

**UPPER LACHLAN SHIRE COUNCIL**  
**MINUTES OF THE**  
**ORDINARY MEETING OF COUNCIL**  
**HELD IN THE COUNCIL CHAMBERS**  
**ON 20 AUGUST 2020**

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**PRESENT:** Mayor J Stafford (Chairperson), Cr R Cummins, Cr P Culhane, Cr P Kensit, Cr R Opie, Cr D O'Brien, Cr J Searl, Cr J Wheelwright, Cr B McCormack, Ms C Worthy (General Manager), Miss K Dewar (Executive Assistant) and Ms S Pearman (Administration Officer)

**VIDEOLINK :** Mr A Croke (Director Finance and Administration), Mrs T Dodson (Director of Environment & Planning), Mr G Lacey (Director of Infrastructure) and Mr C Gordon (Media Officer)

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**THE MAYOR DECLARED THE MEETING OPEN AT 09:01AM.**

**SECTION 1: NOTICE OF WEBCASTING/AUDIO RECORDING OF MEETING**

*Mayor Stafford advised that the meeting is being webcast live and audio recorded in accordance with Council Code of Meeting Practice.*

**SECTION 2: APOLOGIES & LEAVE OF ABSENCE**

There were no apologies.

**SECTION 3: CITIZENSHIP CEREMONY**

Nil

**SECTION 4: DECLARATIONS OF INTEREST**

Nil

**SECTION 5: CONFIRMATION OF MINUTES**

**127/20**                    **RESOLVED** by Cr Searl and Cr Wheelwright

1. That the minutes of the Ordinary Council Meeting held on 16 July 2020 be adopted.

**- CARRIED**

**Councillors who voted for:-**                    Crs P Culhane, R Cummins, P Kensit, R Opie, D O'Brien, B McCormack, J Searl, J Stafford and J Wheelwright

**Councillors who voted against:-**        Nil

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**SECTION 6: MAYORAL MINUTES**

**ITEM 6.1 MAYORAL MINUTE**

**128/20** **RESOLVED** by Mayor Stafford and Cr Searl

1. That Council receive and note the activities attended by the Mayor for July and August 2020.

- CARRIED

**Councillors who voted for:-** Crs P Culhane, R Cummins, P Kensit, R Opie, D O'Brien, B McCormack, J Searl, J Stafford and J Wheelwright

**Councillors who voted against:-** Nil

**SECTION 7: PRESENTATIONS TO COUNCIL/PUBLIC**

Nil

**SECTION 8: CORRESPONDENCE**

**ITEM 8.1 CORRESPONDENCE ITEMS FOR THE MONTH OF JULY/AUGUST**

**129/20** **RESOLVED** by Cr Searl and Cr Wheelwright

**RECOMMENDATION:**

That Item 8.1 - [Minutes of Committee/Correspondence/Information] listed below be received:

1. NSW Office of Minister for Local Government - COVID-19 Local Government Stimulus Package - Emergency Services Levy 2020-2021 - 13 July 2020
2. NSW Department of Planning Industry & Environment - Local Strategic Planning Statement - Planning Portal successful upload - 21 July 2020
3. Office of Local Government Circular to Councils - 20-29 September 2020 Mayoral Elections - 4 August 2020
4. Clr Ron Cummins – Letter of Resignation – 4 August 2020

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5. Dalton District & Community Association – Skate park – correspondence and letter of support – 10 August 2020

- CARRIED

**Councillors who voted for:-** Crs P Culhane, R Cummins, P Kensit, R Opie, D O'Brien, B McCormack, J Searl, J Stafford and J Wheelwright

**Councillors who voted against:-** Nil

**SECTION 9: LATE CORRESPONDENCE**

Nil

**SECTION 10: INFORMATION ONLY**

**ITEM 10.2-10.5 INFORMATION ONLY ITEMS**

**and 10.7**

**130/20** **RESOLVED** by Cr Searl and Cr McCormack

1. Council receives and notes items 10.2-10.5 and 10.7 as information.

- CARRIED

**Councillors who voted for:-** Crs P Culhane, R Cummins, P Kensit, R Opie, D O'Brien, B McCormack, J Searl, J Stafford and J Wheelwright

**Councillors who voted against:-** Nil

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**ITEM 10.1                      DEVELOPMENT STATISTICS FOR THE MONTH OF JULY 2020**  
**131/20                      RESOLVED by Cr Searl and Cr McCormack**

1. Council receives and notes the report as information.

- CARRIED

**Councillors who voted for:-**                      Crs P Culhane, R Cummins, P  
Kensit, R Opie, D O'Brien, B  
McCormack, J Searl, J Stafford  
and J Wheelwright

**Councillors who voted against:-**                      Nil

A further motion was moved by Cr Cummins and Cr Opie that -

1. In Councils amended LEP, schedule 2 exempts schedule 3 complying development provisions be expanded to include headings related to ancillary residential buildings and single storey residential housing.

On being put to the meeting the motion was lost.

**Councillors who voted for:-**                      Crs R Cummins, P Kensit and R  
Opie

**Councillors who voted against:-**                      Crs P Culhane, D O'Brien, B  
McCormack, J Searl, J Stafford  
and J Wheelwright

A motion was moved by Cr Cummins and Cr Opie.

1. That a date received column be added to the Table for Development Application approved by Council so the length of time the application has been in the system can be determined. If "stop the clock" provisions were applied, they also should be noted.

On being put to the meeting the motion was carried.

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**132/20**

**RESOLVED** by Cr Cummins and Cr Opie.

1. That a date received column be added to the Table for Development Application approved by Council so the length of time the application has been in the system can be determined. If “stop the clock” provisions were applied, they also should be noted.

- CARRIED

**Councillors who voted for:-**

Crs P Culhane, R Cummins, P Kensit, R Opie, D O'Brien, J Searl and J Stafford

**Councillors who voted against:-**

Crs B McCormack and J Wheelwright.

**ITEM 10.6**

**GRANTS REPORT**

**133/20**

**RESOLVED** by Cr Cummins and Cr Opie

1. Council extends its Green waste service for the full 12 months of the year and implements the waste less recycle more bin audit and education with the notification that the Green waste service is going to be extended.

- CARRIED

**Councillors who voted for:-**

Crs R Cummins, P Kensit, R Opie, D O'Brien and J Stafford

**Councillors who voted against:-**

Crs P Culhane, B McCormack, J Searl and J Wheelwright

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**REPORTS FROM STAFF AND STANDING COMMITTEES**

**SECTION 11: ENVIRONMENT AND PLANNING**

**ITEM 11.1 AMENDMENTS TO THE UPPER LACHLAN LEP 2010 LAND USE TABLE**

**134/20** **RESOLVED** by Cr Searl and Cr Culhane

1. The Council prepare a planning proposal seeking a gateway determination to amend the Upper Lachlan Local Environmental Plan 2010 by changing the land use tables to improve the permissibility of activities within various zones;
2. The Council request the Department of Planning Industry and Environment to authorise Council to exercise delegation of plan making functions in accordance with the Environmental Planning and Assessment Act 1979;
3. The Council delegate authority to the General Manager to undertake any required changes;
4. The Council notify the community of the proposed changes to the LEP through appropriate processes at the time.

- CARRIED

**Councillors who voted for:-** Crs P Culhane, R Cummins, P Kensit, D O'Brien, B McCormack, J Searl, J Stafford and J Wheelwright

**Councillors who voted against:-** Cr R Opie

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**ITEM 11.2          PLANNING PROPOSAL-LAGGAN LANE ESTATE LOT 2 DP 1233492, LOT 1 DP 1253980 AND LOT 1 DP 239858**

MOVED by Mayor Stafford and Cr Wheelwright

1. Council prepare a planning proposal seeking a Gateway Determination to amend the Upper Lachlan Local Environmental Plan 2010 by changing the zoning and lot sizes in Zoning Map LZ and 006 and Lot Size Mapsz006;
2. Council requested the Department of Planning Industry and Environment to authorise Council to exercise delegation of plan making functions in accordance with the Environmental Planning and Assessment Act 1979; and
3. The applicant be advised of Council's decision.

An amendment was moved by Cr Kensit and Cr O'Brien That –

1. The lodgement of the rezoning application be deferred and considered at the next Ordinary Council meeting following community consultation and Councillor briefing.

On being put to the meeting the amendment was carried.

**135/20          RESOLVED by Cr Kensit and Cr O'Brien That –**

1. The lodgement of the rezoning application be deferred and considered at the next Ordinary Council meeting following community consultation and Councillor briefing.

- CARRIED

**Councillors who voted for:-**          Crs P Culhane, P Kensit, D O'Brien, B McCormack, J Searl, J Stafford and J Wheelwright

**Councillors who voted against:-**      Crs R Cummins and R Opie

*The meeting adjourned for a short break the time being 10:37am.*

*The meeting resumed the time being 10:57am.*

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**ITEM 11.3**  
**136/20**

**INCENTIVES FOR DEVELOPMENT**

**RESOLVED** by Cr Wheelwright and Cr Searl

1. The Council develop an incentives scheme based on the objectives, principles, and target groups in the report and bring it back for review.
2. The Council provide incentives for businesses that will add value in the not for profit and healthcare sectors, industrial development, new tourism development and commercial development in the business districts of Crookwell, Taralga, Gunning, and Collector.
3. The Council provide incentives for residential in villages when they encourage a diversity of housing choice.
4. The Council consider education services such as child care and not for profit enterprises as target businesses.

- CARRIED

An amendment was moved by Cr Searl and Cr McCormack That -

1. The Council develop an incentives scheme based on the objectives, principles, and target groups in the report and bring it back for review. After a workshop is held with Councillors.

On being put to the meeting the amendment was carried.

**137/20**

**RESOLVED** by Cr Searl and Cr McCormack That -

1. The Council develop an incentives scheme based on the objectives, principles, and target groups in the report and bring it back for review. After a workshop is held with Councillors.

- CARRIED

**Councillors who voted for:-**

Crs P Culhane, B McCormack, J Searl, J Stafford and J Wheelwright

**Councillors who voted against:-**

Crs R Cummins, P Kensit, R Opie and D O'Brien



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**SECTION 12:      INFRASTRUCTURE DEPARTMENT**

**ITEM 12.1            WORKS IN PROGRESS - CONSTRUCTION & MAINTENANCE**  
**138/20                RESOLVED by Cr Searl and Cr McCormack**

1.    Council receive the report and note the information.

- CARRIED

**Councillors who voted for:-**            Crs P Culhane, R Cummins, P  
Kensit, R Opie, D O'Brien, B  
McCormack, J Searl, J Stafford  
and J Wheelwright

**Councillors who voted against:-**    Nil

**SECTION 13:      FINANCE AND ADMINISTRATION**

**ITEM 13.1            REVIEW OF DISPOSAL OF COUNCIL ASSETS POLICY**  
**139/20                RESOLVED by Cr Searl and Cr Wheelwright**

1.    Council adopts the reviewed Disposal of Council Assets Policy.

- CARRIED

**Councillors who voted for:-**            Crs P Culhane, R Cummins, P  
Kensit, R Opie, D O'Brien, B  
McCormack, J Searl, J Stafford  
and J Wheelwright

**Councillors who voted against:-**    Nil

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<b>POLICY:-</b>	
Policy Title:	Disposal of Council Assets Policy
File Reference:	F10/618-07
Date Policy was adopted by Council initially:	24 November 2005
Resolution Number:	331/05
Other Review Dates:	27 September 2007, 24 April 2008, 15 December 2011, 19 June 2014 and 21 September 2017
Resolution Number:	279/07, 123/08, 479/11 and 303/17
Current Policy adopted by Council:	20 August 2020
Resolution Number:	139/20
Next Policy Review Date:	2023

<b>PROCEDURES/GUIDELINES:-</b>	
Date procedure/guideline was developed:	N/A
Procedure/guideline reference number:	N/A

<b>RESPONSIBILITY:-</b>	
Draft Policy developed by:	Director of Finance and Administration
Committee/s (if any) consulted in the development of this Policy:	N/A
Responsibility for implementation:	Director of Infrastructure
Responsibility for review of Policy:	Director of Finance and Administration

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**OBJECTIVE**

Goods that are no longer required by Council should be disposed of promptly. The disposal must achieve best value for money such that Council obtains the best possible return for the good it sells. In addition to price, the disposal process must include consideration of the Council's social, economic and environmental objectives.

The disposal method chosen must promote fair and effective competition to the greatest possible extent, and disposals must be conducted in an ethical manner. The process of disposal is as important as the outcome as it reflects Council's level of commitment to fairness and equity.

**1. APPLICATION**

This policy covers the disposal of all Council owned surplus or unserviceable items, except the disposal of real property (i.e. land and buildings).

**2. DEFINITIONS**

**2.1 Asset**

An asset is a resource controlled by Council as a result of past events and from which future economic benefits are expected to flow to the Council (e.g. office equipment, furniture and fittings, motor vehicles, plant and other mechanical equipment, art works, etc.).

**2.2 Asset Disposal**

Asset disposal is the process whereby Council divests itself of any asset in an organised and authorised manner.

**2.3 Best Value**

Best value is a process whereby Council obtains the best possible return for the goods it sells in financial, social, economic and environmental terms.

**3. THE DISPOSAL PROCESS**

The typical disposal process is as follows:-

- (a) Decision to dispose;
- (b) Estimate the value;
- (c) Factors to consider in disposal;
- (d) Select appropriate disposal method;
- (e) Obtain approval for disposal;
- (g) Effect disposal; and

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(h) Evaluate disposal process.

#### **4. DECISION TO DISPOSE**

Before any assets are disposed of, it is necessary to certify and approve that they are appropriate for disposal. Approval to commence the disposal process must be obtained from the relevant Departmental Director or Manager.

The common criteria for determining that goods may be suitable for disposal include:-

- (a) No longer required;
- (b) Unserviceable or beyond economic repair;
- (c) Technologically obsolete and operationally inefficient;
- (d) Surplus to current or immediately foreseeable needs; and/or
- (e) Part of an asset replacement program.

Once a decision has been made to dispose of an asset, the process is to be managed by Council's **Director of Infrastructure or his delegate**.

#### **5. VALUATION**

An accurate valuation of the goods to be disposed of is important in selecting the most appropriate method of disposal. The value of a good is dependent on:-

- (a) The market; and
- (b) The perceived advantages of the good to buyers in the market.

Low sale value goods can be assessed by surveying the market. In the case of any goods that may have a high sale value, a registered valuer must provide an independent assessment and recommend the most appropriate means of disposal.

#### **6. FACTORS FOR CONSIDERATION**

Some important considerations to be made at the commencement of the disposal process are:

##### **6.1 Conflict of Interest**

(a) Staff involved in disposal must disclose to the **Assets and Risk Coordinator** actual or perceived conflicts of interest that may arise should they participate in the disposal process;

(b) The **Assets and Risk Coordinator** must record the disclosure and implement procedures for the management and control of the conflict including the withdrawal of the conflicted officer from the process.

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## **6.2 Other Factors**

Apart from monetary value, the following factors should be considered:

- (a) The market available for the goods;
- (b) Time considerations;
- (c) Council resources required to manage the disposal;
- (d) Costs associated with the different disposal methods, such as transport and administration costs;
- (e) The size, portability and number of goods; and
- (f) Benefits of the different disposal methods.

## **7. DISPOSAL METHODS**

The disposal method chosen must be appropriate to the nature, quantity and location of goods, and promote fair and effective competition to the greatest extent possible. Where practical, a competitive disposal method should be selected, particularly for the disposal of high-value goods or large quantities of similar goods. Disposal methods authorised for use by Council are as follows:-

### **7.1 Public Tender**

Tendering for the disposal of goods is to be conducted in accordance with the following principles as follows:-

- (a) Preparation of tender, including a list of the goods for sale, the conditions of the sale, the assessment criteria for evaluating offers, and a closing time and place.
- (b) Public advertisement of the sale in a manner most likely to capture the anticipated market. This may involve advertising locally or nationally and on the internet, in newspapers or trade magazines, etc. Include in the advertisement the conditions of sale and a clause stating that items will be sold, with any faults, at the buyer's risk.
- (c) Provide bidders with sufficient information to formulate a proper bid, including arrangements to inspect the goods if appropriate.
- (d) Ensure that bidders are dealt with equally, and that any changes or clarifications to the disposal arrangements are promptly communicated.
- (e) Close and evaluate tenders with the utmost probity.
- (f) Accept the tender that most closely meets the assessment criteria, provided it is considered reasonable.
- (g) Seek Council's endorsement of the decision.

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- (h) Notify the successful tenderer in writing.
- (i) Notify the unsuccessful tenderers in writing, and provide them with the opportunity for a debriefing.

## **7.2 Public Auction**

Public auction maximises the opportunity for public participation in the disposal process and is the appropriate method when:-

- (a) There is public demand for the items;
- (b) Alternative disposal methods are unlikely to realise higher revenue; and
- (c) The costs associated with the auction can be justified in relation to the expected revenue from the sale.

The process for conducting the auction should be:-

- (a) Obtain competitive quotes on a commission basis from potential auctioneers by advertising for expression of interest from auctioneers;
- (b) Select an auctioneer based upon:-
  - (i) The commission rates;
  - (ii) Whether the auctioneer is licensed;
  - (iii) Whether the auctioneer has adequate premises, at a suitable location;
  - (iv) The past performance and/or industry reputation of the auctioneer.
- (c) Prior to the auction ensure that each item or category of items has been valued, and where appropriate ensure that the auctioneer is aware of any reserve prices.

## **7.3 Expressions of Interest/Quotations**

Council may determine to dispose of items by advertising for expressions of interest or quotations where:-

- (a) The items are of low value;
- (b) The costs of disposal are disproportionate to the expected returns; or
- (c) There is very limited interest.

The following process must be followed in the case of a negotiated sale:-

- (a) All stages of the negotiation process must be documented, including all discussions and agreements;
- (b) The **Director of Infrastructure** must certify that the accepted prices are fair and reasonable.

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#### **7.4 Trade-in**

Trading in surplus goods can be an efficient means of disposal, and a convenient way to upgrade equipment such as motor vehicles. However, trade-in prices do not always provide the best return as the purchase price of an item not on a State Contract may have been inflated to offset the trade-in value offered by the supplier.

Any decision to trade-in surplus goods must be based on a clear analysis of the benefits of the trade-in as opposed to separate sale of the surplus goods.

Council's **Plant Co-ordinator** is responsible for obtaining this information and recommending whether or not to trade-in. This information shall be detailed in Council's Operational Plan, for all fleet vehicles, plant and equipment replacement schedules.

#### **7.5 Sale or Transfer to Other Agencies**

There may be occasions when Council may consider selling or transferring surplus goods to another Council or similar organisation, before offering them for sale on the open market. For example, it may decide to give surplus office furniture, fittings and equipment to a Section 355 Committee or a co-operative organisation in which Council is a participant. Authorisation is required from the **Council General Manager** before such a sale or transfer can be undertaken for a good that has a material dollar value.

#### **7.6 Donation to Charities or Community Organisations**

Council occasionally receives requests from community, charity or work creation organisations seeking the donation or concessional sales of surplus goods. At times Council may invite such organisations to submit proposals **to the General Manager** for the donation of surplus or obsolete goods.

The following factors must be considered in such cases:-

- (a) The revenue that could otherwise be realised through a sale or auction;
- (b) The costs of donation or disposal compared to the benefits;
- (c) The credibility and reputation of the charity or organisation.

However, the following processes must be followed once the decision is made:-

- (a) The cost of removing the goods should be borne by the recipient;
- (c) A receipt must be obtained from the recipient;
- (d) All records of the process must be retained for audit purposes.

#### **7.7 Writing-off the Value of the Goods (Recycling or Destruction)**

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The value of an item may be written off and the item recycled or destroyed if it is deemed:-

- (a) To have no value;
- (b) To be unserviceable or beyond economical repair; or
- (c) That the disposal cost is higher than the likely return.

The process of writing-off an asset is as follows:-

- (a) An appropriately qualified person must certify that the item is unserviceable, is beyond economical repair, and has no scrap value;
- (b) The Finance and Administration Department must be informed that the item has been certified as unserviceable and it must be removed from the Asset Register;
- (c) The item must be destroyed or disposed of in appropriate manner, in compliance with any relevant environmental guidelines, and this action must be certified. The item is not to be retained by any Council employee for personal use.

## **7.8 Motor Vehicle Auctions**

Unless there is a clear benefit to Council by either trading in or selling privately, the preferred method of disposal of Council motor vehicles and plant fleet should be by public auction under Government Contract arrangements (i.e. Pickles Auctions and Graysonline Auctions).

## **8. EFFECTING THE DISPOSAL**

In effecting the disposal, the following procedures will be followed:-

### **8.1 Obtaining Approval**

The decision to dispose of a good must be approved by the appropriately delegated person or persons:-

- (a) Goods Valued at \$40,000 or less – the General Manager has the delegation to approve the disposal of goods valued under \$40,000.
- (b) Goods Valued over \$40,000 – a report must be made to Council for its approval to dispose of goods valued at over \$40,000. This does not apply in the case of goods that are traded-in as this is part of the purchase arrangement and/or outdated and used plant and equipment.

In the cases of transfers to other agencies, sale to Council staff member or donation to community organisations, Council's approval by way of a Council Resolution must also be sought prior to the disposal being completed.



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- (c) The above Clauses 8.1 (a) and (b) excludes Council motor vehicle and plant fleet trade-ins that are included in Council's Operational Plan.

## **8.2 Preparing Goods for Disposal**

Staff involved in the disposal must check that goods to be disposed of do not contain material that is not intended for disposal. Examples of material that must be removed before disposal include:-

- (a) Stationary – particularly printed stationery, which could be misused;
- (b) Software – unauthorised transfer could breach license agreements;
- (c) Classified information contained on electronic media; i.e. CD, DVD, USB, file servers, laptops, PC computers, iPads, Notepads, smart phones, mobile telephone devices, and portable hard drives;
- (d) Records, files, papers or whiteboards containing information which, if disclosed, could breach privacy legislation, and/or cause embarrassment or potential problems for Council;
- (e) Environmentally sensitive or hazardous stores; and
- (f) Council logos etc, from clothing and equipment.

## **8.3 Informing Interested Parties**

Once an asset has been disposed of, it is the responsibility of the **Director of Infrastructure or his delegate** to inform Council's Manager of Finance and Administration of the disposal so that the Council assets register and insurance policies are updated.

## **8.4 Buyers Risk**

Irrespective of the disposal method applied, all prospective buyers must be advised in writing that items are disposed of, with any faults, at the buyer's risk. Buyers are to rely on their own inquiries regarding the condition and workability of the items.

## **9. EVALUATION**

Each disposal action must be reviewed to see if it has achieved its desired outcome. In particular, the **Director of Infrastructure** should determine whether the disposals have:-

- (a) Achieved value for money;
- (b) Been carried out in a fair and effective manner; and
- (c) Whether the estimations of the value of the goods and the cost of administering the disposal were accurate.

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**10. NON-COMPLIANCE WITH THIS POLICY**

Failure to comply with the terms of this policy may lead to disciplinary procedures being implemented against the responsible staff member. Any instances of corrupt conduct can lead to dismissal and/or criminal prosecution.

**RELEVANT LEGISLATION AND COUNCIL POLICIES**

The following legislation and Council policies relevant to the operation of this policy:-

- Local Government Act 1993;
- Local Government (General) Regulation 2005;
- Independent Commission against Corruption Act 1988 and ICAC Guidelines;
- NSW Ombudsman Act 1974;
- Government Information (Public Access) Act 2009 (GIPA);
- A New Tax System (Goods and Services Tax) Act 1999;
- Anti Discrimination Act 1977;
- Privacy and Personal Information Protection Act 1998;
- Environmental Planning and Assessment Act 1979;
- Work Health and Safety Act 2011;
- State Records Act 1998;
- Trade Practices Act 1974;
- Crimes Act 1900;
- Tendering Guidelines for NSW Local Government;
- Council's Code of Conduct;
- Council's Code of Business Practice;
- Disposal of Council Real Estate Policy;
- Designated Person Disclosing Interest Returns Policy;
- Complaints Management Policy;
- Grievance Policy;
- Disciplinary Policy;
- GIPA Policy;
- Fraud and Corruption Prevention Policy;
- Purchasing – Acquisition of Goods and Services Policy;
- Delegations of Authority Policy; and
- Bribes, Gifts and Benefits Policy.

**12. VARIATION**

That Council reserves the right to vary the terms and conditions of this policy to ensure it meets the requirements of the relevant legislation.

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**ITEM 13.2**                      **REVIEW OF DISPOSAL OF COUNCIL REAL ESTATE POLICY**  
**140/20**                      **RESOLVED** by Cr Searl and Cr Wheelwright

1. Council adopts the reviewed Disposal of Council Real Estate Policy.

- CARRIED

A motion was moved by Cr Cummins and Cr Opie That-

1. The general manager provided Councillors with a list of all real estate property owned by Council.

On being put to the meeting the motion was carried.

- CARRIED

**Councillors who voted for:-**                      Crs P Culhane, R Cummins, P  
Kensit, R Opie, D O'Brien, B  
McCormack, J Searl, J Stafford  
and J Wheelwright

**Councillors who voted against:-**                      Nil

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<b>POLICY:-</b>	
Policy Title:	Disposal of Council Real Estate Policy
File Reference:	F10/618-04
Date Policy was adopted by Council initially:	13 July 2006
Resolution Number:	181/06
Other Review Dates:	15 December 2011, 19 June 2014 and 21 September 2017
Resolution Number:	477/11, 171/14 and 304/17
Current Policy adopted by Council:	20 August 2020
Resolution Number:	140/20
Next Policy Review Date:	2023

<b>PROCEDURES/GUIDELINES:-</b>	
Date procedure/guideline was developed:	N/A
Procedure/guideline reference number:	N/A

<b>RESPONSIBILITY:-</b>	
Draft Policy developed by:	Director of Finance and Administration
Committee/s (if any) consulted in the development of this Policy:	N/A
Responsibility for implementation:	General Manager
Responsibility for review of Policy:	Director of Finance and Administration

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**OBJECTIVE**

Council has a number of properties that on occasions it may seek to dispose of by way of sale or by way of agreement with the tenant or a community organisation. This policy aims to provide a coherent, transparent and ethical method of disposing of Council properties.

**1. POLICY STATEMENT**

Land, buildings and real estate that is no longer needed by Council and for which Council has no long term plans of utilisation, may be disposed of. Disposal of such property provides one or more of the following benefits to Council:-

- (a) It earns immediate income for use in maintaining other assets;
- (b) It reduces operating costs, such as building or property maintenance, insurance, rates and depreciation expenses;
- (c) It prevents costs associated with the deterioration in the condition of an asset and remediation works;
- (d) It may increase the number of rateable properties in the Shire; and
- (e) It may provide land for economic development.

The disposal method chosen must promote fair and effective competition to the greatest possible extent, and disposals must be conducted in an ethical manner. The process of disposal is as important as the outcome as it reflects Council's level of commitment to fairness and equity.

**2. APPLICATION**

This policy applies to the disposal of all Council owned real estate. It does not cover the sale of land for recovery of unpaid rates as this is not Council owned land.

**3. DEFINITIONS**

**3.1 Council Real Estate**

Real estate means any freehold or leasehold property owned by Council, whether or not it is vacant land, business premises or residential property that is classified as "Operational Land".

**3.2 Community Land**

Community Land means land that is classified as "Community Land" under Chapter 6, Division 1 and 2, of Part 2, of the Local Government Act 1993.

Community Land classification reflects the importance of the land to the community because of its use or special features; i.e. includes crown land which Council is appointed as the Trustee, public parks and reserves are also examples of Community land. Community land is intended for public access and use, or where other restrictions applying to the land create an obligation to maintain public access (such as a trust deed or land dedication).

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Community land dealings:-

- Council has no power to sell, exchange or otherwise dispose of community land;
- Council may grant a lease, or licence, or any other estate over the community land under certain provisions; and
- Council must have a Plan of Management for community land.

### **3.3 Operational Land**

Operational Land means land that is classified as “Operational Land” under Chapter 6, Division 1, of Part 2, of the Local Government Act 1993.

Operational Land would ordinarily comprise land held as a temporary asset or as an investment, or land which facilitates the carrying out by Council of its functions, or land which may not be open to the general public. Operational Land has no special restrictions other than those that may apply to any piece of land and may be sold without the restrictions applied to Community Land.

## **4. THE DISPOSAL PROCESS**

The typical disposal process is as follows:-

- (a) Council decision to dispose and inclusion in Council’s Operational Plan.
- (b) Estimate the value.
- (c) Factors to consider in disposal.
- (d) Select appropriate disposal method.
- (e) Effect disposal process.
- (f) Evaluate disposal process.

### **4 (a) DECISION TO DISPOSE**

Before any real estate is disposed of, it is necessary to obtain Council approval to proceed with the disposal. The proposed disposal must be included in Council’s strategic planning documents or a special report that covers the reasons for recommending disposal will be presented recommending a Council Resolution to dispose of real estate.

### **4 (b) VALUATION**

All Council real estate offered for disposal, by whichever method, shall first be assessed by a Registered Real Estate Valuer and the assessment will determine the value of the asset. The valuation provided shall become the reserve price for the land, property or building asset.

The only exception to this requirement is situations where the price for lots has been fixed based on development costs and profit margins.

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**4 (c) FACTORS FOR CONSIDERATION**

Considerations to be made at the commencement of the disposal process include:-

**4.1.1 Conflict of Interest**

- (a) Staff involved in the disposal must disclose to their Director and/or Manager the actual or perceived conflicts of interest that may arise should they participate in the disposal process;
- (b) The Director and/or Manager must record the disclosure and implement procedures for the management and control of the conflict. This is of prime importance where an alternate staff member is not available to perform the disposal activity.

**4.1.2 Other Factors**

Apart from monetary value, the following factors must be considered:-

- (a) The current conditions in the property market;
- (b) Time considerations;
- (c) Council resources required to manage the disposal;
- (d) Costs associated with the different disposal methods, such as auctioneer's costs, administration costs etc;
- (e) Benefits of the different disposal methods;
- (f) Whether Council has an existing tenant occupying the property; and
- (g) Any encumbrance or caveat on the land.

**4 (d) DISPOSAL METHODS**

The disposal method chosen must be appropriate to the situation, and promote fair and effective competition to the greatest extent possible. Where practical, a competitive disposal method should be selected.

Disposal methods authorised by Council are:-

**4.2.1 Public Tender**

Tendering for the disposal of real estate is to be conducted as follows:-

- (a) Preparation of tender, including a list of the properties for sale, the conditions of the sale, the assessment criteria for evaluation of offers, and a closing time and place.
- (b) Public advertisement of the sale in a manner most likely to capture the anticipated market. This may involve advertising locally or nationally and on the internet, in newspapers or trade magazines, etc.
- (c) Provide bidders with sufficient information to formulate a proper bid, including arrangements to inspect the property.
- (d) Ensure that bidders are dealt with equally, and that any changes or clarifications to the disposal arrangements are promptly communicated.
- (e) Close and evaluate tenders with the utmost probity in accordance with Tendering Guidelines and Regulations, the Local Government Act 1993 and Council related policies.

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- (f) Accept the highest tender, wherever possible, provided that it meets or exceeds the reserve price.
- (g) Should the reserve price not be attained by tendering, a sale can be effected by either:-
  - (i) Revising the reserve price, or
  - (ii) Negotiating with the highest tenderer.
- (h) Seek Council endorsement of the decision.
- (i) Notify the successful tenderer in writing.
- (j) Notify the unsuccessful tenderers in writing.
- (k) Notify any existing tenants, if applicable.

**4.2.2 Public Auction**

Public auction maximises the opportunity for public participation in the disposal process and is the appropriate method when:-

- (a) There is a high level of public interest in the properties being offered;
- (b) Alternative disposal methods are unlikely to realise higher revenue; and
- (c) The costs associated with the auction can be justified in relation to the expected revenue from the sale.

The process for conducting the auction should normally be:-

- (a) Obtain competitive quotes on a commission basis from potential real estate agents and auctioneers; or
- (b) Advertise for expressions of interest from registered real estate agents and auctioneers;
- (c) Select a real estate agent or auctioneer based upon:-
  - (i) The commission rates;
  - (ii) Whether the auctioneer and agent is licensed;
  - (iii) The past performance and/or industry reputation;
  - (iv) The relevant experience (i.e. years, sales) meets the selection criteria.
- (d) Prior to the auction ensure that the auctioneer is aware of the reserve price.

**4.2.3 Sale at a pre-determined or negotiated price**

This covers situations where Council is selling land that has been developed for the purpose of resale, such as land subdivisions:-

- (a) The land and prices will be publicly advertised;
- (b) Offers to purchase will be received at any time in writing and must be accompanied by a non-refundable deposit;
- (c) Offers lower than the advertised price will be considered by Council; in accordance with Council's Schedule of Fees and Charges current at the time of the sale;
- (d) Any decision to sell must be approved by Resolution of Council.



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**4.2.4 Sale or Transfer to Other Agencies**

There may be occasions when Council may consider selling or transferring real estate to a community or charity organisation that is currently the tenant of that property.

The following factors must be considered in such cases:-

- (a) The revenue that could otherwise be realised through a sale or auction;
- (b) Savings in maintenance, insurances, rates, etc. that may be made;
- (c) The costs of donation or disposal compared to the benefits;
- (d) The credibility and reputation of the charity or organisation.

The following processes must be followed:-

- (a) The cost of the property transfer must be borne by the recipient;
- (b) All records of the process must be retained for audit purposes;
- (c) Council's contribution must be acknowledged by the recipient.

**4.2.5 Sale or Transfer by Private Treaty**

There may be occasions when Council may consider selling or transferring land by means of a private treaty.

The following processes must be followed:-

- (a) The cost of the land transfer must be borne by the recipient;
- (b) All records of the process must be retained for audit purposes.

**4 (e) EFFECTING THE DISPOSAL**

In effecting the disposal of Council real estate, the following procedure will be followed:-

**4.3.1 Obtaining Approval**

The decision to accept an offer to purchase a Council property must be approved by the General Manager and a Resolution made at Council Meeting.

**4.3.2 Property Transfer Costs**

In general, property transfer and legal costs will be borne by the purchaser unless otherwise specified. On occasions the costs may be shared if the value of the property being transferred is high.

**4.3.3 Informing Interested Parties**

It is the responsibility of the relevant Departmental Director to inform the Director of Finance and Administration that a property has been disposed of, so that Council's insurers can be advised, and Council's Asset Register and Land Registers are updated.

**4 (f) EVALUATION**

Each disposal of real estate must be reviewed to see if it has achieved its desired outcome. In particular it should determine whether the disposals have:-

- (a) Achieved value for money;
- (b) Been carried out in a fair and effective manner;
- (c) Achieved a profit margin for each disposal;

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- (d) Whether the valuation/s and the cost of administering the disposal were accurate; and
- (e) Adhered to tendering guidelines and Council policies.

**5. NON-COMPLIANCE WITH THIS POLICY**

Failure to comply with the terms of this policy may lead to disciplinary procedures being implemented against the responsible staff member. Any instances of corrupt conduct can lead to dismissal and/or criminal prosecution.

**6. RELEVANT LEGISLATION AND COUNCIL POLICIES**

- Local Government Act 1993;
- Local Government (General) Regulation 2005;
- State Records Act 1998;
- Privacy and Personal Information Protection Act 1998;
- Government Information (Public Access) Act 2009;
- Environmental Planning and Assessment Act 1979;
- Independent Commission against Corruption Act 1988;
- Ombudsman Act 1974;
- Trade Practices Act 1974;
- A New Tax System (Goods and Services Tax) Act 1999;
- Roads Act 1993;
- Work Health and Safety Act 2011;
- Anti Discrimination Act 1977;
- Crimes Act 1900;
- Tendering Guidelines for NSW Local Government;
- Designated Person Disclosing Interests Returns Policy;
- Council's Code of Conduct;
- Council's Code of Business Practice;
- Council's Integrated Plans; including Community Strategic Plan, Resourcing Strategy, Delivery Program and Operational Plan;
- Fraud and Corruption Prevention Policy;
- Purchasing - Acquisition of Goods and Services Policy;
- Bribes, Gifts and Benefits Policy;
- Disciplinary Policy;
- Complaints Management Policy; and
- Disposal of Council Assets Policy.

**7. VARIATION**

That Council reserves the right to vary the terms and conditions of this policy to ensure it meets the requirements of the relevant legislation.

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**SECTION 14: GENERAL MANAGER**

**ITEM 14.1 WHS POLICY REVIEW - 2020**

**141/20** **RESOLVED** by Cr Searl and Cr Culhane

1. The WHS Committee endorse the updated WHS Policy;
2. The General Manager and WHS Committee Chairperson endorse and authorise the updated WHS Policy;
3. Council adopt the reviewed WHS Policy and
4. The updated WHS Policy be placed in prominent areas throughout Council.

- CARRIED

**Councillors who voted for:-** Crs P Culhane, R Cummins, P Kensit, R Opie, D O'Brien, B McCormack, J Searl, J Stafford and J Wheelwright

**Councillors who voted against:-** Nil

**ITEM 14.2 WYANGALA DAM WALL RAISING PROJECT UPDATE**

**142/20** **RESOLVED** by Cr Searl and Cr McCormack

1. Council receives and notes the report as information.

- CARRIED

**Councillors who voted for:-** Crs P Culhane, R Cummins, P Kensit, R Opie, D O'Brien, B McCormack, J Searl, J Stafford and J Wheelwright

**Councillors who voted against:-** Nil

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**ITEM 14.3**                      **CROOKWELL DISTRICT HOSPITAL - UPGRADE UPDATE**  
**143/20**                      **RESOLVED** by Cr Searl and Cr McCormack

1. Council receives and notes the report as information.

- CARRIED

**Councillors who voted for:-**                      Crs P Culhane, R Cummins, P  
Kensit, R Opie, D O'Brien, B  
McCormack, J Searl, J Stafford  
and J Wheelwright

**Councillors who voted against:-**                      Nil

**ITEM 14.4**                      **COVID-19 REPORT**  
**144/20**                      **RESOLVED** by Cr Searl and Cr McCormack

1. Council receives and notes the report as information.

- CARRIED

**Councillors who voted for:-**                      Crs P Culhane, R Cummins, P  
Kensit, R Opie, D O'Brien, B  
McCormack, J Searl, J Stafford  
and J Wheelwright

**Councillors who voted against:-**                      Nil

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**ITEM 14.5**                      **DIRECTOR OF INFRASTRUCTURE - APPOINTMENT**  
**145/20**                      **RESOLVED** by Cr Searl and Cr Wheelwright

1. Council receive and note the report as information.

- CARRIED

**Councillors who voted for:-**                      Crs P Culhane, R Cummins, P  
Kensit, R Opie, D O'Brien, B  
McCormack, J Searl, J Stafford  
and J Wheelwright

**Councillors who voted against:-**                      Nil

**ITEM 14.6**                      **CROOKWELL POOL - UPDATE**  
**146/20**                      **RESOLVED** by Cr Searl and Cr McCormack

1. Council receives and notes this report as information

- CARRIED

**Councillors who voted for:-**                      Crs P Culhane, R Cummins, P  
Kensit, R Opie, D O'Brien, B  
McCormack, J Searl, J Stafford  
and J Wheelwright

**Councillors who voted against:-**                      Nil

**SECTION 15:                      LATE REPORTS**

Nil

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**SECTION 16:       REPORTS FROM OTHER COMMITTEES, SECTION 355**  
**COMMITTEES AND DELEGATES**

**ITEM 16.1           REPORTS FROM COMMITTEES FOR THE MONTH OF AUGUST**  
**147/20              RESOLVED by Cr Searl and Cr O'Brien**

That Item 16.1 - [Minutes of Committee/Information] listed below be received:

1. Gunning Arts Festival – Various lots of Minutes from December 2019 to May 2020.

**148/20              RESOLVED by Cr Searl and Cr McCormack That –**

1. The new members Greg Baines , Helen Vooren, Karina Smith, Margaret Jenkinson and Natalie Albury be appointed to the Gunning Arts Festival Section 355 committee

- CARRIED

**Councillors who voted for:-**           Crs P Culhane, R Cummins, P  
Kensit, R Opie, D O'Brien, B  
McCormack, J Searl, J Stafford  
and J Wheelwright

**Councillors who voted against:-**   Nil

2. Gunning Arts Festival – Report for ULSC on Festival 14 June 2020.
3. Audit, Risk and Improvement Committee – Minutes from Meeting held – 29 July 2020.

**149/20              RESOLVED by Cr Searl and Cr McCormack That –**

1. Items 4.1- 4.6 listed below be adopted.

**ITEM 4.1 INVESTMENTS FOR THE MONTH OF JUNE 2020**

1. The report on Council investment portfolio is received and noted as information.

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**ITEM 4.2 AUDIT OFFICE OF NSW - PRESENTATION OF ANNUAL ENGAGEMENT PLAN FOR UPPER LACHLAN SHIRE COUNCIL**

1. The Audit Office of NSW Annual Engagement Plan, including the Agreement of Terms and Audit Timetable, for the external audit of Upper Lachlan Shire Council for the year ending 30 June 2020 is endorsed.

**ITEM 4.3 NSW AUDIT OFFICE - 2019/2020 INTERIM AUDIT MANAGEMENT LETTER**

1. The NSW Audit Office Management Letter on the interim audit for 2019/2020 has been received and Council management responses are endorsed.

**ITEM 4.4 NSW AUDIT OFFICE - REPORT ON LOCAL GOVERNMENT FINANCIAL AUDIT 2019**

1. The NSW Audit Office Report on Local Government 2019 for Financial Audit is received and information noted.

**ITEM 4.5 GRANT THORNTON - INTERNAL AUDIT OF COUNCIL COMPLIANCE FRAMEWORK**

1. The Compliance Framework internal audit report from Grant Thornton is received as information and Council management responses endorsed by the Committee.

**ITEM 4.6 STATUS REPORT - INTERNAL AUDIT RECOMMENDATIONS TRACKING**

1. The report on Internal Audit Recommendations Tracking is received and noted as information.

- CARRIED

**Councillors who voted for:-**

Crs P Culhane, R Cummins, P Kensit, R Opie, D O'Brien, B McCormack, J Searl, J Stafford and J Wheelwright

**Councillors who voted against:-** Nil

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**ITEM 4.7 CHAIRMANS REPORT**

A motion was moved by Cr Opie and Cr Cummins That –

1. The Chairman of Audit, Risk and Improvement Committee put to Council in writing their chairman's report from July 29 2020 meeting.

On being put to the meeting the motion was carried

**150/20**

**RESOLVED** by Cr Opie and Cr Cummins That –

1. The Chairman of Audit, Risk and Improvement Committee put to Council in writing their chairman's report from July 29 2020 meeting.

- CARRIED

**Councillors who voted for:-**

Crs P Culhane, R Cummins, P Kensit, R Opie, D O'Brien, B McCormack, J Searl, J Stafford and J Wheelwright

**Councillors who voted against:-** Nil

4. Crookwell Potato Festival – Minutes from meeting held 19 March 2020.
5. Upper Lachlan Tourist Association – Minutes from meeting held 4 August 2020.

- CARRIED

**Councillors who voted for:-**

Crs P Culhane, R Cummins, P Kensit, R Opie, D O'Brien, B McCormack, J Searl, J Stafford and J Wheelwright

**Councillors who voted against:-** Nil

- CARRIED



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**SECTION 17:     NOTICES OF MOTION**

Nil

**SECTION 18:   QUESTIONS WITH NOTICE**

A motion was moved by Cr Cummins and Cr Opie That –

The five (5) questions with notice (18.3, 18. 4, 18.5, 18.6 and 18.7) and the decision by the General manager not to respond to each of these questions be included in the minutes of this meeting. Additionally, Cr Opie name be recorded as also submitting all seven (7) of the questions with notice.

Cr Opie tendered his resignation to Council effective immediately at 11:33am, left the meeting and did not return.

On being put to the meeting the motion was lost.

- LOST

**Councillors who voted for:-**           Cr R Cummins

**Councillors who voted against:-**   Crs   P   Culhane,   P   Kensit,  
D   O'Brien,   B   McCormack,  
J   Searl,   J   Stafford   and  
J Wheelwright

**ITEM 18.1           CROOKWELL SWIMMING POOL**

Refer to the business paper for 20 August 2020 Council Meeting for the General Manager's comments.

**ITEM 18.2           GUNNING SWIMMING POOL**

Refer to the business paper for 20 August 2020 Council Meeting for the General Manager's comments.

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**CLOSED COUNCIL ITEMS**

In accordance with the Local Government Act 1993 and the Local Government (General) Regulation 2005, in the opinion of the General Manager, the following business is of a kind as referred to in 10A (2) of the Act and should be dealt with in a part of the meeting closed to the public and the media.

**Note:** Pursuant to Clause 25(1) of the Local Government (Meetings) Regulation, Council invites verbal representation by members of the public about whether the items listed below should not be considered by Council in a Closed Meeting. The items are:

**151/20**

**RESOLVED** by Cr McCormack and Cr Searl

1. That Council move into closed Council to consider business identified, together with any late reports tabled at the meeting.
2. That pursuant to Section 10A (2c, 2d(i)) of the Local Government Act 1993: the press and public be excluded from the meeting on the basis that the business to be considered is classified confidential under the provisions of section 10A (2) as outlined above.
3. That the report relevant to the subject business be withheld from access to the media and public as required by section 11(2) of the Local Government Act, 1993.

- CARRIED

**Councillors who voted for:-**

Crs P Culhane, P Kensit,  
D O'Brien, B McCormack,  
J Searl, J Stafford and  
J Wheelwright

**Councillors who voted against:-** Nil

*Council closed its meeting at 11:44am. Live streaming to the public, staff and press ceased.*

*Cr Cummins left the meeting at 11:44am in accordance with his resignation and did not return.*

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**152/20**                    **RESOLVED** by Cr Searl and Cr McCormack

That Council move out of closed Council and into open Council.

- CARRIED

**Councillors who voted for:-**                    Crs P Culhane, P Kensit,  
D O'Brien, B McCormack,  
J Searl, J Stafford and  
J Wheelwright

**Councillors who voted against:-**        Nil

Open Council resumed at 11:58am.

**Resolutions from the Closed Council Meeting**

The following resolutions of Council, while the meeting was closed to the public, were read to the meeting by the Mayor.

**SECTION 19: CONFIDENTIAL SESSION**

**ITEM 19.1**                    **TENDER FOR HIRE OF EQUIPMENT (PLANT AND TRUCKS) UP  
UNTIL 30 JUNE 2023**

**153/20**                    **RESOLVED** by Cr Searl and Cr Wheelwright

1. That Council approves the recommendation of the suppliers for Plant at Attachment 1;
2. That Council approves the recommendation of the suppliers for Trucks at Attachment 2;
3. That delegation be provided to the Director of Infrastructure and the Manager of Infrastructure Delivery to accept future submissions for additional newly available truck and plant and assess and appoint the new companies to the Truck and Plant Hire Register during the 2 + 1 year contract term.

- CARRIED

**Councillors who voted for:-**                    Crs P Culhane, P Kensit, D  
O'Brien, B McCormack, J Searl,  
J Stafford and J Wheelwright

**Councillors who voted against:-**        Nil

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**ITEM 19.2                      PROCUREMENT OF TWO TRUCKS**

**154/20                      RESOLVED by Cr Searl and Cr Wheelwright**

1. Council purchase two dual cab tipping trucks for the sum of \$312,090.90 ex GST from Southern Truck Centre.
2. Trade in existing trucks (Plant 572 & 573) at Southern Truck Centre providing best value for money.

- CARRIED

**Councillors who voted for:-**                      Crs P Culhane, P Kensit, D O'Brien, B McCormack, J Searl, J Stafford and J Wheelwright

**Councillors who voted against:-**                      Nil

**ITEM 19.3                      CROOKWELL BARBELL CLUB**

**155/20                      RESOLVED by Cr Wheelwright and Cr Searl**

1. Council receive and note the report as information.
2. Expression of interest are sought for occupying the lease for Crookwell Memorial Oval Community Sports Centre gym/active space.

- CARRIED

**Councillors who voted for:-**                      Crs P Culhane, P Kensit, D O'Brien, B McCormack, J Searl, J Stafford and J Wheelwright

**Councillors who voted against:-**                      Nil

**THE MEETING CLOSED AT 11:58am**

Minutes confirmed 17 SEPTEMBER 2020

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Mayor