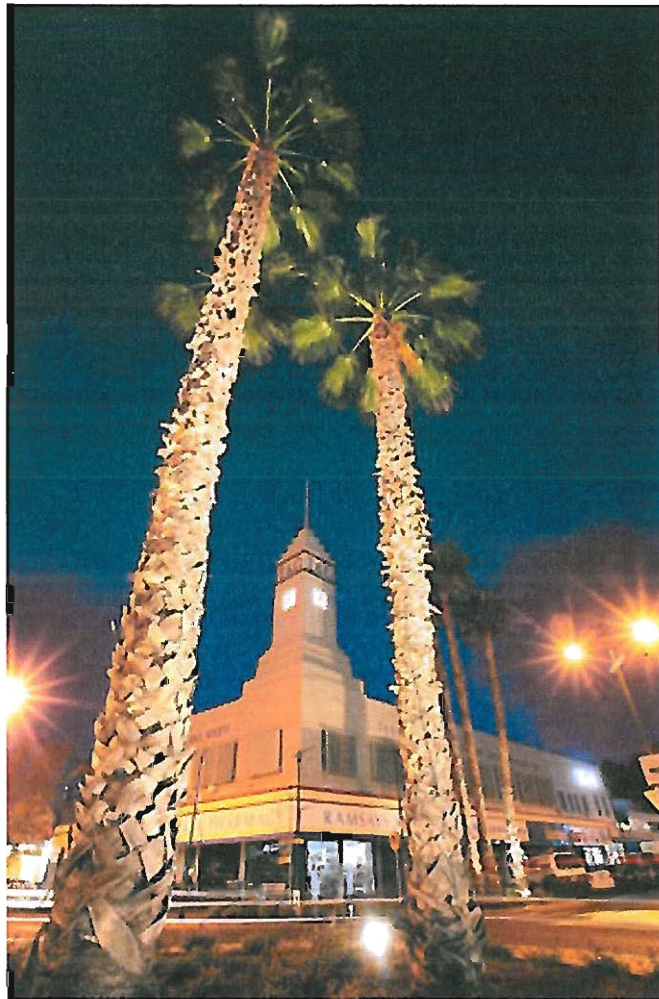


# MILDURA



*Too good to spoil!*

# **MILDURA COUNCIL CONCERNS**

**A Report to the Victorian Premier**

**By former Councillor,**

**Vernon Knight AM JP**

15 April 2011

Hon Ted Baillieu MP  
Premier  
Level 1, 1 Treasury Place  
MELBOURNE VIC 3000

Dear Premier

On Friday 25<sup>th</sup> March, 2011, I formally tendered my resignation from the Mildura Rural City Council.

It was a decision which obviously means that I can no longer represent Council on a range of local interests (all very dear to my heart) and a number of state-wide interests including the Alliance of Councils for Rail Freight Development, the VLGA Taskforce on Problem Gambling and the Victorian Multicultural Commission.

I genuinely regret those losses and my inability to assist my community through those involvements.

**But sadly, I found that I had no alternative but to quit the Council.**

Over the past two years I have been alerted to numerous possible breaches of the Local Government Act, the Councillor Code of Conduct and perceived failures in relation to Council governance.

Not long after the swearing in of the current Council, I saw signs that some of my colleagues may have little regard for their statutory obligations and I confess to fearing what might lie ahead.

**My fears were well placed.**

The first ordinary meeting of the new Council saw one Councillor ejected from the chamber for his refusal to withdraw an insulting remark and I had no hesitation in stating publicly that I would not sit idly by if there was an ongoing risk to the standards and the standing of the Council.

The very next meeting saw a notice of motion which involved an obvious conflict of interest with no attempt on the part of the mover to declare her position on another Council which would obviously benefit from her proposal.

As a result of my report to Council's Audit Committee and the Office of Local Government, Councillor Nichols was found guilty of a crime under the Local Government Act.

**She was placed on a six months good behaviour bond.**

Not long after that meeting, Councillors were summoned to an in-camera meeting to consider a complaint against Cr. Max Thorburn, the Councillor who had been ejected from the first ordinary meeting of the Council.

We were presented with an officer's report which claimed that legal advice obtained by Council had recommended that no action be taken. (I can only assume that other Councillors were equally in the dark as to the substance of the complaint and the basis for the legal advice.)

My request at the meeting to see the offending article – apparently a report or editorial in Cr Thorburn's on-line newspaper – and a copy of the legal advice obtained by Council, were both denied.

I was then witness to a decision to "take no action" supported by Cr Mark Eckel who is employed by a radio station managed by Cr Thorburn.

**At no stage did Cr Eckel reveal that he was in the employment of Cr Thorburn and my subsequent complaint to the Office of Local Government saw Cr Eckel found guilty, fined and also placed on a good behaviour bond.**

The local newspaper, the Sunraysia Daily, appeared sympathetic to the Councillors concerned and published articles which sought to minimise the offences and speculate on how the matters had come to attention.

(Given that my complaints went to Council's Audit Committee whose members include Cr Nichols, there could have been little doubt.)

At the hearing involving Cr Eckel I was officially named in court as the informant and thereafter dubbed the "mole" in Council. It seems that courts are not bound by the Whistle-blowers Act.

The months that followed gave rise to many other matters which I believe could be considered offences on the part of other Councillors and I reported these to the Local Government Inspectorate.

I subsequently received correspondence from the Inspectorate requesting me to provide comprehensive details in relation to these matters.

I declined the request on the basis that it was my view that the Inspectorate should do this work and that I had already paid a significant price in drawing matters to their attention.

I did however indicate that I would assist them as appropriate.

In July 2010, I repeated my call to have the matters pursued given their significance to the credibility of Council.

**I have never had any response to that letter.**

In January 2011, I wrote again seeking advice as to what actions would be taken suggesting that I would have to take the issue elsewhere if necessary.

**The January letter has never been acknowledged.**

In February, I discussed my concerns with the Office of the Victorian Ombudsman only to learn that the Ombudsman does not have powers in relation to the Local Government Inspectorate

In March 2011, I sought to present the matters to the Local Government Minister who was initially happy to speak with me but then had to recant on advice from her Department that she too had no authority in relation to the Inspectorate.

**It is for these reasons that I have opted to resign and bring the matters to your attention.**

As indicated at the time of my resignation, I have used the past few days documenting the matters which deserve to be examined.

Some of these matters are serious in my assessment while some may be less serious. But collectively, they depict a culture in Council which should not prevail.

Given that the Council's Annual Reports have totally failed to disclose that there are matters under investigation, despite reports to the Audit Committee and two court cases, it might reasonably be assumed that internally there are no significant concerns held in relation to Council's performance.

If that is the case and I was to remain on Council, I believe I would become complicit in condoning numerous breaches and possible crimes.

Following is my documentation in relation to a range of matters which I believe serve to question the competence, the creditability and the integrity of the Mildura Council.

I have grouped my concerns under the following headings . . . . .

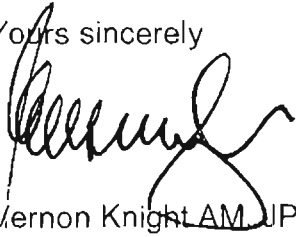
1. Failure to impose a Prescribed Penalty
2. Bringing the Council into Disrepute
3. Failure to Declare a Conflict of Interest
4. Failure to inform Council of a Significant Complaint
5. Illegal Planning Decisions
6. Possible Misuse of Council Resources
7. Highly Sensitive Matters

Attached are copies of all relevant correspondence which attach to these matters.

**(Appendix V)**

I look forward to your active interest in my concerns and the measures needed to remedy this sad situation.

Yours sincerely



Vernon Knight AM JP.  
Former Councillor  
Mildura Rural City Council  
PO Box 487  
MERBEIN VIC 3505

Copies to – Alison McTaggart, Chair, Audit Committee  
Peter Crisp MLA, Member for Mildura  
Damian Drum MLC, Member for Northern Victoria Region  
Hon Jeanette Powell MLA, Minister for Local Government

Updated on April 29, 2011.

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## No 1. FAILURE TO IMPOSE A PRESCRIBED PENALTY

At the first Ordinary Meeting of the current Council, the Mayor Glen Milne required Cr Thorburn to withdraw a remark which he deemed improper.

Cr Thorburn declined that request.

The Mayor then demanded that the comment be withdrawn, warning Cr Thorburn that he risked ejection from the chamber if he failed to do so.

Cr Thorburn again refused the Mayor's request.

The final request from the Mayor was also declined and Cr Thorburn was ordered to leave the chamber.

The actions of Cr Thorburn were prohibited under Mildura Rural City Council's Conduct of Meetings, Local Law No. 1.

In particular, the Local law prescribes that it is an offence for "A councillor to not withdraw an expression which is considered by the chairperson to be defamatory, indecent, abusive, offensive, disorderly or objectionable and to not satisfactorily apologise when called upon twice by the chairperson to do so. Clause 13

**(Appendix A).**

Schedule 3 of the Local law prescribes a penalty of 10 units.

The definitions under the Local Law indicate that a penalty unit "...has the meaning ascribed to it in Section 110 of the Sentencing Act 1991".

While Cr Thorburn obeyed the Mayor's direction to leave the chamber, there has been no attempt to impose the penalty prescribed.

The Mayor's failure to do so has effectively lowered the bar in relation to councillor conduct with the result that many other breaches have been ignored or tolerated.



• • • • • • • • APPENDIX A



Mildura Rural City Council

## **Conduct of Meetings Local Law No.1**

### **Division 1 – Preliminary Provisions**

#### **Title**

1. This Local Law will be known as the "Local Law No.1" (Conduct of Meetings).

#### **Purpose**

2. The purpose of this Local Law is to:
  - (a) Regulate proceedings for the election of the Mayor;
  - (b) Regulate proceedings at all Ordinary and Special Meetings of Council and meetings of Special Committees.
  - (c) Regulate the use of the common seal and prohibit its unauthorised use;
  - (d) Repeal Local Law No.1.1 (Procedures for Meetings) of 6 March 2003 (Local Law 1.1 2003);

#### **Authorising provision**

- 3 This Local Law is made under Section 91 and Part 5, in particular section 111, of the *Local Government Act 1989*.

#### **Commencement and application**

- 4 This Local Law commences at the beginning of the day on which it is made in accordance with Section 121(1) of the Act.

#### **Revocation date**

- 5 This Local Law ceases to operate on the 10th anniversary of its commencement.

#### **Definitions of words used in this Local Law**

- 6 Unless the contrary intention appears in this Local Law, the following words and phrases are defined for the purposes of this Local Law.

**'Act'** means the *Local Government Act 1989* (as amended from time to time);

<b>'Agenda'</b>	means the notice of a meeting setting out the business to be transacted at the meeting;
<b>'Chairperson'</b>	means the Chairperson of a meeting and includes acting, a temporary and a substitute Chairperson;
<b>'Chief Executive Officer'</b>	means the Chief Executive Officer of Council, and includes a person acting as Chief Executive Officer;
<b>'Clause'</b>	means a clause of this Local Law;
<b>'Common seal'</b>	means the common seal of Council;
<b>'Council'</b>	means Mildura Rural City Council;
<b>'Councillor'</b>	means a Councillor of Council;
<b>'Council Meeting'</b>	includes a meeting at which the Mayor is elected, an Ordinary Meeting and a Special Meeting of Council;
<b>'Deputation'</b>	means a group of three or more people that have formally requested an opportunity to address Council on a matter under consideration within an Agenda.
<b>'Leave of Absence'</b>	means any intended or planned absence from Council business as declared by the Councillor in an Ordinary Meeting prior to that absence.
<b>'Mayor'</b>	means the Mayor of Council and any person acting as Mayor;
<b>'Meeting'</b>	means an Ordinary or a Special Meeting of Council, and a Special Committee meeting;
<b>'Minute book'</b>	means the collective record of proceedings of Council;
<b>'Motion'</b>	means a proposed resolution before it has been adopted (passed or carried) by the meeting.
<b>'Municipal district'</b>	means the area from time to time comprising the municipal district of Council;
<b>'Notice of Motion'</b>	means the formal intention to move a motion at a future Ordinary Council Meeting. Such notice must be provided to the Chief Executive Officer in such time as to enable its inclusion within the Agenda for that Meeting.
<b>'Offence'</b>	means an act or default contrary to this Local Law; Guidance should be taken where appropriate from the Mildura Rural City Council adopted Councillor Code of Conduct policy.
<b>'Ordinary Meeting'</b>	means an Ordinary Meeting of Council;
<b>'Penalty units'</b>	has the meaning ascribed to it in section 110 of the <i>Sentencing Act 1991</i>

- 'Petition'** means a joint letter or document which is addressed to or is obviously intended for the Council and is signed by three or more people. Petitions with less than 20 signatories may be addressed by Officer delegation.
- 'Question with Notice'** means a question asked of an Officer by a Councillor within a Council Meeting that cannot be answered within that Meeting. A written response must be provided prior to the next Council Meeting,
- 'Question without Notice'** means a question asked of an Officer by a Councillor within a Council Meeting that is answered within that Meeting,
- 'Special Committee'** means a Special Committee established by Council under section 86 of the Act;
- 'Special Meeting'** means a Special Meeting of Council;
- 'Written'** includes duplicated, lithographed, photocopied, photographed, printed and typed.

## **Division 2 – Election of Mayor**

### **When required**

- 7 The meeting to fill the vacancy of Mayor will be held:
- (a) When the Council conducts a General Election, as soon as practical after the declaration of the result of the election; and annually as soon as practical after the anniversary date of the election or
  - (b) Where the position of Mayor becomes vacant as soon as practicable after the vacancy has occurred.

### **Election of Mayor and Chairs**

- 8 (a) The Chief Executive Officer will determine the most appropriate time and date for the election of Mayor.
- (b) At any meeting to elect the Mayor, the Chief Executive Officer will act as a temporary chair to deal with;
- (i) the receipt of nominations for the election of Mayor; and
  - (ii) the fixing of allowances payable to the Mayor and Councillors;
  - (iii) the election of Mayor;
- In the absence of the Chief Executive Officer another senior officer appointed by the Chief Executive Officer may be temporary chair.
- (c) The election of the Mayor will be carried out by a show of hands unless the council resolves that it be carried out by secret ballot. If election of Mayor is

by secret ballot a request for a division must not be accepted. Further information is contained in the Meeting Procedures Code.

- (d) In determining the election of the Mayor, the following will apply;
- (i) where only one nomination is received, that Councillor must be declared elected;
  - (ii) where two nominations are received, the Councillor with the majority of votes cast will be declared elected;
  - (iii) where there are two or more nominations and all votes cast are equally divided between two or more nominees, the election must be determined by lot;
  - (iv) where there are more than two nominations received and the result has not been determined under paragraphs 8(d)(ii) or 8(d)(iii) the nominee with the fewest number of votes cast must be eliminated (and if more than one of them, the nominee determined by lot) and the names of the remaining nominees must be put to the vote again;
  - (v) the procedure in paragraph 8(d)(iv) must be repeated until the circumstances in paragraph 8(d)(iii) apply or until there are only two nominees remaining in which case a further vote must be taken and the nominee with a majority will be declared elected or, if there is an equal division of votes, the election must be determined by lot;

### Division 3 – Council Meetings

#### Quorum

9 The quorum for a Council Meeting is the majority of elected Councillors.  
Date, time and place of meetings

10

- (a) The date, time and place of all Council meetings are to be fixed by the Council from time to time and reasonable notice must be provided to the public.
- (b) The Council may change the date, time and place of any Council meeting which has been fixed and must provide reasonable notice of the changes to the public.
- (c) The Mayor or Chief Executive Officer may call a Special Meeting of Council at any date, time or place and in any manner the Mayor or Chief Executive Officer considers appropriate at the time.
- (d) The notice necessary to call a Special Meeting in accordance with section 84 of the Act must be delivered to the Chief Executive Officer in sufficient time to enable reasonable notice to be given to the Councillors and in giving such notice, Councillors should have regard to any need for preparatory investigations to enable the business to be undertaken.
- (e) A notice of meeting incorporating or accompanied by an agenda of the business to be dealt with must be delivered to every Councillor:

- (i) For an Ordinary Meeting at least 48 hours before the meeting; and
  - (ii) For a Special Meeting at least 24 hours before the meeting; and
  - (iii) For a Special Committee Meeting at least 48 hours before the meeting
- (f) The notice on agenda for any meeting must state the date, time and place of the meeting and the business to be dealt with and must be sent by post, facsimile, e-mail or otherwise delivered to each Councillor's place of residence or usual place of business (if applicable) or as otherwise specified by the Councillors.
- (g) A notice may be handed personally to a Councillor in any location within the time required, or may be delivered to another destination, provided a written authorisation of the relevant Councillor is held by the Chief Executive Officer.
- (h) If the Mayor is unable to attend a Council meeting for any reason:
- (i) The Deputy Mayor will be acting Chair
  - (ii) If no Deputy Mayor has been elected, an acting Chair may be elected
- (i) Any election by Council of a Deputy Mayor or acting Chair of a Council meeting or a chair of a special committee will follow the same procedure as that for an election of the Mayor

### **Order of business**

- 11 The following order of business on the Agenda should be followed at an Ordinary Meeting unless Council resolves otherwise:
- Council Prayer
  - Apologies;
  - Declaration of any conflict/ pecuniary interest of any Councillor;
  - Adoption and confirmation of the minutes of previous meetings;
  - Requests for leave of absence;
  - Petitions;
  - Mayoral Report;
  - Councillors / Delegates Reports;
  - Questions with notice;
  - Questions without notice;
  - Deputations;
  - Notices of Motion;
  - Reports from Management;

- Other business;
- Public question time;
- Confidential business (In Camera).

#### **Division 4 – Special Committee Meetings**

- 12 (a) All meetings of Council shall observe and comply with this Local Law.
- (b) All meetings of Special Committees shall observe and comply with this Local Law with such modifications and adaptations as may be necessary to give effect to this Local Law.
- (c) Notwithstanding subclause (b) of this Clause, Division 2 of this Local Law does not apply to Special Committees.
- (d) The quorum for a Special Committee Meeting shall be a majority of the members unless specified otherwise within the Deed of Delegation.

#### **Division 5 - Offences**

- 13 It is an offence:
- (a) for a Councillor to not withdraw an expression which is considered by the Chairperson to be defamatory, indecent, abusive, offensive, disorderly or objectionable, and to not satisfactorily apologise when called upon twice by the Chairperson to do so;  
Penalty: 10 penalty units
- (b) for any person, not being a Councillor, who is guilty of any improper or disorderly conduct to not leave the meeting when requested by the Chairperson to do so;  
Penalty: 10 penalty units
- (c) For any person to fail to obey a direction of the Chairperson relating to the conduct of the meeting and the maintenance of order; Penalty: 10 penalty units
- (d) For a Councillor to refuse to leave the room on suspension;  
Penalty: 10 penalty units

#### **Division 6 – Suspension of Local Law**

- 14 Any provisions of this Local Law applicable to an Ordinary or Special Council Meeting, or a Special Committee Meeting may be suspended upon the affirmative vote of the majority of members present.

## **Division 7 – Common Seal**

- 15 The common seal of Council may only be used with the authority of Council. (Please see Schedule 1 for Council Seal template)
- 16 The Chief Executive Officer must keep the common seal in safe custody.
- Every document to which the common seal is affixed must be signed by the two Councillors and the Chief Executive Officer.
- 18 It is an offence for any person to use the common seal of Council or any device resembling the common seal without the authority of Council;  
*Penalty:* 10 penalty units.

## **Division 8 - Revision**

- 19 Local Law 1.1 of 6 March 2003 (Procedures for Meetings) is hereby repealed from the beginning of the day on which the Local Law No.1 (Conduct of Meetings) is made in accordance with Section 121(1) of the Act.

## **Division 9 – Councillor Code of Conduct**

- 20 Council's Meeting Procedures Code and Councillor Code of Conduct is to be applied in the conduct of meetings held in accordance with Council's Local Law No.1 (Conduct of Meetings).

## **Division 10 – Enforcement and penalties**

### **Infringement Notices**

- 21 An authorised officer as defined in the Local Government Act 1989 may issue an infringement notice in the form of the notice in Schedule 2.
- 22 The fixed penalty in respect of an infringement is the amount set out in Schedule 3.

### **Payment of Penalty**

- 23 A person issued with an infringement notice may pay the penalty indicated to the Chief Executive Officer, Mildura Rural City Council, PO Box 105, Mildura 3502 or in person at 108-116 Madden Avenue Mildura;
- 24 to avoid prosecution, the penalty indicated must be paid within 28 days after the day on which the infringement notice is issued;
- 25 A person issued with an infringement notice is entitled to disregard the notice and defend the prosecution in court.



## **No 2. STATEMENTS WHICH RISK BRINGING COUNCIL INTO DISREPUTE**

A long standing concern in Mildura has been the attacks by Cr Thorburn on various individuals through the editorials of his newspaper the Mildura Independent.

Some of these attacks have been the subject of complaints to the Press Council and threats of legal action against Cr Thorburn.

Such was the impact of his comments that the former Member for Mildura, Russell Savage delivered his own stinging criticism of Mr Thorburn in the course of his maiden speech to the Victorian Parliament.

While it was imagined that Cr Thorburn may see the need to temper his published statements following his election to the Mildura Council, this has not been the case.

There are numerous examples where there are significant risks to the standing of Council, councillors and council officers as a result of comments attributed to Cr Thorburn.

Examples of these statements are as follows:

- "The environmental rape of Deakin Avenue trees by Mildura Rural City Council is indefensible, according by one of its own Councillors"

Cr Max Thorburn said that the tree removal in Deakin Avenue between Eleventh and Fourteenth St is the worst example he's ever seen in environmental vandalism in the district".

- "Most council rates and charges are set to rise much to the dismay of Mildura Rural City Councillor Max Thorburn."

"It appears the bulk of Councillors will support a rate rise above that of the Consumer Price Index."

- "In a shock appointment former Mildura Rural City Councillor and one time National Party candidate has been appointed to the position of the new CEO of the newly established Mildura Development Corporation."

- "Ratepayers should be warned that they will be required to pick up most of the over budget cost of building a new art centre theatre and refurbishment of the Langtree Mall."

"Councilor Max Thorburn said that already the warning signs are about that the theatre project is going to go well over budget and the first part of the work has only begun."

- "The last fourteen employees of SDS Beverages at Merbein were handed their final notice at 2pm Tuesday."

“Under Mr Stevenson’s direction the company paid \$22million for Neqtar and consolidated the Robert’s Wine Group with the Evans & Tate Winery and became linked to the failed Bank of Iceland.”

“Later Mr Stevenson fled the company to be the CEO of Sunraysia Murray Group Training and curiously is chairman of the Mildura Rural City Council Audit Committee.”

**(Appendices B, C, D, E, F)**



# Council action disgraceful - indefensible claim

TUESDAY, 13 OCTOBER 2009

## **The environmental rape of Deakin Avenue trees by Mildura Rural City Council is indefensible, according to one of its own Councillors.**

Councillor Max Thorburn said that the tree removal in Deakin Avenue between 11th and 14th streets is the worst example he's ever seen of environmental vandalism in this district.

"The so called master plan which was concocted by a previous Council is a deliberate one to decimate our heritage and change the face of the most picturesque and most beautiful stretch of thoroughfare in Australia."

Cr Thorburn said he had come to live in Mildura in 1964 and what Council has done to Deakin Avenue in recent weeks is disgraceful.

"Our Deakin Avenue is a replica of Euclid Avenue in Upland California and I've told Cr Mark Eckel to have a close look next week at the tree lined thoroughfare and compare it to what we've done."

Cr Thorburn says even the Mayor is cringing and he's lucky he's still in Japan.

"The Mayor knows that the only badly affected white ant infested tree in the whole of Deakin Avenue was the one that was put on public display outside the Chaffey College."

"I believe the Mayor has photos of other trees which were taken after they were felled and they show little, if any termite damage."

Cr Thorburn says that if the Mayor has these type of photographs he should make them public to show how the community has been hoodwinked."

"I spoke to him on the phone in Japan at midnight the other night and told him I was upset."

"Mildura can't go on the way we have been going on in recent years - we planted bottlebrush in our streets in the seventies and now we take them out - we planted plane trees in the eighties and nineties and now they are either being removed or about to come out."

"The sugar gums which have been part of our history are now being removed and no one can convince me that the trees we are going to plant in their place will be the answer."

"You watch - they'll be pulling them out again in 20 to 30 years time."

[Close Window](#)



# Be prepared for hike in rates and charges



TUESDAY, 21 APRIL 2009

## **Most Council Rates and charges are set to rise much to the dismay of Mildura Rural City Councillor Max Thorburn.**

He said despite the warnings of an Australian recession, it appears the bulk of Councillors will support a rate rise above that of the Consumer Price Index.

"It is a very disturbing that Council appears to be more intent on maintaining its own financial advantage than looking after the rank and file, the self retirees and others.

Cr Thorburn said a strategic financial plan was being prepared and it would not be good news for many people.

"While Swan Hill Rural City Council provides a five per cent rate discount for people who pay their rates in full early by September 30, our Council won't even properly consider it."

"While not everyone is a ratepayer, most people are affected by charges and fees set by Council," he said,

"While fees and charges have yet to be set, it seems likely that the philosophy of a desired higher income for Council will not give many people and groups struggling with charges any respite."

"For some reason the bulk of Councillors seem to think that the Federal and State Governments should be the ones who are to fix up the economic downturn."

"In a climate where private enterprise is making business people work harder and are cutting their overall wage bill, our Council is looking to increase its expenditure on wages over the next 12 months."

"It seems that we in Mildura regard ourselves immune to the world economic downturn"

"It's interesting to see that a former Mildura man who lives and works in a senior management role in the USA had the task earlier this month of terminating 2000 of his employees in one day."

"He's cut his salary and the wages of his management because that's our bad it's got"

"I am disturbed in Mildura that very soon our Council will be sending the wrong message to our residents."

"There is general talk in Australian management circles that things will pick up by the end of 2010 - well in the meantime we should temper our expenditure and should also provide some relief on fees and charges if we are not going to provide some measures of rate concessions."

• • • • • • • • APPENDIX D

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[Home](#) | [News](#) | Shock CEO appointment to new Corporation

# Mildura Independent

## Shock CEO appointment to new Corporation

FRIDAY, 13 FEBRUARY 2009

In a shock appointment former Mildura Rural City Councillor and one time National Party candidate Anne Mansell has been appointed to the position of the new Chief Executive Officer of the newly established Mildura Development Corporation.

Late last year Mrs Mansell had been offered a position as trainee planning officer with Mildura Rural City Council but later declined to take up the role after adverse comments had been made by a section of the newly elected Council.

From February 16, Anne Mansell will be the new Chief Executive Officer and according to the new Corporation Mrs Mansell brings a wealth of experience into the organisation.

Growing up in the local area, she has qualifications in the Arts, Management and Corporate Governance, and is currently completing a Graduate Diploma in Planning.

She has worked for and been involved in a number of local organisations including: Advisory Committee of the Lower Basin Laboratory - CRC for Freshwater Ecology; Mildura Rural City Councillor 1997 - 2003; Sunraysia Mallee Economic Development Board; Sunraysia Area Consultative Committee; Sunraysia Community Health Services; Mallee Family Care; La Trobe University; and Sunraysia Citrus Growers.

"I'm honoured to be appointed to this position, and look forward to growing the region's economy," Mrs Mansell said.

Overlooked and dumped after four years is the former Sunraysia Economic Development Board Officer Andrew Millen, who had been an applicant for the position.

Mr Millen's organizational skills had come under close scrutiny last year, while former Chairman John Irwin was also under attack for his style of leadership.

Mr Irwin was re-appointed by a panel to the new Corporation by a special panel which was selected by the former Board and City Council but Mr Millen has not, although at this stage he remains an employee of the Mildura Rural City Council and becomes its Economic Development Manager.

The following members of the local community have been appointed to the Board of Directors: Dane Huxley, CEO - Mildura Base Hospital, John Irwin, Consultant Lawyer - Martin, Irwin & Richards Lawyers, John Tesoriero, CEO - Murray Valley Citrus Board, Marlan Luehman, CEO - Sunraysia Residential Services, Ian Drayton, Manager - Business Development - Sunraysia Institute of TAFE, Ben Smith, Area Manager, North West Region - Bluescope Distribution, Pam Strange, Horticulture Facilitator - Department of Primary Industries (Mildura) Mark Wilson, Ouyen Inc, Eileen Pica, Community representative





• • • • • • • •

# APPENDIX E

## Councillor warns of massive project over spending

MONDAY 06 SEPTEMBER 2010 09:58



**Ratepayers should be warned that they will be required to pick up most of the over budget cost of building a new Mildura Arts Centre Theatre and refurbishment of the Langtree Mall.**

Cr Max Thorburn said that already the warning signs are about that the Theatre project is going to go well over budget and the first part of the work has only begun.

Cr Thorburn said just as some preparatory work is begun on the car park, there are rumblings that this project won't cost \$8.2 million but will eventually cost \$11 to \$12 million.

"Ratepayers will have to pick up the massive overspend on a project to which no proper business plan was ever prepared," he said.

"I shudder every time I'm told Council must run like a business because it's not true – somehow Council got all this Government funding for a new theatre and there is not a business plan to back it up when its finished."

"The business plan was about as naïve as asking potential users what type of facility they wanted."

"There has never been any financial business plan prepared and we are spending millions – it all defies logic to me."

"When this project was first talked about years ago we did not have the theatre facilities we have now," he said.

"In recent years we have seen the establishment of the Cardross Hall as a place for plays, the construction of an excellent 300 seat Mercy Theatre, a 200 plus theatre at Trinity School and a new 180 seat theatre at the Chaffey Secondary College."

"The people of Launceston have a 1000 seat plus theatre but beautiful as it is, the cost of running it is too high and now they are trying to get a small theatre of around 300 to 350 seats."

Cr Thorburn said the existing theatre should not be pulled down.

"We should have modernised what we had and kept a proper stage, retained the fabulous acoustic sound and settled for around 400 to 430 seats.

He said that the Council theatre people are telling locals that the new theatre will be ready by December 2011.

"There is no chance this project will be completed in 2011 – if they get it complete by December 2012 they'll be lucky"

"Council shut down the Theatre last December and the only work that has been done is minor works for a new car park."

"And it's time someone told the public that there will not be enough car parking if they do fill the new theatre one day because when the August Council meeting was held down at Murrayville and the press were absent, Council granted themselves a concession of 65 car parks."

"We did something similar when we built Mildura Waves and look at the congestion there when it comes to car parking.

"Council took half of 12th street for car parking and at 6pm on Monday of this week every car park outside the Waves was filled and it's a time of the year when the outside swimming and diving pools are not even operating."

Cr Thorburn said that he stood for Council because Local Government had been wasting ratepayers money.

"I think I got on Council too late because look what I have had to inherit"

"The Nowingi Place Soundshell was supposed to cost \$700,000 and it ended up costing ratepayers \$1.6 million and believe me – it is a lemon."

"I can't wait for someone to show me it's usage figures for the first year of operation."

Cr Thorburn said like many people he was just dumbfounded that alongside a 113 year old Rio Vista homestead and a 54 year old Arts Centre we are tearing down a magnificent 45 year old Theatre and replacing it with a space age monstrosity which will at the end of the day will be around \$3 million above the original budget.

"Ratepayers should not expect any relief with their rates for years because the Langtree Mall is another project which is going to go through the roof when the full costs are known.

"This project was budgeted for \$3.8 million but it's already up to \$4.2 million and the likely final cost will be somewhere between \$5 and \$6 million.

Council's record when it comes to building projects of its own is disastrous – only Mildura City Council would go into a Langtree Mall project and spend that kind of ratepayers money on what will eventually be a 'dead duck'.

• • • • • • • • APPENDIX F

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## 14 jobs lost at Merbein as company folds

TUESDAY, 09 MARCH 2010 07:35 ADMINISTRATOR



The last 14 employees of SDS Beverages at Merbein were handed their final notice at 2pm Tuesday.

As the 13 men and one woman filed out of the factory, locks were changed in preparation for the new owners taking over, possibly as early as next week.

The end of their employment had been foreshadowed a fortnight ago when the remaining staff were given a months notice.

Australian Workers' Representative Patrick Woods said that he hoped most of the workers would secure positions with the Lamattina brothers operation from Wemen.

"We've had talks with them and they seem keen to maintain the Merbein operation and not move it to Wemen," Mr Woods said.

"They know that key skilled staff are necessary and its also pleasing that they have indicated further investment in the facility."

While the Lamattina's will take over most of the SDS Beverages Pty Ltd operation, through a separate company Wayne Simmons will operate the base paste operation from a factory on the other side of Game Street.

Mr Woods said Mr Simmons will probably only employ two people and was a small operation.

The staff were told that their employment had come to an end by the administrators Pricewaterhousecoopers.

"They believe that with some sales of stock the workers will get all their payments and this is a good outcome for them," Mr Woods said.

"I'm hopeful that eight full time jobs will be retained in the new operation but I don't know about management and I don't care about management jobs."

The Site Manager Ernes Gobbo lost his job in the announcement on Tuesday.

SDS Beverages was formed nine years ago to take over the Irymple (IPC) and the initials are taken from three senior IPC staff members David Stevenson, Paul Derrico and Wayne Simmons.

Under Mr Stevenson's direction the company paid \$22 million for Nectar and consolidated the Roberts Wine Group with the Evans and Tate winery and became linked to the failed Bank of Iceland.

Later Mr Stevenson fled the company to be Chief Executive Officer of Sunraysia Murray Group Training and curiously is chairman of the Mildura Rural City Council Audit Committee.

The former Nectar Winery and plant was recently sold by administrators to a local consortium of growers for around \$12 million.

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### **NO 3. FAILURE TO DECLARE A CONFLICT OF INTEREST**

At its meeting 24<sup>th</sup> September 2009 the Mildura Council was requested to adopt the Mildura Recreation Reserve Master Plan.

#### **(Appendix G)**

Included in this plan was an intention to retain harness racing at the reserve and negotiate a heads of agreement with Harness Racing Victoria and Mildura Harness Racing Club "To secure funding".

The plan also sought to extend the existing lease for harness racing at the reserve beyond 2012 "by a further 10 years plus a 5 year option."

Cr Thorburn has been associated with the harness racing club for many years.

His long involvement as a race caller may well entail employment while his newspaper clearly benefits from its ability to publish harness racing information.

Cr Thorburn was possibly the most active contributor to Council's debate of the plan but at no stage did he declare any association with the harness racing club.

It is inconceivable that Cr Thorburn would not have known of the investigations concerning Cr Eckel and Cr Nichols for their failure to disclose conflicts of interest and it's difficult to believe that Cr Thorburn was unaware of his obligations.

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# APPENDIX G

### **13.4 MILDURA RECREATION RESERVE MASTER PLAN JUNE 2009 MILDURA INDOOR STADIUM STRATEGY JUNE 2009**

File Number: 16/03/01

Officer: General Manager Community & Culture

#### **1. Summary**

This report relates to the review of the Master Plan for the Mildura Recreation Reserve which has been reviewed in conjunction with the development of the Mildura Indoor Stadium Strategy.

Two separate studies have been conducted, however this report is combined because of the future strategic directions that impact on future provision of sporting facilities and how they integrate into the development of recommendations for the Mildura South Regional Sporting Precinct.

The findings of the respective studies have been reported to Council at various forums and stages throughout the past 12 months and this report is provided for Council's consideration and adoption to set in place the development of major sporting facilities in the region for the future.

#### **2. Recommendation**

That Council:-

- (i) Adopts the Mildura Recreation Reserve Master Plan 2009 as outlined in section 3.3 of the final report, including drawings 002c and 003 and, by adopting these plans, confirms its intention to retain harness racing at the site;
- (ii) Advises Harness Racing Victoria of the adoption of the 2009 Mildura Recreation Reserve Master Plan and completes a negotiated project Heads of Agreement with Harness Racing Victoria and Mildura Harness Racing Club to secure funding;
- (iii) Extends the existing lease for harness racing at the Mildura Recreation Reserve beyond 2012 by a further 10 years plus a five year option;
- (iv) Considers the ongoing negotiation for the relocation of one of the current tenant football clubs to Mildura South Regional Sporting Precinct, subject to Council approving the development of the Mildura South Sporting Precinct and associated outdoor playing fields;
- (v) Consider options for securing additional funding from State and Federal Government Grants, club and associated contributions and Council funding to meet the cost of the proposed \$650,000 enhanced development at the Recreation Reserve that is considered to be additional to the work funded by Harness Racing Victoria in conjunction with the redevelopment of the harness racing track and reinstatement works;
- (vi) Adopts the Indoor Sports Facility Strategy 2009 as the model to plan and guide indoor sport facility development for Mildura in the future;



- (vii) Confirm that the study findings support the long term development of a new indoor sport complex at the proposed new Mildura South Regional Sporting Precinct to service the current and future needs of local and regional sports organisations and local residents;
- (viii) Notes that the indoor sports participation demand and demographic and market research review indicates there is sufficient need, in the first stage to develop a five court facility with three to four squash courts and associated service and function areas, once final detailed site and facility master planning, funding, land acquisition and development issues can be resolved;
- (ix) Endorses the conceptual plans and recommendations to maximise use of the site by developing the proposed outdoor playing fields and service areas at the Mildura South Regional Sporting Precinct site;
- (x) Approves the acquisition of adjoining land to allow the proposed concept to be developed;
- (xi) Appoint an experienced sport and leisure design team to complete an Indoor Stadium and Outdoor Sports Complex Master Plan with final recommendation staging and capital cost estimates for the Mildura South Regional Sporting Precinct;
- (xii) Adopts the base case 10 year financial model and business and operating assumptions as a guide to future management, operational and financial outcomes for the proposed development;
- (xiii) Convenes meetings with the Mildura Indoor Sport Group, other key stakeholders, key user groups and project stakeholders to discuss their review of the proposed improvements and to seek their feedback at specific design phases of the project;
- (xiv) Sets up a project funding committee that will review funding, grants and investment options and associated management and development opportunities and develop a final project funding strategy and staged development timeline.

### 3. Background

Council initiated the review of the Master Plan for the Mildura Recreation Reserve which was adopted in 2004 based on changes to circumstances at this reserve, which climatic conditions and the reduced availability of water for irrigation and the growth of sports conducted at the facility, in particular junior football. Another factor was the advice from Harness Racing Victoria that it will not invest the required funds for the relocation of harness racing in Mildura and that if the 2004 Master Plan were to be implemented, the sport of harness racing in the North-West region would be based at Swan Hill.

As part of the advice from Harness Racing Victoria, it indicated that it is prepared to expand the existing track at Mildura Recreation Reserve and offered \$2.5 million as a contribution to the project (\$2.2 million to extend the track and \$300,000 to assist with the relocation of one football club).

The need for an indoor sports stadium strategy was an outcome of a previous report prepared for Council titled 'The Preliminary Indoor Sports Facility Provision Assessment Report' which identified the future needs for indoor sports facilities. The strategy presented to Council is to provide a 10 to 15 year development and a management plan for the provision of facilities for a wide range of indoor sports.

#### 4. Discussion

Council considered the draft reports at its Forum held 16 July 2009 and determined to seek public comment prior to the formal adoption of the Reports.

The following two separate reports are attached, including Executive Summaries;

- Mildura Recreation Reserve Master Plan 2009
- Indoor Sport Stadium Strategy

The Indoor Sport Stadium Strategy presented to Council in July has been amended to correct an error in the five court 10 year Financial Model (see Appendix One of Indoor Sports Stadium Strategy). The summary of usage and charges for the Irymple Basketball Association has been altered which has had a positive impact on the annual projected income of \$69,426 in the first year of operation.

Proposals for the development of facilities at Mildura Recreation Reserve and the Mildura South Regional Sporting Precinct as part of the Indoor Stadium Strategy are summarised below and detailed in each of the reports.

#### Mildura Recreation Reserve Master Plan Findings

The recommended Master Plan option provides for the key ingredients required to retain harness racing at the site and significantly increases infield active playing space for football, cricket and other field sports as compared to current layouts and arrangements:

- It seeks to improve on-site car-parking and provides a large grassed area buffer between ovals one and two (approximately 22 metres at its narrowest point). This enables the annual show equestrian activities to be held close to the main grand-stand while reducing wear and tear on key field areas. This addresses some of the risk management issues previously raised by users of the areas.
- It also provides improved overflow car-parking in the infield without affecting ovals. It has both ovals end boundary lines within six metres of the inside of the track; and provides the current wicket table on oval one to be retained and a new wicket table to be constructed in the centre of oval two.

The recommended Master Plan has a new northern site entry allowing adequate space for the installation of water tanks by the fire brigade to service its training area. It also provides for two new outdoor netball courts.

It includes the removal of that bottom plat of seating from the grand-stand overlooking oval one and includes a range of other changes to enable an increase in length of the harness racing track to create the provision of two ovals suitable for Australian Rules football.

The layout report assumes that the Youth and Scout areas are both relocated to another site (ahead of the construction program at the Recreation Reserve). This frees up an area for a further 35 car parking spaces.

The project team has recommended a further \$650,000 in area improvement works that will need to be funded over the next five years by way of grants, club and association contributions and Council funding. These works include:

- New Netball courts currently being developed at estimated cost of \$100,000 which is being funded by Commonwealth Grant but require an extra \$50,000 for surrounds.
- Provision of new female changerooms at an estimated cost of \$150,000
- Incorporation of environmentally sensitive design initiatives including water harvesting and underground storage linking new building structures and existing suitable building structures at an estimated cost of \$100,000.
- Upgrading of ovals watering system to meet new ovals configuration as well as specialist turf and levelling (above Harness Racing reinstatement funding) costed at \$250,000.
- New car park areas costed at \$100,000

#### **Indoor Stadium Strategy and Mildura South Sports Precinct**

Though this project started as an indoor sport strategy, the need for a new indoor stadium at a greenfield site has seen a portion of the project working on the Master Plan for the proposed Mildura South Sports Precinct.

The indoor sport stadium demand assessment clearly indicates the need for more indoor sport courts in Mildura and the surrounding areas. The demand identified is high either due to the lack of available indoor sport courts or the current courts being fully booked resulting in some sports having to restrict their usage and membership growth.

The closure of three commercially built indoor sport courts adjacent to the Old Aerodrome site a number of years ago has created further pressure on existing courts.

The feasibility and assessment work completed by SGL indicates that the future indoor sport strategy will be best based on a mix of existing facility upgrades and two new indoor sport venues that would see a three pronged approach based on:

##### **(a) Improving Current Facilities**

Provide a one-off facility improvement grant (suggested at \$200,000) to Mildura Basketball Association to assist in a maintenance/upgrade of the existing four court stadium and to improve amenity blocks and change rooms.

Through a new funding and service agreement, making a contribution towards either upgrading or expanding the existing gymnastics facility at Red Cliffs (estimated at

\$200,000 if for gymnastics only or a greater contribution to be negotiated if ballet is included) or assisting them in relocating to a suitable shed that may be leased or bought with Council's assistance. There is, for example, an excellent opportunity to renovate an unused shed at the Council depot and this could meet gymnastics and the Ballet Guild's needs as well.

**(b) New School Facility Stadium**

The project team endorses the Council's contribution towards the development of (under construction) Chaffey College (new two court facility) for the permanent home of Badminton as well as competition and training overflow use for a range of sports including local training.

Part of these funds has gone to increasing storage at the site for badminton, Futsal and community groups, which will again assist multi-use of the new facilities.

The \$800,000 investment is bringing two courts to the area and if Council were to build these without such a partnership it would cost in excess of \$3 million. Though the Indoor Sport Group supports bringing all indoor sport to one site, consultants endorsed Council's strategy that will see new courts developed for 40% of likely capital cost if Council is the only developer.

**(c) New five Court Indoor Sport Complex**

Develop a five court, netball sized but multi-lined facility at the Sixteenth Street and Deakin Avenue site to cater for Volleyball, Netball, Irymple Basketball and Table Tennis as initial anchor tenants.

This is based on likely future demand that will see increased indoor sport participation with the new facilities. The design and site has the capacity to be future-proofed for a further five courts of the same dimensions at later development stages.

Included in the plan should be an allowance for a four to six court squash facility at this complex with final court numbers to be determined by capital cost and available funding. This development can also be a staged construction. The courts should have the capacity to have moveable internal walls (hence the three and six court configurations) to allow the development of a doubles squash program.

The vision is to develop the facility as an integrated indoor/ outdoor sports precinct of regional standard and to maximize use and sharing of facilities by providing function spaces, meeting and board rooms with central kitchens that can be shared by all users as well being as available for public hire.

This theme can also be extended to provide central administration area, food and beverage and catering facilities.

Such a facility will become one of the best regional indoor sport complexes in a provincial area in Victoria and therefore it would provide a good home for office and administration space for sports organisations as well as a new office for the regional sports bodies.

The facility's amenities need to be linked to the adjoining outdoor amenities to create two way uses of central change zones.

Though the five court complex is smaller than the proposed Indoor Sport Group model (seven courts) the project team believes current projected indoor sport growth over the next five to 10 years can be accommodated in a combined five court model with badminton and Futsal being catered for at the two court Chaffey stadium.

#### **New Outdoor Sport Facilities**

Based on these new indoor area and activity component allowances, the new indoor stadium provides a great opportunity to have a dual role in being the service and amenity area for new surrounding outdoor sport and parkland facilities. It is therefore recommended that the following outdoor and service facilities be based at the Mildura South Regional Sports Precinct.

It is proposed that the Sixteenth Street and Deakin Avenue site would cater for two Australian Rules football ovals, with one oval having capacity to accommodate cricket with shared club rooms and associated amenities.

The facility design would be such that all indoor and outdoor sports based at the precinct would share some common spaces for club rooms/function areas but also have the capacity to have their own individual spaces to ensure their individual identity. This could see one of the function rooms allocated to the relocating club.

The common facilities would be designed in such a way to be subdivided (for both function room and change rooms) to accommodate all users but so it can be opened up to cater for larger usage needs or events.

#### **Long Term Master Plan to Meet Future Demand**

The proposed concept plan and facility scope for the proposed Mildura South Regional Sports Precinct (listed in section 3.4) of the report has been designed to provide a 20-year-plus master plan of truly integrated indoor and outdoor sport, entertainment, social and training facilities.

From an indoor sport strategy perspective, it provides five initial courts and future capacity for up to 10 indoor sport courts and up to six squash courts. These are recommended to be developed over a staged approach, subject to capital funding availability and the formation of new management partnership and license agreements with indoor and outdoor sport organisations.

Added to the indoor sport components are major outdoor sport playing fields and shared infrastructure that will also see significant multi-use and shared benefit from facilities built at the indoor sports centre.

To complete this total concept there is also need for an expanded site to meet area drainage and parkland needs and, therefore, the consultant team recommend that Council acquires the required adjoining land to enable the multi-use indoor and outdoor concept to be delivered

**5. Time Frame**

The proposed concept plan and facility scope for the proposed Mildura South Regional Sports precinct has been designed to provide a 20 year master plan.

A 10 year financial model, including business and operating assumptions, are provided as part of these studies as a guide for future management, operational and financial outcomes for the development. This model will be available to further investigate future management models for the centre as the project proceeds.

Staged development plans for the implementation of the projects need to be developed in conjunction with a construction management plan for the Mildura Recreation Reserve and Mildura South Regional Sporting Precinct. These need to be integrated due to the new facility being available before works are undertaken at Mildura Recreation Reserve.

**6. Strategic Plan Links**

This report relates to Key Result Area 4.2 of Council's Plan 2009 – 2013 - Recreation and Sport

**Results to be achieved:**

"Ours will be a community...

- where all people have equal access to appropriate recreation facilities and services
- that promotes and encourages participation in sporting and recreational activities
- that recognises, supports and encourages sports people to achieve their sporting potential
- with sporting and recreation organisations which have the capacity and support to provide a diverse range of programs and activities
- with infrastructure and partnerships that can cater for state, national and international recreation and events".

**Actions:**

- Implement the Mildura Major Sporting Reserves Master Plan 2009 to 2020
- Develop the Master Plan for the Mildura South Sporting precinct and feasibility assessment

**7. Asset Management Policy/Plan Alignment**

A detailed design and feasibility study of the Mildura South Regional Sporting Precinct will be developed over the next 12 months to take these projects to the next step and this process will incorporate Asset Management requirements.

The 10 year financial model provides assistance in identifying costs for maintenance and operation over the first 10 years when the operation of the facility commences.

**8. Consultation Proposed/Undertaken**

Extensive consultation has been conducted with all user groups at the various reserves throughout the process and this has been reported back to Council on a regular basis during Forums.

Consultation with users and associated local organisations included the conducting of three workshop forums, individual meetings, telephone conferences and in some instances formal written feed-back. These consultations were also complemented by a workshop and discussions with indoor sport centre stakeholders.

After presenting the draft reports to Council's Forum on 16 July 2009, the reports and plans were presented in a media conference on 22 July 2009. This attracted extensive media exposure inviting comment from the public. The results of this Engagement Strategy were reported in a Briefing Note to Council's Forum held on 21 August 2009. No changes have been made to the reports as a result of feedback received and any suggested inclusions in the plans will be considered as part of the detailed feasibility stage if the plans proceed.

Consultation will need to continue in the future with a variety of stakeholders including Harness Racing Victoria, potential funding partners which will include state and federal government, current users, potential users etc. This will be necessary to determine detailed design contributions, timing, actual facilities to be included in plans etc.

**9. Implications****Policy Implication**

These studies have been conducted in accordance with the principles of Council's Recreation Strategy.

**Legal/Statutory Implications**

Legal and statutory requirements will be considered as part of the detailed feasibility of the Mildura South Regional Sporting Precinct and designed for works at the Mildura Recreation Reserve.

**Financial Implications**

Quantity surveyors have provided initial capital cost estimates for the Mildura South Regional Sporting Precinct of \$22,116,000 an additional \$650,000 has been identified for works at the Mildura Recreation Reserve.

The indicative capital cost plan assumes that all facilities are built in one stage and will be completed by September 2010. The project costs will increase if the project is staged or built after this timeframe.

The following table indicates capital cost estimates identified in this report:

Mildura South Regional Sporting Precinct	\$22,116,000
Mildura Recreation Reserve	\$650,000
Mildura Basketball Association	\$200,000
Gymnastics	\$200,000
<b>TOTAL</b>	<b>\$23,166,000</b>

These costs do not include the acquisition of land as proposed in the reports.

The reports propose a funding strategy and staging plan to be developed and more accurate final project costs estimates can be completed as part of the detailed design and feasibility assessment.

It is recommended that Council establish a project funding committee to review funding, grants and investment options and associated management and development opportunities to enable the development of a final project funding strategy and staged development timeline.

This funding strategy will need to include contributions from relevant sporting organisations and could also consider private partnership opportunities. This strategy will need to consider and be integrated with Council's Strategic Resource Allocation Plan which has an allowance of \$5 million annually, specifically for the implementation of Master Plans.

Section 4.11.4 and 4.11.5 of the Indoor Sports Stadium Strategy identifies staged development priorities, proposed funding allowances over a five year period and funding opportunities.

It should be noted that this report has no impact on the 2009/10 Budget. \$1,725,000 has been allocated in this budget for the Mildura South Regional Sporting Precinct and it is anticipated that approximately \$150,000 of this will be required for the detailed master plan and feasibility assessment as per recommendation five.

#### **Environmental Implications**

The Mildura South Regional Sporting Precinct will occupy land containing significant drainage infrastructure on the corner of Sixteenth Street and Deakin Avenue.

Discussions with staff during the development of the concept plans have raised opportunities for innovative environmental strategies at this precinct which would incorporate water harvesting from buildings and reuse on ovals as part of the drainage capacity.

#### **Social Implications**

The facilities proposed in this report will provide quality facilities for local sport and recreation for the long term, however the high quality facilities proposed will also provide increased opportunities to attract major sporting events.

Social implications or opportunities will include:

- increase access to quality facilities;
- increased participation;
- opportunities for sporting organisations to grow financially and develop their capacity to conduct major events
- provide improved family environments for increased involvement in sport and recreation.



**10. Risk Assessment**

The review of the Mildura Recreation Reserve Master Plan has partly been to address the risk management issues which have existed at this reserve for several years and actions have been recommended in reports to address these issues.

The recommendations in this report address, or expose Council to the following risks:

Risks	Controls	Residual Risk
Negative impact on Council's reputation for not addressing safety management issues at Mildura Recreation Reserve and not responding to identified need for indoor and sporting facilities.	Consultation, review and development of Master Plans. The likelihood and extent of negative feedback will depend on Council's commitment to adopt and implement the Plans.	Low

Detailed risk assessment and insurance requirements will be considered in more detail as part of the detailed facility design process and specific Project Risk Assessments.

**11. Conflicts of Interest**

There are no conflicts of interest relating to this report.

**12. Conclusion**

Councillors would be aware that there are many local organisations representing thousands of participants in sport and recreation eagerly awaiting the outcome of these studies.

While it is recognised that there is still a lot of work to be completed to take these projects forward, the adoption of these strategies is a vital initial step to commence this process.

**Attachments**

- 1 Mildura Recreation Reserve Master Plan Review
- 2 Indoor Sport Stadium Strategy
- 3 Indoor Sport Stadium Strategy - 5 court 10 year Financial Model

#### **NO 4. FAILURE TO INFORM COUNCILLORS OF A COMPLAINT FROM A STATUTORY AUTHORITY**

In December 2009, Western Murray Irrigation wrote to Mildura Council's CEO in relation to "recent unfounded allegations against the company and its officers in an editorial written by one of (your) sitting Councillors Max Thorburn.

In addition to their complaint against individuals exercising their demographic right, the Authority drew attention to inaccuracies in the editorial.

The Authority claimed that "the actions of Mr Thorburn in printing this editorial are detrimental to the Wentworth Shire Council and Sunraysia Region'.

By implication, it may be seen that Cr Thorburn's actions have again run the risk of bringing the Mildura Council into disrepute.

Western Murray Irrigation sought discussion about their concerns at the next council meeting and consideration by Council of a tighter Code of Conduct for sitting Councillors.

Responding to the complaint, Mildura Council CEO clearly opted to take no action.

While acknowledging the existence of Council's Code of Conduct the CEO indicated his view that "the code covers the functions and behaviour of Councillors when fulfilling their role in public office but does not readily extend to their private lives and employment".

Based on my reading of the code, there is nothing which appears to exempt Councillors from proper conduct either inside or outside the business of Council.

In any event the matter was never drawn to my attention and the absence of any discussion suggests that it was not drawn to the attention of other, if not all, Mildura Councillors. Having received a telephone complaint from Western Murray Irrigation, I wrote to the CEO noting that the request from WMI had effectively sought to have the matter drawn to the attention of all Mildura Councillors.

I do not believe that this occurred and I do not believe the matter was brought to the attention of the Audit Committee.

A subsequent response from the CEO in relation to a raft of matters was disturbingly dismissive....

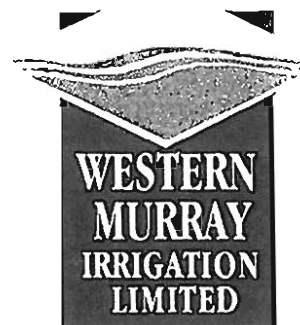
"Viewed objectively the matters appear to reflect a pattern of behaviour that do not sit comfortably with the Council's agreed Code of Conduct and Meeting Procedure Local law but as they are largely historical in nature I doubt there is much to be gained by raking over the coals."

**(Appendix H, I, J, K)**

• • • • • • • • APPENDIX H

18 December 2009

Mr Mark Henderson  
Chief Executive Officer  
Mildura Rural City Council  
PO Box 105  
MILDURA VIC 3502.



Incorporating Berridge,  
Coomalla and Curlwaa  
Irrigation Areas.  
JLN 007191113

5 Tapio Street  
PO Box 344  
Darebin NSW 2717  
Phone (03) 5027 4953  
Fax (03) 5027 1880  
Email: [enquiries@westernmurray.com.au](mailto:enquiries@westernmurray.com.au)

Dear Mark,

**Re: Wentworth Shire Council By Election 5 December 2009**

Western Murray Irrigation Limited (WMI) wishes to bring to your attention the recent unfounded allegations against the Company and its officers in an editorial written by one of your sitting councillors, Mr Max Thorburn and an associated article with a number of comments from a candidate dated 5 and 6 December respectively (Source: Mildura Independent On-line [www.milduraindependent.com](http://www.milduraindependent.com) copies attached).

The people named by Mr Thorburn in the editorial were exercising their democratic right as individuals to support the candidates of their choice in the Wentworth Shire Council by election held on 5 December 2009.

The reporting in the editorial was inaccurate. One person named as a director of WMI, Howard Jones has not been a director for some time. An unfounded and serious accusation was made against the Company that it is a political machine giving favours to specially selected people and that the Company orchestrated a campaign to influence the outcome of the by election. Defamatory comments about three directors of WMI all of who make significant contributions to the Wentworth Shire in a variety of community roles were made.

WMI refutes all allegations and confirms the four individuals named acted on their own volition and were not representing WMI.

The actions of Mr Thorburn in printing this editorial are detrimental to the Wentworth Shire Council and Sunraysia region.

WMI would appreciate discussion about our concerns at its next Council meeting and the consideration by Council of a tighter code of conduct for sitting councillors through an election process including "non Mildura" elections.

I look forward to your response.

Yours sincerely,

Ian Murdoch  
Chairman  
Cc: Mildura Rural City Councillors

. . . . .

# APPENDIX I

**DISCUSSION  
REQUIRED**

RECEIVED AT  
17 JAN 2010

WESTERN MURRAY  
IRRIGATION LTD



## Mildura Rural City Council

*"The Most Liveable, People Friendly Community in Australia"*  
A.S.N. 42 498 937 037

File 02/01/06  
7 January 2010

Mr Ian Murdoch  
Chairman  
Western Murray Irrigation  
PO Box 346  
DARETON NSW 2717

Dear Ian

### WENTWORTH SHIRE COUNCIL BY-ELECTION

Thank you for your letter of 18 December concerning recent media coverage of the Wentworth Shire By-Election. I've given considerable thought to the issues you have raised and in particular the capacity of a Council to influence the behaviour and views of a Councillor when they are acting outside their role as a Councillor. I also note that there is no clear disclosure of the author of the editorials you refer to and so my response is perhaps more generic in nature as a consequence.

In considering your request for a tighter code of conduct I keep coming back to the underlying conclusion that Mildura Rural City Council's Councillor Code of Conduct is not an appropriate mechanism for controlling the private endeavours of Councillors or in this particular case censoring the media. The code covers the functions and behaviour of Councillors when fulfilling their role in public office but does not readily extend to their private lives and employment.

It's not appropriate for me to comment on the politics of Wentworth Council but assuming the factual content of the media articles you attached is broadly correct (excluding the reference to Mr Jones) then on face value it does seem that key leadership people within Western Murray Irrigation have actively participated in the by-election process and through support of a particular candidate sought to influence an election outcome.

Normally I wouldn't comment on this, however given that you've raised the issue and if it's correct that 3 Western Murray Irrigation Directors and the General Manager actively supported a particular candidate, then a lay observer might find it difficult to draw a clear distinction between the actions of the individuals and their joint positions of leadership within a Corporation. It's a fine line which is probably best resolved amongst the individuals concerned and any guidance provided by the Corporation.

Mildura Offices  
108 - 116 Madden Avenue Mildura & 75 - 84 Deakin Avenue Mildura  
PO Box 105 Mildura 3502, DX 50014  
Telephone (03) 5018 8100 TTY Hearing Impaired (03) 5018 8175  
Facsimile (03) 5021 1899 Email [mcc@mildura.vic.gov.au](mailto:mcc@mildura.vic.gov.au)  
Website: [www.mildura.vic.gov.au](http://www.mildura.vic.gov.au)

Ouyen Office  
79 Oke Street, Ouyen  
Telephone (03) 5091 3600 (from Ouyen)  
Telephone (03) 5018 8600 (from Other Places)

"Working Together to Achieve Excellence"

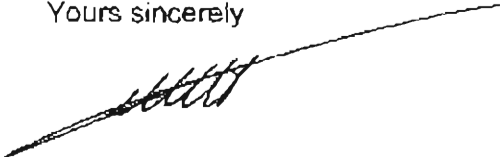
To: Ian Murdoch  
File: 02/01/06

7 January 2010  
Page 2


If we accept the democratic right of individuals as the guiding principle then we also need to apply that same principle to the actions of Councillors and recognise their right to express personal views, particularly where their employment or business is media based. In relation to your view that the editorial is defamatory and has caused detriment please note that the views expressed do not under any circumstances reflect the views or opinions of Mildura Rural City Council.

I'd be happy to privately discuss this matter with you further if this would be of assistance, and should you require any further information please contact my office on ☎ 5018 8151.

Yours sincerely



**MARK HENDERSON  
CHIEF EXECUTIVE OFFICER**

MH/nj  


• • • • • • • • APPENDIX J



**Vern Knight**

---

To: Mark Henderson

Dear Mark,

Some time ago you asked my thoughts in relation to a complaint from Western Murray Irrigation about statements attributed to Cr Thorburn. I indicated at the time that I had already been alerted to their concerns and provided with a copy of the letter.

While I am not privy to your response, I judge from a phone conversation of last night that the Board of WMI is far from satisfied. This would seem to be a matter which has the potential to portray our Council in a rather poor light.

The original letter from WMI requested copies to all Councillors. As I take that this did not occur, can I assume that a complaint of such significance will find its way to Council's Audit Committee?

Regards,

Vernon

## Vern Knight

---

**From:** Cheryl Rix [rix@westernmurray.com.au]  
**Sent:** Monday, 21 December 2009 9:37 AM  
**To:** Vern Knight  
**Subject:** RE: CONFIDENTIAL FOR V KNIGHT ONLY FW: LETTER TO MILDURA RURAL CITY COUNCIL 18/12/2009 13:26

**Sensitivity:** Private

Hello Vernon,

Western Murray agree to you using this letter to support your case to the Ombudsman. The letter has been sent Mark Henderson and I am not sure how he will treat it. Over the phone he noted a Councillor has the right to do anything they like as a private citizen.

Thanks

Cheryl

-----Original Message-----

**From:** Vern Knight [mailto:vknight@malleefamilycare.com.au]  
**Sent:** Friday, 18 December 2009 2:34 PM  
**To:** Cheryl Rix  
**Subject:** RE: CONFIDENTIAL FOR V KNIGHT ONLY FW: LETTER TO MILDURA RURAL CITY COUNCIL 18/12/2009 13:26  
**Sensitivity:** Private

Hi Cheryl,

Thanks for keeping me in the loop!

You might want to check-out the new legislation in relation to Councillor Conduct in Victoria and the Mildura Councillor's Code of Conduct.

You could probably follow-up your complaint with a reference to the code and the areas breached.

I will be taking my issues to the Ombudsman in the New Year.

Am I permitted to include a copy of your letter when I present my issues?

Given that you asked that the matter be discussed by Council, can I assume that I have every reason to be aware of your complaint.

I'm in your hands.

Vernon Knight

Executive Director

Mallee Family Care

122 Ninth Street

Mildura

Phone - mobile: 0418 502 957

Phone - office: (03) 5023 5966

Fax: (03) 5022 1065

Email: vknight@malleefamilycare.com.au

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-----Original Message-----

From: Cheryl Rix [mailto:rix@westernmurray.com.au]  
Sent: Friday, 18 December 2009 1:33 PM  
To: Vern Knight  
Subject: CONFIDENTIAL FOR V KNIGHT ONLY FW: LETTER TO MILDURA RURAL CITY COUNCIL 18/12/2009 13:26  
Sensitivity: Private

Hello Vernon,

Attached is a copy of the letter to the Mildura Rural City Council regarding the editorial written by Max Thorburn. I have not attached the editorial but if you need a copy it can be printed from the website.

Regards,

Cheryl Rix  
General Manager

Western Murray Irrigation Limited (ACN: 067 197 853)  
5 Tapio Street  
Dareton NSW 2717  
Tel: (03) 50 27 4953 Fax: (03) 50 274 880 Mob: 0418 170 074  
email: rix@westernmurray.com.au

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-----Original Message-----

From: enquiries@westernmurray.com.au  
[mailto:enquiries@westernmurray.com.au]  
Sent: Friday, 18 December 2009 2:26 PM  
To: Cheryl Rix  
Subject: LETTER TO MILDURA RURAL CITY COUNCIL 18/12/2009 13:26

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Date: 18/12/2009 13:26  
Pages:1  
Resolution:300x300 DPI  
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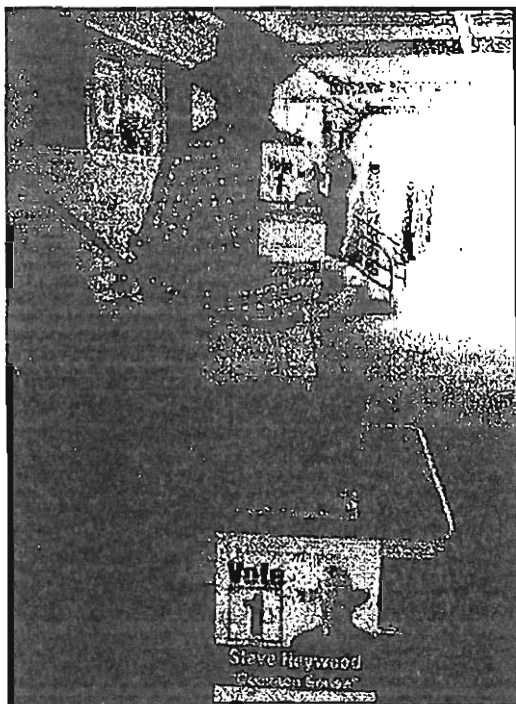
# Candidate outraged at unfair election tactics

SATURDAY, 05 DECEMBER 2009

**Curlwaa truck driver Steve Heywood says that tactics employed against him during Saturday's Wentworth Shire By-Election were simply not fair.**

Although he could still secure a seat on Council after the counting of preferences, he was dismayed at the number of high profile Western Murray Irrigation people who had handed out how to vote cards for the Councillors backed candidate Bill Brook.

"I am a shareholder in Western Murray Irrigation yet the directors of the Company handed out how to vote cards for Mr Brook, who is not a



shareholder," Mr Heywood said.

"I believe that it was pretty poor taste for them to work against one of their own shareholders, especially to the degree they did."

Mr Heywood (pictured at the Buronga booth late Saturday) said that when voting opened up at the Wentworth polling centre Western Murray Irrigation General Manager Cheryl Rix and Wentworth Shire Councillor Mark King were handing out how to vote cards for Mr Brook. Mr Heywood then cited the other directors who also handed out how to vote cards for Mr Brook as being

Michael Keenan of Dareton, Colin Thomson of Curlwaa, Dennis Mills of Trentham Cliffs, Ian Murdoch and Howard Jones of Dareton.

Mr Heywood said he was also staggered at the actions of the Wentworth Shire Mayor Margaret Thomson who had not spoken to him since he had put his hand up to stand at the by-election.

"I've know Margaret nearly all her life and I can't believe she has turned her head the other way and has ignored me through the whole pre-election period."

## **NO 5. ILLEGAL PLANNING DECISIONS**

It is to be noted that there have been a number of decisions by Council during the past two years which were at odds Council's own rules.

This is probably not surprising given the views of some Councillors and the apparent belief that Council had a right to break the rules.

In my letter to the Chair of the Audit Committee in April 2009, I drew attention to some of the statements made by Council at its March Meeting.

I believe it was Cr Milne who made the pronouncement that "Councils need to stand up to the Victorian Government's Planning requirements."

This comment was mirrored by Cr Eckel who defended his consistent votes in opposition to officer recommendations with the assertion that "people have to understand that this is a new Council with new policies in relation to planning."

There was seemingly no appreciation that what was being determined was in contradiction to the policies which existed at that time.

One of the most notable decisions was a planning determination made by Council in relation to application P08/479.

### **(Appendix L)**

The officer's recommendation that the application not be approved was supported by Russell Kennedy Council's legal advisers in relation to planning matters.

Their advice reads in part...

"Although Council has the discretion to support the application, its decision at this time is unlawful due to procedural deficiencies as Section 55 has not been complied with."

"Failure to refer the application as detailed above will render the decision unlawful and open the planning permit to challenge and expose Council to potential claims for damages and/or compensation."

### **(Appendix M)**

Notwithstanding this advice and concerns expressed by those Councillors wishing to oppose the application, the application was approved.

Recognising the potential costs to Council, the following meeting saw a notice of motion to rescind the granting of Planning Permit P08/479.

The motion was put on the basis that .....

"The proposed subdivision is not lawful in light of the minimum lot requirements of 10 hectares on all land within the farming zone which is within a gazetted irrigation district, having regard to the decision of VCAT in Leigh versus Greater Geelong 2008 VCAT 1335.

**(Appendix N)**

Shortly after, the Minister for Planning gave approval to the preparation and adoption of amendment C58 to the Mildura Planning Scheme under Section 20 (4) of the Planning and Environment Act 1987. The Amendment was gazetted on the 29<sup>th</sup> May 2009.

In the Minister's advice to the Local Member, the shortcomings of Council's decisions were made clear.

"The amendment should not have come as a surprise to Council".

**(Appendix O)**

"In September 2008 I wrote to Council and indicated that I would be willing to consider an interim amendment while Council resolved the issues associated with the MOIA Rural Strategy. I also expressed my concern about the number of dwellings and subdivision approvals being issued and that such approvals may continue unabated in the future. I reminded Council that it had a legal responsibility to assess applications against the provisions of the Planning Scheme and warned Council that it was inappropriate to continue this approach.

In a letter to the then Mayor on the 23<sup>rd</sup> of September the Minister wrote .....

"I remind Council of its legal responsibility to assess applications under the requirements of the Planning and Environment Act 1987 and its provision of the Mildura Planning Scheme. It is inappropriate for Council to continue its practice of issuing permits where they are inconsistent with the provision of the Mildura Planning Scheme."

**(Appendix P)**

There is to my mind an amount of evidence which suggests that some Councillors had no regard for the consequences of their decisions and the possible costs to the Mildura Rural City Council.

I suggest that the best efforts of Council officers to remind Council of its obligations were of little value in far too many decisions.

• • • • • • • • APPENDIX L



*Opposite.  
Not lawful!!*

P08/479

4 LOT SUBDIVISION

MARKS ROAD,  
RED CLIFFS

## 0.00 P08/479 - PLANNING PERMIT APPLICATION - 4 LOT SUBDIVISION - MARKS ROAD RED CLIFFS

File Number: P08/479 - C-5348  
Officer: General Manager Assets & Development

### 1. Summary

Date Received:	6 November 2008
Subject Property:	Marks Road, Red Cliffs (Lot 2 PS 522101J Sec B)
Proposed Use/Development:	4 Lot Subdivision
Planning Scheme:	Mildura Planning Scheme
Zone:	Farming Zone (FZ) Rural Conservation Zone – Schedule 1 (RCZ1)
Overlays:	Land Subject to Inundation Overlay (LSIO) Environmental Significance Overlay – Schedule 1 (ESO1)
Applicant:	Roy Costa & Associates

The proposal is to subdivide the existing lot into four lots.

The subject land is within two different zones, being the Farming Zone (FZ) and Rural Conservation Zone – Schedule 1 (RCZ1).

The proposal would create three lots (Lots 1, 3 & 4) within the RCZ1 and one lot (Lot 2) within the FZ.

The three lots within the RCZ1 (Lots 1, 3 & 4) would all meet the minimum lot size under this zone, but the proposed Lot 2 within the FZ has an area of 6.7 hectares, which is less than the minimum lot size of 10 hectares within irrigated areas.

Council's attention is drawn to the decision of the Victorian Civil and Administrative Tribunal (VCAT) in *Leigh v Greater Geelong CC (Red Dot) [2008] VCAT 1335 (27 June 2008)*, in which the Tribunal considered a proposal to subdivide along a zone boundary to create a lot that would have been smaller than the minimum lot size under the relevant zone.

In respect of this issue, the Deputy President of the Tribunal stated as follows:

1. *"I rule that in this proceeding, a subdivision along zone boundaries is not lawful in light of the minimum lot requirement of 40 hectares in the Farming Zone (Barrabool Land System)."*

In cases prior to *Leigh*, different Members of the Tribunal held conflicting views on whether or not it is permissible to create a lot that is smaller than the minimum lot size in situations where a lot boundary is to be created along a zone boundary.

The *Leigh* decision has provided a definitive ruling on this question of law from the Deputy President of the Tribunal.

Having regard to the Tribunal's decision in *Leigh*, it is considered the proposed subdivision is unlawful, as the lot within the Farming Zone (Lot 2) does not meet the minimum lot size of 10 hectares under the zone.

### 2. Recommendation

THAT:

1. Planning Application No. P08/479 be determined pursuant to Section 61 of the Planning and Environment Act 1987 by refusing to grant a permit for a 4 lot subdivision at Marks Road, Red Cliffs (Lot 2 PS 522101J Sec B) on the following grounds:

1. ~~The proposed subdivision is not lawful in light of the minimum lot requirement of 10 hectares on all land within the Farming Zone which is within a gazetted irrigation district, having regard to the decision of the Victorian Civil and Administrative Tribunal in *Leigh v Greater Geelong CC (Red Dot) [2008] VCAT 1335 (27 June 2008)*.~~

### 3. Background

Planning Permit P03/202 was issued on 1 August 2003 for a 2 lot subdivision, which created the subject site as well as a lot for an existing dwelling (shown on the plans submitted with the application as N.I.S or Not in Subdivision).

Planning Permit P08/327 was issued on 22 October 2008 for a 2 lot subdivision, which allowed the creation of one lot within the FZ of 6.7 hectares and one lot within the RCZ1 of 4.8 hectares. Since the issue of this permit, officers became aware of the decision of the Deputy President of VCAT in *Leigh v Greater Geelong CC* (referred to in the introduction to this report), which held such subdivisions to be unlawful, despite previous decisions by other Members of the Tribunal to the contrary. Given the Tribunal's decision in *Leigh*, it is considered the current proposal is unlawful, and that the previous issue of Planning Permit P08/327 does not justify the issue of a permit for the current proposal.

#### Section 173 Agreement

A Section 173 Agreement is registered against the title to the subject land.

Agreement AC586097V provides that "Any allotment, located within the Rural Use Zone, created pursuant to planning permit P03/202 may not be further subdivided so as to increase the number of lots. This requirement does not apply to a subdivision for a public authority for the purpose of a utility installation, if the zoning of the land changes to residential or a low density residential zone or the resubdivision of the land." As the number of lots will not be increased within the FZ and the remainder of the land is within the RCZ1 (and meets the minimum lot size), it is considered the proposal is not in breach of this agreement.

### 4. Proposal

The subject site has an area of 11.4 hectares, and is located to the west of the Woorlong Wetlands. The site is surrounded by horticultural land and associated dwellings, as well as rural residential dwellings, to the north, west and south, and the Woorlong Wetlands to the east. The subject land abuts Marks Road on its southern side and Woorlong Avenue on its north-eastern side and contains an existing picker's hut and shed (within proposed Lot 2).

It is proposed to subdivide the subject site into 4 lots, to create a lot of 6.7 hectares within the Farming Zone with an existing pickers hut and shed (Lot 2) and three lots within the RCZ1 of 1.172 hectares, 1.566 hectares and 1.886 hectares respectively



(Lots 1, 3 & 4). In addition, there will be an area of common property of 1760 square metres providing access from Woorlong Avenue to Lots 1, 3 and 4.

**5. Time Frame**

The application was lodged on 6 November 2008.

**6. Strategic Plan Links**

Council Plan 2006-2010. This report complies with the key result area 1.5 Planning and Development.

**7. Asset Management Policy/Plan Alignment**

This is not relevant to the subject application.

**8. Consultation Proposed/Undertaken**

The application was not notified under Section 52 of the Planning and Environment Act 1987, as it is considered the proposal is not lawful and must not be approved. Nor was the proposal externally or internally referred.

**9. Implications**

**Policy Implications**

**State Planning Policy Framework (SPPF)**

As it is considered the proposal is not lawful and must not be approved, an assessment against the SPPF is considered unnecessary.

**Local Planning Policy Framework (LPPF)**

As it is considered the proposal is not lawful and must not be approved, an assessment against the LPPF is considered unnecessary.

**Planning Scheme Provisions**

**Farming Zone**

The area of the subject site within proposed Lot 2 is within the Farming Zone pursuant to Clause 35.07 of the Mildura Planning Scheme.

Pursuant to Clause 35.07-3 of the Mildura Planning Scheme, a permit is required to subdivide land within the Farming Zone.

Each lot must be at least 10 hectares on all land which is within a gazetted irrigation district; or on land where a Water Licence has been issued and applied to land for horticultural production purposes.

The subject land is on land where a Water Licence has been issued and applied to land for horticultural production purposes, therefore the minimum lot size is 10 hectares.

A permit may only be granted to create smaller lots if any of the following apply:

- *"The subdivision is to create a lot for an existing dwelling. The subdivision must be a two lot subdivision. An agreement under Section 173 of the Act must be entered into with the owner of each lot created which ensures that the land may not be further subdivided so as to create a smaller lot for an existing dwelling. The agreement must be registered on title.*
- *The subdivision is the re-subdivision of existing lots and the number of lots is not increased. An agreement under Section 173 of the Act must be entered into with the owner of each lot created which ensures that the land may not be further subdivided so as to increase the number of lots. The agreement must be registered on title.*
- *The subdivision is by a public authority or utility service provider to create a lot for a utility installation."*

None of the above exemptions apply, therefore it is not possible to create a lot of less than 10 hectares within the Farming Zone.

As discussed in the introduction to this report, it is considered the proposed subdivision is unlawful, based on the decision of VCAT in *Leigh v Greater Geelong CC*.

#### **Rural Conservation Zone – Schedule 1 (RCZ1)**

The area of the subject site within proposed Lots 1, 3 & 4 is within the Rural Conservation Zone – Schedule 1 (RCZ1) pursuant to Clause 35.06 of the Mildura Planning Scheme.

Pursuant to Clause 35.06-3 of the Mildura Planning Scheme, a permit is required to subdivide land within the RCZ1. Each lot must be at least the area specified for the land in a schedule to this zone. Schedule 1 to the Rural Conservation Zone provides for a minimum subdivision area of 1 hectare with a maximum of 3 hectares and an average of 1.5 hectares (Schedule 1 to the Rural Conservation Zone also refers to the Woorlong Wetlands Policy at Clause 22.02 of the Mildura Planning Scheme, but as stated previously, an assessment against the Local Planning Policy framework has not been undertaken).

Proposed Lots 1, 3 & 4 meet the minimum lot size under the RCZ1.

#### **Land Subject to Inundation Overlay (LSIO)**

Pursuant to Clause 44.04-2 of the Mildura Planning Scheme, a permit is required to subdivide land within the LSIO.

#### **Environmental Significance Overlay – Schedule 1 (ESO1)**

Pursuant to Clause 42.01-2 of the Mildura Planning Scheme, a permit is required to subdivide land within the ESO1.

### **Aboriginal Cultural Heritage**

It appears that an Aboriginal Cultural Heritage Management Plan is required, therefore a permit cannot issue until a copy of an approved Cultural Heritage Management Plan is submitted.

### **Assessment of the Application**

As discussed in the introduction to this report, it is considered the proposed subdivision is unlawful, based on the decision of the Deputy President of Victorian Civil and Administrative Tribunal (VCAT) in *Leigh v Greater Geelong CC*.

This being the case, it is considered a permit must not issue for the proposed subdivision and no further assessment of the proposal against the objectives or decision guidelines of the relevant planning controls has been undertaken.

### **Legal/Statutory Implications**

Council is required to determine the application pursuant to Section 61 of the Planning and Environment Act 1987. Council's decision is subject to possible review by the Victorian Civil and Administrative Tribunal (VCAT).

### **Financial Implications**

All relevant fees have been paid. In the event of an application for review by VCAT, each party will be required to bear their own costs.

### **Environmental Implications**

As detailed in the Assessment of the Application.

### **Social Implications**

As detailed in the Assessment of the Application.

## **10. Risk Assessment**

Council's decision is subject to possible review by the Victorian Civil and Administrative Tribunal. In the event of an application for review by VCAT, each party will be required to bear their own costs.

Given that the proposed subdivision is considered unlawful, it is considered Council must not issue a permit for the proposed subdivision. It is reiterated that notification and referral of the proposed subdivision has not taken place.

## **11. Conclusion**

It is recommended that the proposed subdivision be refused on the grounds that the proposal is not lawful, in keeping with the decision of the Deputy President of VCAT in *Leigh v Greater Geelong CC*.

### **Attachments**

There are no attachments for this report.

• • • • • • • • APPENDIX M

# RUSSELL KENNEDY

MEMBER OF THE KENNEDY STRANG LEGAL GROUP

Your Ref P08/479  
Our Ref DVV 124514-00035

Contact  
David Vorchheimer  
Tel 61 3 9609 1537  
Fax 61 3 9609 6838  
DVorchheimer@rk.com.au

15 April 2009

Rebecca Mouy  
Manager Planning  
Mildura Rural City Council

Dear Rebecca

Planning Application P08/479 ("Application")  
Proposed 4 lot subdivision  
Marks Road, Red Cliffs ("Land")

We refer to the above and discussions on 8 April 2009.

We confirm that you are seeking advice on how to proceed in respect of the above Application and that:

- the Land is located in both the Farming Zone ("FZ") and Rural Conservation Zone ("RCZ"), and is affected by the Environment Significance Overlay schedule 1 ("ESO1") and the Land Subject to Inundation Overlay ("LSIO") controls pursuant to the Mildura Planning Scheme ("Scheme");
- the Land has an area of 11.5ha;
- the Application proposes to subdivide the Land into 4 lots comprising a 6.7ha lot in the FZ and 3 lots of between 1.172ha and 1.886ha in area in the RCZ;
- pursuant to clause 35.07-3 all lots within the FZ must have a minimum lot size of 10ha;
- pursuant to clause 35.06-3 all lots within the RCZ must have a minimum lot size of 1ha and an average of 1.5ha;
- the Application was not advertised pursuant to section 52 of the *Planning and Environment Act 1987* ("Act") and was not referred to the relevant referral authorities pursuant to clause 66.01 of the Scheme; and
- the Application was reported to the Council meeting of 26 March 2009 and Council directed that a planning permit issue subject to conditions.

On the basis of the information provided, a review of the Act, the Scheme and relevant Victorian Civil and Administrative Tribunal ("VCAT") decisions, in line with the recent VCAT decision in *Leigh v Greater Geelong CC (Red Dot)* [2008] VCAT 1335 (27 June 2008) it is our opinion that approval of the Application appears to be inconsistent with the Scheme. It is noted however that decisions of VCAT highlight that it is uncertain whether the proposal is prohibited by the Scheme. As such, although Council has the discretion to support the application, its decision at this time is unlawful due to procedural deficiencies as section 55 of the Act has not been complied with. Therefore, prior to

DVV 1254568v2 DVV

RUSSELL KENNEDY PTY LTD

LEVEL 12, 469 LA TROBE STREET, MELBOURNE VIC 3000 PO BOX 5146AA, MELBOURNE VIC 3001 DX 494 MELBOURNE

T. +61 3 9609 1555 F. +61 3 9609 1600 www.rk.com.au ACN 126 792 470 ABN 14 940 129 185



issuing the planning permit as directed by Council, it is our view that the procedural problems with the decision must be rectified by:

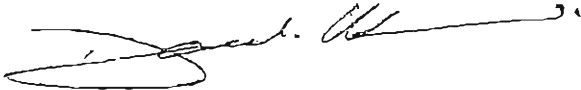
- referring the Application to the relevant referral authorities pursuant to section 55 of the Act and clause 66.01 of the Scheme and including any conditions required by the referral authorities on the planning permit; and
- advertising the Application to the owners and occupiers of surrounding properties for a minimum of 14 days and considering any objection/s received.

Failure to refer the Application as detailed above will render the decision unlawful and open the planning permit to challenge and expose Council to potential claims for damages and/or compensation.

If Council is of a mind to rescind its resolution to grant a permit for the Application the permit applicant and owner of the Land should be notified so that they do not act purported in reliance upon the resolution. In the event Council rescinds its resolution the permit applicant and owner of the Land must be notified immediately of the rescission.

If you have any queries please contact me.

Yours faithfully  
RUSSELL KENNEDY



David Vorchheimer  
Senior Associate

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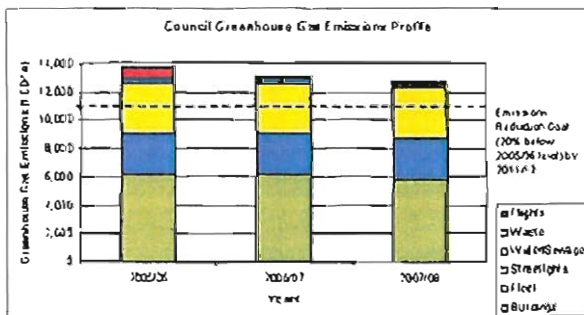
Mildura Rural City Council

# Ordinary Council Meeting

## AGENDA

5.00pm Thursday 23 April 2009

Council Room, Deakin Avenue,  
76 - 84 Deakin Ave, Mildura



Cr Glenn Milne (Mayor)  
Cr Susan Nichols (Deputy Mayor)  
Cr John Arnold  
Cr Nick Cavallo  
Cr Mark Eckel  
Cr Judi Harris  
Cr Fiona Hilton-Wood  
Cr Vernon Knight  
Cr Max Thorburn

14 NOTICES OF MOTION

14.1 NOTICE OF MOTION - NOTICE OF RESCISSION P08/447 - 2 LOT  
SUBDIVISION AT SIXTEENTH STREET MILDURA

Councillor: Susan Nichols  
Notice of Motion No: 64  
File No: P08/447

MOTION

The following Notice of Rescission has been tabled for the Ordinary Council Meeting to be held on Thursday 23 April 2009.

1. Recommendation

THAT:

Planning Application No. P08/447 be determined pursuant to Section 62 of the Planning and Environment Act 1987 by refusing to grant a permit for a 2 Lot Subdivision (Resubdivision to create a residential lot) at Sixteenth Street, Mildura (Lot 2 PS 137779 & Lot 1 TP 674938K) on the following grounds:

1. The proposal does not support the intent of the SPPF as it contributes to the loss of productive agricultural land and therefore reduces the viability of the existing vineyard on the site.
2. The proposal does not support the intent of the LPPF as it contributes to unplanned urban intrusion into rural areas.
3. The proposal does not satisfy local policy at Clause 22.06 of the Mildura Planning Scheme as it is creating a vacant allotment for a future dwelling that is not incidental to the use of the land for crop raising and are not directly related to the use of the land for agriculture or horticulture.
4. The proposal does not present a benefit to the existing agricultural use on site and therefore it does not accord with the intent of the Farming Zone.

be rescinded.

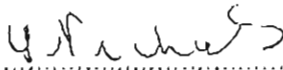
OPPOSE !!

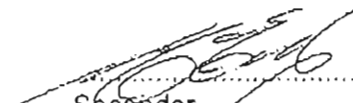
Should this motion be successful, I intend to move the following alternate motion:

THAT:

Planning Permit Application P08/447 be approved subject to the appropriate conditions.

Yours sincerely

  
.....  
Mover

  
.....  
Secunder

14.2 NOTICE OF MOTION - NOTICE OF RESCISSION P08/479 -  
GRANTING OF A PLANNING PERMIT

Councillor: Vernon Knight  
Notice of Motion No: 65  
File No: P08/479

MOTION

The following Notice of Rescission has been tabled for the Ordinary Council Meeting to be held on Thursday 23 April 2009.

1. Recommendation

THAT:

Planning Application No P08/479 be approved subject to the appropriate conditions.

be rescinded.

SUPPORT !!!

Should this motion be successful, I intend to move the following alternate motion:

THAT:

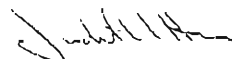
Planning Application No. P08/479 be determined pursuant to Section 61 of the Planning and Environment Act 1987 by refusing to grant a permit for a 4 lot subdivision at Marks Road, Red Cliffs (Lot 2 PS 522101J Sec B) on the following grounds:

1. The proposed subdivision is not lawful in light of the minimum lot requirement of 10 hectares on all land within the Farming Zone, which is within a gazetted irrigation district, having regard to the decision of the Victorian Civil and Administrative Tribunal in *Leigh v Greater Geelong CC (Red Dot) [2008] VCAT 1335* (27 June 2008).

Yours sincerely



Cr Vernon Knight



Cr Judi Harris

14.3 NOTICE OF MOTION - NOTICE OF RECISSION P08/424 - GRANTING OF A PLANNING PERMIT

Councillor: Vernon Knight  
Notice of Motion No: 66  
File No: P08/424

MOTION

The following Notice of Rescission has been tabled for the Ordinary Council Meeting to be held on Thursday 23 April 2009.

1. Recommendation

THAT:

Planning Application No P08/424 be approved subject to the appropriate conditions.

be rescinded

Should this motion be successful, I intent to move the following alternate motion:

THAT:

Planning Application No. P08/424 be determined pursuant to Section 61 of the Planning and Environment Act 1987 by refusing to grant a permit for a 2 Lot Subdivision (Dwelling Excision) at 79 McEdward Street Merbein (Lot 2 PS509526Y) on the following grounds:

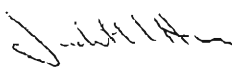
1. The application is in breach of the Section 173 Agreement that is located upon title.
2. The proposal is contrary to the purpose of the Farming Zone as the proposal is not providing for the use of the land for agriculture.
3. The proposal does not support the intent of the SPPF as it is creating a lot that will be incidental to the use of the land for agriculture.
4. The proposal does not support the intent of the LPPF as it contributes to unplanned urban intrusion into rural areas.
5. The proposal does not present a benefit to the existing agricultural use on site and therefore it does not accord with the intent of the Farming Zone.

Yours sincerely



Cr Vernon Knight

SUPPORT !!!



Cr Judi Harris

. . . . .

# APPENDIX O





8 Nicholson Street  
PO Box 500  
East Melbourne Victoria 8002

Ref: ADP000105  
File: PL-SP/03/3413

Telephone: (03) 9637 8114  
Facsimile: (03) 9637 8921  
DX 210098

Mr Peter Crisp MP  
Member for Mildura  
35 Deakin Street  
MILDURA VICTORIA 3500

7 SEP 2009

Dear Mr Crisp

#### AMENDMENT C58 TO THE MILDURA PLANNING SCHEME

I refer to your adjournment debate question on 2 June 2009 regarding Amendment C58 to the Mildura Planning Scheme and your request that the amendment be withdrawn.

As you are aware, I have used my powers of intervention to undertake the preparation, adoption and approval of Amendment C58 to the Mildura Planning Scheme under section 20(4) of the *Planning and Environment Act 1987*. The amendment was gazetted on 29 May 2009.

The amendment addresses the Mildura Rural City Council's request for clearer policy direction from the State Government and is intended as an interim measure until council is able to finalise its position with regard to the *Mildura Older Irrigation Area Rural Area Strategy, Final Report, April 2008*.

I understand that at its meeting on 9 June 2009, council resolved to receive the Mildura Older Irrigation Area (MOIA) Rural Strategy but did not endorse the recommendations of the report. Council also resolved to undertake a further desktop assessment of relevant studies to determine its position in relation to the MOIA. I have advised council that its final position needs to be consistent with State planning policies.

The issues within the MOIA are complex and challenging and I acknowledge that significant industry and social adjustment is occurring in this area. The continuing drought and lack of water is also contributing to the problems being faced in this community.

I have not undertaken the amendment lightly. Both the MOIA Rural Strategy and the MOIA Study into Land Values recognised that council had been approving new dwellings on all lots within the MOIA for many years despite the provisions of the planning scheme, including its own local policy. This land is within a Farming Zone not a residential zone. The purpose of the Farming Zone is primarily concerned with keeping land in agricultural production and avoiding uses that could limit or constrain agricultural activities. Farming should be the dominant land use in this zone.

#### Privacy Statement

Any personal information about you or a third party in your correspondence will be protected under the provisions of the *Information Privacy Act 2000*. It will only be used or disclosed to appropriate Ministerial, Statutory Authority, or departmental staff in regard to the purpose for which it was provided, unless required or authorised by law. Enquiries about access to information about you held by the Department should be directed to the Manager Privacy, Department of Sustainability & Environment, PO Box 500, East Melbourne, 3002.



Council's approach of approving all new dwellings in this area has created an unrealistic expectation that landowners have a right to build a new dwelling on these lots and this perception has been reflected in land sales and land values. I have acted to protect the future of horticulture within the MOIA, which is under considerable pressure from dwelling development and land fragmentation through subdivision.

A task force is also being established by the Department of planning and Community Development with representatives from key agencies and authorities to work with council to resolve a long-term position for the MOIA in accordance with State planning policies.

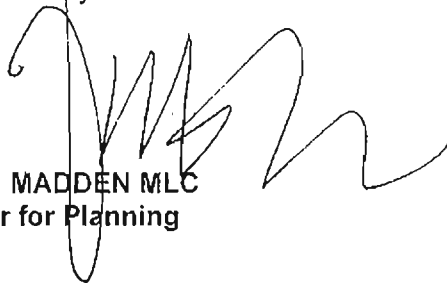
The amendment should not have come as a surprise to council. In September 2008, I wrote to council and indicated that I would be willing to consider an interim amendment whilst council resolved the issues associated with the MOIA Rural Strategy. I also expressed my concern at the number of dwelling and subdivision approvals being issued and that such approvals may continue unabated in the future. I reminded council that it had a legal responsibility to assess applications against the provisions of the planning scheme and warned council that it was inappropriate to continue this approach.

I also understand that the issue of dwelling approvals may have a negative impact on the business case for the Sunraysia Modernisation Project. The amendment will ensure that infrastructure, in particular that associated with water delivery, is protected from the inappropriate encroachment of residential development.

I encourage you to work with council to provide a way forward and to address these long-standing issues and hope that council's position can be resolved in a timely manner.

You have also raised issues relating to water security and the Australian Government's Exit Grant Package. The planning scheme is unable to provide a mechanism for securing water within the MOIA. I suggest that you raise these issues directly with the Minister for Water.

Yours sincerely



**JUSTIN MADDEN MLC**  
**Minister for Planning**

• • • • • • • • APPENDIX P



# Minister for Planning

MRCC  
RECEIVED

Ref: BMTN00696  
File: PL-PL/02/0782

29 SEP 2008

8 Nicholson Street  
PO Box 500  
East Melbourne Victoria 3002  
Telephone: (03) 9637 8087  
Facsimile: (03) 9637 8921  
DX 210098

23 SEP 2008

Cr John Arnold  
Mayor  
Mildura Rural City Council  
PO Box 105  
MILDURA VIC 3502

13/01/01

W/Flow DINFO: .....

Act/Off J. Arnold .....

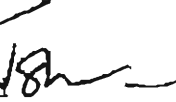
Security .....

Copy/Rel .....

Permanent

1-10 Years

11-35 Years

Dear Cr Arnold 

## MILDURA OLDER IRRIGATED AREAS STRATEGY PROJECT

I refer to our recent meeting on 30 July 2008 about the significant restructuring occurring in the horticultural industry in the Mildura Older Irrigated Areas and subsequent letter dated 4 August 2008 from Cr Glenn Milne. Minister Helper and I wrote to council in April this year concerning the importance of agriculture in the region and to the economy of Mildura. I understand that council has deferred adopting the Mildura Older Irrigated Areas Strategy pending further information on potential land valuation impacts. Given the significance of these irrigated areas to the State's agricultural base, I would urge completion of this valuation work as soon as possible.

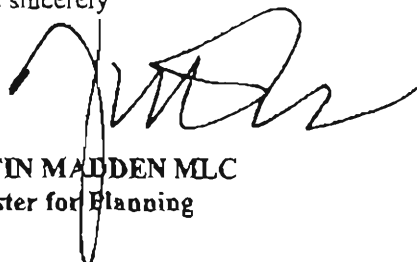
It is always difficult to balance short term individual gain against the long term benefit of the community, horticultural industry and the region. I note that since my correspondence in April, a number of subdivision and excision proposals have been considered by council. The decision making of council has resulted in 9 additional dwellings in this farming area. I also understand that 15 applications for subdivision have also been approved by council. These ad hoc residential intrusions can work to undermine the overall agricultural productivity of the region and the settlement objectives for the development of urban communities. I am concerned that such approvals may continue unabated in the future.

The issues are acknowledged to be complex and challenging. If it would assist council, I would be willing to introduce interim provisions based on the final strategy while our officers work to resolve outstanding issues. The interim controls should provide clarity around issues of dwellings and subdivisions within these areas, and will enable farmers to move forward.

I remind council of its legal responsibility to assess applications under the requirements of the *Planning and Environment Act 1987* and the provisions of the Mildura Planning Scheme. It is inappropriate for council to continue its practice of issuing permits where they are inconsistent with the provisions of the Mildura Planning Scheme.

I note that issues associated with urban settlement and land uses along the Murray River will be further investigated over the coming year by the department as part of its regional policy program. This investigation will involve councils along both sides of the river.

Yours sincerely



JUSTIN MADDEN MLC  
Minister for Planning



## **NO 6. POSSIBLE MISUSE OF COUNCIL RESOURCES**

In the course of my last term on Council, I have become increasingly concerned with the expenses claimed by some Councillors.

It is to be noted that several Councillors sought election in part on their determination to cut costs, especially in relation to overseas travel.

In my three terms on Council I have not before witnessed the regularity with which certain Councillors have sought to be funded for overseas travel.

This trend is one which raised some alarm in the wider community and it came as little surprise that questions would be asked.

As a result of these questions, Council's Freedom of Information Officer issued a breakdown of the costs incurred by Crs. Milne, Arnold, Hilton-Wood, Nichols, Eckel and Cavallo in 2009.

### **(APPENDIX Q)**

All told there was a total of nine overseas trips taken by Councillors during the year.

While most of the costs were predictable I was compelled to note there had been, for some reason, a decision to overlook the costs incurred by Councillors in relation to internet in the course of their travel.

In November 2009, Crs. Eckel and Hilton-Wood incurred internet costs of \$6,667 and \$11,246 respectively.

By my calculations the internet costs of Cr Eckel exceeds the cost of all other travel costs by a factor of 3 while the internet costs of Cr Fiona Hilton-Wood exceed the total of all other travel costs by a factor of 5.

Together Cr Eckel and Cr Hilton-Wood incurred almost \$20,000 internet expenses in the period which they were overseas.

### **(APPENDIX R)**

When I drew this matter to the attention of the CEO he indicated "that (Item 16) is partly known to me as I was asked for guidance on whether there was a basis for withholding information involving Councillor's expenses. My advice was that my FOI Officer should accurately respond to the request on the basis of expenses directly associated with travel which MRCC had paid for or accepted for reimbursement. I haven't read our specific response but doubt that it would have extended to ancillary costs such as internet usage or mobile phone costs.....I am aware of the internet costs incurred by Councillors whilst on overseas travel and after detailed examination am satisfied that the use was legitimate Council business."

One is compelled to assume that the CEO had been briefed in relation to this matter and that the Mayor too would have hopefully known of these charges.

**(APPENDIX S)**

I am unaware of any directions or guidelines that were issued as a result and I'm left to wonder how such inordinate costs can be protected from public scrutiny.

Another example suggests a very casual approach to the use of Council resources came to my attention December 2009.

I was on leave at that stage but called at Council to collect various papers from my pigeon hole.

Included in the papers was a hand written letter supposedly penned by Cr Susan Nichols which I am compelled to conclude had something to do with her non Council business.

A hand written note at the foot of the letter simply said....."Type this for Cr Nichols on plain paper."

It remains to be seen whether typing services have been accessed on other occasions and on what basis Council officers provided this service.

**(APPENDIX T)**

The Mildura community has experienced enormous hardship in recent years and its incumbent on all Councillors to do the right thing by their community.

One would have to feel that personal typing and excessive internet use does not meet that expectation.

.. . . . APPENDIX Q

1

Councillor	Date of travel	Destination	Fares	Accommodation	Meals	Registration	Misc	Total
<b>Glenn Milne</b>	13-20 June 2009	Dali, China Sister Cities exchange	1,775.22	1,800.00	354.80	N/A	1,155.78	5,085.80
	7-15 October 2009	Kumatori, Japan Sister Cities exchange	2,123.25		205.35	N/A	566.13	2,894.73
	17 October – 1 November 2009	United States Solar delegation	2,041.21	3,043.21	360.68	795.00		6,240.10
<b>John Arnold</b>	13-22 June 2009	Dali, China Sister Cities exchange	1,701.89	1,800.00	137.78	N/A	525.48	4,165.15
	8-18 November 2009	China Sister Schools program	2,002.85	780.00		N/A	810.00	3,592.85
<b>Fiona Hilton-Wood</b>	7-18 October 2009	Kumatori, Japan Sister Cities Exchange	2,012.84		134.68	N/A	145.56	2,293.08
<b>Sue Nichols</b>	18-24 October 2009	Upland, USA Sister Cities Exchange	1,349.57	513.28		N/A	203.12	2,065.97
<b>Mark Eckel</b>	16-24 October 2009	Upland, USA Sister cities Exchange	1,163.98	883.18	278.35	N/A	203.12	2,528.33
<b>Nick Cavallo</b>	17 October- 1 November 2009	United States Solar delegation	2,041.21	3,265.31	360.68	1,070.00		6,737.20





## OVERSEAS AND INTERSTATE TRAVEL

Section 222 of the Local Government Act requires that certain information be available for inspection. Part (f) requires that:

“Details of overseas and interstate travel undertaken in an official capacity by Councillors or any member of Council staff in the previous twelve months, including the names of the Councillors or members of Council staff and the date, destination, purpose and total cost of the overseas or interstate travel.”

Therefore, you are required to complete this form for any overseas or interstate travel. This should be carried out on your return as **all costs** are to be taken into account. Please note that travel to a neighbouring interstate municipality (ie. Wentworth Shire Council) is not included.

**NAME:** Cr Glenn Milne

**DATES:** 7-15 October 2009

**DESTINATION:** Kumatori, Japan

**PURPOSE:** Sister-city Exchange Program Visit 2009

**COSTS:**

	Comments	Costs (\$)
Travel (inc flights/car hire/cab charge etc)	Mildura-Melbourne-Japan return flight	2,060.00
	Taxi fares	63.25
Accommodation		
Conference Registration		
Meals	As per receipts and Cash Expenses Reconciliation prepared for Cr Milne	205.35
Other (please specify)	Laundry	33.70
	Blank CD	11.76
	Shower at airport	6.96
	Hotel telephone charges	450.71
	Luggage wrap	29.00
	Travel double adapter	34.00
<b>TOTAL</b>		<b>2,894.73</b>

Please forward to the Corporate Governance Branch as soon as possible:

- Email – Helpdesk – Travel – Advertising – Catering
- Phone – Extension 8171 or 8102

## OVERSEAS AND INTERSTATE TRAVEL

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Therefore, you are required to complete this form for any overseas or interstate travel. This should be carried out on your return as all costs are to be taken into account. Please note that travel to a neighbouring interstate municipality (ie. Wentworth Shire Council) is not included.

**NAME:** Cr Glenn Milne  
**DATES:** 13–20 June 2009, inclusive  
**DESTINATION:** Dali, China  
**PURPOSE:** Sister-city exchange program visit  
**COSTS:**

	Comments	Costs
Travel (inc flights/car hire/cab charge etc)	International flights with Thai Airways	1,600.00*
	On-ground transport to meetings and tourist sites	100.00*
	Boat trip	75.22
Accommodation	Internal costs China (flights, guides, accommodation and breakfast)	1,800.00*
Conference Registration	N/A	-
Meals	Dinner on 14 June 2009	76.59
	Banquet in Kunming	278.21
Other (please specify)	Tea Horse Road Tours (travel agency) fees	300.00*
	Shower at Bangkok Airport x 2	25.33
	Lounge entry at Bangkok Airport x 2	64.08
	Internet usage x 2	29.37
	Suitcase	58.20
	Drycleaning	23.33
	Excess baggage charge	655.47
<b>TOTAL</b>		<b>5,085.80</b>

Note: \* Costs as per Tea Horse Road Tours Invoice No. T6903 dated 19/04/09.

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## OVERSEAS AND INTERSTATE TRAVEL

Section 222 of the Local Government Act requires that certain information be available for inspection. Part (f) requires that:

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Therefore, you are required to complete this form for any overseas or interstate travel. This should be carried out on your return as all costs are to be taken into account. Please note that travel to a neighbouring interstate municipality (ie. Wentworth Shire Council) is not included.

**NAME:** Cr Glenn Milne  
**DATES:** 17 October - 1 November 2009  
**DESTINATION:** United States  
**PURPOSE:** Solar Research Delegation & Conference

**COSTS:**

	Comments	Costs
<b>Travel</b> (inc flights/car hire/cab charge etc)	Airfares International - 1,380.00	2,041.21
	Domestic Aust - 205.00	
	Domestic US - 354.45	
	Cab fares US - 101.76	
<b>Accommodation</b>	San Fransisco, Pheonix, Las Vegas, San Diego, Anaheim	3,043.21
<b>Conference Registration</b>	Solar Conference -	795.00
<b>Meals</b>		360.68
<b>Other</b> (please specify)		
<b>TOTAL</b>		<b>\$6,240.10</b>

Please forward to the Corporate Governance Branch as soon as possible:

- Email – Helpdesk – Travel – Advertising – Catering
- Phone – Extension 8171 or 8102

Personal and or Health Information collected by Council is used for municipal purposes as specified in the Local Government Act 1989. The Personal and or Health Information will be used solely by Council for these purposes and or directly related purposes. Council may disclose this information to other organisations if required by legislation. The applicant understands that the Personal and or Health Information provided is for the above purpose and that he or she may apply to Council for access to and/or amendment of the information. Requests for access and or correction should be made to Council's Privacy Officer.



## OVERSEAS AND INTERSTATE TRAVEL

Section 222 of the Local Government Act requires that certain information be available for inspection. Part (f) requires that:

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Therefore, you are required to complete this form for any overseas or interstate travel. This should be carried out on your return as **all costs** are to be taken into account. Please note that travel to a neighbouring interstate municipality (ie. Wentworth Shire Council) is not included.

**NAME:** Cr Fiona Hilton-Wood  
**DATES:** 7-18 October 2009  
**DESTINATION:** Kumatori, Japan  
**PURPOSE:** Sister-city Exchange Program visit

**COSTS:**

	Comments	Costs \$
<b>Travel</b> (inc flights/car hire/cab charge etc)	Mildura-Melbourne-Japan return economy class airfare for Cr Fiona Hilton-Wood	2,012.84
<b>Accommodation</b>		
<b>Conference Registration</b>		
<b>Meals</b>	As per receipts provided by Cr Hilton-Wood	134.68
<b>Other</b> (please specify)	Gamma raying of corporate gift from Kumatori Town Council – Customs requirement	60.56
	Excess baggage charge due to gifts from Kumatori Town Council for Mildura Rural City councillors	85.00
<b>TOTAL</b>		2,293.08

Please forward to the Corporate Governance Branch as soon as possible:

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Therefore, you are required to complete this form for any overseas or interstate travel. This should be carried out on your return as **all costs** are to be taken into account. Please note that travel to a neighbouring interstate municipality (ie. Wentworth Shire Council) is not included.

**NAME:** Cr Mark Eckel

**DATES:** 16-24 October 2009

**DESTINATION:** Upland California USA

**PURPOSE:** Mildura/Upland Sister City 40th Anniversary Celebrations

**COSTS:**

	Comments	Costs
<b>Travel</b> (inc flights/car hire/cab charge etc)	Airefares: International - 880.95 Domestic - 256.79 Cab Fares - 25.94	1,163.98
<b>Accommodation</b>	Heritage Inn Rancho California	883.18
<b>Conference Registration</b>		
<b>Meals</b>		278.35
<b>Other (please specify)</b>	Gifts	203.12
<b>TOTAL</b>		<b>\$2,528.33</b>

Please forward to the Corporate Governance Branch as soon as possible:

- Email – Helpdesk – Travel – Advertising – Catering
- Phone – Extension 8171 or 8102

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• • • • • • • • APPENDIX R

## Bill Allocation - Executive Services

Base For Comparison: Nov 2009 To Nov 2009  
 Compare To: Oct 2009 To Oct 2009  
 Filter(s) Applied: 1 Cost Centre(s)

Include Charges: All Charge Categories

% Allocation	Months Nov 2009 To Nov 2009			Months Oct 2009 To Oct 2009		
	Excl GST	GST	Incl GST	Excl GST	GST	Incl GST
<b>Cost Centre: All Cost Centres</b>	\$21,348.43	\$154.24	\$21,502.67	\$2,559.25	\$255.92	\$2,815.17
Cost Centre: Executive Services	\$21,348.43	\$154.24	\$21,502.67	\$2,559.25	\$255.92	\$2,815.17
Cost Centre: Airport	\$30.12	\$3.01	\$33.13	\$32.13	\$3.21	\$35.34
0428 342 950 - Andrew McSwain - Airpor 100 \ 100 %	\$30.12	\$3.01	\$33.13	\$32.13	\$3.21	\$35.34
Cost Centre: Councillors	\$20,673.59	\$86.76	\$20,760.35	\$1,883.82	\$188.39	\$2,072.21
0427 052 236 - Cr Arnold - Turbo Card 100 \ 100 %	\$70.61	\$7.06	\$77.67	\$40.13	\$4.01	\$44.14
0427 321 092 - Cr Harris - Turbo Card 100 \ 100 %	\$80.91	\$8.09	\$89.00	\$80.91	\$8.09	\$89.00
0428 314 079 - Cr Nichols - Turbo Card 100 \ 100 %	\$60.95	\$6.10	\$67.05	\$27.04	\$2.71	\$29.75
0428 320 178 - Cr Eckel - Turbo Card 100 \ 100 %	\$6,659.61	\$8.09	\$6,667.70	\$193.07	\$19.30	\$212.37
0428 325 081 - Cr Cavallo - Turbo Card 100 \ 100 %	\$61.02	\$4.16	\$65.18	\$101.43	\$10.15	\$111.58
0428 337 568 - Cr Knight - Turbo Card 100 \ 100 %	\$276.38	\$27.63	\$304.01	\$991.69	\$99.17	\$1,090.86
0428 338 507 - Cr Milne - Turbo Card 100 \ 100 %	\$2,078.89	\$2.85	\$2,081.74	\$138.67	\$13.87	\$152.54
78 530 772 - Cr Thorburn - Turbo Card 100 \ 100 %	\$146.87	\$14.69	\$161.56	\$229.97	\$23.00	\$252.97
0428 995 776 - Cr Hilton-Wood - Turbo C 100 \ 100 %	\$11,238.35	\$8.09	\$11,246.44	\$80.91	\$8.09	\$89.00
Cost Centre: Economic Development	\$70.33	\$7.03	\$77.36	\$76.27	\$7.62	\$83.89
0400 876 216 - Andrew Millen 100 \ 100 %	\$70.33	\$7.03	\$77.36	\$76.27	\$7.62	\$83.89
Cost Centre: Executive Services	\$0.25	\$0.03	\$0.28	\$0.25	\$0.03	\$0.28
0419 368 887 - Cr Glenn Milne (Mayor) 100 \ 100 %	\$0.25	\$0.03	\$0.28	\$0.25	\$0.03	\$0.28
Cost Centre: Marketing & Communication	\$31.13	\$3.11	\$34.24	\$28.16	\$2.82	\$30.98
0417 567 006 - Mieka Symes 100 \ 100 %	\$31.13	\$3.11	\$34.24	\$28.16	\$2.82	\$30.98
Cost Centre: Organisational Development	\$185.37	\$18.53	\$203.90	\$212.59	\$21.25	\$233.84
0408 560 049 - Mandy Whelan 100 \ 100 %	\$78.04	\$7.80	\$85.84	\$85.20	\$8.52	\$93.72
0418 329 448 - Geoff Burr 100 \ 100 %	\$20.62	\$2.06	\$22.68	\$28.35	\$2.83	\$31.18
0418 511 257 - Richard Morrison 100 \ 100 %	\$14.76	\$1.48	\$16.24	\$15.08	\$1.51	\$16.59
0419 383 927 - Tim Rodger 100 \ 100 %	\$18.31	\$1.83	\$20.14	\$30.32	\$3.03	\$33.35
0439 331 084 - Vanessa Manno 100 \ 100 %	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
0439 570 715 - Mandy Whelan - Turbo C. 100 \ 100 %	\$53.64	\$5.36	\$59.00	\$53.64	\$5.36	\$59.00
0447 868 688 - Kellie Boyce 100 \ 100 %	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Cost Centre: SMEDB	\$357.64	\$35.77	\$393.41	\$326.03	\$32.60	\$358.63
0407 183 338 - Helena Howe 100 \ 100 %	\$0.60	\$0.06	\$0.66	\$14.33	\$1.43	\$15.76
0418 337 662 - Cathy Violi 100 \ 100 %	\$0.05	\$0.01	\$0.06	\$0.00	\$0.00	\$0.00
0439 612 317 - Majella Ballard - Rural Sk 100 \ 100 %	\$356.99	\$35.70	\$392.69	\$311.70	\$31.17	\$342.87
<b>Grand Total:</b>	<b>\$21,348.43</b>	<b>\$154.24</b>	<b>\$21,502.67</b>	<b>\$2,559.25</b>	<b>\$255.92</b>	<b>\$2,815.17</b>

• • • • • • • • APPENDIX S



## Draft questions for discussions

Chris Knight

**Sent:** Sunday, 7 March 2010 2:43 PM

**To:** dstevenson@smgt.com.au

**IN STRICTEST CONFIDENCE**

**NOT TO BE SHARED BY E-MAIL UNDER ANY CIRCUMSTANCES**

**NOT TO BE PROVIDED TO COUNCIL'S CEO OTHER THAN DIRECTLY BY HAND, IN CONFIDENCE**

1. Why was Cr Thorburn excused from the prescribed penalties when he refused to withdraw a derogatory comment and abide by the Mayor's directive, or failed to apologise after an incident at the Council meeting in January, 2009?
2. Why were Councillors denied access to details of a formal complaint made against Cr Thorburn, or a copy of the legal opinion obtained by Council, when the matter was brought to a Special In-camera Meeting?
3. Why did Ms Cheryl Wood seek a legal opinion in relation to my own published comments without any reference to me, or it would seem, the then CEO?
4. How was it that the Mayor was able to make public statements in relation to the matter?
5. Were Ms Wood's actions at odds with Council's obligation to protect a whistleblower given that the matter was an immediate follow-up to my complaints to LGV?
6. Why was no action taken against Cr Thorburn in the course of the past year with respect to his editorials and public comments which were at real risk of bringing the Council into disrepute?
7. Why was no action taken against Cr Thorburn in relation to his failure to vote on various matters during 2009?
8. What actions if any were taken in relation to allegations against a Council officer who it was alleged sought favours from a developer for personal gain?
9. Why was no action taken against those Councillors who approved planning permits which had been declared 'unlawful' by Council's legal advisors?
10. Why was no action taken in response to the Planning Minister's criticism of certain planning decisions made by Council?
11. Why were the apparent bullying behaviours of Crs Milne, Eckel and Nichols ignored when they openly attacked the offer of a planning cadetship to Mrs Anne Mansell?
12. Why was no action taken against Cr Thorburn when he voted in support of a matter which benefitted the Mildura Harness Racing Club without declaring his interest?

13. Why did Council state in its Annual Report 2008-9 that there were no matters in which Council was subject to complaint or dispute?

14. Why did Cr Nichols feel able to request a staff member for typing services in a matter which was clearly not Council related?

15. Why was a complaint by Western Murray Irrigation against Cr Thorburn, not shared with all councillors as requested?

16. Why were the internet expenses of Councillors not revealed in an FOI report concerning the costs incurred in overseas trips when the monthly increases ranged from 1,500% to 14,000%?

17. Who made the decision not to reveal this information?

18. What action has been considered in relation to the expense claims of Councillors detailed in the report for the period July to October, 2009?

*Vernon Knight*

## Vern Knight

---

**From:** Mark Henderson [Mark.Henderson@mildura.vic.gov.au]  
**Sent:** Wednesday, 10 March 2010 11:15 AM  
**To:** Vern Knight  
**Cc:** David Stevenson  
**Subject:** In Confidence

Vernon, I've reviewed the matters of concern you have identified and thought overnight about how I might respond. As you know most matters pre date my arrival so whilst I have heard about some many are unknown to me. Broadly speaking however they relate to conduct of Councillors, potentially improper or corrupt conduct by Council staff and potential breaches of the Councils code of conduct and meeting procedure local law.

Two matters stand out as they potentially involve Council staff breaching legislation. Item 5 questions management's compliance with whistleblower protection legislation and item 8 draws reference to allegations of corrupt conduct by an unnamed Council officer. In terms of item 5 the protection of whistleblower protection legislation does not readily apply to complaints or disclosures relating to behavioural conduct. It relates to disclosures of misconduct (personal gain from public office or abuse of public office) or criminal activity. I haven't researched the nature of the events that lead to item 5 but it may be the whistleblower protection legislation did not apply.

Item 8 draws into focus my obligations as the Councils public officer under Ombudsman's legislation. To enable me to properly fulfil my obligations I would welcome any further information that you have available in relation to the allegation so that I can establish whether it has already been investigated.

Item 15 is well known to me and been the subject of earlier discussion. By way of background the complaint from WMI sought MRCC intervention through Council's code of conduct on a matter arising from a Councillors private employment. In that sense WMI was seeking something that was beyond the Council's power and therefore its request that the matter be listed for discussion at Councils next meeting was rejected. Its further request that the complaint be cc'd to all Councillors was not acted upon on my judgement that the complaint was not a matter that Council was able to deal with and therefore its wider circulation was not appropriate. Had the logic and argument put by WMI found its way into other hands I think there was a high probability that the weakness of its position and its attempt to have MRCC misuse its conduct policy to sanction the media could have proved highly embarrassing to WMI as a corporate entity.

Item 16 is partly known to me as I was asked for guidance on whether there was a basis for withholding information involving Councillor expenses. My advice was that our FOI Officer should accurately respond to the request on the basis of expenses directly associated with travel which MRCC had paid for or accepted for reimbursement. I haven't read our specific response but doubt that it would have extended to ancillary costs such as internet usage or mobile phone costs although the latter is disclosed in council reports. I'm aware of the internet charges incurred by Councillors whilst on overseas travel and after detailed examination am satisfied that the use was legitimate Council business. Our internet arrangements have since been altered so that MRCC is able to introduce a cap on charges to avoid excessive but at the time unknown costs from international internet providers.

Item 18 relates to Councillor expenses and any proposed action. Use of private vehicles for Council business has been identified as an area where savings may be possible by substituting a Council vehicle. Corporate is currently evaluating this option.

In terms of the other matters raised I have no personal knowledge and would be hard pressed to investigate without drawing attention to my actions and risking a breach of confidence. Perhaps other parties would view the collective weight of the matters as a basis for further investigation but from my perspective there is no fundamental breakdown in governance or breach of duty that would warrant Ministerial intervention. Viewed objectively the matters appear to reflect a pattern of behaviour that does not sit comfortably with the Councils agreed code of conduct and meeting procedure local law but as they are largely historical in nature I doubt there's much to be gained by raking over the coals. Conduct panels may provide a mechanism to deal with future issues but I'm not sure that any Council has found these to be particularly helpful except as a basis for dealing with extreme Councillor behaviour. I'm happy to talk further if this would assist.

Regards

**Mark Henderson** | Chief Executive Officer  
Mildura Rural City Council | PO Box 105 | Mildura Victoria 3502  
Ph: (03) 5018 8151 | Fax: (03) 5023 8187 | [mark.henderson@mildura.vic.gov.au](mailto:mark.henderson@mildura.vic.gov.au)

## Vern Knight

---

**From:** Mark Henderson [Mark.Henderson@mildura.vic.gov.au]  
**Sent:** Monday, 15 March 2010 3:36 PM  
**To:** Vern Knight  
**Subject:** RE: Governance Concerns

Vernon, I'm certainly happy to work through operational issues with you and privately discuss the depth of the issues you have raised. Prompted by your email I did read the latest editorial (normally don't) and acknowledge that when read as material published by a Councillor it does not sit comfortably with Councils code of conduct. I note David has recently re-nominated as Audit Chair so it will be interesting to see if the published views emerge in some way through the appointment process. In terms of acting further on the matters MRCC's Code of Conduct could be a starting point or alternatively you may prefer the objectivity of Local Govt Vic.

Regards

**Mark Henderson** | Chief Executive Officer  
Mildura Rural City Council | PO Box 105 | Mildura Victoria 3502  
Ph: (03) 5018 8151 | Fax: (03) 5023 8187 | [mark.henderson@mildura.vic.gov.au](mailto:mark.henderson@mildura.vic.gov.au)

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**From:** Vern Knight [mailto:vknight@malleefamilycare.com.au]  
**Sent:** Sunday, 14 March 2010 2:45 PM  
**To:** Mark Henderson  
**Cc:** 'David Stevenson'  
**Subject:** Governance Concerns

Dear Mark,

I appreciate your quick response to my concerns but I am not sure that you fully appreciate the seriousness of the situation.

While they are matters which essentially predate your arrival, I have to indicate that they are ongoing, whether we like it or not.

These are not new or isolated issues. They are indications of a culture which can only be changed by determined action.

(Ironically, a newspaper owned and/or operated by Cr Thorburn published an article that questioned the integrity of a member of Council's Audit Committee on the very day following our meeting.)

While I understand your reluctance to 'rake over the coals', I need to indicate that these are not just smouldering fires.

They have burnt many people in the past and they are destined to burn more.

I remain happy to brief you on any matters that you might wish to address at an operational level but I trust you'll appreciate my need to take my concerns further. My awareness of them makes that obligation.

No doubt we can talk on Wednesday, but I intend to act further on the matters when I return from Melbourne.

Regards,

Vernon

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The information in this electronic mail may be privileged and confidential and

• • • • • • • • APPENDIX T

H SUSAN NICHOLS  
226 ROAM'S STREET

WENTWORTH NSW  
2648

To Whom IT MAY CONCERN.

THIS NOTE IS TO CONFIRM. I HAVE PREPARED PAPERWORK TO  
MARRY [REDACTED] & [REDACTED]  
ON THE 4 4 2010. I AM A CIVIL MARRIAGE CELEBRANT  
A3164 & MAY BE CONTACTED AT ADDRESS ABOVE OR FAX  
0350272444 TELEPHONE 0350272371

YOURS SINCERELY

J.P. NSW  
CR SUSAN NICHOLS cmc.

Type this for Cr Nichols  
explain paper.

Inadvertently received  
my Cr Knight on  
24.12.09 as an  
to Knight as an  
bookings.  
6.12.09

~~3 NAME ST  
DARLTON NSW 2917~~



## **NO 7. HIGHLY SENSITIVE MATTERS**

There are also matters which I am reluctant to note but ought to be reported in the event there is a will to act upon my other concerns.

One involves the possibility of an officer failing to establish 'appropriate distance' in relation to planning applications while the other concerns the possible harassment of a new staff member.

### **7.1 Planning Applications**

In my role of CEO of Mallee Family Care, I was involved in obtaining a planning permit for a new office development at 94 Lemon Avenue Mildura.

The purpose was not prohibited and the planning issues were only ever destined to involve setback and aesthetics.

The matter was given over to GSD Design, the architects of the project and MFC's representative in negotiations with Council's Planning Department.

I believe that I personally maintained proper distance throughout the application process with the principal of GSD representing MFC at the objector's meeting.

I was disturbed to hear that the application received one objector being a senior administration officer of Council and a person with close connections to a senior officer in the Planning Department.

In the course of that meeting, Mr Sparkes advised me that the Planning Manager appeared in the company of his partner. Mr Sparkes inquired whether the planner was also an opponent and was advised that he, the planner, was only present in his role as an officer of the Planning Department.

I was personally disturbed that a senior officer of the Council would display such a lack of insight.

My conversation with Mr Sparkes then alerted me to other matters and I found myself even further distressed.

The planner's home is in Lemon Avenue, virtually opposite the development proposed by Mallee Family Care.

Adjoining their property is a vacant block which had also been proposed for a development in which Mr Sparkes had been given the responsibility for obtaining the permit.

According to Mr Sparkes and the developers, the new development has been thwarted for many years by the planner and his family.

The developers have spent over six years trying to develop the site, firstly as luxury town-houses as part of a larger inner-city development of thirteen town-houses, and then as a business centre.

Despite many planning requirements, the developers claim the planner listed objections which required extensive responses, expensive studies and lengthy delays.

After mutual agreement to improve the amenity of the planner's property, the developers ceded a strip of land to the planner who placed a caveat on the developer's title in respect of this. I am advised that the planner's family undertook to resurvey the block of land involved, complete the various approval processes and remove the caveat from the title.

This agreement also removed any objections by the planner's family in relation to possible removal of a tree situated on the property interface.

Some three years later, I am given to understand that the planner's family have not fulfilled their undertakings and the caveat is preventing the developer from proceeding with development or sale of the land.

The developer believes that they have lost three potential sales of the property as a result of what they deem to be dilatory processes and a public history of related problems.

Rightly or wrongly, the developers clearly felt that they were between a rock and a hard place in their endeavours to negotiate a planning permit with the planning manager who also happens to be the adjoining owner.

As with the case involving Mallee Family Care, there would appear to be a failure on the part of the planner to distance himself from a matter in which he had a direct interest.

I took the matter to the attention of the then CEO with the approval of Mr Sparkes.

#### **(Appendix V)**

I am informed that the then CEO met with Mr Sparkes to receive first hand details of what had happened. It remains a matter of record that the said planner continues to occupy a senior role in the management of Planning in the Mildura Rural City Council.

I was left to share the disillusion of those who are having to deal with such situations in their pursuit of planning permits.

#### **7.2 The appointment of a Planning Cadet**

It's a matter of record that councils generally struggle to attract qualified planner. It came to my attention that the President of my organisation was in the throes of completing her Planning Degree.



Mrs Mansell held qualifications in Nursing and Business Studies and I was somewhat surprised to learn that she was planning a new career.

I took the opportunity to alert Council's CEO to the possibility that there would soon be another planner in Mildura.

I subsequently heard that Mrs Mansell had been interviewed by Council's Development Manager and offered a Planning Cadetship for the six months remaining in her course.

Some days later, I was present at a Council Forum where Mrs Mansell's appointment was being discussed by Crs Eckel, Nichols and Milne.

Their conversation was also overheard by then Cr Sharyon Peart and we were both appalled by the objections and innuendo expressed.

There were suggestions that a woman in her forties should never be offered a Cadetship and that she was the wrong person for the position.

Neither I nor Cr Peart made any comment other than to convey to each other the sadness of what we were hearing.

Within days Mrs Mansell had quit the cadetship which she had held for just eight weeks and I was informed by the then Planning Manager that she had effectively been 'hounded out' of Council.

In a later discussion with Mrs Mansell, I sought to find out what had happened.

While Mrs Mansell had seemingly determined that it was not the position that she would want long term, she informed me that she was prompted to withdraw on the basis of her knowledge that certain Councillors were openly critical of her appointment.

Mrs Mansell had previously been a Mildura Rural City Councillor and she privately observed to me that she had no intention to exposing her family to any more of the vitriol that she was sure would follow.

It is with some irony that some short time later Mrs Mansell was appointed to the high profile position of CEO of the Mildura Economic Development Corporation.

Aside from the inappropriateness and the illegality of the actions of three Councillors it remains clear that some Councillors refuse to understand their role and the prohibitions in relation to involvement in day to day management.

(In both cases the complainants would be reluctant to tell their stories given their fear of retribution.)

**Notwithstanding, former Planning Manager Rebecca Mouy will testify that she felt compelled to advise the cadet that her appointment was being challenged by certain Councillors.**



## Vern Knight

---

**From:** Geoff Sparkes [geoff@gsda.com.au]  
**Sent:** Wednesday, 30 June 2010 1:33 PM  
**To:** Vern Knight  
**Subject:** RE: Council - aaaghhh!

Hi Vern

I am happy to speak to someone about it. They should also talk to Lois as it was her land.  
regards Geoff

G E O F F S P A R K E S

**GSD**

111 MADDEN AVE

MILDURA VIC

ARCHITECTS

T : (03) 5023 2616  
F : (03) 5021 2824  
E : [geoff@gsdarchitects.com.au](mailto:geoff@gsdarchitects.com.au)

---

**From:** Vern Knight [mailto:vknight@malleefamilycare.com.au]  
**Sent:** Wednesday, 30 June 2010 1:26 PM  
**To:** Geoff Sparkes  
**Subject:** Council - aaaghhh!

Hi Geoff,

The wheels grind very slowly, but Local Government Victoria is finally following-up some of the matters which I have brought to their attention.

Aside from the two, much publicised cases – where both pleaded guilty, there are at least another 18 matters which bear investigation.

One includes of course the matter which you brought to my attention and which you subsequently discussed with Phil Pearce.

I am now being asked to provide more information. Are you still happy that the investigators contact you in relation to the Beckwith land?

You'll gather that I don't intend to rest until the job is done and I fear that things are worse now than ever.

Regards,

Vernon

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• • • • • • • • APPENDIX V

23<sup>rd</sup> January 2008 9

Mr John Watson,  
Executive Director,  
Local Government Victoria,  
Level 8,  
55 Collins Street,  
MELBOURNE 3000.

Dear Mr Watson,

I am writing to request your investigation of a matter which I believe is a significant breach of the Councillor's Code of Conduct and the Local Government Act.

Over the past three years I have served on the Mildura Council with a Councillor, Susan Nichols, who is also a Councillor on the Shire of Wentworth in NSW. At no stage to my knowledge has she ever declared a conflict of interest, despite the fact the numerous planning and financial decisions would surely have placed her in a compromised position.

I have not previously sought to have these concerns addressed, but I now feel that her situation is totally untenable.

At Mildura Council's January meeting, Cr Nichols put forward a Notice of Motion that:

Mildura Rural City Council initiate and facilitate a meeting/consultation with Wentworth Shire Council with a view to pursuing the possibility of the establishment of a purpose-built, state-of-the-art regional waste facility at Mourquong.

Mourquong is in the Shire of Wentworth in New South Wales.

At no stage did Cr Nichols declare any direct or indirect interest other than in the course of moving her motion, state that she had not discussed the matter with the Wentworth Council. She in fact made this statement without declaring her position as a Councillor of Wentworth Shire, NSW.

You will be aware that recent amendments to the Local Government Act have sought to ensure that Councillors in Victoria are prohibited from serving on two Councils. This is a position which was overwhelmingly endorsed by Victorian Councils in a survey conducted prior to the new legislation. Sadly, the Act remains silent on the position of interstate Councillors given, I suspect, that the situation was never envisaged.

Turning to the subject of Cr Nichol's motion, it needs to be understood that Mildura Council is already a leader in Victoria's waste management. Our diversion rates in kerb-side collection are well above state averages and we have ourselves developed a 'state of the art' facility with a life expectancy of at least 25 years.

Wentworth does not at this stage have any kerb-side recycling collection and it is inconceivable that Wentworth's population base would itself be able to fund a facility comparable to that which exists in Mildura.

In my view, the proposal could only benefit the residents of Wentworth and disadvantage the residents of Mildura.

For example:

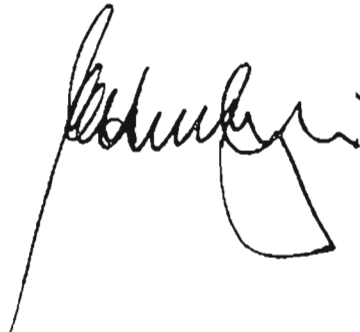
1. A new shared waste facility at Mourquong would provide amenity to Wentworth residents and inconvenience for Mildura residents.
2. Such a facility could have significant financial benefits for the Wentworth Council.
3. (It would potentially establish services within the Shire which are currently beyond the Council's reach or funding ability).
4. Such a facility could have significant financial burdens for the Mildura Council.
5. (Any steps which serve to reduce the life of the Mildura waste management centre would bring forward Council's liability in relation to land-fill rehabilitation).

To my mind, the actions of Cr Nichols breach Section 79 of the Act in terms of 'residential amenity' and 'a conflicting duty to another'.

It is my view that there has been a serious failure to declare an interest and it has been made by a long-serving Councillor (both in Mildura and Wentworth), a councillor who has already had to defend herself publicly in relation to divided obligations and a Councillor who had just days before attended a high level briefing on the requirements of the new legislation.

I would hope that it's not too late for the Department and the Government to revisit the issue of prohibiting a Councillor holding office in Victoria and a Council in another state as the principles are clearly the same as those which lead to prohibition of serving on two Councils in Victoria. I would be pleased if you could advise me if you share my views in the relation to the above and your willingness to pursue the investigations that I deem necessary.

Cr Vernon Knight AM JP  
Box 487,  
MERBEIN 3505.

A handwritten signature in black ink, appearing to read 'Vernon Knight', with a large, sweeping flourish extending downwards and to the left.

**14 NOTICES OF MOTION****NOTICE OF MOTION - REGIONAL WASTE FACILITY**

**Councillor:** Susan Nichols  
**Notice of Motion No:** NM3/09  
**File No:** 15/05/01  
**Date:** 9 January 2009

**MOTION**

Mildura Rural City Council (MRCC) initiate and facilitate a meeting/consultation with Wentworth Shire Council (WSC) with a view to investigating the establishment of a purpose built, state-of-the art regional waste facility at Mourquong.

This facility is to be capable of receiving all types of waste: paper, glass, plastic, rubber, oil, wood and general refuse. It is expected that the operator would have the expertise, ability and equipment to generate financial gain from the operation of this facility.

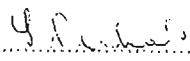
A committee could be formed, if both Councils agree, to investigate funding opportunities from the Federal and Victorian and NSW State Governments. The committee would also investigate compliance issues pertaining to EPA, Occupational Health and Safety and other regulatory bodies for both states.

Due to the isolation of MRCC and WSC it is not possible to form an alliance with other councils in either state and this project would show a determination to overcome a border anomaly that would benefit both municipalities in encouraging superior recycling of refuse in a purpose built facility.

**1. Recommendation****THAT:**

- 1. Mildura Rural City Council initiate and facilitate a meeting/consultation with Wentworth Shire Council with a view to pursuing the possibility of the establishment of a purpose-built, state-of-the art regional waste facility at Mourquong.**

Yours sincerely

  
.....  
Cr Susan Nichols

  
.....  
Cr Mark Eckel

28<sup>th</sup> January 2009

Mr. John Watson,  
Executive Director,  
Local Government Victoria,  
Level 8,  
55 Collins Street,  
MELBOURNE 3000.

Investigator :  
RUSSELL BENNETT  
9651 7062

Dear Mr. Watson,

I wrote to you on January 23 to voice my concerns in relation to a Mildura Councillor who I believe has seriously breached her obligations with respect to a failure to declare her interest in a particular matter. I had hardly expected to write again so soon.

But I am now of the view that the breach by Cr Nichols is becoming symptomatic of the behaviours of some other Councillors in Mildura and I am now believing that there are grounds for a broader investigation.

If I can back track for just a moment, there was an issue which developed at the very first Ordinary Meeting of Council in December. It resulted in a Point of Order and a direction that one Cr Max Thorburn withdraw a remark. He failed to do so and after three requests, he was expelled from the meeting. A number of us also observed that Cr Thorburn did not vote on various matters prior to his expulsion.

Our Local Law provides that there are penalties attached to the incident but the Mayor issued a public statement that he did not intend to impose any fine.

As I understand the situation, the determination of penalties is the responsibility of the authorised officer and not the Mayor. The Mayor has since acknowledged his mistake but there has been no attempt to remedy that situation.

At the January meeting, Cr Thorburn also failed to vote on various occasions, a matter which was noted by the media representative and conveyed to me in person. Again there was no attempt to make Cr Thorburn conform to the requirements of the Act.

Yesterday, Councillors were called to a Special In-camera meeting to discuss a complaint received from a former Councillor in relation to Cr Thorburn and his publication of material contained in a confidential letter to Councillors. The contents were allegedly published in a newspaper which is owned or managed by Cr Thorburn. An officer's report claimed that the matter had been referred for legal advice and there was an officer's recommendation that no action be taken.

In company with two other Councillors, I requested that the matter be deferred until such time as Councillors were provided with copies of the article which



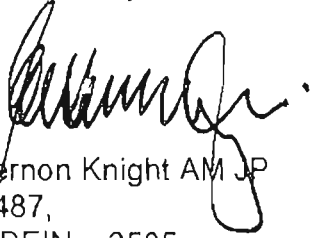
had lead to the complaint and a copy of the legal opinion obtained by Council. The request was overturned and the motion to adopt the recommendation for no further action was duly agreed to (five votes to three).

One of those voting that there be no further action taken against Cr Thorburn was Cr Mark Eckel (who actually tried to second the motion.)

At no time did Cr Eckel declare any interest in the matter, despite the fact that he is employed by a Community Radio station which is managed by Cr Thorburn.

I am compelled to suggest that we have another potent example of a Councillor failing to give any attention to his conflict obligations and I believe that failures will continue to be the norm without the appropriate actions of your Department.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Vernon Knight', with a large, stylized flourish at the end.

Cr Vernon Knight AM JP  
Box 487,  
MERBEIN 3505.

12th February, 2009

The Chief Executive Officer,  
And the Mayor,  
Mildura Rural City Council,  
Madden Avenue,  
**MILDURA VIC 3500**

Dear Phil and Glenn,

**Re: Letters of Councillor Vernon Knight - Matters of Concern to Audit Committee**

Councillor Knight furnished to me in my capacity as Chair of the Audit Committee copies of his letters dated the 23rd January and the 28th January, 2009 respectively to the Executive Director of Local Government Victoria, copies of which are enclosed.

In my view it was entirely appropriate that I be furnished with such copy letters as the allegations made in such letters do raise questions which, under its Charter, the Audit Committee should address and bring to the attention of Council in the interests of better governance, accountability, transparency and adherence by all councillors to their legislative obligations and general fulfilment of the undertaking given by each councillor in the oath of office.

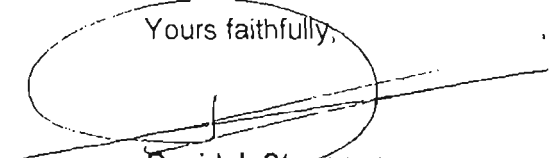
The obligation of the Audit Committee is to fulfil an advisory role in assisting Council in the effective conduct of its responsibilities, including facilitating compliance with laws and regulations as well as use of Best Practice Guidelines.

It is not the task of the Audit Committee to conduct enquiries or make findings in relation to the allegations made by Councillor Knight, but it is entirely appropriate that the Committee draws to your attention, and that you draw to the attention of all Councillors, the potential seriousness of the allegations made, and if after enquiry by others any of the allegations are found to have substance, it is the view of the Committee that Council will need to be more vigilant in ensuring that all Councillors comply with all laws and regulations and that they fulfil the undertaking in the oath of office.

At our committee meeting on Thursday 12<sup>th</sup> February it was agreed we seek your response to the issues raised.

I look forward to hearing from you in due course.

Yours faithfully,



**David J. Stevenson**  
**CHAIRMAN**  
**Audit Committee**

STRICTLY CONFIDENTIAL

27 April 2009

Mr David Stevenson  
Chair  
Audit Committee  
Mildura Rural City Council  
PO Box 105  
MILDURA VIC 3502

Dear David

You will be aware of my concerns in relation to the governance of the Mildura Rural City Council and my desire to ensure that we strive to maintain the standards which were set under Mayors Arnold, Warhurst and Byrne.

While I acknowledge that Mayor Glenn Milne has outwardly evidenced his wish to follow in their footsteps, I am increasingly concerned that his efforts have not been well supported.

You will know that I have identified various matters which I consider to be serious abuses of Council's Code of Conduct with respect to conflict of interest. I'm encouraged that these matters have attracted the interest of Local Government Victoria.

But there are now matters of equal and increasing concern attracting my attention and I am compelled to record my grave misgivings with respect to the bases on which Council has recently exercised its powers as the planning authority in applications recommended for refusal by our planning officers.

Just last week the argument advanced in support of a motion to overturn an officer's recommendation resorted to "Council's need to stand up to the Victorian Government's planning requirements."

This statement mirrors the comments of a Councillor at the March meeting who defended his consistent votes in opposition to officer's recommendations with the assertion that "people have to understand that this is a new Council with new policies in relation to planning!"

Given that Council has already received an alert from the Planning Minister (September 2008) . . . "It is inappropriate for council to continue its practice of issuing permits where they are inconsistent with the provisions of the Mildura Planning Scheme" . . . one would have to expect that a number of Council's recent planning decisions will be the subject of heightened scrutiny.

Noting the Audit Committee's responsibilities in relation to governance and risk management, I am obligated to detail a Council decision made on Tuesday 21<sup>st</sup> April following my endeavour to rescind the decision of the previous month with respect to application P08/479.

The earlier decision effectively ignored a reference by Council's Statutory Planning Manager to a VCAT decision which deemed that a similar subdivision "was not lawful in light of the minimum lot requirement of 40 hectares in the farming zone".

"Having regard to the Tribunal's decision . . . . it is considered the proposed subdivision is unlawful, as the lot within the farming zone . . . does not meet the minimum lot size of 10 acres under the zone."

Preparatory to last Tuesday's meeting the Planning Manager circulated to Councillors advice received from Russell Kennedy (lawyers) specific to planning application P08/479.

Contained in that correspondence are the following statements . . . .

"Although Council has the discretion to support the application, its decision at this time is unlawful due to procedural deficiencies as Section 55 of the Act has not been complied with".

"Failure to refer the application as detailed above will render the decision unlawful and open the planning permit to challenge and expose Council to potential claims for damages and/or compensation".

I hardly need to elaborate on my concerns in relation to this advice or Council's disinclination to rescind the original decision.

As I'm sure you also know, Council has resolved to fund an independent review of the statutory planning branch and draft terms of reference have been circulated for Councillor's comment.

While I have no hesitation in seeking constant improvement in Council's management of planning applications, I have comparable if not greater concerns about Council's management of officer recommendations, subject to Council adjudication, and the prospect that the performance of Council should be a matter for independent analysis.

In scripting this letter, I'm mindful that the contents pose potential threats for Council itself and I would seek that its contents be treated with the upmost confidentiality and it is for that reason that copies have only been circulated to the Mayor and CEO. I trust that its consideration can be managed in a manner which protects Council's interests and any possible repercussions.

Yours sincerely

Cr Vernon Knight  
STRICTLY CONFIDENTIAL

**Confidential**

28<sup>th</sup> September 2009

Mr John Watson  
Executive Director  
Local Government Victoria  
Level 8  
55 Collins Street  
MELBOURNE 3000

Dear Mr Watson,

While I cannot claim a detailed understanding of the events which led to the sacking of the Brimbank Council, I am compelled to wonder what warrants a review of the Mildura Rural City Council given past and continuing evidence of its apparent failure to meet the Government's declared standards in respect to governance and Councillor conduct.

In January 2009, I drew your Department's attention to matters which were in my opinion, in breach of the Council's Code of Conduct and the requirements of the Local Government Act.

While I am understanding that these matters are the subject of your Department's investigations, the effluxion of time is leaving me to ponder the extent to which these matters are seen to be serious and deserving of some action.

The matters which I had raised with your office were matters which I considered to be clear breaches of Council's Code of Conduct and it was my understanding that similar issues were the bases of Government intervention in relation to Brimbank.

Of interest in relation to the Brimbank Council was the determination that the sacking seemed to concern actions by the previous Council and a belief that this culture had allegedly prevailed in the new Council.

While I have not had the chance to read the latest report of the State Ombudsman, I gather from the article published in the Sunday Age (Sept. 27), the Ombudsman has found that misunderstanding of the conflict of interest principles was most pronounced in local government and that many Councils were not ethically serving their communities, with their being "poor governance practices, misuse of resources, double standards and abuses of power."

It is my belief that the general findings of the Ombudsman make it imperative that what is now perceived in some quarters to be a 'culture' is checked and redressed by an exhaustive investigation of the sort of complaints I have made, with enforcement of the Local Government Act and prosecutions where appropriate.

I now contend that this may well be what is required in relation to the Mildura Rural City Council.

While I could cite many further examples of my Council's possible breaches of the Code of Conduct, I draw your attention to the following new matters....

1. The Mildura Rural City Council has been seen to fail in its compliance with the State's planning requirements and I draw your attention to a letter from the Minister for Planning to Local Member Peter Crisp following the C58 amendment to the Mildura Planning Scheme.

*The Minister states – "The amendment should not come as a surprise to Council. In September 2008, I wrote to Council and indicated that I would be willing to consider an interim amendment whilst Council resolved the issues associated with the MOIA's Rural Strategies. I also expressed my concern about the number of dwelling and subdivision approvals being issued and that such approvals may continue unabated in the future. I reminded Council that it had a legal responsibility to assess applications against the provisions of the planning scheme and warned Council that it was inappropriate to consider this approach."*

Over recent months I have been compelled to witness the approval of permit applications which were not recommended to Council and in some cases were deemed prohibited.

2. In recent days, I wrote to the Mayor of Mildura expressing my concerns in relation to the indirect criticism of a number of current Councillors as a result of an earlier Council's decision to establish an arts facility at the Mildura river front.

Cr Thorburn has publicly declared the project to be a "white elephant" in both the Sunraysia Daily and his own on-line newspaper.

I expressed the belief that those Councillors were owed an apology from Cr Thorburn on the basis that the Code of conduct requires Councillors to respect the decisions of Council.

My request was ignored.

3. On Thursday 24<sup>th</sup> September 2009, I attended a Council meeting at which consideration was given to the Mildura Recreation Reserve Master Plan.

Included in this report was a recommendation that "Council adopts the Mildura Recreation Reserve master Plan 2009 as outlined ....and.....confirms its intention to retain harness racing at the site."

The most active participant in the debate was one Cr Thorburn who I understand to be the race caller for the Mildura Harness Racing Club and a Life Member.

At no stage did Cr Thorburn indicate any association with the club.

Can I again invite your attention to a continuing culture which, in my view, disregards the requirements of the Councillor Code of Conduct and the Local Government Act.

I am rapidly approaching a point where I consider my membership of the Council to be a personal and professional embarrassment.

I would be grateful if you could regard my letter as another expression of formal concern about my Council's behaviours and a desire to be appraised of your Department's intentions in this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Vernon Knight', with a large, stylized flourish at the end.

Cr Vernon Knight AM JP

Box 487, Merbein 3505  
Mobile : 0418 502 957.

COPY

7 May 2010

Mr Ross Millard  
Investigations Manager  
Local Government Inspectorate  
GPO Box 2392  
MELBOURNE VIC 3001

Dear Mr Millard

I note that charges against Cr Mark Eckel were heard in Mildura on Thursday 6<sup>th</sup> May.

I must conclude that the charges are in some way connected to my earlier complaints in relation to Cr Eckel and his failure to disclose his possible conflict of interest.

The press reports in relation to this matter state that Cr Eckel had not declared his interest in a community radio station where he is a part-time employee. The station is owned and/or managed by a fellow Councillor, Max Thorburn.

If I correctly understand the charge against Cr Eckel, it simply relates to his failure to make the declaration in the Council register.

Presumably this omission was discovered in the course of your investigations.

It's not in fact the matter I had brought to the Department's attention and I'm left feeling that this matter may have been overlooked.

My concern relates to a matter which was brought to an in-camera meeting of Council following a complaint against Cr Max Thorburn.

The complainant alleged that Cr Thorburn had used information which had been provided to him in his role as a Councillor to make comments against a former Councillor in the editorial of his newspaper.

It was the only matter to be considered at the meeting and we were presented with an Officer's report recommending that no action be taken.

The recommendation was said to be based on legal advice obtained by the Council.

I requested access to the editorial and a copy of the legal advice received by Council. Both requests were denied.

It was then voted on and Council resolved that no action be taken against Cr Thorburn.



My complaint concerns the fact that Cr Eckel voted on this matter in support of the Officer's recommendation without ever declaring that he was employed by a company which was owned and/or operated by Cr Thorburn.

I consider this to be a blatant violation of the Council's Code of Conduct and the Local Government Act.

Could you please advise why this matter was not subject to investigation and consideration by the Court?

Yours sincerely

Cr Vernon Knight  
PO Box 487  
MERBEIN VIC 3505

7 May 2010

COPY

Hon. Richard Wynne  
Minister for Local Government  
Parliament House  
MELBOURNE VIC 3000

Dear Minister

By now you will have seen comments reported in the Sunraysia Daily (Friday 7<sup>th</sup> May) following the appearance of Cr Mark Eckel in the Mildura Magistrates Court.

I trust that you are similarly distressed by the claim that the Prosecutor in this matter has referred to the source of the allegation as a "mole in Council" and that the matter pertains to a "spat between Councillors".

There are a number of things which I need to draw to your attention. . . .

1. I'm the person who drew the attention of Local Government Victoria to what I believed was a significant breach of the Local Government Act by Cr Mark Eckel.
2. I am the person who reported on another matter which also involves a Mildura Councillor and which is scheduled to be heard in June.
3. My actions were a product of my inability to have my concerns understood within Council and I believed I had a duty to take the matters further.
4. While I'm precluded from commenting on the matter to be heard in June, I need to indicate that the substance of my complaint against Cr Eckel appears to have been overlooked.

(I append for your information a copy of my letter to Local Government Victoria in which I believe that Cr Eckel failed to declare a pecuniary interest in a matter which cleared Cr Thorburn from having to answer a complaint from a former Councillor.)

5. It is to be noted that this matter was considered at an "in-camera" meeting and that I was specifically denied access to the material which was the subject of the complaint, or a copy of the legal advice obtained by Council.
6. What was reported in the media suggests that Cr Eckel was only found guilty of failing to fully complete Council's Register of Interests.
7. The statements attributed to the Prosecutor have potentially inflamed issues within Council and sparked a witch-hunt in relation to the so called "mole".

8. The fact that the matter involving Cr Eckel was "in-camera" I am obviously precluded from any public statements although I have sought explanation from Local Government Victoria as to why my concerns appear not to have been addressed.
9. I'm further precluded from any comment on the basis that there is a further matter awaiting the Court's consideration.
10. I do nevertheless believe that the statements attributed to the Prosecutor would seem to ignore the obligations of the Department in relation to the Whistleblowers Act.
11. Those statements and the reporting of the case are encouraging many in our community to simply believe that a Mildura Councillor had simply failed to complete his administrative responsibilities in terms of the Register of Interests.
12. The whole exercise is leaving me to think that anyone who strives for good governance is possibly destined to pay an enormous personal price.
13. The fact that the notion of the "mole" being a Councillor was allegedly stated by the lawyer defending Cr Eckel leads me to believe that someone else has also breached the Code of Conduct in terms of the confidentiality of the Audit Committee.

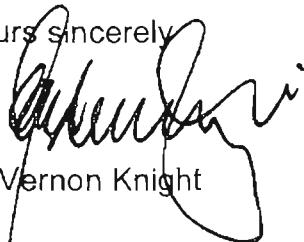
(My written complaints to Local Government Victoria were provided to the Audit Committee whose members include The Mayor and Cr Nichols.)

I have already drawn Local Government Victoria's attention to a further 18 matters which are in my opinion, equally serious and I am wondering whether I can expect to be similarly targeted for having the guts to do so.

I need your indication that all the above matters will be fully and immediately investigated.

I also seek your advice as to a form of words which might enable me correct the impressions created in the reporting of this matter without in anyway prejudicing future hearings or compromising my own obligations under the Local Government Act or any other Acts..

Yours sincerely



Cr Vernon Knight

Copies – Shadow Minister for Local Government  
Victorian Ombudsman

31 May 2010

Mr John Watson  
Local Government Victoria  
GPO Box 2392  
MELBOURNE VIC 3001

COPY

Dear Mr Watson

It is in disbelief and despair that I am again compelled to protest the actions of some Mildura Rural City Councillors.

You will be aware that last year, I lodged complaints in relation to Mark Eckel and Susan Nichols and I'm left to assume that the validity of my concerns was identified by your Department in laying charges against both.

The matters alleged conflicts of interest and failures to disclose.

Cr. Eckel pleaded guilty and was fined \$3,000 and placed on a good behaviour bond.

He seemingly escaped conviction and to my mind, seemed to avoid having to answer my belief that he is employed by Cr. Max Thorburn, the subject of a community complaint requiring Council's consideration.

Cr Eckel failed to disclose his relationship with Cr Thorburn in voting in support of a recommendation that no action be taken against Cr Thorburn.

(I am compelled to feel that Cr Eckel has not had to answer what I perceive to be the most important breach and as a consequence, his further actions suggest that he still has no understanding or regard for his obligations in Council.)

Cr. Nichols is yet to face court on other charges laid by your Department.

Subsequent to those complaints, I have lodged with your Department, a list of 18 other matters which I consider are deserving of consideration.

They are matters of varying seriousness but if found to be true, seem to reflect a culture of contempt for our Council's Code of Conduct and the Victorian Local Government Act.

I'm writing to you now as a consequence of a Council meeting held on Thursday 27<sup>th</sup> May where I believe several councillors have acted in a manner which warrants investigation.

You'll be aware that our Council is grappling with a casino proposal and a community which is angrily divided on the issue.

Two councillors, namely Arnold and Cavallo declared conflicts of interest and absented themselves from the chamber for both the discussion and the decision.

In both cases, they indicated that their activities involved business relationships with other gaming venues that might be affected by any decision.

But the more disturbing actions involve Cr Eckel and Cr Thorburn who similarly have associations with the gaming industry and who I believe are in much the same situation as Councillors Arnold and Cavallo.

Cr Thorburn is the proprietor of an on-line newspaper which consistently features advertising by the Coomealla Memorial Club, a significant operator of poker machines in Sunraysia.

Cr Eckel is the announcer employed on community radio, coincidentally managed by Cr Thorburn and that station is sponsored by both the Coomealla Memorial Club and the Wentworth Services Club.

It's to be noted that the Council recommendation in support of a casino was in fact moved by Cr Thorburn and seconded by Cr Eckel and I repeat neither made any mention of their connections to the gaming industry.

At the very same meeting, Cr Thorburn voted in relation to community grants, one of which will benefit the Mildura Harness Racing Club with which he again has a close association.

I understand that Cr Thorburn is the race caller for the club and has a long standing connection to harness racing in Mildura.

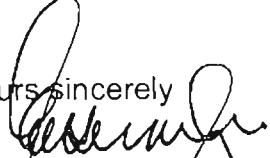
It is clear to me that we have a number of councillors who evidence, if only by their failure to make declarations, that they have no understanding or regard for the obligations of their office.

The casino matter is of major importance given the divided views within our community and the fact that the votes of Councillors Eckel and Thorburn were decisive in determining Council's position on the matter.

I remain hopeful of your further intervention lest I find my position completely untenable and a matter which may need to be addressed more publicly.

(It is regrettable that such matters have the ability to bring Council into an unfavourable light and I have to say that in relation to Councillors Eckel and Thorburn, I drew the attention of their possible conflicts to the Mayor, prior to the meeting. I am assured by the Mayor that he made contact with Cr. Thorburn and suggested that he and Cr Eckel might care to consider their positions.)

Yours sincerely

  
Cr Vernon Knight  
PO/Box 487  
MERBEIN VIC 3505

Level 8  
55 Collins Street  
Melbourne Victoria 3000  
GPO Box 2392  
Melbourne Victoria 3001  
Telephone 03 9651 7777  
[www.dpcd.vic.gov.au/inspectorate](http://www.dpcd.vic.gov.au/inspectorate)

Ref CMIN018416

Cr Vernon Knight AM  
Councillor  
Mildura Rural City Council  
Box 487  
MERBEIN VIC 3505

Dear Cr Knight

## MILDURA COUNCIL

I refer to your correspondence of 07 May 2010 to the Minister for Local Government, Richard Wynne MP, concerning the above matter.

Your correspondence was forwarded to the Local Government Inspectorate (LGI) for attention and response.

I can advise that all matters reported to the Inspectorate or other matters discovered in the course of an investigation are afforded the strictest confidentiality. At no stage have any details or inference regarding the source of the complaint emanated from this office.

I also wish to advise that the comment in the Sunraysia Daily (Friday 7<sup>th</sup> May 2010) which implies that the Prosecutor Raj Malhotra stated that there is a "mole in the ranks" is misleading. The LGI obtained a copy of the court recording of the proceedings and has listened to it in full. Mr Anderson alleged during the proceeding that the complaint against his client was made by a fellow councillor and occurred as a result of a 'political spat'. The comment a "mole in the ranks" was made by Magistrate Gibbs in response to Mr Anderson's comments. It is extremely disappointing that this interpretation of a comment made by the Magistrate in the proceedings formed the basis of the media report but it is also something that is outside our control.

The court transcript is a public document and can be obtained in audio format from the Mildura Magistrates Court should you wish to hear it in full.

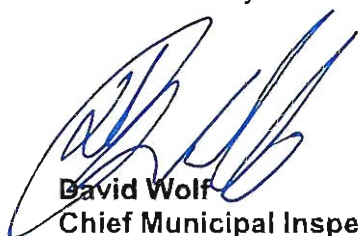
The Inspectorate conducted a thorough investigation into matters raised and this resulted in court proceedings where admissible evidence was obtained and supported a prosecution.

In relation to the matters you raised regarding Crs Eckel and Thorburn including the "in-camera" meeting, I note that Ross Millard Manager of Investigations advised you of the outcome of the LGI's investigation in his letter dated 4 June 2010.

In regards to the 18 matters raised in your letter dated 15 March 2010 these are currently receiving attention as noted in our letter to you dated 22 March 2010. I anticipate that you will receive a response in the near future.

If you have any queries or would like to discuss the matter please contact Russell Bennett on (03) 9665 9556.

Yours sincerely



**David Wolf**  
Chief Municipal Inspector  
Local Government Inspectorate

11 16 12010 .

Level 10  
1 Spring Street  
Melbourne Victoria 3000  
GPO Box 2392  
Melbourne Victoria 3001  
Telephone 03 9665 9555  
[www.dped.vic.gov.au/inspectorate](http://www.dped.vic.gov.au/inspectorate)

Cr Vernon Knight  
PO Box 487  
MERBEIN VIC 3505

Dear Cr Knight

## MILDURA RURAL CITY COUNCIL

I refer to your correspondence of 15 March 2010 to the Local Government Inspectorate concerning the above matter.

I note that you have now received advice from Ross Millard, Manager of Investigations regarding the outcome of the investigation into the allegations you raised in late January 2009 regarding Crs Eckel, Thorburn and Nichols.

The primary function of the Local Government Inspectorate is to investigate allegations regarding breaches of the Local Government Act 1989. Some investigations can result in court proceedings where admissible evidence is obtained and supports a prosecution.

Your letter has an email attached to it dated 7 March 2010 which lists 18 allegations. Some of the allegations relate to specific Councillors. Others relate to Council as a whole.

Allegations 1 to 7 have been previously investigated by the LGI as part of your earlier complaint to Local Government Victoria. I note that you have been advised of the outcome of that investigation.

On the basis of the information you have provided the LGI is of the view that allegations 10, 13 and 15 do not fall within its jurisdiction as you have not identified any breach of the Local Government Act.

In relation to the remaining allegations the LGI requires more information before it can consider them further. Please refer to the table below for details of the information required.

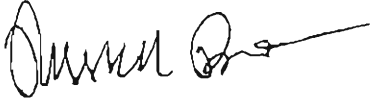
Allegation 1-7	These allegations have been investigated by the LGI as part of your prior complaint. The LGI wrote to you on June 2010 advising you of the outcome of its investigation.
Allegation 8	Please provide further particulars of your allegation including the identity of the



	Council officer and developer and the nature of the favours the council officer sought.
Allegation 9	Please provide further particulars of your allegation including the identity of the Councillors concerned, the planning permits in questions and when the legal advice was provided.
Allegation 10	On the basis of the information you have provided this allegation does not fall within the jurisdiction of the LGI as you have not identified any breach of the Local Government Act.
Allegation 11	Please provide further particulars of your allegation in particular when did the bullying behaviours occur and what did it consist of.
Allegation 12	Please provide further particulars of your allegation including when Cr Thorburn voted the matter he voted on and the nature of his interest with the harness racing club.
Allegation 13	On the basis of the information you have provided this allegation does not fall within the jurisdiction of the LGI as you have not identified any breach of the Local Government Act.
Allegation 14	Please provide further particulars of your allegation including the staff member involved, the nature of the services provided and why the matter was not Council related.
Allegation 15	On the basis of the information you have provided this allegation does not fall within the jurisdiction of the LGI as you have not identified any breach of the Local Government Act.
Allegations 16 and 17	Please provide further particulars of your allegation including: what report you are referring to; how you came to know of the alleged increases in internet usage and how such increases have been calculated; the identity of those councillors whose internet usage has increased.
Allegation 18	Please provide further particulars of your allegation including: why you consider action should be taken, what the justification is for such action, any evidence that Councillors may have breached the Local Government Act 1989 in relation to their expenses.

Should you have any queries or wish to discuss the matter I can be contacted on 9655 9556 or by email at [russell.bennett@dpcd.vic.gov.au](mailto:russell.bennett@dpcd.vic.gov.au)

Yours sincerely

A handwritten signature in black ink, appearing to read 'Russell Bennett', with a long horizontal stroke extending to the right.

**Russell Bennett**  
**Senior Investigator**  
**Local Government Inspectorate**

16/6/2010

6<sup>th</sup> July 2010

COPY

Mr David Wolfe  
Chief Municipal Inspector  
Local Government Inspectorate  
GPO Box 2392  
MELBOURNE 3001

Dear Sir

**Re: Mildura Rural City Council**

On the 15<sup>th</sup> March 2010, I wrote to acknowledge your earlier letter and alert you to my ongoing concerns in relation to the governance of the Mildura Rural City Council.

I attached a copy of my confidential email to the Chair of Council's Audit Committee, Mr David Stevenson. The email listed eighteen matters which sought to evidence the basis of my continuing disquiet.

Sadly they have already been augmented by matters which I have further referenced in my letter of 31<sup>st</sup> May 2010.

Given that my first complaint resulted in charges laid and pleas of guilt by Councillors Eckel and Nichols, can I respectfully suggest that there is a cause for genuine alarm at the prospect that the Local Government Act and its obligations on Councillors are now seeming more honoured in the breach than in the observance, at least in Mildura.

While appreciating my recent meeting with your officers and the invitation to provide more information, I must indicate that I'm less than satisfied with the end results of my own wish to remedy the shortcomings that I perceive in relation to the governance of Mildura.

You point out in your letter of June 11 that the reference to the existence of "a mole in the ranks" was made by the magistrate. I was not in court and I have not sought access to a transcript of proceedings so I accept your indication that it was the magistrate who made the claim.

To suggest that I find myself similarly disappointed with His Honour's statement is an understatement in the extreme.

There has been of course a further hearing in which, I am told, I was formally identified leading to my ridicule and vilification in the Sunraysia Daily.

The case concerned Cr Nichols who attends meetings of the Audit Committee in her capacity as Deputy Mayor

I am reliably informed that it was her lawyer who accused me of "dobbing" and I am compelled to suggest that he would have had to have been privy to the confidential business of the Audit Committee, to make that claim.

I leave it to your imagination as to how that may have occurred.

In any event, the print media have had the suspect joy of attacking the Councillor brave enough to tackle the issues which threaten to question the efficacy of the Mildura Council and Local Government itself.

When I was first invited to provide more information in relation to my latest concerns, I felt totally obliged to do so, recognising that our local media may well relish my identification as a "repeat offender".

I have since reflected on that invitation and found myself seriously questioning the investigative process.

While I mean no disrespect whatsoever, my professional interests as the CEO of a large family welfare organisation, left me to wonder how it would be viewed if someone concerned about the sounds of screaming from a neighbours house were greeted with the invitation to provide further information.

Given the reality that I am destined to suffer accusations and innuendo, irrespective of my actions, I believe that the circumstances probably call for an investigation initiated by the Local Government Inspectorate.

I firmly stand by the claims I have made in relation to all my correspondence and remind the Inspectorate that the first matters which I drew to your attention have been fully validated.

I feel I must now leave it to the Inspectorate to determine the need for a full and complete examination of the matters which I have raised and I remain available to assist your officers as needed.

You will conclude that I am less than content with my Council's ability to internally manage its compliance with the Councillor's Code of Conduct.

I remain hopeful that the Government's commitment to good governance and its decision to establish a Local Government Inspectorate will work to address that situation.

Yours sincerely

Cr Vernon Knight  
PO Box 487  
Merbein 3505  
Mobile: 0418 502 957

PS I will be overseas from July 22 to August 10, 2010



31<sup>st</sup> January 2011

Mr David Wolfe  
Chief Municipal Inspector  
Local Government Inspectorate  
GPO Box 2392  
MELBOURNE 3001

Dear Sir

On July 6, 2010, I wrote to you in relation to my continuing concerns about certain activities and behaviours which I perceive were at odds with the proper governance of the Mildura Rural City Council. A further copy of my letter is enclosed.

You will be aware that matters which I first drew to the attention of your office culminated in criminal charges and guilty pleas and I am at a loss to understand why your office has not given more active attention to my subsequent complaints.

My letter of July 2010 has not even received an acknowledgment.

In the hope of seeking further interest, I have discussed my concerns with the Victorian Ombudsman only to learn that your Office is not subject to their powers of investigation.

Clearly, the matters which I intend to pursue are the responsibility of your Office and I now wish to know if you and your officers are intending to undertake a formal investigation of my complaints.

Your failure to furnish a prompt and satisfactory response will leave me with no alternative but to have our local member refer the matter to the Minister for Local Government.

Your earliest advice would be much appreciated.

Cr Vernon Knight  
PO Box 487  
MERBEIN 3505