

ORDINARY MEETING 3 DECEMBER 2014	6.1
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NOTICE OF PROPOSED AMENDMENT TO RESOLUTION – CR MELCHERT

PROPOSED SHED – PORT DOUGLAS SPORTS COMPLEX – PORT DOUGLAS FOOTBALL CLUB INC

NOTICE OF PROPOSED AMENDMENT TO RESOLUTION

I hereby give Notice of my intention to move at the Council meeting scheduled for Wednesday 3rd December 2014 the following amendment to the resolution passed at Council Meeting on Tuesday 7th October 2014:-

“That Council resolves to:

1. *give preliminary approval of the application to erect a shed to the rear of the Port Douglas Sports Complex, Wharf Street, Port Douglas, generally in accordance with **Hunt Design drawing submitted 26 September 2014** and NQ Sheds and Patios Pty Ltd elevations dated 3 February 2014 **excluding the verandah roof** subject to the following conditions:*
 - *All development, building and plumbing approvals are required prior to the commencement of works;*
 - *Council is to be advised in writing prior to commencement of works;*
 - *A safety barrier/fencing is to be erected around the area prior to commencement and for the duration of the works;*
 - ***All works are confined to the area shown generally on Hunt Design drawing submitted to Council on 26 September 2014;***
 - *All works are to be completed in a good and workmanlike manner by qualified tradespeople;*
 - *The area is to be left in a clean and tidy condition once the works are completed;*
 - *Council is not responsible for the cost of the works, maintenance, compensation to the Club or any successor, or to repair or restore the works;*
 - *The following documents must be submitted to Council before commencing to use the shed otherwise this preliminary approval lapses and use of the shed will revert to Council:*
 - a. *Final inspection certificate;*
 - b. *Certificate of classification as a class 10 building;*
 - c. *Certificate(s) of insurance for:*
 - i. *Building;*
 - ii. *Public liability for \$20,000,000.00;**and will nominate Douglas Shire Council and the State of Queensland as coinsurer parties as the trustee and owner of Lot 99 on SP150469;*
 - ***The Club is to make application to Council for appropriate tenure, the application to be held in abeyance pending the preparation of a Land Management Plan for Reserve for Recreation Purposes R. 1256 Lot 99 SP150469.***
2. *delegates authority to the Mayor and Chief Executive Officer in accordance with section 257 of the Local Government Act 2009 to negotiate, determine or resolve any and all matters for the proposed shed including form, appearance and location of the works.”*

By deleting the words **highlighted in red** above and inserting the following provision:-

- “Subject to the written agreement of the Netball, AFL and Cricket Clubs, and in consultation with Councils Architect Mr Hunt, the storage shed is to be located adjacent to the clubhouse building generally in the area occupied previously by the caretaker’s caravan. The walls to be textured and coloured to match as far as possible the texture and colours of the existing building and as far as possible the shed is to be landscaped and placed so as not to detract from the merit of the existing clubhouse.”

BACKGROUND

My understanding is Cairns Regional Council had approved the building subject to conditions on the location of the former caretaker’s caravan site.

On advice from Council staff and after some consultation with users Douglas Council expressed a view that the Storage Shed might best be located behind the existing Clubhouse.

Advice has now been received that the area behind the clubhouse is used extensively by the Netball Club and an on-site meeting with both the AFL and the Netball Club confirmed that both these users much prefer the shed to be located, as described above, adjacent to the existing building.

This motion seeks to respect the wishes of the user Clubs.

CEO’S COMMENT:

Section 262 of the Local Government Regulation 2012 provides that a resolution of a local government may be repealed or amended only if written notice of intention to propose the repeal or amendment is given to each councillor at least 5 days before the meeting at which the proposal is to be made. Cr Melchert provided Notice of his intention to all Councillors on 24 November 2014, and as a consequence this Notice is listed on the Agenda for the Ordinary Meeting of 3 December 2014.

The commentary on the Local Government Act notes that some resolutions are legally incapable of being repealed or amended. This occurs where a resolution has been fully carried into legal effect so that there is nothing further which needs to be done in order to implement Council’s decision. In such circumstances nothing is left “alive” to repeal and a purported repeal or amendment would be both pointless and a legal nullity.

On 7 October 2014 Council considered the officer’s report on the Proposed Shed – Port Douglas Sports Complex – Port Douglas Football Club Inc and resolved to:

1. *give preliminary approval of the application to erect a shed to the rear of the Port Douglas Sports Complex, Wharf Street, Port Douglas, generally in accordance with Hunt Design drawing submitted 26 September 2014 and NQ Sheds and Patios Pty Ltd elevations dated 3 February 2014 excluding the verandah roof subject to [a number of conditions which were detailed in the resolution and as detailed in the above Notice] and*
2. *delegates authority to the Mayor and Chief Executive Officer in accordance with section 257 of the Local Government Act 2009 to negotiate, determine or resolve any and all matters for the proposed shed including form, appearance and location of the works.*

To implement Council’s resolution a formal letter with a copy of the resolution from the meeting on 7 October 2014 was sent to the Club’s representative Andy Smith on 9 October 2014 (Doc ID 430678). This was emailed, and then a hard copy also posted out.

Further, subsequent to the notification and in reliance on Council's resolution, the AFL representative has advised staff that the Club has undertaken the following actions including:

- Engaging the building certifier and paying his fees.
- Seeking the professional advice of the building consultant with regard to the sizing and location of the fire hydrant based on the location approved by Council.
- Engaging in discussions with the fire brigade regarding design and location of fire hydrant based on the location approved by Council.
- Engagement of the concreter and builder.
- Writing letters ordering the concrete reinforcing.
- Negotiating prices for specific quantities of concrete supply.
- Organising the electrician who has now completed the site inspection.
- Sending numerous emails to volunteers who are mobilised ready to assist the builder.

The Building Certifier has also met with Council officers to assist with determining the floor area in relation to the fire requirements and the hydrant issues. The building certifier attended Council offices on the 23 October for this purpose.

On 3 November 2014 the building certifier was ready to issue the Building Approval.

It is clear that the AFL Club has undertaken work, engaged consultants and incurred other expenses, acting in reliance on Council's approval as given at its meeting of 7 October 2014, as subsequently notified by letter dated 9 October 2014. If Council were to now modify its approval, as per the notice of motion, there is little doubt that it would bear the financial responsibility of compensating the AFL Club for all the costs and expenses it has incurred to date, that will be wasted as a consequence of Council's change of mind. Council should also consider the potential negative impact such a change will have on its reputation and standing within the community, particularly if the AFL Club were to publicise the losses it will incur and the delay and inconvenience it will suffer, as a consequence of such a decision.

ARCHITECT'S COMMENT

Cr Melchert's proposed amendment to relocate the Shed to the end of the Clubhouse was forwarded to the architect of the Clubhouse, Mr Gary Hunt of Hunt Design for comment.

Mr Hunt has provided the following written statement:

"I have considered Cr. Melchert's suggestion to apply a new facade treatment to the sheet metal exterior of the shed presumably by fixing Blue Board or similar with a render and paint finish to approximate the finish on the Clubrooms. Whilst this is an improvement it does not change the reality that a shed is a shed. The architecture is in no way complementary to the classic North Queensland architectural style of the Clubrooms. The roof pitch, verandahs, colonnades, fenestration, pitching heights and general detailing of the Clubrooms is dramatically different to the shed. Furthermore the primary facade facing the oval is a continuous array of garage rolladoors which would not be treated with the facade suggestion.

The end result still would be an unattractive visual element in a highly visible location and would read as a poorly considered afterthought clashing with the architectural expression of the Clubrooms.

It does not integrate with the existing surrounds and will be particularly unattractive when viewed on the entry road to the precinct and from around the curtilage of the oval.

I have considered the arguments from the Netball Club and on balance do not feel that they justify re-siting the tin shed to a visually deleterious location. After viewing the location of the building on site and noting the repositioning of the building further away from the courts I have formed the opinion that the sight lines to the Courts are not compromised. There may be a need to manage access for children around the back of the shed as an “out of bounds area if that proves to be an issue.

I respect the views of the Netballers but for the greater good I cannot support their rationale for relocating the shed to a highly visible location in the broader public domain.”