



*Minutes of the Ordinary Meeting of Council
24 January 2006
Commencing at 8.30am*

PRESENT

Councillors - M P Berwick (Mayor), D P Egan (Deputy Mayor), W J Bellerio, M J Cox, R Davis, D G Pitt and J Sciacca.

Staff - J R Neely (A/Chief Executive Officer), D G Carey (General Manager Community & Corporate), I B Barton (General Manager Finance & Administration), R J Baade (General Manager Engineering), P Trotman (General Manager Development & Environment) and Ms A M Rodgers (Manager Corporate Support)

CONDOLENCES

Cr Berwick referred to the recent deaths of Trevor Johnson, Lena Oui and Maria Tati. The Council stood and observed one minute's silence.

It was resolved to send letters of condolence to the next of kin.

06/2401/00 MINUTES

Recommendation -

That the minutes of the Ordinary Council Meeting held on 6 and 7 December 2005 be confirmed.

It was resolved the minutes be confirmed subject to the following amendment

- *on Page 9 in voting for the motion appearing under the heading "PDPV 050/05 - LOT 1-74 SP113399, PARISH OF SALISBURY" deletion of the second reference to Cr Pitt.*

COMMUNITY & CORPORATE

06/2401/02 LEASE – DOUGLAS TENNIS ASSOCIATION – REYNOLDS PARK

Recommendations -

06/2401/02/i That the Douglas Tennis Association Inc be offered a five (5) year lease over the area of Reynolds Park which is reasonably required to be used for tennis club purposes.

06/2401/02/ii That the Club be advised a further lease beyond the term of the proposed lease will not be considered in the future and the club will be required to vacate the Reynolds Park site at the end of the term.



06/2401/02/iii That the Council actively work with the Club to facilitate relocation to the Port Douglas Sports Complex at the end of the proposed lease

06/2401/02/iv That the Council advise the Club should the Council require the Club to relocate prior to the expiry of the proposed lease the Council will meet the costs of relocation.

Moved Cr Davis

Seconded Cr Sciacca

"That Council adopts the recommendations subject to the addition of the following in recommendation No 06/2401/02/iv -

- *that Council enter negotiations with the Club that the basic framework of agreement for relocation is covered"*

An amendment to the Motion was moved by Cr Cox and seconded by Cr Egan :-

"That Council adopts the recommendations subject to recommendation No 06/2401/02/iv being modified to indicate that Council will meet the cost of the relocation of the current facilities."

With the support of the mover and seconder the amendment to the motion was withdrawn.

The motion was put -

For Crs Davis, Sciacca, Cox, Egan, Berwick, Pitt.

Against Cr Bellerio

Carried

06/2401/03 COUNCIL LAND – OLD PORT ROAD, CRAIGLIE

Recommendations -

06/2401/03/i That a strategic review of all of the Council's land assets throughout the whole of the Shire be undertaken over the next six (6) months.

06/2401/03/ii That action be taken to seek the approval of the Minister for Local Government to extend the month to month occupation of Lot 401 CP 2251 by Boral Resources Pty Ltd for a period of twelve (12) months.

06/2401/03/iii That the lease on Lot 402 CP 2251 in the occupation of Mr Lenny Gow be allowed to continue on a month to month basis until December 2006.

06/2401/03/iv That the occupants of Lots 401, 402 and 403 (Majacorp P/L) be informed of the Council's decisions.

Moved Cr Egan

Seconded Cr Pitt

"That Council adopts the recommendations."

Carried unanimously



ATTENDANCE

The Manager Planning Services, Paul Gleeson, attended the meeting at 9.05am.

DECLARATION OF INTEREST

Cr Bellerio declared a personal interest as a member of the Lions Club in the following matter and withdrew from the meeting while discussions were held.

06/2401/04 REQUEST FOR REMISSION OF HALL HIRE FEE – MOSSMAN LIONS CLUB

Recommendations -

06/2401/04/i That the request of the Mossman Lions Club for a reduction in the hire fee applied to the Port Douglas Community Hall be refused as staff have effectively already applied a discount to the fee by categorising the event as category C instead of category D.

06/2401/04/ii That the Council determine as policy it will not consider requests for variations to its annual revenue policy except in accordance with any discount provisions which are incorporated in the revenue policy.

Moved Cr Egan

Seconded Cr Berwick

"That Council adopts the recommendations."

For Crs Egan, Berwick, Cox

Against Crs Sciacca, Pitt, Davis

The Mayor used his casting vote in favour of the motion.

Carried

RE-ATTENDANCE

Cr Bellerio re-attended the meeting at 9.15am

06/2401/05 TRANSFER OF SUBLEASES – ISLAND POINT SLIPWAY

Recommendations –

06/2401/05/i That the Council consent to the transfer of subleases 708818400 & 708818406 to MFS Resorts Pty Ltd

06/2401/05/ii That the Trustee's consent be signed and sealed accordingly.

Moved Cr Egan

Seconded Cr Sciacca

"That Council adopts the recommendations."

Carried unanimously



06/2401/06 PROPOSED LEASE – DOUGLAS SHIRE COMMUNITY SERVICES ASSOCIATION, 22 MILL STREET, MOSSMAN

Recommendations –

- 06/2401/06/i That the Council agree to enter into a lease with the DSCSA in respect of the Council's property located at 22 Mill Street, Mossman on the terms outlined in this report.
- 06/2401/06/ii That the Council agree to offer the DSCSA first right of refusal to purchase the property should it be determined to sell it in the future.
- 06/2401/06/iii That the Council refer financial assistance to the sum of \$15,000 for the DSCSA's proposed building works to its 2006/07 budget considerations.

Moved Cr Cox

Seconded Cr Egan

"That Council adopts the recommendations."

Carried unanimously

06/2401/07 CHANGE OF LIBRARY FEES AND CHARGES

Recommendation –

That Council accept and adopt the changes to the current library fees and charges to commence at the return of service in the new library.

Moved Cr Cox

Seconded Cr Bellerio

"That Council adopts the recommendation."

Carried unanimously

06/2401/08 LEASE RENTAL REVIEW

Recommendation –

That Council adopts the proposed lease rental increases.

Moved Cr Berwick

Seconded Cr Davis

"That Council adopts the recommendation and requests a report on the status of the Claude Neon leases."

Carried unanimously



06/2401/09 CONFERENCE – CLIMATE CHANGE & BUSINESS

Recommendation –

For Council's consideration of options.

Moved Cr Davis

Seconded Cr Cox

"That Council agrees to attendance by either a member of staff or Councillor at the conference."

For Crs Davis

Against Crs Cox, Egan, Sciacca, Bellerio, Pitt, Berwick

Lost

06/2401/10 INFORMATION PAPERS FOR COUNCIL

Recommendation -

That Council receives and notes the information papers being presented to Council on 24 January 2006.

Moved Cr Berwick

Seconded Cr Cox

"That Council adopts the recommendation."

Carried unanimously

06/2401/11 DETAILS OF THE USE OF THE COUNCIL SEAL

Recommendation -

That the report providing Details of the Use of the Council Seal be received and Council endorse the actions of the A/Chief Executive Officer and Mayor in executing on its behalf, under seal, the documents detailed therein.

Moved Cr Egan

Seconded Cr Cox

"That Council adopts the recommendation."

Carried unanimously



DEVELOPMENT & ENVIRONMENT

06/2401/12 HEIGHT DISPENSATION APPLICATION – L6 FRANCES ROAD, KILLALOE

Recommendation -

That approval be granted to the height dispensation application subject to the applicant reducing the maximum height of the dwelling to not more than 8.5 metres above natural ground and the submission of a landscape plan prior to the issue of building approval which will screen the lower storey of the dwelling.

Moved Cr Pitt

Seconded Cr Sciacca

“That Council adopts the recommendation.”

For Crs Pitt, Sciacca, Egan, Bellerio

Against Crs Cox, Berwick, Davis

Carried

06/2401/13 MCU 3B 036/05 – LOT 8 RP895020, PARISH OF VICTORY

Recommendation -

That the applicant be advised Council approves the Application for Material Change of Use of Premises for a Warehouse on General Industry zoned land situated at Lot 8 on RP895020, Parish of Victory (more particularly 16 Therese Drive, Mossman) subject to the conditions as recommended by the Assistant Planning Officer in her report.

Moved Cr Davis

Seconded Cr Egan

“That Council adopts the recommendation subject to amendment of condition 14 to have provision for only six (6) carparking spaces.”

Carried unanimously

06/2401/14 MCU 3B 037/05 – LOT 5 RP706271, PARISH OF VICTORY

Recommendation -

That the applicant be advised Council approves the Application for Material Change of Use of Premises for a four (4) Bay Storage Shed and Office on Light Industry zoned land situated at Lot 5 on RP706271, Parish of Victory (more particularly 22 Mill Street, Mossman) subject to the conditions as recommended by the Assistant Planning Officer in her report.

Moved Cr Sciacca

Seconded Cr Bellerio

“That Council adopts the recommendation.”

Carried unanimously



06/2401/15 MCU 3B 040/05 – LOT 7 RP740233, PARISH OF VICTORY

Recommendation –

That the applicant be advised Council approves the Application for Material Change of Use of Premises for a Warehouse on General Industry zoned land situated at Lot 7 on RP740233, Parish of Victory (more particularly 57 Pringle Street, Mossman) subject to the conditions as recommended by the Assistant Planning Officer in her report.

Moved Cr Pitt

Seconded Cr Bellerio

“That Council adopts the recommendation.”

Carried unanimously

06/2401/16 TPC 1225 – LOT 1 SP126929, PARISH OF SALISBURY

Recommendation -

That the applicant be advised Council approves the application for a Material Change of Use of Premises, to carry out a Home Occupation (Recruitment Agency), on land situated at Lot 1 on SP126929, Parish of Salisbury (more particularly 1/34 Pecten Avenue, Port Douglas) subject to the conditions as recommended by the Assistant Planning Officer in her report.

Moved Cr Cox

Seconded Cr Egan

“That Council adopts the recommendation.”

Carried unanimously

06/2401/17 TPC 1213 – LOT 22 SP161481, PARISH OF SALISBURY

Recommendation -

That the applicant be advised Council approves the application for a Development Permit for Material Change of Use to permit the development of two (2), three (3) bedroom Multiple Dwelling Units (Residential) on land situated at Lot 22 on RP161481, Parish of Salisbury (more particularly 40 Murphy Street, Port Douglas) subject to the conditions as recommended by the Planning Officer in her report.

Moved Cr Bellerio

Seconded Cr Davis

“That Council adopts the recommendation.”

Carried unanimously

ADJOURNMENT

The meeting adjourned for morning tea at 10am.

The Library Assistant, Shannon Elcoate, and the Manager Library Services, Anne Scheu, attended the meeting at this time to enable a presentation to Ms Elcoate to acknowledge her service to the organisation and the Library over the past 15 years.



RESUMPTION

The Meeting resumed at 10.30am. The General Manager Development and Environment withdrew from the Meeting at this time.

06/2401/18 TENDER 28-05/06 – HIRE OF NON-MOTORISED BEACH RECREATION EQUIPMENT, FOUR MILE BEACH, PORT DOUGLAS

Recommendation -

That Contract No 28-05/06 be awarded to Kelvin Brown for the period 1st March 2006 to 28th February 2011 as per the General Conditions of Permit.

Moved Cr Egan

Seconded Cr Cox

“That Council adopts the recommendation.”

Carried unanimously

ATTENDANCE

The Environmental Officer, Greg Keith, and Technical Officer (Parks & Gardens), Reg Pike, attended the meeting at 10.35am.

06/2401/19 RELOCATION – OIL PALMS, PORT DOUGLAS

Recommendation -

That Council approves the relocation of 39 Oil Palms to replace the Oil Palms that have been poisoned and to balance the Oil Palm avenue along Port Douglas Road.

Moved Cr Egan

Seconded Cr Berwick

“That Council adopts the recommendation.”

An amendment to the Motion was moved by Cr Davis and seconded by Cr Bellerio :-

“That Council approves the relocation of 39 Oil Palms to replace the Oil Palms that have been poisoned and to use the balance of the oil palm replacement budget along Port Douglas Road.”

With the support of the mover and seconder the amendment to the motion was withdrawn.

The motion was put -

Carried unanimously

WITHDRAWAL

The Environmental Officer and Technical Officer (Parks & Gardens) withdrew from the meeting at 10.50am.



06/2401/20 MCU 3B 017/05 – LOT 16 RP745096, PARISH OF VICTORY

Recommendation -

That the applicant be advised Council approves the application for a Material Change of Use of Premises for a Dwelling House on Residential Rural zoned land situated at Lot 16 on RP745096, Parish of Victory (more particularly Ocean View Drive, Killaloe) subject to the conditions as recommended by the Assistant Planning Officer in her report.

Moved Cr Sciacca

Seconded Cr Bellerio

“That Council adopts the recommendation.”

Carried unanimously

ENGINEERING

06/2401/21 PROPOSED ROAD CLOSURE – WESTERN PRECINCT – ADJACENT TO THE DAINTREE RIVER

Recommendation -

That Council seeks an independent valuation for:

- The seventeen (17) Degarra blocks and the four (4) parcels in Whitby.
- The two (2) areas shown on attached plan “Ferry D”

Moved Cr Bellerio

Seconded Cr Berwick

“That Council adopts the recommendation.”

An amendment to the Motion was moved by Cr Berwick and seconded by Cr Davis :-

“That Council adopts the recommendation, together with some options for valuation of additional land including the land adjacent to the boat ramp.”

The amendment was put -

Carried unanimously

06/2401/22 TENDERS FOR REPLACEMENT VEHICLES

Recommendations -

06/2401/22/i Contract No. 18-05/06

That the tender from Trinity Auto Group be accepted for the supply of a Ford Courier with trade in for a changeover of \$8,624.79.



06/2401/22/ii Contract No. 20-05/06

That the tender from Pacific Toyota be accepted with trade for a changeover of \$5,983.74.

06/2401/22/iii Contract No. 22-05/06

That the tender from Trinity Auto Group be accepted which together with the trade from East Coast Commercials will achieve a changeover of \$9,499.67.

06/2401/22/iv Contract No. 24-05/06

That the tender from Hiland Ford be accepted with trade for a changeover of \$6,808.72.

06/2401/22/v Contract No. 26-05/06

That the tender from Hiland Ford be accepted with trade for a changeover of \$8,448.34.

06/2401/22/vi Contract No. 30-05/06

That the tender from Pacific Toyota be accepted with trade for a changeover of \$6,079.01.

06/2401/22/vii Contract No. 32-05/06

That the tender from Hiland Ford for the supply of a Ford Courier XL be accepted with trade for a changeover of \$13,083.15.

06/2401/22/viii Contract No. 34-05/06

That the tender from Pacific Toyota be accepted for the supply of a petrol Prado with trade for a changeover of \$13,670.52.

06/2401/22/ix Contract No. 36-05/06

That the tender from Pacific Toyota be accepted for the supply of a Toyota Workmate with trade for a changeover of \$6,489.61

06/2401/22/x Contract No. 38-05/06

That the tender from Pacific Toyota be accepted for the supply of a diesel Toyota Prado which together with the trade from East Coast Commercials will achieve a changeover of \$19,406.60.

06/2401/22/xi Contract No. 40-05/06

That the tender from Pacific Toyota be accepted for the supply of a Toyota Hilux which together with the trade from East Coast Commercials will achieve a changeover of \$4,968.00.



06/2401/22/xii Contract No. 42-05/06

That the tender from Pacific Toyota be accepted for the supply of a Hilux with trade for a changeover of \$7,579.01.

06/2401/22/xiii Contract No. 44-05/06

That the tender from Hiland Ford be accepted for the supply of a Ford Courier which together with the trade from Dan Irby will achieve a changeover of \$2,943.72.

Moved Cr Sciacca

Seconded Cr Bellerio

"That Council adopts the recommendations with the exception of the recommendation in relation to Contract No. 26-05/06. In the case of Contract No 26-05/06 the tender be accepted without trade and the vehicle be retained for SES purposes."

Carried unanimously

REPORTS – CHIEF EXECUTIVE OFFICER

06/2401/25 GREENHOUSE GAS ABATEMENT PROGRAM – FARM FORESTRY

Recommendation:

That ITC be invited to submit a proposal to the Australian Greenhouse Office under the Farm Forestry Project as well as Australian Forest Rewards, Carbon Credits International and Tree Corp (Insignus Forest Services).

Moved Cr Cox

Seconded Cr Egan

"That Council adopts the recommendation."

For Crs Cox, Egan, Sciacca, Davis, Berwick

Against Crs Bellerio, Pitt

Carried

CLOSE OF MEETING TO PUBLIC

Moved Cr Berwick

Seconded Cr Egan

"That the meeting be closed to the public pursuant to Section 463(1)(b) and (g) of the Local Government Act 1993 for discussions regarding a staff matter and a legal issue relating to planning matters."

For Crs Berwick, Egan, Cox, Sciacca, Pitt, Bellerio

Against Cr Davis

Carried



WITHDRAWAL

The General Manager Engineering and General Manager Finance & Administration withdrew from the meeting at 11.20am

RE-OPEN MEETING

It was resolved the meeting re-opened to the public.

DEPUTATION

At 12 noon a deputation was received from C&B Group and Langford Property Group in relation to the proposed development of land located on Bonnie Doon Road, Cooya Beach. The members of the deputation were –

- Mr Owen Dalton and Ms Emma Hitchins – C & B Group
- Mr John Barnett, Mr John Clarke and Mr John Ferguson – Langford Property Group

The Mayor invited the deputation to address the Council. A presentation on the proposal was provided to the meeting and copies tabled.

ADJOURNMENT

At 12.35 pm the meeting adjourned for lunch. The members of the deputation were thanked for the presentation and withdrew from the Meeting at this time.

The Meeting resumed at 1.30pm. The Workplace Health & Safety Officer, Peter Chapman, attended the meeting at this time.

CLOSE OF MEETING TO PUBLIC

Moved Cr Berwick

Seconded Cr Cox

“That the meeting be closed to the public pursuant to Section 463(1)(b) and (g) of the Local Government Act 1993 for discussions regarding a staff matter and a legal issue relating to planning matters.”

Carried unanimously

WITHDRAWAL

The Manager Corporate Support and Manager Planning Services withdrew from the meeting at 1.45pm



COUNCILLOR MEMORANDA

06/2401/23 SUBDIVISION – MR ROBERT PALETHORPE

Discussions were held in closed session in relation to the above matter and no decision recorded.

COMMUNITY & CORPORATE

06/2401/01 “IN COMMITTEE” EMPLOYEE RETURN TO WORK PROGRAM

In closed session, Councillors were briefed in some detail by the Workplace Health & Safety Officer and the General Manager Community & Corporate in relation to the Organisation’s responsibilities in the following matters :-

- Workplace Health and Safety Act 1995
- Prevention of Workplace Harassment
- The LGW Rehabilitation Process - Injured Worker
- Vicarious Liability related to discrimination and harassment

WITHDRAWAL

The Workplace Health & Safety Officer withdrew from the meeting at 3.15pm

RE-OPEN MEETING

Moved Cr Berwick

Seconded Cr Davis

“That the meeting be re-opened to the public.”

Carried

COUNCILLOR MEMORANDA

06/2401/24 “IN COMMITTEE – STAFF MATTER

Moved Cr Davis

Seconded Cr Cox

“That Council conduct a full and independent investigation into the events that resulted in the Council taking legal action in respect of The Beach Club matter and in particular whether the Council was provided with all the pertinent legal advice from Council’s lawyers, Williams Graham and Carman, prior to making its decision.”



Moved Cr Davis

"That the motion be put."

For Crs Davis, Pitt, Egan.
Against Crs Belleri, Berwick, Cox, Sciacca.
Lost

Cr Pitt wished it noted in relation to the matter that he had requested Cr Davis to agree that if the investigation demonstrates there has been no inappropriate action or inaction on the part of Council staff the matter will be forgotten.

The Mayor tabled a document representing his views on a number of related matters and requested they be included in the minutes (Attachment 1).

The Motion was then put -

Moved Cr Davis Seconded Cr Cox

"That Council conduct a full and independent investigation into the events that resulted in the Council taking legal action in respect of The Beach Club matter and in particular whether the Council was provided with all the pertinent legal advice from Council's lawyers, Williams Graham and Carman, prior to making its decision."

For Crs Davis, Cox, Berwick.
Against Crs Belleri, Egan, Pitt, Sciacca.
Lost

CLOSE OF MEETING

The Meeting was closed at 5.10 pm.

Presented to and confirmed by Council on the *Seventh* day of *February* 2006.

M P Berwick
Chair



ATTACHMENT 1

Tabled by Cr Bernick 24-01-06

Confidential Report re Beach Club
DRAFT
28- 7-05

In an attempt to get to the bottom of the allegations made by Rod Davis about Terry Melchert's (TCM) handling of the Beach Club, I sought a meeting with Williams, Graham Carman, initial solicitors for DSC re the Beach Club. Specifically I met with Dale Treanor, (Partner), Paul Furse, (Office Manager) and Marc Ronan.

While I have been of the view that TCM has not handled the case well, I have not seen sufficient evidence to go so far as to support Rod Davis's (RD'S) allegation that we were deliberately misled and that such action should lead to the CEO's dismissal or resignation.

As well I have not been prepared to support RD's approach of public statements, recriminations, threats and the general lack of decorum in open Council meetings. Any discussion about staff should be in committee, as with any industrial relations matter. However I have always thought there was some substance to RD's allegations and have therefore made my own inquiries.

The salient events as I see them are as follows:

- In a memo to council on May 3 (attached) TCM advised councilors to stay with the 2000 guidance document interpretation of GFA
- May 6 (attached) Marc Ronan (MR) advised TCM the court's view was contrary to the direction Terry was taking, that council should take the view of the Court into account and that should Council use the 2000 guidance document methodology the applicant would likely challenge Council and win.
- Concerned Terry had not read the email, MR reinforced his earlier advice by another email (attached) later in the day warning the course of action proposed by TCM may lead to costs being awarded against council.
- In an email to Bruce Hedley (attached), May 8, it is clear TCM is aware of MR's advice and that Council would be meeting to determine the matter on May 9
- At its meeting May 9 MR's advice was not tabled

In light of these concerns I counseled Terry to hand over management of this case to Bruce Hedley, a professional planner from Planning Far North, who are the town planning consultants to the Council. I told council I had done this, so far as I know it is not minuted but I understood Terry agreed. Terry has not taken this advice this but has continued to handle the case himself and at the time of writing was still doing so.



I have further concerns that go beyond whether TCM misled council or mishandled the situation.

They are that WGC and Marc Ronan have been made the scapegoat for the whole Beachclub drama. I discovered at that meeting that Terry has instructed WGC that Marc Ronan is not to work on DSC matters any longer. This combined with public statements and the public apology Terry sought have seriously undermined Marc's reputation in the region to the point where he has decided to take another job overseas for a year in the interests of preserving the reputation of the firm he works for. There is no justification for Terry's vilification of Marc whose advice on this issue has been correct. I am now of the view there was no reason or justification to go to another law firm for a second opinion when the WGC opinion has been proven to be correct. This has led to additional costs, time and staff resources that are unnecessary.

I have also talked at some length to Stuart McNaughton. He agrees that Marc Ronan has done nothing wrong. He does not think Council's processes since the Page appeal have been unreasonable and that the main problem has been MacDonnells (Picha in particular) driving an aggressive political agenda, advising her clients Council has been unreasonable and deliberately holding things up.

In summary I therefore have four concerns:

- TCM's micromanagement and retaining direct control
- Poor handling of the job and inadequate reporting to council
- The vilification of Marc Ronan and WGC

Some related matters:

- When Marc Ronan gave a copy of the judgment to Page he did so knowing it was a public document, it had already been given to Page by Mark Hinson, QC and the Judge later acknowledged it was a public document. MR acknowledges he should have informed DSC of his giving it to Page, and has provided a full explanation of this, including a legal opinion, in a facsimile to TCM for submission to the Council, but this document has not been provided to the Council to my knowledge.
- WGC wish to re-establish their relationship with DSC.
- A lot of legal advice eg the Mirage Lease issues, are procedural and should not be dealt with by the Council in general meeting if a valid delegation and standard process for dealing with such matters already exists.

Issues needing clarification:



- Council called tenders for legal services. Which firms were engaged and have we followed the tender decision?
- How much has Council spent on legal costs, what is our budget, will there be an over expenditure? Do we (or Terry) seek legal advice too readily? What is the process by which briefs are given for legal advice?
- There needs to be a scheme of delegation for these matters and that scheme must comply with the Act