

ORDINARY MEETING 26 MAY 2015	6.4
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NOTICE OF MOTION – CR MELCHERT

MCU (CODE ASSESSABLE DEVELOPMENT) LOT 1 CAPTAIN COOK HIGHWAY – INTENSIVE ANIMAL HUSBANDRY ETC

NOTICE OF MOTION

I hereby give Notice of my intention to move the following motion at Council's Ordinary Meeting to be held on Tuesday 26 May, 2015:-

“That Council:-

1. *resolves to partially release funds to Paws and Claws Kennels Port Douglas that are currently held on their behalf.*
2. *instruct the Chief Executive Officer to investigate opportunities for provision of land for Paws and Claws Kennels Port Douglas to construct new premises. A further report to be furnished to Council, in due course, with an assessment of available options.*
3. *delegates authority to the Mayor and the Chief Executive Officer in accordance with the Local Government Act 2009 to finalise any and all matters associated with this resolution.’*

Accordingly the Chief Executive Officer and the Mayor be requested to advise on:-

- a) *why given the above specific direction no report was provided to Council examining land options*
- b) *why all Councillors were not immediately informed that a Development Application was submitted to the Planning Department providing just one option close to houses and a horse riding school*
- c) *What discussions have been held by the Mayor and Chief Executive Officer on the development application with Paws and Claws prior to all Councillors being made aware of the existence of the application by its inclusion on the most recent Ordinary Council meeting agenda.”*

BACKGROUND

This Development Approval has raised significant community concerns not only about the inappropriateness of the development relative to the amenity of the area, but also about the level of openness and transparency of Council's operations. Accordingly in my view all matters relating to the approval should be dealt with at open Council meetings within the full gaze of the Community and some advice should be provided on the process followed to date

CEO'S COMMENT:

This communication from Cr Melchert has been incorrectly submitted as a Notice of Motion.

For the avoidance of doubt, legal advice has been obtained from specialist local government solicitors, King & Company who state as follows:

“So far as the law of meetings is concerned, motions are proposed (whether proposed by an individual councillor, or submitted by Council’s administration) for the purpose of eliciting a decision from the Council on a particular subject matter. The purpose of proposing motions, and adopting them, is to arrive at operating decisions, that is, to take appropriate action to accomplish something. We do not consider that the proposed motion put forward by Cr Melchert comfortably fits within these parameters. Further, to the extent that the intent of the motion is to ask questions of a councillor (including the Mayor) or the CEO at a Council meeting, that issue is dealt with by clause 19 of Council’s Standing Orders, as follows: -

19. Questions

19.1 A Councillor may at a Council meeting ask a question for reply by another Councillor or an officer regarding any matter under consideration at the meeting. A question shall be asked categorically and without argument and no discussion shall be permitted at the meeting of Council in relation to a reply or a refusal to reply to the question. A Councillor or officer to whom a question is asked without notice may request that the question be taken on notice for the next Meeting.

19.2 A Councillor who asks a question at a meeting, whether or not upon notice, shall be deemed not to have spoken to the debate of the motion to which the question relates. #420749

19.3 The Chair may disallow a question which is considered inconsistent with good order, provided that a Councillor may move a motion that the Chair’s ruling be disagreed with, and if such motion be carried the Chair shall allow such question.

Having regard to the above provision, it is clear that councillors and staff can only be questioned at Council meetings in relation to matters under consideration at the meeting. The standing orders do not contemplate the asking of questions in the manner detailed in the Notice of Motion.

Finally, to the extent that the proposed motion constitutes a request for information (which is largely what it appears to be), Cr Melchert can seek same by way of a request for information pursuant to section 170A of the Local Government Act.

For the foregoing reasons, it is our view that the motion proposed by Cr Melchert is not competent and, subject to it being dealt with in accordance with clause 21 of the Standing Orders, should not be considered further.”