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**Minutes of an ordinary meeting of the Development Support Special Committee held in the Council Chamber at the Administration Centre, 19 King Edward Street, Ulverstone on Monday, 21 August 2006 commencing at 4.00pm**

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**Members attendance**

Cr Mike Downie (Mayor)  
Cr Warren Barker  
Cr Tony van Rooyen

Cr Brian Robertson (Deputy Mayor)  
Cr Ken Haines  
Mrs Kathy Schaefer

**Employees attendance**

Director Planning & Environment (Mr Jeff McNamarra)  
Acting Planning Services Manager (Mr Shane Warren)  
Town Planner (Mr Mark McIver)

**Media attendance**

There was no media attendance.

**Public attendance**

No members of the public attended during the course of the meeting.

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## CONFIRMATION OF MINUTES OF THE COMMITTEE

### 36/2006 Confirmation of minutes

The Acting Planning Services Manager reported as follows:

“The minutes of the previous meeting of the Development Support Special Committee held on 7 August 2006 have already been circulated. The minutes are required to be confirmed for their accuracy.

The *Local Government (Meeting Procedures) Regulations 2005* provide that in confirming the minutes of a meeting, debate is allowed only in respect of the accuracy of the minutes.”

■ Cr van Rooyen moved and Mrs Schaefer seconded, “That the minutes of the previous meeting of the Development Support Special Committee held on 7 August 2006 be confirmed.”

Carried unanimously

## MAYOR’S COMMUNICATIONS

### 37/2006 Mayor’s communications

The Mayor reported as follows:

“Under the terms of appointment of the Development Support Special Committee, it acts in agreed circumstances as if it were the Council and, accordingly, as a planning authority under the *Land Use Planning and Approvals Act 1993*.

Members are reminded that the *Local Government (Meeting Procedures) Regulations 2005* provide that the general manager is to ensure that the reasons for a decision by a council acting as a planning authority are recorded in the minutes.

In the event that items listed for consideration are referred, under the terms of the Committee’s appointment, to the Council (e.g. any matter the Committee cannot determine unanimously), or if the Committee is unable to make a determination within the relevant statutory time limit, such items will be referred to a meeting of the Council for a decision.”

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- Cr Haines moved and Cr van Rooyen seconded, “That the Mayor’s report be received.”

Carried unanimously

## **PECUNIARY INTEREST DECLARATIONS**

### **38/2006 Pecuniary interest declarations**

The Mayor reported as follows:

“Members are requested to indicate whether they have, or are likely to have, a pecuniary interest in any item on the agenda.”

The Acting Planning Services Manager reported as follows:

“The *Local Government Act 1993* provides that a member must not participate at any meeting of a special committee in any discussion, nor vote on any matter, in respect of which the member has an interest or is aware or ought to be aware that a close associate has an interest.

Members are invited at this time to declare any interest they have on matters to be discussed at this meeting. If a declaration is impractical at this time, it is to be noted that a member must declare any interest in a matter before any discussion on that matter commences.

All interests declared will be recorded in the minutes at the commencement of the matter to which they relate.”

## **ADJOURNMENT OF MEETING**

### **39/2006 Adjournment of meeting**

The Mayor reported as follows:

“In order to effectively consider the report before this meeting of the Committee it is appropriate that I adjourn the meeting to enable the related documents to be workshopped prior to resumption of the meeting and formal resolution of the agenda item.”

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The workshop having been concluded, the Mayor resumed the meeting.

## **DEPUTATIONS**

### **40/2006 Deputations**

The Acting Planning Services Manager reported as follows:

“No requests for deputations to address the meeting or to make statements or deliver reports have been made.”

## **OPEN REPORTS**

### **41/2006 Service Station redevelopment, Access rearrangement and Signage at 4 Eastland Drive, Ulverstone Application No. DEV2006.1**

The Director Planning & Environment reported as follows:

“The Acting Planning Services Manager has prepared the following report:

<i>DEVELOPMENT APPLICATION NO.:</i>	DEV2006.1
<i>APPLICANT:</i>	Claremont Project Management on behalf of Woolworths Ltd
<i>LOCATION:</i>	4 Eastland Drive, Ulverstone
<i>ZONING:</i>	Business (BB) - Satellite
<i>PLANNING INSTRUMENT:</i>	Central Coast S.46 Planning Scheme No.1 of 1993 (the Scheme)
<i>ADVERTISED:</i>	7 July 2006
<i>REPRESENTATIONS EXPIRY DATE:</i>	21 July 2006
<i>REPRESENTATIONS RECEIVED:</i>	Three
<i>42-DAY EXPIRY DATE:</i>	22 August 2006
<i>DECISION DUE:</i>	21 August 2006

#### *PURPOSE*

The purpose of this report is firstly to discuss compliance of the application with the relevant development standards of the Scheme and secondly to consider the merits of the issues raised in the representations.

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*BACKGROUND*

The site contains a building that was developed, according to Land Valuation Data, as a service station in 1940. In 1996 the Scheme was amended to include a specified departure for this site only to allow a “showroom” and “saleyard” to be developed as one-off uses. This conditionally allowed for motor vehicles to be displayed and sold from the site. There is no file history on the duration of this development since the specified departure was approved.

It appears though that in more recent times the service station closed and was re-opened by another operator as a petrol filling facility and convenience store before ultimately closing again several months ago. Although the fuel bowsers have been removed the underground tanks remain. It has been verbally communicated that these tanks will be removed, the site subjected to remediation and new tanks installed within the site to service the refurbishment.

A Location Plan is appended as Annexure 1/5.

*DISCUSSION*

From the Council’s perspective the first matter to consider when the initial enquiry was made was whether to treat the redevelopment as a continuing use and condition the required Building/Planning Permit accordingly. This had been the case for minor refurbishments and alterations over time and due to the service station being in existence for many years the impacts associated with the use would be well known to residents in the local and general community.

However due to the various components of this proposal, including the relocation of the kiosk, changes to the access, setback waivers and hours of operation, the application proposed to change the dynamics of the site and accordingly it was determined that the application should be subject to formal public scrutiny.

As a result the applicants have provided a comprehensive submission that includes comments on the following matters:

- 1 The features of the site and its surrounding context;
- 2 Details of the proposed buildings and works and the nature of the proposed use;

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- 3 How the proposal conforms with current planning controls for the site;
  - 4 How the siting, design and layout of the proposal respects the amenity of surrounding residential properties; and
  - 5 A traffic report and analysis, including comment on existing traffic volumes, intersection performance and access/egress configuration.

The Applicant's Planning Report is appended as Annexure 2/5.

The Applicant's Traffic Engineering Assessment is appended as Annexure 3/5.

Part 4 of the Applicant's Planning Report (APR) outlines the fundamental Planning Scheme provisions pertaining to this site. These details have been examined especially in regard to the required exemptions to the development standards that are needed to develop the site to their satisfaction.

The intent of the Business (BB) - Satellite zone has been reproduced in the APR and it is contended by the applicant that the proposed use is wholly consistent with the zone.

In regard to any exemptions to the development standards, Part 7 of the Scheme allows the Council to consider, at its discretion, whether an exemption to one or more of the relevant requirements should be granted.

The Council must, as well as considering the tenor of the Scheme, be of the opinion that enforcement of the requirements would be:

- 1 impracticable;
- 2 unreasonable; or
- 3 inequitable; and
- 4 not of sufficient importance in respect to the objectives of the Scheme to warrant enforcement.

The elements of discretion and details of the various exemptions from the relevant development standards of the Scheme are also contained in the report and grounds such as impracticality and unreasonableness have been submitted by the applicant for the consent of the Council.

The first element of discretion applies to signage. Part 7.2 of the Scheme requires consent for all signage, with some exceptions, to be exercised with discretion. Part 4.3 of the APR submits reasons for the Council to consider. It is submitted that the location of the proposed one-price sign near the corner

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of Eastland Drive and Main Street is comparable to the existing freestanding pole sign. In either circumstance the signs compete vertically with the existing power and street light pole on the corner.

Secondly, discretion is required to waive the required number of car parking spaces. Clause 7.5.5 (a) of the Scheme allows the Council to consider alternative car parking spaces on nearby land, the payment in lieu or a combination of both. Clause 7.5.5 (c) indicates that any determination to require cash in lieu should only be applied to developments in the Business (BA) - Central zone.

Therefore, the Council must consider the need to waive any car parking requirements for this proposal on its merits if no alternative locations are nearby.

Part 4.4 of the APR submits three reasons for the Council to take into consideration.

The third area of discretion applies to vehicular access to roads but more particularly the development standards for Service Stations covered specifically in Schedule 10 of the Scheme. Clause 10.1.2 of this Schedule requires the width of each access to be between 8 and 10 metres. Part 4.7 of the APR provides reasons for a minor variation to increase this width to 11 metres.

Notwithstanding the above variation the access and egress aspects of this development were first discussed between Council Officers and a representative from the Grogan Richards, Consulting Traffic Engineers before the planning application was made. This was considered worthwhile and appropriate due to the peculiarities of the intersection and the associated site constraints.

Subsequently, the fourth aspect submitted for consideration is the traffic engineering issues. The submitted Traffic Engineering Assessment (TEA) has been assessed by the Council's Assets & Engineering Department and their comments include the need for the developer to modify some existing kerb and channel and footpath infrastructure on the opposite side of the intersection to supplement the TEA.

The exercising of some discretion in regard to setback waivers is a facet of many planning applications the Council receives. This application is no

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exception and the details of the three variations and reasons offered in support are contained under Part 4.6 of the APR.

It is submitted that the canopy, although larger in area than the existing structure, offers a significant improvement over the existing arrangement. The setback variation that has the most potential for impact is the reduction of the rear setback requirement from 4.5 metres to .265 metres. An examination of the plans better illustrates the site location and proximity of the kiosk to the site's eastern boundary. This adjoining boundary has been confirmed as the defined "rear boundary". Amongst other reasons the APR indicates that this location is required in order to maximise the distance of the canopy from Eastland Drive.

Other reasons in support of this location are elaborated on in Part 4.6 of the APR.

Plans of the proposal are appended as Annexure 4/5.

The presented APR has ideally separated the consideration of the specific Planning Scheme development standards from the broader issues associated with the Scheme objectives and subjectivity of matters such as the effects of safety, amenity, acoustic impact, illumination and visual impact on the locality but more specifically the adjoining properties.

These matters are explained in further detail in Part 5 of the APR and are also subject to further discussion in response to the points raised in the received representations.

#### *CONSULTATION*

The application was subjected to the required 14-day public scrutiny process required by s.57 of the *Land Use Planning Approvals Act 1993*. This requires advertising of the development by a notice on site (in this case two notices due to there being two road frontages) and also by a notice placed once in daily local newspaper. Correspondence to the adjoining owners inviting them to view the application was also undertaken.

The application as a matter of procedure was referred to the Council's Planning and Assessment Team. A potential environmental issue with under-canopy containment of spills and associated drainage was referred to the applicant for comment. In response it has been demonstrated that any spills are collected and connected to a device called a Vertical Gravity Separator

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that separates the contaminant from stormwater and stores the petroleum products for later disposal.

No other comments were received from the Planning and Assessment Team that couldn't be included in the final determination of the application.

### *Representations*

Three representations were received within the prescribed time. All of these are from people with a property interest in close proximity to the proposal and all share similar concerns with the proposal.

The representations are appended as Annexure 5/5.

These concerns are summarised below and commented on in regard to any Planning Scheme relevance. Any appropriate details submitted in the APR will also be referenced. Comments from a Council perspective will conclude the particular concern.

- 1 Traffic generation - It is contended that an increase in traffic flow will occur with resultant increase in traffic noise.

APR comments - Part 5.2.1 indicates that the proposal will not greatly affect the existing acoustic environment of the site and it is submitted that the movement of vehicles on and off the site would not cause any material change. Part 5 of the (TEA) specifically discusses traffic generation. It is contended that the operation of the petrol outlet will more closely replicate traditional petrol stations rather than those of Woolworths petrol outlets adjacent to a supermarket. It is also indicated that the anticipated vehicle movements along Main Street and Eastland Drive will be made by motorists for unrelated purposes who divert into the site for fuel.

Council comments - One of the primary intentions of the zone is to serve the needs of the motoring public. The Scheme is silent on specific traffic generation issues from a business zoned site.

- 2 Expected patronage - It is contended that patronage will exceed expectations due to the discount vouchers available.

APR comments - Part 5.1 of the TEA indicates that expectations are between 45-60 vehicles per hour during periods of peak patronage.

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Council comments - Details on anticipated vehicle movements have been previously commented on. It is somewhat speculative that motorists will be on Main Street and Eastland Drive for unrelated purposes as some percentage of shoppers will surely divert to the petrol filling station after shopping.

- 3 Acoustic impact - It is contended that the increased traffic volume between 6pm and midnight will impact on residential amenity.

APR comments - Part 5.2.1 characterises this concern by reiterating that the proposal will largely rely on passing trade and not significantly generate new traffic that would affect the acoustic environment.

Council comments - Both the representation and the APR are speculative in nature. For example, patrons may change their supermarket shopping times to ensure that they can obtain petrol after shopping without unnecessary waiting. This is assumed of course that it may be quieter after 6pm.

- 4 Illumination - It is contended that the late opening hours would increase the likelihood of headlights shining into properties.

APR comments - Part 5.2.2 specifies the proposed illumination for the site. The applicant indicates that there is a reasonable degree of existing illumination on the site and surrounding the site due to street lighting and on-site flood lighting. The applicant indicates that proposed lighting, removal of some existing floodlighting and landscaped buffers and fencing will shield adjacent buildings from new lights. Further communication from the applicant indicates that due to the subject site being within a “built up” area headlights should be set to low beam and as a consequence be lower than the heights of the windows opposite. It is conceded however that some headlight glare may occur but it shouldn’t be any more detrimental than the existing situation when vehicles turn left into Main Street from Eastland Drive. The applicant indicates that Woolworths would be prepared to respond positively by installing appropriate landscaping of fencing within the front yard of affected properties.

Council comments - Appropriate mitigation measures by the proponent appear to have some merit. This situation would need to be agreed to between the stakeholders. The properties which may be subject to the most headlight glare are 92 and 94 Main Street. No. 92 doesn’t have

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any front fence and would most likely greet the proposal by Woolworths favourably.

- 5 Safety - It is contended that the right-hand turn from Eastland Drive onto the site would create a very dangerous situation. This is exacerbated by a lack of vision from eastward travelling vehicles. There is a history of accidents and near misses.

APR comments - Part 3.2 of the TEA summarises the access proposal and includes an auxiliary lane for right-hand turning to the site from Eastland Drive.

Council comments - The right-hand turning lane into the site has provided the most angst also from an assessment perspective. The Department of Infrastructure Energy and Resources (DIER) have advised the applicant that the Council should first assess the TEA. The submitted assessment included a turning movement survey for the intersection of Main Street/Eastland Drive/Finch Street between the hours of 3.00pm and 6.00pm on Thursday 22 June 2006. From this data the PM peak hour was determined to be between 4.15pm and 5.15pm. Analysis of the data indicated that using a SIDRA (Signalised and unsignalised Intersection Design and Research Aid) program to determine the Degree of Saturation (or capacity) of the intersection it was shown that the intersection operates under “excellent” conditions during peak hour.

Further technical data to support the “excellent” claim is contained in the TEA.

- 6 Development standards - It is contended that the petrol outlet does not comply, is unsuitable due to its size and should be relocated to a more appropriate site.

APR and Council comments - Reasons to support the exemption components of the application and corresponding Council comments have been previously detailed.

- 7 Zone provisions - It is submitted that a petrol outlet is located within 300 metres of this site and that two other petrol outlets have closed down in the past two years. Further it is submitted that the reports supporting the application have grossly underestimated the impact on

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traffic generation and subsequent noise and that any approval should limit the hours of operation.

APR comments - In their conclusion the applicants state that the proposal will greatly enhance the current site. It is also stated that few if any amenity implications are anticipated and that locationally the site is well suited to a service station.

Council comments - The Council is bound by its Planning Scheme, in particular the intent of the zone, the use classification and any relevant development standards. While many of the parameters are prescriptive and numerical the question of amenity will always attract subjective opinion. In this situation the balance hangs between the options of re-development of the site, renovation of the existing site or an application for any other use that is permitted or discretionary under the Scheme.

#### *IMPACT ON RESOURCES*

This report has no impact on resources.

#### *CORPORATE COMPLIANCE*

The Central Coast Strategic Plan 2004-2009 includes the following objectives:

- Meet our statutory and regulatory obligations
- Plan for and develop a sustainable community
- Create a municipal area that is productive and socially and aesthetically attractive.

#### *CONCLUSION*

The application has received a comprehensive assessment against the relevant provisions of the Planning Scheme. There are elements of discretion to consider and the impacts of these on neighbourhood amenity have been carefully considered after analysing the reasons demonstrated by the applicant.

The intent of the zone provides a degree of surety to the applicant as the zone is:

*“primarily intended to accommodate existing (in the main) businesses which serve local needs within a neighbourhood or identifiable locality within a*

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*town, or serve the needs of the motoring or travelling public. The allocation of land to and in this zone and its location is intended to ensure that:*

- (i) the scattered sites throughout the urban area for local commerces are recognised;*
- (ii) the appropriate sites on arterial routes or in close proximity to recreational or tourist facilities for the accommodation or motoring needs of the public are recognised.”*

Notwithstanding the intent of the zone the issue of primary concern is safety and the redesign of the intersection. The Traffic Engineering Assessment has been examined by the Council's Assets & Engineering Department and their recommendation has been made.

The headlight glare from vehicles departing the site is acknowledged and the applicant's intention to resolve the matter is positive.

The exemptions from the development standards have been addressed by the applicant and reasons why the variations are reasonable, practical and not of sufficient importance to warrant enforcement have been demonstrated.

The aspects of the proposal reported on have been in response to the Scheme issues and the matters contained in the representations. Other development details are contained in the supporting Planning and Traffic Engineering Assessment reports.

#### *Recommendation*

It is recommended that the representations be deemed not to have sufficient merit on planning grounds to justify refusal of the application and, on the basis that the scale and form of the proposal satisfies the development standards of the Scheme and the intent of the zone, the application be approved subject to the following conditions:

#### General

- 1 The development being in accord with the submitted plans, reference Drawings T186 dated 11/11/05, the Coomes Consulting Group Pty Ltd report dated July 2006 for Claremont Project Management and Woolworths Limited, and the Traffic Engineering Assessment by Grogan Richards Pty Ltd dated 29 June 2006 reference 106345REP001, unless otherwise altered or modified by conditions of this Permit;

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- 2 Any other activity to be conducted on the land will require the separate approval of the Council;
  - 3 Final plans of landscaping works proposed must be submitted for consideration and, subject to approval, completed prior to the petrol station commencing operation;

#### Engineering

- 4 The developer providing kerb and channel to both road frontages (Eastland Drive and Main Street) including road profile alterations to suit;
- 5 The developer modifying the kerb and channel on the northern side of the intersection (in front of 91 Main Street and 1 Eastland Drive). This is to include design to maximise pedestrian safety;
- 6 The proposed painted island to be a solid island with appropriate signage;
- 7 No delivery of petrol supplies is to occur via the right-hand turn from Eastland Drive;
- 8 Existing services disturbed during the subdivision, including any damage to road, kerb and channel, nature strip and footpath, being reinstated to the satisfaction of the Council's Director Assets & Engineering;

#### Environmental

- 9 The decommissioning and removal of the existing underground storage tanks must be carried out in accordance with the Department of Tourism, Arts and Environment's *Underground Storage Tank Decommissioning Guidelines (September 2002)*;
- 10 The activity endorsed by this Permit must be carried out in accordance with the requirements of the *Environmental Management and Pollution Control Act 1994* and associated regulations;
- 11 The applicant must not in the course of carrying out the activity, without the prior written approval of the Council, change any process, construct, install, alter or remove any structure or equipment or change the nature

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or quantity of materials used or produced which might cause or increase the issue of a pollutant, or otherwise result in environmental harm;

- 12 No sound is to be emitted from any device or from any source or activity on the land so as to become a proven environmental nuisance to the occupiers of properties nearby;
- 13 All uncontaminated stormwater from the canopy and other roofed areas including uncovered forecourt areas must be directed away from the covered forecourt;
- 14 The covered forecourt area must be protected from the entry of external surface waters at the canopy line by a change in grade to direct surface water to the Council's stormwater drainage system;
- 15 The covered forecourts must be graded from the canopy line into appropriate sumps within the forecourt area such that surface effluent generated within the covered forecourt area is directed into a drainage system for subsequent treatment, storage and disposal;
- 16 Any potentially contaminating liquids (e.g. engine oil) which are held on site are to be stored within fully sealed and bunded areas;
- 17 All solid/inert waste material generated by the activity is to be either appropriately disposed of to a Council waste disposal facility or reclaimed/recycled if possible;
- 18 No washing of vehicles or machinery is to occur on the site;
- 19 Full plans and specifications of the convenience store facility must be submitted as part of a Building Application detailing compliance with the *Australia New Zealand Food Standards Code* and the *Building Code of Australia*;

and further that the applicant be requested to note that:

- A a Building Application and subsequent Permit is required for the proposed development;
- B this Permit expires two years from the date advice of this decision is received unless the development has been substantially commenced;

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- C an extension of time to this period may only be granted once but only if the request is received prior to the expiry of the specified time;
  - D this permit is for the development and use of the land for a “Service Station”. A change of use may require separate approval by the Council;
  - E in regard to conditions 4 and 5 these should be carried out in liaison with the Council and any requirements of the Department of Infrastructure, Energy and Resources; and
  - F any works undertaken within the road reservation requires a Road Reservation Permit to be submitted and approved prior to construction. A fee is required for this Permit.’

The report is supported.”

The Acting Planning Services Manager reported as follows:

“Copies of the annexures referred to in the Acting Planning Services Manager’s report have been circulated to all members.”

■ Cr van Rooyen moved and Cr Haines seconded, “That the representations be deemed to have sufficient merit on planning grounds to justify refusal of the application and, on the basis that the scale and form of the proposal does not satisfy the development standards of the Central Coast S.46 Planning Scheme No. 1 of 1993, and the intent of the Business (BB) - Satellite zone, Development Application DEV2006.1 be refused on the following grounds:

- 1 It does not satisfactorily address traffic management issues; and
- 2 It is not considered reasonable to approve the requested exemption from the Development Standards in respect of on-site car parking and rear boundary setback.”

Voting for the motion

(4)

Cr Downie

Cr Barker

Cr Haines

Cr van Rooyen

Voting against the motion

(2)

Cr Robertson

Mrs Schaefer

Motion

Carried

The meeting noted at this time that, as the matter could not be determined unanimously, it must accordingly be referred to a meeting of the Council for a decision.

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**Closure**

There being no further business, the Mayor declared the meeting closed at 4.44pm.

CONFIRMED THIS            DAY OF            , 2006.

**Chairperson**

(jm:mk)

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## QUALIFIED PERSON'S ADVICE

The *Local Government Act 1993* provides (in part) as follows:

- . A general manager must ensure that any advice, information or recommendation given to the council is given by a person who has the qualifications or experience necessary to give such advice, information or recommendation.
- . A council is not to decide on any matter which requires the advice of a qualified person without considering such advice unless the general manager certifies in writing that such advice was obtained and taken into account in providing general advice to the council.

I therefore certify that with respect to all advice, information or recommendation provided to the Development Support Special Committee within these minutes:

- (i) the advice, information or recommendation was given by a person who has the qualifications or experience necessary to give such advice, information or recommendation; and
- (ii) where any advice was directly given by a person who did not have the required qualifications or experience that person has obtained and taken into account in that person's general advice the advice from an appropriately qualified or experienced person.

Katherine Schaefer  
GENERAL MANAGER