



Byron Shire Council



Minutes

Extraordinary Meeting
Thursday, 21 March 2013

BYRON SHIRE COUNCIL

Extraordinary Meeting Minutes
21 March 2013

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EXTRAORDINARY MEETING MINUTES

21 MARCH 2013 (1 of 4)

MINUTES OF THE BYRON SHIRE COUNCIL EXTRAORDINARY MEETING HELD ON THURSDAY, 21 MARCH 2013 COMMENCING AT 3.11PM AND CONCLUDING AT 5.03PM

#E2013/17385

PRESENT: Cr S Richardson (Mayor), Cr B Cameron, Cr C Cubis, Cr D Dey, Cr A Hunter, Cr S Ibrahim, Cr P Spooner, Cr R Wanchap and Cr D Woods

Staff: Ken Gainger (General Manager)
Phil Holloway (Executive Manager Community Infrastructure)
Mark Arnold (Executive Manager Corporate Management)
Ray Darney (Executive Manager Environment and Planning)
Shannon McKelvey (Executive Manager Organisational Support)
Trish Kirkland (Manager Information Services, Property and Contracts)
Mila Jones (Minute Taker)

The Mayor opened the meeting and acknowledged that the meeting was being held on Bundjalung Country.

APOLOGIES: There were no apologies.

REQUESTS FOR LEAVE OF ABSENCE

There were no requests for leave of absence.

DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

There were no declarations of interest.

CORPORATE MANAGEMENT - EXECUTIVE MANAGER'S REPORT

Report No. 3.1. Byron Bay War Memorial Swimming Pool – Lease/Management Agreement

File No: #E2013/11398

13-145 Resolved that Council:

1. Not call for tenders for the proposed lease/management agreement of the Byron Bay Byron Bay War Memorial Swimming Pool Complex ("the Complex") for the following reasons:
 - a) that Crown Lands (as Lessor) has refused to provide its consent to the calling of tenders to establish a new lease/management agreement;
 - b) the specialised nature of pool management means that there are limited persons with sufficient experience and skill; and
 - c) a tenure of two (2) years would be unlikely to result in commercially acceptable tenders.
2. Delegate the General Manager to negotiate a new lease/management agreement for the Complex with the current lessees/managers (Fishheads@Byron Pty Ltd) on a "without admission", "without prejudice" and "without obligation" basis and subject always to all necessary approvals from external agencies and resolutions of the Reserve Trust and Council being obtained.
3. Endorse the proposed lease/management agreement for the Complex be on the same basis of the existing deed of agreement, refer Annexure 1(b) (#E2013/17509) with the following changes:

- a) a 24 month period commencing 1 July 2013 and terminating on 30 June 2015,
- b) the Rent and Management Fee will be indexed where necessary,
- c) inclusion of clauses that sever the pool management part of the agreement without fault or liability to any party should there be a plant failure during the term of the agreement, as included at Schedule 3 clause ii of Annexure 1(b),
- d) delete the word "BYO" from Annexure 1, Page 36 of 56, - BB. Contractor's Additional Obligations, clause e), and
- e) delete the word "BYO" from Annexure 1, Page 47 of 56, - 6 KIOSK/CAFÉ, clause iv.

subject to meeting all statutory requirements relating to any new lease including public notice and public consultation processes, obtaining approval of the Minister of Lands, as well as the Minister for Local Government if necessary.

- 4. That the lease/management agreement be subject to the following:
 - a) the lessees releasing Council, as Reserve Trust Manager, from all (real or perceived) claims, damages, liability, actions or the like, arising from anything to do with the tender of the Complex, leases or generally their occupation of the Byron Bay War Memorial Swimming Pool Complex at any time, such release to be in writing to the satisfaction of the General Manager and Council's solicitors; and
 - b) the lessees personally guaranteeing that they will vacate the premises by the end date of the proposed new lease, namely 30 June 2015, and indemnifying Council as the Reserve Trust Manager, from all claims, damages, actions, liability or the like in the event that they do not so vacate the premises.
- 5. Delegate the General Manager to do all such things as may be necessary at the appropriate times to seek all necessary approvals, from the Crown Lands Division and Division of Local Government, for any new Lease/management agreement and to meet all statutory requirements relating to any new lease, including public notice and public consultation processes.
- 6. That in the event negotiations with the current lessees/managers are unsuccessful and/or are not concluded within this time, the General Manager is authorised to serve notice on the current lessees/managers to vacate the premises on or before 30 June 2013.
- 7. That in the event an acceptable leasing arrangement cannot be reached and notice is served on the current lessees/managers to vacate the premises, the management of the Complex revert to Council from 1 July 2013. (Woods/Ibrahim)

The motion was put to the vote and declared carried.

ENVIRONMENT AND PLANNING - EXECUTIVE MANAGER'S REPORT

Report No. 3.2. Interim Rock Protection Works - Border, Don and Manfred Streets, Belongil

File No: #E2013/17240

Moved:

- 1. That as Council recognises that when a Coastal Zone Management Plan is adopted for the area, interim works may have to be removed from the area, the use of rock/hard materials for the purpose of providing interim protection at Manfred, Border and Don Streets is not supported.

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2. That any interim protection provision process be by way of the DA process.
(Richardson/Dey)

The motion was put to the vote and declared lost.

Crs Ibrahim, Cubis, Woods, Wanchap and Hunter voted against the motion.

FORESHADOWED MOTION

Moved:

1. That Council, authorise the General Manager to pursue options for rock/hard materials for the purpose of providing interim protection at Manfred, Border and Don Streets, Belongil; noting that this is an interim position until a long term coastal management policy has been adopted.
2. That within the Belongil Beach area the prioritisation of sites for reconsideration of interim protection works be Manfred, Border then Don Street sites (noting that this is an internal prioritisation only for these sites and depending on prevailing circumstances there may be higher priority areas or projects in the Shire).
3. That the Old Jetty Site not be considered further by Council as it is owned and managed by Crown Lands Division of NSW Trade & Investment (formerly Crown Lands), but that Council confirm that it does not object to the concept of interim erosion control works consisting of rock/hard materials on the Old Jetty Site provided any specific design will not adversely impact the environment or the public interest etc.
4. That Council delegate authority to the General Manager to advance the consideration of alternative interim protection works, including without limitation:
 - a) securing sufficient funding eg landowners or State or Federal Government funding;
 - b) applying for and obtaining all necessary approvals and permits including without limitation from State Government, Crown Lands, the Marine Park Authority and all affected landowners etc;
 - c) proceeding to construction if all preconditions are able to be satisfied; etc

and Council note that the matter will be reported back if any preconditions are unable to be satisfied.
(Ibrahim/Woods)

AMENDMENT

13-146 Resolved:

1. That Council authorise the General Manager to expediently pursue options for rock/hard materials for the purpose of providing interim protection at Manfred, Border and Don Streets, Belongil; noting that this is an interim position until a long term coastal management policy has been adopted.
2. That within the Belongil Beach area the prioritisation of sites for reconsideration of interim protection works be Manfred, Border then Don Street sites (noting that this is an internal prioritisation only for these sites and depending on prevailing circumstances there may be higher priority areas or projects in the Shire).
3. That the Old Jetty Site not be considered further by Council as it is owned and managed by Crown Lands Division of NSW Trade & Investment (formerly Crown Lands).

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4. That Council confirm that it does not object to the concept of interim erosion control works on the Old Jetty Site provided any specific design will not adversely impact the environment or the public interest including beach users.
5. That Council delegate authority to the General Manager to advance the consideration of rock/hard materials, including without limitation:
 - a) securing external funding from, for example, landowners or State or Federal Government funding (to the extent that any funds beyond current budget allocations are required);
 - b) applying for and obtaining all necessary approvals and permits including without limitation from State Government, Crown Lands, the Marine Park Authority and all affected landowners;
 - c) proceeding to construction if all preconditions are able to be satisfied;
 - d) that if the Coastal Panel does not support or recommends against the proposal the matter be brought back to Council;

and that Council require periodic reports to be provided to Council.

6. That Council note that the matter will be reported back if any preconditions are unable to be satisfied.
7. That Council recognise that interim and unapproved works may, one day, have to be removed from the area. (Dey/Richardson)

*The amendment was put to the vote and declared carried.
Crs Cameron and Spooner voted against the amendment.*

*The amendment upon becoming the substantive motion was put to the vote and declared carried.
Crs Dey, Cameron and Spooner voted against the motion.*

There being no further business the meeting concluded at 5.03pm.

I hereby certify that these are the true and correct Minutes of this Meeting
as confirmed at Council's Ordinary Meeting on 18 April 2013.

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Mayor Simon Richardson