

NOTICE OF MEETING



EXTRAORDINARY MEETING

An Extraordinary Meeting of Byron Shire Council will be held as follows:

Venue	Council Chambers, Station Street, Mullumbimby
Date	Tuesday, 3 April 2012
Time	9.00am

This meeting will be open to the public and the press.

Public Access relating to items on this Agenda can be made at 1pm on the day of the Meeting. Requests for public access should be made to the General Manager or Mayor no later than 12.00 midday on the day prior to the Meeting.

A handwritten signature in black ink, appearing to read 'Graeme Faulkner', is written over a light blue horizontal line.

Graeme Faulkner
General Manager

CONFLICT OF INTERESTS

What is a “Conflict of Interests” - A conflict of interests can be of two types:

Pecuniary - an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated.

Non-pecuniary – a private or personal interest that a Council official has that does not amount to a pecuniary interest as defined in the Local Government Act (eg. A friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature).

Remoteness – a person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to a matter or if the interest is of a kind specified in Section 448 of the Local Government Act.

Who has a Pecuniary Interest? - a person has a pecuniary interest in a matter if the pecuniary interest is the interest of the person, or another person with whom the person is associated (see below).

Relatives, Partners - a person is taken to have a pecuniary interest in a matter if:

- The person’s spouse or de facto partner or a relative of the person has a pecuniary interest in the matter, or
- The person, or a nominee, partners or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.

N.B. “Relative”, in relation to a person means any of the following:

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descends or adopted child of the person or of the person’s spouse;
- (b) the spouse or de facto partners of the person or of a person referred to in paragraph (a)

No Interest in the Matter - however, a person is not taken to have a pecuniary interest in a matter:

- If the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative or company or other body, or
- Just because the person is a member of, or is employed by, the Council.
- Just because the person is a member of, or a delegate of the Council to, a company or other body that has a pecuniary interest in the matter provided that the person has no beneficial interest in any shares of the company or body.

Disclosure and participation in meetings

- 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.
- 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.

No Knowledge - a person does not breach this Clause if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

Participation in Meetings Despite Pecuniary Interest (S 452 Act)

A Councillor is not prevented from taking part in the consideration or discussion of, or from voting on, any of the matters/questions detailed in Section 452 of the Local Government Act.

Non-pecuniary interests - Must be disclosed in meetings.

There are a broad range of options available for managing conflicts & the option chosen will depend on an assessment of the circumstances of the matter, the nature of the interest and the significance of the issue being dealt with. Non-pecuniary conflicts of interests must be dealt with in at least one of the following ways:

- It may be appropriate that no action be taken where the potential for conflict is minimal. However, Councillors should consider providing an explanation of why they consider a conflict does not exist.
- Limit involvement if practical (eg. Participate in discussion but not in decision making or vice-versa). Care needs to be taken when exercising this option.
- Remove the source of the conflict (eg. Relinquishing or divesting the personal interest that creates the conflict)
- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in S451 of the Local Government Act apply (particularly if you have a significant non-pecuniary interest)

RECORDING OF VOTING ON PLANNING MATTERS

Clause 375A of the Local Government Act 1993 – Recording of voting on planning matters

- (1) In this section, **planning decision** means a decision made in the exercise of a function of a council under the Environmental Planning and Assessment Act 1979:
 - (a) including a decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but
 - (b) not including the making of an order under Division 2A of Part 6 of that Act.
- (2) The general manager is required to keep a register containing, for each planning decision made at a meeting of the council or a council committee, the names of the councillors who supported the decision and the names of any councillors who opposed (or are taken to have opposed) the decision.
- (3) For the purpose of maintaining the register, a division is required to be called whenever a motion for a planning decision is put at a meeting of the council or a council committee.
- (4) Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document, and is to include the information required by the regulations.
- (5) This section extends to a meeting that is closed to the public.

BUSINESS OF EXTRAORDINARY MEETING

1. APOLOGIES

2. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

3. NOTICE OF RESCISSION MOTION

3.1 Lighting – New Brighton Oval 2

4. ITEM DEFERRED FROM ORDINARY MEETING 22 MARCH 2012

Please note this report has not been reproduced. Please bring your Ordinary Meeting Agenda of 22 March 2012. The page numbers below refer to that Agenda.

Environment and Planning

13.21. PLANNING - DA 10.2011.117.1 - Stage 2 Tallowood Estate 27 residential allotments and associated civil infrastructure and access road at Tuckeroo Avenue, Mullumbimby

NOTICE OF RESCISSION MOTION

Notice of Rescission Motion No. 3.1.**Lighting at New Brighton**

COR4030000#1211545

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We move that Council rescind Resolution No. **12-169** from its Ordinary Meeting held on 22 March 2012 which reads as follows:

- 10 1. *That Council approve the use of lighting for 2 nights per week, being Tuesdays and Thursdays for the month of April to allow training to occur for the New Brighton Soccer Club with lights off by 8.30pm*
- 15 2. *That a review of the Review of Environmental Effects (REF) be done to determine any negative impacts on fauna and amenity during the month.*
3. *That Council ensure the floodlights in the canteen are removed immediately.*
4. *That if immediate impacts on fauna are made known then the use ceases.*
(Woods/Barham)

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**Signed: Cr Morrisey
Cr Staples
Cr Cameron**

25 If successful we intend to move:

That the community of New Brighton be consulted on any changes to the use of lighting at the field as part of a Review of Environmental Factors (REF).

30 **Comments Executive Manager Community Infrastructure:**

35 The Review of Environmental Factors (REF) for lighting at Tom Kendall Field, New Brighton was approved under delegated authority upon certification by Independent Planner Malcolm Scott. The REF was accepted by Director Asset Manager Services (Executive Manager Community Infrastructure) and determined by Executive Manager Environment and Planning on 2 October 2009. The application for lighting was based upon submissions made by the Shores United Junior Soccer Club and indicated that *"field lighting would enable it to use the field to 8.30pm, 3 or 4 times per week"*.

40 The Review of Environmental Factors indicates that Shores United Junior Soccer Club provides that *"lighting would enable our club to stagger training times at 8.30 pm 3 or perhaps 4 evening per week"*.

45 The Ecological Assessment provided with the REF stated that avoidance measures include the proposal to limit the hours of usage from dusk to 8.30pm, 3 nights/week on alternate nights from mid May to mid September each year.

50 Avoidance measures are intended to eliminate or reduce the impact of the activity (i.e. lighting) on significant conservation values. The time period allowed in the REF (i.e. mid May commencement for lighting) is precautionary to avoid the possibility of overlapping the hatching time for endangered sea turtles.

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The ecologist also provided “*On occasions it may be necessary to use the lights on consecutive nights due to rain and the need for make-up games*”. This was on the basis that the overall number of light uses would not increase (i.e. 3 per week for the season).

5 The Infrastructure SEPP and Part 5 Assessment is the relevant methodology for assessing and allowing for the installation of community infrastructure. It would be possible to alter the proposal by a supplementary review of environmental factors being prepared to extend the period into April and to consider additional days per week during winter (i.e. say from 3 nights to 4 nights per week for training under lights).

10 This would involve ecological assessment of the additional month and consideration of neighbourhood amenity.

15 The nocturnal survey undertaken in 2011 of fauna concentrated on tree dependent species, such as possums and flying foxes and determined that little disruption to the feeding patterns of these species occurred whether lights were used on consecutive nights or alternating nights.

20 Consequently, Council resolved to allow training and play on any week night as of May each year. The reason for not allowing the use of the lights until May is due to advice from the ecologists that we have employed advising that:

- endangered loggerhead turtles have been recorded as laying eggs on South Golden Beach within the last four years (there is photographic evidence of this and NPWS staff have attended and helped rescue disorientated turtles at this site)
- loggerhead turtles require sandy beaches to nest. Sand temperatures between 25 – 33°C are needed for successful incubation. Beaches free from light pollution are required to prevent disorientation, disturbance and to allow nesting females to come ashore. Light pollution on nesting beaches alters nocturnal behaviours in sea turtles, including; how sea turtles choose nesting sites; how they return to the sea after nesting; and how hatchlings find the sea after emerging from their nests (Witherington & Martin 1996)
- the lights when activated at the sports field are visible from the beach, potentially causing disorientation
- Council is obliged to act within the legislation of The Threatened Species Conservation Act (1995) and give due regard to the potential for any development or activity to impact on rare, threatened or endangered species

40 It is not practical to turn the lights on early and then try to assess whether their presence influences behaviour of the turtles, as the influence may be for the turtles to not land at all on beaches that they are genetically programmed to revisit.

45 **Resolution 10-747 part 5 requires:**

A further nocturnal study be undertaken by a suitably qualified ecologist to monitor the impacts of the lights.

50 It is possible to again investigate the impacts of operation of the sports field lights on fauna in April with the methods used in the 2010 survey for flying foxes, gliders and micro-bats. Investigation of impacts on marine turtles depends upon a nest being present and hatchling emergence coinciding with use of the lights.

55 Limited data from the Gold Coast indicates loggerhead turtles laying on Stradbroke Island in December, January and February. Latest nesting dates might result in hatchling emergence in

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April however hatchlings from a single nest may emerge over 4-8 days due to variation in thermal conditions within the nest during incubation.

5 The timing of the proposed sports field lighting (April) means that turtle hatchlings may be present, however female turtles should not be landing to lay eggs as it is too late in the season, and as such female laying turtles should not be affected. Without precisely finalising the methodological detail, mapping and monitoring the section of the beach receiving light spill from the sports field lights can be used to identify whether turtle hatchlings are present within the illuminated area and if so, how they are affected. If turtle hatchlings are emerging within or near the light spill and fail to orientate properly (towards the sea) these can be rescued and taken to the water.

10 In the absence of a turtle nest, the only other option is to focus any fauna survey / nocturnal study on the other fauna groups.

15 Where it can be identified that there is no adverse impact on the fauna adjacent to the sports fields, the Review of Environmental Factors (REF) for the lighting could be amended to reflect additional operating times. Any Review of Environmental Factors should also include community consultation to ensure that the holistic community issues are addressed.

20 In relation to the proposed resolution, management would anticipate that consultation would occur within the immediate area (i.e. 100m radius of the field) and that outcomes of the consultation process be reported back to Council with a draft revised REF for consideration.

Relationship to, priority of, and impact on other projects/tasks:

25 Open Space and Recreation: 16.40 – Northern Sports Fields Strategy (Stage 2)
Open Space and Recreation: 16.34 – Undertake operations in a cost effective manner (Draft Sportsground user fee policy and sportsground lighting)

30 Financial and Resource Implications:

There will be additional costs for the required monitoring and future supplementary REF to be prepared to adjust the number of days and extend the period of lighting.

35 In the 2010 survey undertaken over 12 nights the total cost including report preparation was \$6270 (57 hours @\$110 incl. GST). The necessity to search a section of the beach before and after soccer training will necessitate additional survey time, however by reducing the sample size to 10 nights (5 with lights on, 5 unlit) then a similar costing would probably cover the time required for beach searches. However, if a turtle nest is found and hatchlings are emerging, then this warrants some further monitoring to ensure emergence is safely completed, and would generate additional cost, and/or reduce time available for survey of other fauna groups.

40 The cost for undertaking these works could be allocated for job no. 3250.02 – New Brighton Surrounds.

45 Legal and Policy Implications:

Council will be able to adjust the current usage of lighting as provided for in the approved REF, and this may be via a supplementary Review of Environment Factors for extension to the period of the year and the number of times lights are operated per week.

50 Before such action is proposed the monitoring as set out in the REF should occur and be assessed

ITEM DEFERRED FROM ORDINARY MEETING 22 MARCH 2012

- 13.21. PLANNING - DA 10.2011.117.1 - Stage 2 Tallowood Estate 27 residential allotments and associated civil infrastructure and access road at Tuckeroo Avenue, Mullumbimby

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(Please see page 129 of Ordinary Meeting Agenda 22 March 2012)