affecting the security of council, councillors, staff or council property and matters that could be prejudice to the maintenance of law.

Further information on any item that is listed for consideration as a confidential item can be sought by contacting Council.

ORDINARY COUNCIL MEETING – 24 MAY 2011

184	Councillor Peter Kafer Councillor John Nell	It was resolved that Council move into Confidential Session.
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CONFIDENTIAL

ITEM NO. 1

FILE NO: T03-2011

**TENDER FOR THE SUPPLY OF TWO (2) 22.5 TONNE SINGLE CAB TRUCK/
CHASSIS (T03/2011)**

REPORT OF: DAMIEN JENKINS – FINANCIAL SERVICES MANAGER
GROUP: COMMERCIAL SERVICES

ORDINARY COUNCIL MEETING – 24 MAY 2011

185	Councillor Frank Ward Councillor Geoff Dingle	It was resolved that Council: <ol style="list-style-type: none">1. Accept the tender submitted by Gilbert & Roach for the supply of two (2) Isuzu Single Cab Truck Chassis at the tendered price of \$294,017.27 (exc. GST).2. Accept the tender submitted by Gilbert & Roach for the trade price of \$70,909.09 for Council's existing plant items.3. Accept the quotation from Capital Body Works (Council's preferred body builder) for the supply and fitting one (1) 10m³ gravel tipping body and one (1) 13,000 litre aluminium water tank at a combined cost of \$109,557.00.
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Please note: This item was deferred from the Council Meeting of 19 April 2011, to allow for further information to be provided.

CONFIDENTIAL

ITEM NO. 2

FILE NO: T04-2011

TENDER T04-2011 SUPPLY OF LABOUR HIRE SERVICES

REPORT OF: ANNE SCHMARR - ORGANISATION DEVELOPMENT MANAGER

GROUP: CORPORATE SERVICES GROUP

 ORDINARY COUNCIL MEETING – 24 MAY 2011

186	<p>Councillor Glenys Francis Councillor Frank Ward</p>	<p>It was resolved that Council:</p> <ol style="list-style-type: none"> 1) Accept the tenders from Labourco Council Services Pty Ltd, Complete Staff Solutions Pty Ltd, Hudson Global Resources (Newcastle) Pty Ltd and Skilled Group Ltd, for appointment for the supply of temporary administrative, clerical and office based positions. 2) Accept the tender from Labourco Council Services Pty Ltd for appointment for the supply of temporary manual based labour. 3) Accept the tenders from Labourco Council Services Pty Ltd, Complete Staff Solutions Pty Ltd, and Hudson Global Resources (Newcastle) Pty Ltd for the supply of permanent staff placements. 4) Accept the tenders for a period of two (2) years with an option to extend the contract for a further two (2) years based upon performance of contract.
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MINUTES FOR ORDINARY MEETING – 24 MAY 2011

187	Councillor Peter Kafer Councillor Sally Dover	It was resolved that Council move out of Confidential Session.
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There being no further business the meeting closed at 6.40pm.

I certify that pages 1 to 42 of the Open Ordinary Minutes of Council 24 May 2011 and the pages 43 to 54 of the Confidential Ordinary Minutes of Council 24 May 2011 were confirmed by Council at its meeting held on 14 June 2011.

.....
Cr Bob Westbury
MAYOR