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*Agenda and Business Papers  
 Oberon Council Special Meeting  
 Tuesday October 12 2010  
 5.30pm Council Chambers*

5.30pm	Opening of meeting
5.35pm – 6.15pm	Presentation from Mr John Borg, Borg Manufacturing
6.15pm – 7.30pm	Officer Reports
7.30pm – 8.00pm	Dinner

01	Opening of Meeting .....	2
02	Record of Attendance .....	2
03	Declarations of Interest .....	2
04	Director of Development Reports .....	3
	04.01 Reports for Decision.....	3
	04.01.01 Development Application 10.2010.49.1, Proposed Dwelling, Lot 3 in DP 1113081, 576 Shooters Hill Road, Oberon .....	3
05	Director of Corporate Services Reports .....	6
	05.01 Reports for Information .....	6
	05.01.01 Declarations of Interest in Conjunction with LEP Matters .....	6
06	General Manager Reports .....	10
	06.01 Reports for Decision.....	10
	06.01.01 Pool Matters.....	10
07	Closed Session Reports .....	20
	07.01.01 Draft Land Use Strategy (Version Three) .....	20
08	Closure of meeting.....	20

## 01 Opening of Meeting

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The Mayor welcomed members and declared the meeting open at xxxxxxxx

## 02 Record of Attendance

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Members Cr Keith Sullivan, Mayor - Chair  
Cr John McMahon, Deputy Mayor  
Cr Bob O’Bernier  
Cr Ian Doney  
Cr Don Fitzpatrick  
Cr Neil Francis  
Cr Zsuzsanna Handelsmann  
Cr Clive McCarthy

Officers Leanne Mash, General Manager  
John Chapman, Director of Corporate Services  
Ralph Tambasco, Director of Development  
Leigh Robins, Director of Engineering  
Sharon Swannell, Executive Assistant

Apologies Nil

Recommendation

That apologies are received and accepted for the non-attendance of the .....

## 03 Declarations of Interest

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Pecuniary - Nil

Conflicts - Councillor

Staff - Nil

## 04 Director of Development Reports

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### 04.01 Reports for Decision

04.01.01 Development Application 10.2010.49.1, Proposed Dwelling, Lot 3 in DP 1113081, 576 Shooters Hill Road, Oberon

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#### *Executive Summary*

A letter, dated 26 September 2010, has been received from the Applicant of the above Development Application proposing certain construction details for the future dwelling. In addition the letter acknowledges the potential operations of the adjoining Vulcan State Forest and the potential land use conflict this may impose.

By email dated 6 October 2010, Forests NSW advised that they now have no objection to the proposal in its amended format, which incorporates noise attenuation construction for the proposed dwelling.

However, Clause B.14.12.9 of Development Control Plan 2001 will still need to be varied by Council to allow the dwelling to be constructed at a distance of 130 metres instead of 150 metres from the boundary of the Vulcan State Forest.

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#### *For council decision*

#### *Recommendation*

That:

- a) Clause B.14.12.9 “Dwelling Setbacks and Buffers” of Part B of the Oberon Development Control Plan 2001 be varied to allow the construction of the dwelling on Lot 3 in DP 1113081, 576 Shooters Hill Road, Oberon, at a distance of 90m from the Northern property boundary for environmental reasons, and
  - b) The proposed dwelling incorporate, as a minimum, the following noise attenuation construction features:
    - Installation of “Smart Glass Comfort Plus” acoustic glass to all windows and doors in the Northern, Eastern and Western elevation walls.
    - Installation of Bradford “Soundscreen Acoustic” insulation batts to the Northern, Eastern and Western elevation walls and the ceiling.
    - The planting of a buffer zone of native Eucalyptus trees along the Northern boundary between the Vulcan State Forest and proposed dwelling.
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### *Background*

At its 21 September 2010 Ordinary Meeting, Council considered a report concerning the above matter. A copy of the Report and Resolution is attached (**attachment a**).

The Director of Development conducted a site inspection with the owners on the 24 September 2010. The inspection confirmed that the proposed site for the dwelling is the only practical site on the lot for the dwelling owing to its steep topography and existence of established native trees.

The 90m distance of the proposed dwelling from the Northern boundary was confirmed, as to was the requested 130m setback from the adjoining Vulcan State Forest.

By email, dated 6 October 2010, Forests NSW have advised that they are “*satisfied with the proposed measures and make no further objection to this development*”.

The proposed dwelling complies with all other relevant requirements of the Local Environmental Plan 1998 and Development Control Plan 2001.

### *Attachments*



10 Special Meeting 12  
October 2010 - Attach

Report A3 and Resolution of 21 September 2010, Ordinary Meeting



10 Special Meeting 12  
October 2010 - Attach

Letter from Forests NSW dated 6 October 2010

### *Statutory Environment*

Oberon Local Environmental Plan 1998  
Development Control Plan 2001 (DCP2001)

### *Policy Implications*

Applicant seeks a variation to Clause B.14.12.9 of the DCP2001 of 20 metres so that the dwelling can be located at a distance of 130m instead of 150m from the Vulcan State Forest, subject to incorporation of noise attenuation construction.

Forests NSW have now advised that they raise no objections to the location of the dwelling subject to the provision of the noise attenuation measures.

### *Financial Implications*

N/A

*Strategic Implications*

The proposal should not create any land use conflicts.

*Officers Comment*

Should Council resolve to adopt the recommendation, a precedence will be set, however, all Development Applications that seek a variation to Clause B.14.12.9 of DCP2001 will be treated on their individual merits.

With the proposed noise attenuation features, the request to vary the DCP2001 is supported by staff.

*Consulted With*

Forests NSW

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File: PR17.576  
Author: Ralph Tambasco  
Date: 6 October 2010

## 05 Director of Corporate Services Reports

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### 05.01 Reports for Information

#### 05.01.01 Declarations of Interest in Conjunction with LEP Matters

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##### *Executive Summary*

At the Special Council Meeting held on 3 September 2010 the Acting General Manager (Director of Corporate Services) undertook to investigate the matter of appropriate declarations of interests and any exemptions available, if applicable, to Councillors during the process of the review of the Local Environmental Plan (LEP).

Investigations have revealed that Councillors, when considering matters relating to the adoption of the new LEP, may be required to declare an interest if they have an interest in any land that may be subject to a change in the permissible use as a result of the review of the LEP.

If it is considered that the extent of such declarations of interest may lead to a situation at a Council Meeting where a quorum is not present, application may be made to the Minister under Section 458 of the Local Government Act to allow a Councillor who has a pecuniary interest to be present at the meeting and to take part in the consideration or discussion and to vote on the matter.

Discussions with the Director of Development indicate that the extent of interest of current Councillors is not likely to lead to a situation where decisions cannot be made due to lack of a quorum. Therefore, it is unlikely that the Minister would allow a Councillor who has a pecuniary interest to be present at the meeting and to take part in the consideration or discussion and to vote on the matter.

No further action is to be taken unless the circumstances for individual Councillors change in relation to this matter.

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##### *For council information*

##### *Recommendation*

That the information be received and noted

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##### *Background*

At the Special Council Meeting held on 3 September 2010 with the Executive Director, Planning Operations, NSW Department of Planning, Mr Neil McGaffin and Ms Lois Gray, representing the Western Region Department of Planning, it was noted that:

*“The matter of appropriate declarations of interest by Councillors who participate in the decision-making process and associated with the adoption of the new LEP was raised. The Acting General Manager undertook to investigate the matter and ensure the necessary procedures are in place to protect elected members.”*



Enquiries with a Legal Officer from the Division of Local Government indicate that Section 451 of the Local Government Act provides that:

- (1) *A councillor or a member of a council committee who has a pecuniary interest in any matter with which the council is concerned and who is present at a meeting of the council or committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.*
- (2) *The councillor or member must not be present at, or in sight of, the meeting of the council or committee:*
  - (a) *At any time during which the matter is being considered or discussed by the council or committee, or*
  - (b) *At any time during which the council or committee is voting on any question in relation to the matter.*
- (3) *For the removal of doubt, a councillor or a member of a council committee is not prevented by this section from being present at and taking part in a meeting at which a matter is being considered, or from voting on the matter, merely because the councillor or member has an interest in the matter of a kind referred to in section 448.*

**Note.** *The code of conduct adopted by a council for the purposes of section 440 may also impose obligations on councillors, members of staff of councils and delegates of councils.*

However, Section 448(g) of the Act provides that the following interests do not have to be disclosed:

*“...an interest in a proposal relating to the making, amending, altering or repeal of an environmental planning instrument other than an instrument that effects a change of the permissible uses of:*

- (i) *land in which the person or a person, company or body referred to in section 443 (1) (b) or (c) has a proprietary interest (which, for the purposes of this paragraph, includes any entitlement to the land at law or in equity and any other interest or potential interest in the land arising out of any mortgage, lease, trust, option or contract, or otherwise), or*
- (ii) *land adjoining, adjacent to or in proximity to land referred to in subparagraph (i), if the person or the person, company or body referred to in section 443 (1) (b) or (c) would by reason of the proprietary interest have a pecuniary interest in the proposal...”*

Additionally, Section 458 of the Act provides that:

*“The Minister may, conditionally or unconditionally, allow a councillor or a member of a council committee who has a pecuniary interest in a matter with which the council is concerned to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:*

- (a) *That the number of councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or*
- (b) *That it is in the interests of the electors for the area to do so.”*

If it is considered that the extent of such declarations of interest may lead to a situation at a Council Meeting where a quorum is not present, application may be made to the Minister under Section 458 of the Local Government Act to allow a Councillor who has a pecuniary interest to be present at the meeting and to take part in the consideration or discussion and to vote on the matter.

Discussions with the Director of Development indicate that the extent of interest of current Councillors is not likely to lead to a situation where decisions cannot be made due to lack of a quorum. Therefore, it is unlikely that the Minister would allow a Councillor who has a pecuniary interest to be present at the meeting and to take part in the consideration or discussion and to vote on the matter.

No further action is to be taken unless the circumstances for individual Councillors change in relation to this matter.

*Attachments*

Nil

*Statutory Environment*

Local Government Act 1993

*Policy Implications*

Not applicable

*Financial Implications*

Not applicable

*Strategic Implications*

Not applicable

*Officers Comment*

Not necessary

*Consulted With*

The Division of Local Government's Legal Officer  
Director of Development

## 06 General Manager Reports

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### 06.01 Reports for Decision

#### 06.01.01 Pool Matters

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##### *Executive Summary*

A number of issues around the operation of the Oberon Council Pool Complex have been raised by Council. This report recommends for resolution the following:

- Fees and Charges for the 2010-11 season, including a \$2.50 entrance fee for all swimmers aged three years and over, no charge for swimmers under three years, no charge for non-swimmers, no charge for pensioners and disability card holders.

The report also comments on a number of operational matters and recommends a review of operations as a whole and the implementation of the following specific actions for the 2010-11 season:

- Continuation of the entrance fee.
  - Lifting the unsupervised child age to 14 years and over (currently ten years and over).
  - Continuation of the position of two lifeguards on each shift (applicable to public opening hours).
  - Closing of the kiosk for the 7.00am – 9.00am shift.
  - Allocation of the grass mowing and whipper snipping duties to parks and gardens staff to be completed outside of the pool public opening hours.
  - Review of operations as a whole prior to the commencement of the 2011-12 swimming season including the option of tendering the management rights for the complex to a private sector provider.
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##### *For council decision*

##### *Recommendation*

The draft Fees and Charges Schedule for the Oberon Swimming Pool for 2010-11 be adopted as presented and advertised for a period of 28 days for the receipt of public submissions, before adoption at the next Ordinary Meeting of Council.

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##### *Background*

Over a number of months the operation of the Oberon Council Pool Complex has been a subject for discussion by Council. Given that I have only had a brief time to understand the dynamics of the operations I have concluded there may be room for improvement in a number of areas.

Having not seen the complex in operation puts me at a degree of disadvantage when writing this report. None the less the following information is provided for Council's consideration.

The basic premise Council pools tend to operate under is partial cost recovery and a user pays system. It is a common occurrence for Council pool operations to be tendered out to the private sector. As the season starts in November there is insufficient time to investigate this option now. It should be considered for the 2011-12 season.

A beginning point for the current discussion is a review of the 2009-10 operating budget.

This report will also address the following matters:

- Safety of Users – of paramount concern to Council
- Entrance Fees – charging regime and adoption of fees
- Kiosk – operations
- Swim School – operation of lessons
- Future Direction

### 1) 2009-10 Operating Year

The 2009-10 Income and Expenditure for the pool operations was as follows:

#### **Income**

Entrance Fees	18,620
Swimming Lessons Fees	23,519
Kiosk	13,192
<b>TOTAL INCOME</b>	<b>55,331</b>

#### **Expenses**

Employee Costs	103,358
Staff Training	4,576
Office Administration	2,600
Computer/IT	112
Office Equipment & Furniture	329
Insurance	7,508
Water Charges	2,035
Electricity	15,999
Garbage Service Charges	762
Cleaning	1,960
Other Expenses	1,822
Grounds Maintenance	5,453
Building Maintenance	4,336

Swimming Pool Maintenance	8,291
Plant & Equipment Maintenance	11,339
Chemicals	1,551
Depreciation	36,889

Internal Overheads Charged	6,203
Kiosk Expenses (incl wages)	11,400
Swim School Costs (incl wages)	13,967
<b>TOTAL EXPENSES</b>	<b>240,490</b>
<b>Net Operating Loss</b>	<b>(185,159)</b>
Capital Improvements Expenditure	
Equipment Purchase	15,000
	15,000

### Observations

#### Employee Costs

- Wages to carry out lifeguard activities, pool maintenance activities and other staffing duties not including the kiosk or swim school account for \$103,358.
- Entrance fees income of \$18,620 relates to this wages expense.
- Wages for the swimming lessons is represented as part of the swim school costs of \$13,967. Swim lesson fees income was \$23,519. This gives a positive position of \$9,552 for this activity. Note this does not apportion any associated facility costs to the swim lessons activity, for example grounds maintenance, electricity, insurance, administration costs or staff training.
- Wages for the kiosk operations is included in the figure of \$11,400. Kiosk income amounted to \$13,192. This gives a positive figure of \$1,792 for kiosk operations overall. Note this does not apportion any associated facility costs to the kiosk, for example grounds maintenance, electricity, insurance, administration costs or staff training.
- As a percentage of total costs of operation, employee costs (wages and training) for all three activities is approximately 55%.
- Employee costs presented here do not include any on-costs such as superannuation (9%) and workers compensation insurance (4%) for employees so in fact the real employee costs are higher than stated here.
- All pool operation employees are casuals.
- The hourly rates not inclusive of on-costs for casual pool employees in 2009-10 are shown in the attached table.

## 2) The Current Operating Environment

The Pool opens to the public from November to March each year. Currently the usual hours of operation for the public are Monday to Friday 7.00am – 9.00am and 2.00pm – 7.00pm. On Saturday and Sunday the hours are 10.00am – 7.00pm.

During school holidays the Monday to Friday hours are extended to include 7.00am – 9.00am and 10.00am – 7.00pm.

The kiosk is open for all operating hours.

Swim lessons take place during the current operating hours, most usually Monday to Friday afternoons.

During all public opening hours the usual staffing component relating to lifeguard duties comprises of one senior lifeguard and one junior lifeguard.

At any given time one of the lifeguards is also tasked with cleaning duties, pool testing procedures, kiosk duties, entrance functions etc. See the attached duties lists for more detail.

Swimming lessons are conducted by swim school instructors. Swim school instructors do not perform lifeguard duties while undertaken swimming school lessons.

The operations of the pool, with regards the safety of patrons are set under the standards as adopted by the Royal Lifesaving Association of Australia. This means that all people within the facility are counted as part of the user group.

There is no distinction between swimming and non-swimming users. The ratio of users to lifeguards is set at 50 users to one lifeguard, as per the standards prescribed by the Royal Lifesaving Association of Australia.

Public user fees for 2009-10 were as follows:

- Under three years of age – no charge
- Pension or disability card holder – no charge
- One supervising non swimming adult – no charge
- Swimmers - \$2.50
- Non-swimming patrons - \$2.50

Children under ten years must be accompanied by a supervising adult (defined as a person over 16 years).

#### *Observations*

- Swimming adults who are also the supervising adult pay the \$2.50.
- Children aged from ten onwards are currently able to be left at the pool unsupervised regardless of swimming ability.
- The patronage of the kiosk from 7.00am – 9.00am is limited.

### **3) Safety of Users**

It is of paramount concern to Council that pool users are able to use the facility in a safe manner, where harm is minimised and the likelihood of a serious or fatal event is negated.

To this end Council was influenced by the near drowning at the pool in December 2008 by a child who suffered a hypoglycaemic attack whilst in the pool. Thus Council resolved additional funding for a second junior lifeguard to be on the pool deck during busy periods.

This seems to have been interpreted as the new norm for all shifts. See the attached roster.

It should be noted that the responsibility of ensuring the effective supervision of children lies with the supervising parent or carer under the Royal Lifesaving Society Guidelines for Safe Pool Operations. Thus swimming supervising parents are to be encouraged as they are more likely to provide active supervision of their children while in the water themselves.

The current system of two lifeguards on duty over the majority of hours open to the public is seen as meeting the concerns of Council and providing a safe environment for all users.

The second staff member is also seen as covering a duty of care to our own employees. Should an event happen there is a second trained staff member there to offer support and manage other aspects of the site during the emergency. In addition to this uncommon situation the second staff member on duty means that things like 'accidents' in the toilets or change rooms can be rectified in a timely manner, there is back up to deal with rowdy patrons or the removal of inappropriate users.

Additionally if a staff member is injured in the course of their duties (slip, fall, overcome by heat, fumes etc) there is another qualified person on site to assist that individual. Given the nature of the work environment, involving large bodies of water, wet surfaces, chemical handling, outdoors and supervision of the public this is seen as a reasonable position.

#### **4) Entrance Fees**

This report aims to address the setting of fees for the 2010-11 season as a matter of priority. Additionally the concept of no entrance fee will be discussed and the ongoing confusion with the public entrance fee arrangements.

The concept of no entrance fee being charged for public access to the pool was initially raised as a way of reducing staff costs and increasing supervision levels. The premise being that if the staff member was not at the front counter taking entrance fees they could in fact be on the pool deck fulfilling lifeguard duties.

This is not seen as a viable proposition because the front entrance would still need to be staffed to manage admittance to the facility. This is with particular regard to ensuring children under a designated age have appropriate adult supervision upon entering the facility.

In addition to this patrons are assessed at this entrance point with regards their genuine intent to use the pool facility. At least one case in 2009-10 identified a person who had little legitimate business for attending the venue and was in fact asked to leave the venue as a result of staff observations of inappropriate behaviour.

The charging of an entrance fee also supports the user pays premise of the facility and assists in creating and implementing a code of responsible conduct. The assumption being that you, by way of paying an admission fee have agreed to abide by a code of responsible conduct while at the venue.

Additionally the entrance fees do contribute to the overall income stream for the facility and in the 2009-10 year minimised the cost of operations to Council by \$18,620.

There is already public acceptance that a fee is charged to utilise the pool and the expectation that this will remain is not an unreasonable one.

Therefore the draft Fees and Charges Schedule for the Oberon Swimming Pool for 2010-11 should be adopted then advertised for a period of 28 days for the receipt of public submissions, before adoption at an Ordinary Meeting of Council.

The proposed draft fees are similar in nature to the adopted 2009-10 fee structure. A simplified version of what was adopted in 2009-10 is suggested for the general admission entry fees, with the aim being to remove confusion from the application of such fees.

As such the full draft fees and charges are attached.

In summary the general admission fees for public swimming hours in 2010-11 are recommended as follows:

- Swimmers aged three years and above \$2.50
- Children under three years of age – no charge
- Pension and disability card holders – no charge
- Non swimmers – no charge
- Family ticket – up to five swimmers with a responsible adult - \$7.00
- Season ticket - \$87
- Season family ticket - up to five swimmers with a responsible adult - \$250

The recommended no charge for non-swimmers is presented as an encouragement for parents and carers to attend the facility and take responsibility for their children.

This is also in line with Council's resolution of 17 November 2009 which states that adults attending the Oberon Pool Complex supervising children and not using the pool can enter free of charge.

It is understood that the Council's resolution was not implemented to during the 2009-10 season and that only one adult was admitted as the supervising carer with any amount of children. This seemed to undermine the notion that attending the facility might be seen as a family recreational outing and that in fact two or more adults may wish to observe their children while at the facility for safety and other reasons. An overall increase in adult attendance at the pool, either swimming or not swimming, would be a positive thing.

It is recommended that the age for unaccompanied children be lifted from ten years to children 14 years and over. This means that children 13 years and under must be accompanied by a responsible adult. Adult in this instance means person over the age of 16 years.

This is suggested to address the facility being seen as a defacto baby sitting service where by children (currently ten to 13 years) are left for extended periods of time without a supervising adult in attendance. In some cases these children have not been competent swimmers.

## **5) Swim School Operations**

It can be demonstrated that swim school operations are, as a stand alone proposition, a viable community service. The swim school does not add to the cost burden of the swimming pool operations. The fact that private lessons are conducted during usual operating hours further supports this position and is usual practice.

Further swim school lessons do not detract from the overall safety of other pool users as swim instructors are not acting in the capacity of a lifeguard while conducting lessons.

## 6) Kiosk Operations

The income from the Kiosk for 2009-10 swimming season was \$13,192 and the Kiosk expenditure was \$11,399.

The kiosk sells drinks and food to patrons and convenience items such as sunscreen and swim gear items such as goggles, caps, flippers and other items. It also offers Cardio Pulmonary Resuscitation and “First Aid in a Box” resources to the public.

It should be noted that rostered staff are not involved in the kiosk operations to the exclusion of other duties. One staff member is dedicated to the pool deck supervision while the second staff member provides kiosk service. In addition to the kiosk the second staff member undertakes other pool operational duties such as cleaning, taking entry fees, making swim school bookings, handling enquiries and other maintenance activities.

It is recommended that the kiosk not be operation during the 7.00am – 9.00am shift and that in fact it remains closed. Historically this is not the peak period of operation for the kiosk and staff time could be better spent on other duties.

## 7) Other Matters

During meetings to discuss the operation of the pool it has come to my attention that the current practice is for pool staff to do the mowing and whipper snipping inside the complex.

This is not seen as desirable for a number of reasons and in fact should be a task allocated to Parks and Garden staff to do outside the usual public operating hours of the pool.

This change will be implemented for this season.

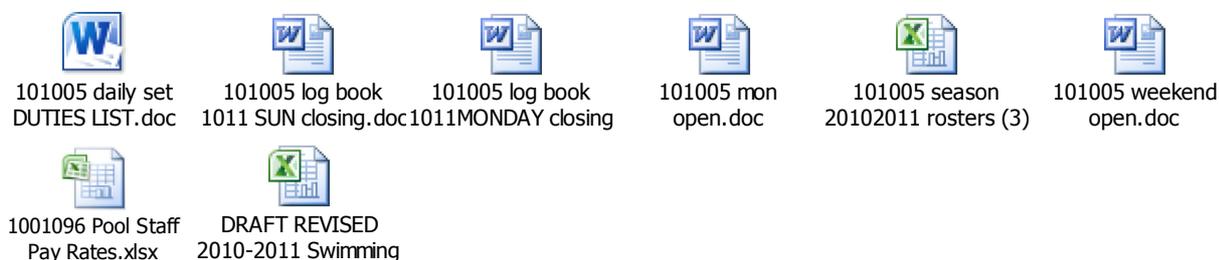
## 8) Future direction

In preparation for the operation of the pool for the 2011-12 season Council can choose to explore a number of options. These include:

- A call for expressions of interest from the public for the management right of the pool complex as a whole
- A full assessment of operational issues and practices, with the benefit of having seen the facility in use that may demonstrate a more appropriate structure for pool operations. For example a dedicated pool maintenance officer to carry out all testing, maintenance, cleaning and associated duties. It may also be a practical solution to have a dedicated administration officer for the pool or some other arrangement such as swimming lesson bookings taken at the Council administration officer rather than at the pool itself. It should be noted that at this point in time these

ideas are all speculative in nature as I have no independent assessment of pool operations to base proposed changes to operating practices on.

### *Attachments*



### *Statutory Environment*

Not applicable

### *Policy Implications*

All associated pool policies should be reviewed before the 2011-12 season.

### *Financial Implications*

Some minor changes to forecast income and expenditure due to the change in fee structures and the re-allocation of duties to parks and gardens staff.

### *Strategic Implications*

Not applicable

### *Officers Comment*

See Observations in the body of the report

### *Consulted With*

All Directors, the Mayor, the current Swimming Pool Supervisor

File: R11  
Author: Leanne E Mash  
Date: 7 October 2010

## 07 Closed Session Reports

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### 07.01.01 Draft Land Use Strategy (Version Three)

This item is classified CONFIDENTIAL under section 10A(2)(d) of the *Local Government Act 1993*, which permits the meeting to be closed to the public for business relating to the following:

- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business
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## 08 Closure of meeting

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The next Ordinary Meeting of Oberon Council is 19 October 2010, commencing at 5.30pm.