

MINUTES

WARRINGAH COUNCIL MEETING

held at the Civic Centre, Dee Why on

TUESDAY 26 MARCH 2013

(2013/3)

warringah.nsw.gov.au



Warringah Council

Minutes of the an Ordinary Meeting of Council**held on Tuesday 26 March 2013****at the Civic Centre, Dee Why****Commencing at 6:00pm****ATTENDANCE:****Members**

Councillors M Regan (Mayor), B Giltinan (Deputy Mayor), P Daley, V De Luca OAM, W Gobert OAM (arrived 6:07pm), R Harrison, S Heins, D Kerr, J Menano-Pires and V Moskal (arrived 6:04pm)

Officers

| | |
|-------------------|---|
| Rik Hart | General Manager |
| Adam Vine | A/Deputy General Manager Community |
| Peter Robinson | A/Deputy General Manager Environment |
| Vivienne Ingram | Executive Legal Counsel |
| Melissa Lee | Governance Manager |
| Anna Moore | Coordinator Governance |
| Dinesh Mishra | IM&T Support Officer |
| David Walsh | Chief Financial Officer |
| Richard McManus | Chief Information Officer |
| Graham Middleton | Group Manager Marketing & Communications |
| Todd Dickinson | Group Manager Natural Environment |
| Paul Trigg | Group Manager Procurement, Fleet & Plant |
| Campbell Pfeiffer | Group Manager Building Property & Spatial Information |
| David Kerr | Group Manager Strategic Planning |
| Gary Penfold | Group Manager Warringah Aquatic Centre |
| Andrew Patterson | Internal Ombudsman |
| Belinda Noble | Media and Content Manager |

NOTES

The meeting commenced at 6:00pm, adjourned at 8:07pm, resumed at 8:14pm, moved into closed session at 8:59pm, resumed in open session at 9:05pm and concluded at 10:12pm

1.0 APOLOGIES

Nil

2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF ORDINARY MEETING OF COUNCIL HELD 26 FEBRUARY 2013

031/13 **RESOLVED**

Cr De Luca / Cr Heins

That the Minutes of the Ordinary Meeting of Council held 26 February 2013, copies of which were previously circulated to all Councillors, are hereby confirmed as a true and correct record of the proceedings of that meeting.

VOTING

For the resolution: Crs Daley, De Luca, Giltinan, Harrison, Heins, Kerr, Menano-Pires and Regan

Against the resolution: Nil

CARRIED

PROCEDURAL MOTION - CHANGE TO ORDER OF BUSINESS

032/13 **RESOLVED**

Cr Regan / Cr De Luca

That the Order of Business be changed so Item 4.0 Public Forum be brought forward and dealt with prior to Item 3.0 Declaration of Pecuniary and Conflicts of Interest to allow all councillors to be able to make declarations.

VOTING

For the resolution: Crs Daley, De Luca, Giltinan, Harrison, Heins, Kerr, Menano-Pires, and Regan

Against the resolution: Nil

CARRIED

4.0 PUBLIC FORUM

The Mayor requested each speaker to acknowledge they had been informed that the meeting was to be webcast live and that Council accepts no responsibility for any defamatory comments made.

Councillor Moskal entered the meeting at 6:04pm

PROCEDURAL MOTION - EXTENSION OF PUBLIC FORUM PERIOD033/13 **RESOLVED****Cr Regan / Cr Kerr**

That Council extend the public forum period beyond the thirty minutes as provided for in Clause 12.1 (ii) of the Code of Meeting Practice and that all speakers who requested to speak at Public Forum be granted permission to address Council.

VOTING

For the resolution: Crs Daley, De Luca, Giltinan, Harrison, Heins, Kerr, Menano-Pires, Moskal and Regan

Against the resolution: Nil

CARRIED

- 4.1 Ms Amy Sutherland representing Sutherland Associates Planning addressed Item 8.5, Evergreen Estate Planning Proposal.**

Councillor Gobert entered the meeting at 6:07pm

- 4.2 Mr Eugene Marchese representing Marchese and Partners International addressed Item 8.5, Evergreen Estate Planning Proposal.**

- 4.3 Mr Peter Christie representing Residents of Dee Why Garden Village addressed Item 8.5, Evergreen Estate Planning Proposal.**

- 4.4 Ms Ann Sharp addressed Item 8.5, Evergreen Estate Planning Proposal.**

PROCEDURAL MOTION - EXTENSION OF TIME**Cr Giltinan / Cr Kerr**

That Ms Sharp be granted an extension of 3 minutes to address the meeting.

VOTING

For the motion: Crs Giltinan, Kerr and Moskal

Against the motion: Crs Daley, De Luca, Gobert, Harrison, Heins, Menano-Pires and Regan

LOST

- 4.5 Dr Conny Harris addressed Item 8.5, Evergreen Estate Planning Proposal.**

- 4.6 Ms Joanne Tauro made a statement regarding noxious weeds at 21 Drumcliff Avenue and a community garden at Killarney Heights shops.

- 4.7 Ms Merran Doyle, representing a group of social competition players, addressed Item 7.4, RFT 2012/103 - Licence for District Park Tennis Complex.

PROCEDURAL MOTION - EXTENSION OF TIME

034/13 **RESOLVED**

Cr Gobert / Cr Kerr

That Ms Doyle be granted an extension of 3 minutes to address the meeting.

VOTING

For the resolution: Crs De Luca, Giltinan, Gobert, Kerr and Moskal

Against the resolution: Crs Daley, Harrison, Heins, Menano-Pires and Regan

There being an equal number of votes, the Mayor used his casting vote for the motion, which was declared CARRIED.

- 4.8 Mr Patrick Luttrell addressed Item 7.4, RFT 2012/103 - Licence for District Park Tennis Complex.

PROCEDURAL MOTION - EXTENSION OF TIME

035/13 **RESOLVED**

Cr Giltinan / Cr Regan

That Mr Luttrell be granted an extension of 3 minutes to address the meeting.

VOTING

For the resolution: Crs De Luca, Giltinan, Gobert, Kerr and Moskal

Against the resolution: Crs Daley, Harrison, Heins, Menano-Pires and Regan

There being an equal number of votes, the Mayor used his casting vote for the motion, which was declared CARRIED.

- 4.9 Ms Josephine Wing, representing the owners of 13 Worcester Street, Collaroy, addressed Item 8.6, Warringah Community Based Heritage Study Review - Final Report.

PROCEDURAL MOTION - EXTENSION OF TIME036/13 **RESOLVED****Cr De Luca / Cr Kerr**

That Ms Wing be granted an extension of 3 minutes to address the meeting.

VOTING

For the resolution: Crs Daley, De Luca, Giltinan, Gobert, Kerr and Moskal

Against the resolution: Crs Harrison, Heins, Menano-Pires and Regan

4.10 Mr Richard Michell addressed Item 8.9, Proposed Multipurpose Community Facility And Carpark at 36 - 48 Kingsway, Dee Why.

4.11 Mr Jack Tilburn asked the following questions regarding the Dee Why Community Centre:

- A. Will the Council provide the advantages and disadvantages of one-way traffic flow from west to east for Oaks Avenue, Dee Why and related costs?
- B. Will the Council provide the advantages and disadvantages of one-way traffic flow from east to west for Howard Ave, Dee Why and related costs?
- C. Will the Council provide the advantages and disadvantages of widening the footpaths in Oaks Avenue and Howard Ave, Dee Why and relevant costs of the additional construction, lighting and cleaning?
- D. Why if Dee Why CBD has no overall increase in foreseeable population densities, is it vital and necessary to factor in increasing the width of the footpaths when such reconstruction is not done in the City of Sydney CBD or in Chatswood or North Sydney?
- E. With increasing the width of these footpaths isn't there going to be serious decreases and declines in available customer parking for shopping with serious consequences for all the retail shopping owners and traders?

Answer:

The Mayor advised that a response would be sent to Mr Tilburn

4.12 Mr Alan Frost addressed Item 7.4, RFT 2012/103 - Licence for District Park Tennis Complex.

PROCEDURAL MOTION - EXTENSION OF TIME037/13 **RESOLVED****Cr De Luca / Cr Kerr**

That Mr Frost be granted an extension of 3 minutes to address the meeting.

VOTING

For the resolution: Crs De Luca, Giltinan, Gobert, Kerr and Moskal

Against the resolution: Crs Daley, Harrison, Heins, Menano-Pires and Regan

There being an equal number of votes, the Mayor used his casting vote for the motion, which was declared CARRIED.

4.13 Mr Richard Edwards addressed Item 7.4, RFT 2012/103 - Licence for District Park Tennis Complex.

Councillor Menano-Pires left the chamber at 6:57pm

Councillor Menano-Pires returned to the chamber at 7:00pm

4.14 Mr Peter Harley addressed Item 8.6, Warringah Community Based Heritage Study Review - Final Report.

3.0 DECLARATION OF PECUNIARY AND CONFLICTS OF INTEREST

Councillor Regan declared a significant, non pecuniary interest in relation to Item 7.4, due to his professional relationship and friendship with the Deputy Mayor, Councillor Bob Giltinan, and would take no part in debate or voting on the Item.

Councillor Regan declared a less than significant, non pecuniary interest in relation to Item 8.4, as he is a member of the Beach Services Club. He stated that he did not believe that it would have any impact on his voting on the matter.

Councillor Giltinan declared a pecuniary interest in relation to Item 7.4, as he is the current licensee of the tennis complex, and would take no part in debate or voting on the Item.

Councillor Menano-Pires tabled a letter he had received immediately prior to the Council Meeting in relation to Item 7.4 (attached to the minutes). He refuted the allegations made within the letter and stated that he did not have a conflict of interest.

Councillor Daley declared a significant, non pecuniary interest in relation to Item 7.4, due to his involvement in the Liberal Party and various matters relating to the campaign for the last Council elections. He stated that he did not think it was appropriate to participate in the debate and that he had not participated in any of the forums or discussions in relation to the matter.

Councillor Daley, at Item 7.4, re-stated his conflict of interest advising that he had declared an interest in 7.4 because of his involvement with the Manly Liberal Party State Electoral Conference, which Councillor Giltinan was also a member and in particular other matters relating to the B Ward campaign at the last Council elections. He stated and then reiterated that he and Councillor Giltinan are both B Ward Councillors.

Councillor De Luca declared a less than significant, non pecuniary interest in relation to Item 7.4, as he had received representations from the community, emails from Mr Robert Giltinan Junior and emails from a previous tenderer. He also stated that Councillor Giltinan was an elected colleague but that he had never socialised with Councillor Giltinan or met with him outside of the Council

Chambers or received or liaised with him at the last elections over any preference deal nor ever received any hospitality from him. He stated that no further action was required as his impartiality was not affected and that he was not a member of the Liberal Party of Australia.

Councillor De Luca declared a less than significant, non pecuniary interest in relation to Item 8.5, as he had received representations from Ms Linda Tattershall, Ms Ann Sharp, Ms Kathryn Laurie and had met with Mr Richard Lenarduzzi at a charity event, at which time no discussion was held regarding the proposal. He stated that no further action was required as his impartiality had not been affected.

PROCEDURAL MOTION - ITEMS MOVED BY EXCEPTION

038/13 **RESOLVED**

Cr Regan / Cr Gobert

That the Order of Business be changed so Items 6.1, 6.2, 7.1, 7.3, 8.1, 8.2, 8.3, 8.5, 8.8, 8.10, 8.11, 13.1, 13.3 are dealt with by exception with the recommendations of the General Manager / Deputy General Managers being adopted.

VOTING

For the resolution: Crs Daley, De Luca, Giltinan, Gobert, Harrison, Heins, Kerr, Menano-Pires, Moskal and Regan

Against the resolution: Nil

CARRIED

ITEMS RESOLVED BY EXCEPTION:

6.1 MINUTES OF THE SHOROC INC BOARD MEETING HELD 20 FEBRUARY 2013

039/13 **RESOLVED**

Cr Regan / Cr Gobert

That the Minutes of the SHOROC Incorporated Board Meeting held 20 February 2013 be noted.

RESOLVED BY EXCEPTION

6.2 MONTHLY FUNDS MANAGEMENT REPORT FEBRUARY 2013

040/13 **RESOLVED**

Cr Regan / Cr Gobert

That the:

- A. Report indicating Council's Funds Management position be received and noted.
- B. Certificate of the Responsible Accounting Officer be noted and the report adopted.

RESOLVED BY EXCEPTION**7.3 MEDIA POLICY GOV - PL 520**041/13 **RESOLVED****Cr Regan / Cr Gobert**

That the draft Media Policy GOV - PL 520 be placed on public exhibition for a minimum of 28 days.

RESOLVED BY EXCEPTION**8.1 2013 NATIONAL GENERAL ASSEMBLY OF LOCAL GOVERNMENT - AUSTRALIAN
LOCAL GOVERNMENT ASSOCIATION (ALGA)**042/13 **RESOLVED****Cr Regan / Cr Gobert**

That Council:

- A. Authorise Mayor Regan and Councillor Menano-Pires to attend the National General Assembly of Local Government to be held in Canberra from 16-19 June 2013;
- B. Determine any Motions to be put forward by Warringah Council to the 2013 National General Assembly of Local Government.

RESOLVED BY EXCEPTION**8.2 COUNCILLOR REQUESTS - SEPTEMBER 2012 TO FEBRUARY 2013**043/13 **RESOLVED****Cr Regan / Cr Gobert**

That the report be noted.

RESOLVED BY EXCEPTION**8.3 REPORTING OF STRATEGIC REFERENCE GROUP MINUTES**044/13 **RESOLVED****Cr Regan / Cr Gobert**

That the draft minutes of the Environmental Sustainability, Infrastructure and Development and Recreation and Open Space Strategic Reference Group meetings held on 18 February 2013 be noted.

RESOLVED BY EXCEPTION

8.5 EVERGREEN ESTATE PLANNING PROPOSAL045/13 **RESOLVED*****Cr Regan / Cr Gobert***

That Council:

- A. Adopts the Evergreen Estate - Voluntary Planning Agreement, incorporating the amendments referred to in the report, and the associated Explanatory Note.
- B. Does all things necessary for the execution of the Voluntary Planning Agreement and, without limiting the generality of the foregoing, delegates to the General Manager, and authorises, the execution of the Voluntary Planning Agreement.
- C. Subject to the proper execution by all parties of the Voluntary Planning Agreement incorporating the amendments referred to in the report, endorses the Planning Proposal relating to 26 Campbell Avenue, Cromer which is referred to in the report and would (if the proposed local environmental plan is made) make various changes to Warringah Local Environmental Plan 2011, including:
 - a. amendments to the zoning map by rezoning the southern part of Lot 1 DP 611195 as indicated Land Zoning Map - Proposed from RE2 Private Recreation to R2 Low Density Residential and RE1 Public Recreation;
 - b. amendments to the Minimum Subdivision Lot Size Map – Proposed to apply a 300sqm minimum lot size to the land; and
 - c. amendments to the Height of Buildings Map – Proposed to remove the height control from the land that will be zoned Public Recreation,and forward it to Department of Planning and Infrastructure for gazettal for the Minister for Planning and Infrastructure to make the proposed local environmental plan.
- D. Subject to the proper execution by all parties of the Voluntary Planning Agreement incorporating the amendments referred to in the report, approves Part G6 ('the Evergreen Estate'), in the form in which it was publicly exhibited, as an amendment to Warringah Development Control Plan.
- E. Advises all submission makers and the proponent of this resolution and give public notice of this decision as required.

RESOLVED BY EXCEPTION**8.8 WARRINGAH LEP AMENDMENT NO. 3**046/13 **RESOLVED*****Cr Regan / Cr Gobert***

That Council, pursuant to Section 59 of the Environmental Planning and Assessment Act 1979, forward the Planning Proposal to the Department of Planning and Infrastructure together with a request that the Minister makes a local environmental plan to amend Warringah Local Environmental Plan 2011.

RESOLVED BY EXCEPTION**8.10 STREET TREE PLANTING FOR PROPOSED MULTIPURPOSE COMMUNITY FACILITY AND CARPARK**047/13 **RESOLVED****Cr Regan / Cr Gobert**

That Council approve the reallocation of \$50,000 from the Police Citizens and Youth Club Project fund to the Parks Minor Renewals fund to enable planting to commence in April 2013.

RESOLVED BY EXCEPTION**8.11 RE-EXHIBITION OF THE DRAFT FORESTVILLE PARK PLAN OF MANAGEMENT**048/13 **RESOLVED****Cr Regan / Cr Gobert**

That Council approve the public exhibition of the revised draft Forestville Park Plan of Management for a period of 42 days.

RESOLVED BY EXCEPTION**13.1 VARIATION TO CONTRACT RFT 2012/035 - CROMER PARK UPGRADE**049/13 **RESOLVED****Cr Regan / Cr Gobert**

That Council

- A. Resolve to bring forward \$40,000 from the General Infrastructure Renewal Program (\$10,000 a year for four years from 2013/2014) and reallocate \$40,000 from CR 5884 Manly Dam Trail Renewal from the 2012/2013 Capital Expenditure Program to fund CR 5847 Cromer Park Upgrade
- B. Delegate to the General Manager authority to approve contract variations to the value of \$2,921,960.00 for RFT 2012/035

RESOLVED BY EXCEPTION**13.3 RFT 2012/102 - UPGRADES TO BEACH RESERVE, STAGE 1 - COLLAROY ACCESSIBILITY PRECINCT**050/13 **RESOLVED****Cr Regan / Cr Gobert**

That

- A. Pursuant to clause 178 (1) (a) of the Local Government (General) Regulation 2005, Council accept the tender of **Landscape Solutions Australia Pty Ltd** in the amount of

\$1,645,379.55 (ex GST), comprised of a Lump Sum Amount of \$1,557,034.07 (ex GST) and Provisional Amount of \$88,345.48 (ex GST), and

- B. Council delegate authority to the General Manager to execute the contract including a contingency amount of \$150,000 (ex GST) for approved variations under the contract, and
- C. The following amounts be allocated in the 2013/14 fiscal year,

CR5853 – Collaroy Disability \$1,452,000

CR5863 – Collaroy Accessibility Precinct \$409,000

Note: The contract amount will be 10% higher than amounts in recommendation A. to include GST.

RESOLVED BY EXCEPTION

PROCEDURAL MOTION - CHANGE TO ORDER OF BUSINESS

051/13 **RESOLVED**

Cr Regan / Cr Heins

That the Order of Business be changed so Item 7.4 be moved to the last item on the agenda.

VOTING

For the resolution: Crs Daley, Gobert, Harrison, Heins, Kerr, Menano-Pires, Moskal and Regan

Against the resolution: Crs De Luca and Giltinan

CARRIED

5.0 MAYORAL MINUTES

5.1 MAYORAL MINUTE NO 4/2013 - GRAFFITI

052/13 **RESOLVED**

Cr Regan

That staff write to the State Government seeking a review of the Graffiti Act 2008 with the view to increasing Councils legislative powers to access private land without consent for the sole purpose of removing Graffiti. Further, we ask that Councils be given authority to pass on the cost of the removal of graffiti to the land owner by way of rate levies or by some other means so that local residents are not held accountable for these enormous costs.

VOTING

For the resolution: Crs Daley, De Luca, Giltinan, Gobert, Harrison, Heins, Kerr, Menano-Pires, Moskal and Regan

Against the resolution: Nil

CARRIED

**5.2 MAYORAL MINUTE NO 5/2013 - CLOSURE OF COUNCIL UNMADE ROAD RESERVE
- SOUTH CREEK ROAD**

053/13 **RESOLVED**

Cr Regan

That staff investigate the feasibility and benefit of closing the South Creek Road unmade road reserve (DP151292) and advise Council of the outcome.

VOTING

For the resolution: Crs Daley, Giltinan, Gobert, Harrison, Heins, Kerr, Menano-Pires, Moskal and Regan

Against the resolution: Cr De Luca

CARRIED

5.3 MAYORAL MINUTE NO 6/2013 - NATIONAL BROADBAND NETWORK

054/13 **RESOLVED**

Cr Regan

That Council:

- A. Make representations to our local Federal Members calling on them to lobby in support of fast-tracking of the NBN Infrastructure not only to our region but to Warringah.
- B. Write to Senator Conroy, the Minister for Broadband, Communications and the Digital Economy echoing our support for the SHOROC resolution but highlighting the pressing need for the NBN infrastructure to be rolled out within Warringah given the hospital project is a significant State Infrastructure project and our own commitment to the Dee Why Masterplan.

VOTING

For the resolution: Crs Daley, De Luca, Giltinan, Gobert, Harrison, Heins, Kerr, Menano-Pires, Moskal and Regan

Against the resolution: Nil

CARRIED

**5.4 MAYORAL MINUTE NO 7/2013 - ACCOMMODATION OPPORTUNITY FOR SCHOOLS
WITHIN THE PROPOSED COMMUNITY HUB PRECINCT**

BACKGROUND

As was outlined in the recently released State Government's Draft Metropolitan Strategy, we need to plan for our growing population and this is also true for our schools who are already struggling to accommodate the growing number of students each year.

Many of the schools I visit will require additional buildings to cater for these growing numbers which is going to be difficult as the sites are already quite constrained. With work on the Police Citizens Youth Club imminent, it is timely for all our local schools to start planning their future needs together around what will be a great Northern Beaches hub for our youth. Alongside this is the proposed Community Hub Precinct development which includes a vision for an art gallery space and a state-of-the-art library. It could also cater for a senior learning off-site campus with for example specialist classrooms for cooking or textiles, arts and or metal/woodwork. At this point, the opportunities are limitless with even an opportunity for a university campus on the Northern Beaches but the discussion needs to start now. Schools need to work together and start thinking about the future needs of their students and collectively come up with a way forward that will benefit our growing student population.

Council could enter into a partnership arrangement by way of leasing or the schools purchasing floor space depending on their individual requirements and any process for such partnerships would be open and strictly on a commercial basis.

Schools can be invited to attend a presentation on the Dee Why Masterplan with a specific focus on the Community Hub Precinct and the Police Citizens Youth Club to open the idea and get schools to start considering the options that may be available to them.

Council should encourage our schools regardless of whether they are State or private institutions to start working together and look at the possibilities for them individually or in partnerships to provide new opportunities for their students. I encourage an Expression of Interest process be undertaken with all our schools and the district level governing bodies such as the NSW Department of Education and the Catholic Education Office to ascertain their interest in this proposal.

I am advised that this process can be funded within the existing budget for the Dee Why Masterplan.

055/13 RESOLVED

Cr Menano-Pires / Cr Regan

That

- A. Council extends an invitation to all local school principals and relevant district education offices to attend a presentation on the Dee Why Masterplan, specifically looking at opportunities for off-site learning facilities within the proposed Community Hub Precinct and Police Citizens Youth Club.
- B. Following the presentation Council undertakes an Expression of Interest process to these schools and relevant district education offices for a period of no more than three months.
- C. A report to Council be prepared at the end of the Expression of Interest process with details of the outcomes and any recommendations to progressing this proposal.

VOTING

For the resolution: Crs Daley, De Luca, Giltinan, Gobert, Harrison, Heins, Kerr, Menano-Pires, Moskal and Regan

Against the resolution: Nil

CARRIED

REPORTS TO COUNCIL MEETING

7.0 COMMUNITY DIVISION REPORTS

7.1 WARRINGAH AQUATIC CENTRE - SITE DEVELOPMENT STRATEGY

056/13 **RESOLVED****Cr Menano-Pires / Cr Regan**

That:

1. Council resolves to further investigate options to provide a more sustainable future development for the Warringah Aquatic Centre site. This is to include investigation of potential partnerships, funding sources, opportunities presented by the Frenchs Forest Hospital development and consideration of possible reconfiguration of the existing 50 metre pool.
2. Pursuant to Section 55(3)(i) of the Local Government Act, Council resolves that a satisfactory result would not be achieved by inviting tenders for services required to carry out the investigation of options for the re-development of the Warringah Aquatic Centre because of the following extenuating circumstances:
 - a. Both Sydney Projects and Strategic Leisure Group have performed well to date and have acquired familiarity with the project.
 - b. Significant additional time and money would have to be spent calling for fresh tenders and for any new tenderer to acquire the same level of experience as the proposed companies for no discernable advantage
 - c. The market has been tested as recently as 2011
3. Council delegate authority to the General Manager to negotiate and enter into contracts with both Sydney Projects and Strategic Leisure Planning for the provision of services to carry out the investigation of further options for the re-development of the Warringah Aquatic Centre for consideration by Council in 2014.

*Councillor Heins left the chamber at 7:37pm**Councillor Heins returned to the chamber at 7:38pm*

VOTING

For the resolution: Crs Daley, De Luca, Giltinan, Gobert, Harrison, Heins, Kerr, Menano-Pires, Moskal and Regan

Against the resolution: Nil

CARRIED

7.2 YOUTH STRATEGY - CONSIDERATION OF SUBMISSIONS057/13 **RESOLVED****Cr Moskal / Cr Regan**

That Council adopt the Youth Strategy.

VOTING**For the resolution:** Crs Daley, De Luca, Giltinan, Gobert, Harrison, Heins, Kerr, Menano-Pires, Moskal and Regan**Against the resolution:** Nil**CARRIED****8.0 ENVIRONMENT DIVISION REPORTS****8.4 COLLAROY PLANNING PROPOSAL**058/13 **RESOLVED****Cr Regan / Cr Gobert**

That Council

- A. Pursuant to Section 59 of the *Environmental Planning & Assessment Act 1979*, forward the Collaroy Planning Proposal (Attachment 1) to the Department of Planning & Infrastructure, for the Minister for Planning & Infrastructure to make a Local Environmental Plan to:
- a) Re-classify the western portion of Collaroy Beach Reserve car park (part of Lot 1 DP346265) from Community Land to Operational Land under Warringah Local Environmental Plan 2011.
- B. As recommended by the Independent Chairperson to the public hearing, in making this determination, acknowledges the important public purpose the reclassified land is intended to play into the future as part of the area covered by the Masterplan for the Collaroy Beach Reserve.

VOTING**For the resolution:** Crs Daley, Gobert, Harrison, Heins, Kerr, Menano-Pires, Moskal and Regan**Against the resolution:** Crs De Luca and Giltinan**CARRIED**

8.6 WARRINGAH COMMUNITY BASED HERITAGE STUDY REVIEW - FINAL REPORT059/13 **RESOLVED*****Cr Regan / Cr Menano-Pires***

That:

- A. The contents of the Warringah Community Based Heritage Study Review, dated February 2013, be adopted.
- B. Council prepare a Planning Proposal to amend Warringah Local Environmental Plan 2011 to:
 - a. amend Schedule 5 by correcting errors and anomalies, as outlined in Attachment 3;
 - b. delete two (2) existing items from Schedule 5, being:
 - i. Long Reef Garage, 2 Hay Street, Collaroy (Pt Lot 6 Sec 6 DP 11358); and
 - ii. "Ballagh", 5 The Avenue, Collaroy (Lot 24 DP 7001)
 - c. add fifteen (15) new heritage items to Schedule 5, being those items listed in Attachment 4; excluding the Warringah Council Civic Centre Building and 13 Worcester Street, Collaroy subject to confirmation from the owners.
 - d. expand three (3) existing listings in Schedule 5 to more accurately reflect the item, also listed in Attachment 4; and
 - e. add ten (10) items to Schedule 5, which are already heritage listed in State Government s.170 heritage registers, being those items listed in Attachment 5.
- C. Council send the Planning Proposal to the Department of Planning and Infrastructure for Gateway Determination.
- D. Upon receipt of the Department's Gateway Determination, and in accordance with any directions contained, Council authorises the public exhibition of the Planning Proposal and notification of all owners of properties affected by this heritage Planning Proposal.
- E. Investigate listing and provide a report back to Council in relation to Soldiers Avenue street trees and associated plaques to be included as a State Heritage Item.
- F. That the heritage status of the Warringah Council Civic Centre Building be reviewed and brought back to Council for consideration between 2015 and 2016.

VOTING

For the resolution: Crs Daley, De Luca, Giltinan, Gobert, Harrison, Heins, Kerr, Menano-Pires, Moskal and Regan

Against the resolution: Nil

CARRIED

8.7 THE DEE WHY / BROOKVALE MAJOR CENTRE TRANSPORT MANAGEMENT AND ACCESSIBILITY STUDY060/13 **RESOLVED****Cr Regan / Cr Menano-Pires**

That:

- A. Council endorse the Dee Why / Brookvale Major Centre Transport Management and Accessibility Study as a planning reference document.
- B. Land development in the Dee Why / Brookvale Major Centre be monitored and recorded over time to: support future updates to the traffic model; inform Council's planning for transport system upgrades within its jurisdiction; inform Council's communications with state agencies and advocate for improved transport facilities and upgrades.
- C. The Dee Why / Brookvale Major Centre Transport Management and Accessibility Study recommendations be considered for integration into Council's works program, where appropriate, as part of Council's annual business and budget planning cycle.

VOTING

For the resolution: Crs Daley, De Luca, Giltinan, Gobert, Harrison, Heins, Kerr, Menano-Pires, Moskal and Regan

Against the resolution: Nil

CARRIED

In accordance with clause 13.2 (ii) of Council's Code of Meeting Practice, the meeting was adjourned at 8:07pm. The meeting resumed at 8:14pm with the Councillors De Luca, Giltinan, Gobert, Harrison, Heins, Kerr, Moskal and Regan present.

Councillor Daley returned to the chamber at 8:16pm

8.9 PROPOSED MULTIPURPOSE COMMUNITY FACILITY AND CARPARK AT 36 - 48 KINGSWAY, DEE WHY061/13 **RESOLVED****Cr Regan / Cr Kerr**

That:

- A. The Planning Report and the Draft Plan of Management for the Land at 36 - 48 Kingsway Dee Why be placed on public exhibition for 28 days with 42 days for submissions.
- B. A public hearing be held in accordance with clause 40A of the Local Government Act 1993.

Councillor Menano-Pires returned to the chamber at 8:17pm

VOTING

For the resolution: Crs Daley, Giltinan, Gobert, Harrison, Heins, Kerr, Menano-Pires, Moskal and Regan

Against the resolution: Cr De Luca

CARRIED

9.0 NOTICES OF RESCISSION

Nil

10.0 NOTICES OF MOTION**10.1 NOTICE OF MOTION NO 5/2013 - ANTI-SOCIAL BEHAVIOUR**

062/13 **RESOLVED**

Cr Gobert / Cr Kerr

That Council staff investigate the ability to deal with anti-social behaviour.

VOTING

For the resolution: Crs Daley, De Luca, Giltinan, Gobert, Harrison, Heins, Kerr, Menano-Pires, Moskal and Regan

Against the resolution: Nil

CARRIED

10.2 NOTICE OF MOTION NO 6/2013 - WARRINGAH COMMUNITY PANEL

063/13 **RESOLVED**

Cr Gobert / Cr De Luca

1. That Council staff investigate the creation of the Warringah Community Panel at the earliest opportunity.
2. That a separate report including details of the current mechanisms used for community consultation be reported to Council within 4 months.

VOTING

For the resolution: Crs Daley, De Luca, Giltinan, Gobert, Harrison, Heins, Kerr, Menano-Pires, Moskal and Regan

Against the resolution: Nil

CARRIED

10.3 NOTICE OF MOTION NO 7/2013 - REVIEW REFUSED APPLICATIONS FOR TREE REMOVAL064/13 **RESOLVED****Cr De Luca / Cr Giltinan**

1. That this Council notes:

- a. That on 23 February 2013 a tree, which had been the subject of a development application on the neighbouring property, two years prior for removal, which had been refused, fell on a property at 5 Peronne Parade, Allambie Heights occasioning significant damage to the carport and pergola attached to the house and trauma for the residents.
- b. That in the Supreme Court case of *Timbs V Shoalhaven City Council* [2004] NSWCA 81 Mr Timbs sought council permission to remove a large gum tree near his house. A council officer inspected the tree and refused permission to remove the tree, stating it was 'safe and sound'. During a storm the tree fell onto Mr Timb's house, resulting in his death. Further inspection indicated that the roots were decayed, but this was not easily seen. Mrs Timbs sued the Shoalhaven City Council for negligence, and the council was found to be liable for economic loss. When the council officer stated that the tree was safe, the Timbs relied on his opinion because of his position, and did not cut down the tree. The council officer did not have to provide expert opinion, and could have suggested that the Timbs obtain independent advice about the condition of the tree. Damages totaling over \$700,000 were awarded to Mrs Timbs. For the full Statement of Decision go to:

<http://www.austlii.edu.au/au/cases/nsw/NSWCA/2004/81.html>
- c. That applicants who are dissatisfied with Council's determination of applications for tree removal can submit a report from an independent Arborist and if that report finds the tree is in a dangerous state then the tree can be removed. It should be noted that this did not occur in this matter.
- d. The payment to the owners made by the General Manager for expenses associated with the removal of the tree.

2. That this Council resolves to:

- a. Extend it sincere sympathy to Rock and Kendal Davis-Bogan for their tragic circumstances.
- b. Request the General Manager to prepare a report on the application of the DCP for tree removal taking into account the particular circumstances of this case.

*Councillor Regan left the chamber at 8:51pm**Councillor Regan returned to the chamber at 8:53pm***VOTING****For the resolution:** Crs De Luca, Giltinan, Gobert, Harrison, Heins, Kerr and Moskal**Against the resolution:** Crs Daley, Menano-Pires and Regan**CARRIED**

10.4 NOTICE OF MOTION NO 8/2013 - BOAT AND TRAILER PARKING IN WARRINGAH065/13 **RESOLVED****Cr De Luca / Cr Gobert**

1. That this Council notes:

- a. That boats and trailers, some of which have not been used in many years, continue to park in Warringah residential streets, sports ground car parks and general public car parking areas.
- b. That recently, complaints were received that trailers and boats were parking along Abbott Road, North Curl Curl taking up much needed car spaces for users of John Fisher Park playing fields, to which Mr Malcolm Ryan, Deputy General Manager, has reported:

“The parking spaces provided at the playing fields along Abbott Rd North Curl Curl are not subject to any time restricted parking conditions. Therefore any vehicle, including a trailer is permitted to be parked at this location as long as they are legally parked and their registration is current.”

- c. Under current NSW road rules, a boat up to 7.5 metres long can be parked in a public street and Councils have no power to fine a registered boat or trailer parked in an unlimited zone.
- d. That in *The Sydney Morning Herald* on 13 February 2012, even David Miles, of the Boat Owners Association, conceded that “long-term boat parking was a problem in some areas”.
- e. That on 18 January 2012, Warringah Council wrote to the Premier, The Hon. Barry O’Farrell MP, in support of Woollahra Council’s request to change the NSW Road Rules to limit parking of trailers, however to date, the regulations have not been amended.

2. That this Council resolves to:

- a. Write to the Minister for Roads and Maritime Services, The Hon Duncan Gay MLC and Shadow Minister for Roads and Maritime Services, The Hon Penny Sharpe MLC outlining Warringah’s continuing problems with boats and trailers parking on residential streets, in sports ground car parks and general public car parking areas and renew calls for legislative reform to restrict such parking.
- b. Request the General Manager ensure Council Staff investigate and report to Council within three months ways to prevent boats and trailers parking in sports grounds and general car parking areas in Warringah for long periods of time.

VOTING

For the resolution: Crs Daley, De Luca, Giltinan, Gobert, Harrison, Heins, Kerr, Menano-Pires, Moskal and Regan

Against the resolution: Nil

CARRIED

11.0 QUESTIONS ON NOTICE

11.1 QUESTION ON NOTICE NO 3/2013 - LANTANA ADJACENT TO CAR PARK ABOVE DEE WHY ROCK POOL

In accordance with Council's Code of Meeting Practice Clause 22(5) the question was deemed in order

11.2 QUESTION ON NOTICE NO 4/2013 - PAINTING OF ROCK POOLS IN WARRINGAH AND MARKING OF SWIMMING LANES

In accordance with Council's Code of Meeting Practice Clause 22(5) the question was deemed in order

11.3 QUESTION ON NOTICE NO 5/2013 - OUTDOOR EXERCISE EQUIPMENT AT WARRINGAH BEACHES AND RESERVES

In accordance with Council's Code of Meeting Practice Clause 22(5) the question was deemed in order

12.0 RESPONSES TO QUESTIONS ON NOTICE

12.1 RESPONSE TO QUESTION ON NOTICE NO 1/2013 - SIGNAGE AND BEAUTIFICATION WORKS INTERSECTION TORONTO AVENUE AND FISHER ROAD NORTH CROMER

A response to the question on notice was provided in the business papers

12.2 RESPONSE TO QUESTION ON NOTICE NO 2/2013 - BEACON HILL WAR MEMORIAL COMMUNITY HALL BUILDING WORKS

A response to the question on notice was provided in the business papers

13.0 CONFIDENTIAL MATTERS – CLOSED SESSION

066/13 **RESOLVED**

Cr Regan / Cr Daley

- A. That, on the grounds and for the reasons stated below, the Council resolve into Closed Session to receive and consider the items identified as Confidential and listed on this Agenda as:

Item 13.2 RFT 2012/096 - Narrabeen Childrens Centre Playground Upgrade

Matters to be Discussed During Closed Session - Section 10D

Item 13.2 RFT 2012/096 - Narrabeen Childrens Centre Playground Upgrade

Grounds on which Matter Should be Considered in Closed Session – Section 10A(2)

Item 13.2 10A(2)(d(i)) commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it

Reason Why Matters are being considered in Closed Session – Section 10B

To preserve the relevant confidentiality, privilege or security of such information.

- B. That pursuant to Section 10A Subsections 2 & 3 and 10B of the Local Government Act 1993 (as amended), the press and public be excluded from the proceedings of the Council in Closed Session on the basis that the items to be considered are of a confidential nature.
- C. That the closure of that part of the meeting for the receipt or discussion of the nominated item or information relating thereto is necessary to preserve the relevant confidentiality, privilege or security of such information.
- D. That the Minutes and Business Papers including any reports, correspondence, documentation or information relating to such matter be treated as Confidential and be withheld from access by the press and public, until such time as the reason for confidentiality has passed or become irrelevant because these documents relate to a matter specified in section 10A(2).
- E. That the resolutions made by the Council in Closed Session be made public after the conclusion of the Closed Session and such resolutions be recorded in the Minutes of the Council Meeting.

VOTING

For the resolution: Crs Daley, Giltinan, Gobert, Harrison, Heins, Kerr, Menano-Pires, Moskal and Regan

Against the resolution: De Luca

CARRIED

NOTE: The meeting moved into closed session at 8:59pm and resumed in open session at 9:05pm

14.0 REPORT OF RESOLUTIONS PASSED IN CLOSED SESSION

NOTE: The General Manager reported the resolutions on confidential matters passed by exception and in closed session:

13.1 VARIATION TO CONTRACT RFT 2012/035 - CROMER PARK UPGRADE

049/13 **RESOLVED**

Cr Regan / Cr Gobert

That Council

- A. Resolve to bring forward \$40,000 from the General Infrastructure Renewal Program (\$10,000 a year for four years from 2013/2014) and reallocate \$40,000 from CR 5884 Manly Dam Trail

Renewal from the 2012/2013 Capital Expenditure Program to fund CR 5847 Cromer Park Upgrade

- B. Delegate to the General Manager authority to approve contract variations to the value of \$2,921,960.00 for RFT 2012/035

RESOLVED BY EXCEPTION

13.2 RFT 2012/096 - NARRABEEN CHILDRENS CENTRE PLAYGROUND UPGRADE

067/13 **RESOLVED**

Cr Regan / Cr Menano-Pires

That Council terminate the tender process in accordance with Local Government (General) Regulation 2005 under part 178 (3) to not accept any tenders and under 178 (3e) enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender.

VOTING

For the resolution: Crs Daley, De Luca, Giltinan, Gobert, Harrison, Heins, Kerr, Menano-Pires, Moskal and Regan

Against the resolution: Nil

CARRIED

13.3 RFT 2012/102 - UPGRADES TO BEACH RESERVE, STAGE 1 - COLLAROY ACCESSIBILITY PRECINCT

050/13 **RESOLVED**

Cr Regan / Cr Gobert

That

- A. Pursuant to clause 178 (1) (a) of the Local Government (General) Regulation 2005, Council accept the tender of **Landscape Solutions Australia Pty Ltd** in the amount of **\$1,645,379.55 (ex GST)**, comprised of a Lump Sum Amount of \$1,557,034.07 (ex GST) and Provisional Amount of \$88,345.48 (ex GST), and
- B. Council delegate authority to the General Manager to execute the contract including a contingency amount of \$150,000 (ex GST) for approved variations under the contract, and
- C. The following amounts be allocated in the 2013/14 fiscal year,
- | | |
|--|-------------|
| CR5853 – Collaroy Disability | \$1,452,000 |
| CR5863 – Collaroy Accessibility Precinct | \$409,000 |

Note: The contract amount will be 10% higher than amounts in recommendation A. to include GST.

RESOLVED BY EXCEPTION

NOTE: At this time, Councillor Daley, re-stated his conflict of interest advising that he had declared an interest in 7.4 because of his involvement with the Manly Liberal Party State Electoral Conference, which Councillor Giltinan was also a member and in particular other matters relating to the B Ward campaign at the last Council elections. He stated and then reiterated that he and Councillor Giltinan are both B Ward Councillors.

The Mayor, Councillor Regan left the chamber at 9:11pm due to a declared significant non pecuniary conflict of interest

The Deputy Mayor, Councillor Giltinan left the chamber at 9:11pm due to a declared pecuniary interest

Councillor Daley left the chamber at 9:11pm due to a declared significant non pecuniary conflict of interest

NOTE: In the absence of a chairperson, the General Manager called for nominations for an acting chairperson. Councillor Heins was the only nomination and was duly elected acting chairperson.

7.4 RFT 2012/103 - LICENCE FOR DISTRICT PARK TENNIS COMPLEX

Cr Heins / Cr Harrison

- A. That pursuant to Clause 178(1)(b) of the Local Government (General) Regulation 2005, on the advice of the independent Tender Evaluation Committee, Council declines to accept the tender submission received for RFT 2012/103 – Licence for District Park Tennis Complex.
- B. That pursuant to Clause 178(3)(f) of the Local Government (General) Regulation 2005, Council resolves to carry out the proposed requirements of the contract itself and delegate to the General Manager the function of taking over the complete financial and operational management of all facilities associated with the District Park Tennis Complex.

PROCEDURAL MOTION – TENDER DOCUMENTS TO BE MADE PUBLIC

0689/13 **RESOLVED**

Cr Moskal / Cr De Luca

That, in relation to Item 7.4 - RFT 2012/103 - Licence for District Park Tennis Complex, the confidential Business Case as well as the Tenderer's submission and the Tender Evaluation Report, for which approval for release of both documents has been granted by the tenderer, be made public.

VOTING

For the resolution: Crs De Luca, Gobert, Harrison, Heins, Kerr, Menano-Pires and Moskal

Against the resolution: Nil

CARRIED

NOTE: Councillors Daley, Giltinan and Regan were not present for voting on this item

7.4 RFT 2012/103 - LICENCE FOR DISTRICT PARK TENNIS COMPLEX***Cr Heins / Cr Harrison***

- A. That pursuant to Clause 178(1)(b) of the Local Government (General) Regulation 2005, on the advice of the independent Tender Evaluation Committee, Council declines to accept the tender submission received for RFT 2012/103 – Licence for District Park Tennis Complex.
- B. That pursuant to Clause 178(3)(f) of the Local Government (General) Regulation 2005, Council resolves to carry out the proposed requirements of the contract itself and delegate to the General Manager the function of taking over the complete financial and operational management of all facilities associated with the District Park Tennis Complex.

AMENDMENT***Cr Gobert / Cr De Luca***

That Item 7.4 be deferred until the next Ordinary Meeting of Council to held on 23 April 2013 and that the confidential report presented at the 11 December 2012 Council Meeting be presented to Council in open session at the 23 April 2013 meeting.

VOTING

For the amendment: Crs De Luca, Gobert and Kerr

Against the amendment: Crs Daley, Harrison, Heins, Menano-Pires and Moskal

LOST

NOTE: Councillors Daley, Giltinan and Regan were not present for voting on this item

The meeting concluded at 10:12pm

This is the final page of the minutes comprising 26 pages numbered 1 to 26
of meeting 2013/3 of Warringah Council held on Tuesday 26 March 2013
and confirmed on Tuesday 23 April 2013

Mayor

General Manager

26 MARCH 2013

Our Ref: PW:SG:330163
Enquiries: Peter Wood
Email: pwood@wmw.com.au

26 March 2013

Councillor Jose Menano-Pires
Warringah Council
Civic Centre
725 Pittwater Road
DEE WHY NSW 2099

Email: jose.menano-pires@warringah.nsw.gov.au

With copy to:
Email: robertgiltinan@hotmail.com

Dear Councillor Menano-Pires,

RE: GILTINAN

We act for Bob Giltinan Corporate Tennis Pty Ltd and Councillor Robert Giltinan, and members of their family. We note that the Council will be considering tonight, matters relating to the Tennis Centre located at the corner of Kentwell and Pittwater Roads at North Manly, of which our client is the present lessee. We are instructed that in the period prior to the Council elections pursuant to which Robert Giltinan and yourself were elected to Council, there were negotiations between yourself and Robert Giltinan, as well as several other persons, including your colleague, Councillor Pat Daley regarding possible preference exchanges and support, and that information was discussed in relation to Councillor Robert Giltinan's business, as well as confidential information on political strategy, you are both members of the same political party and likely to be competing for offices both within and outside that party, and as a result you have a personal interest in any damage which might be caused to our client's business or his reputation. It is our client's view that you have a non-pecuniary conflict of interest and should not participate in debates or vote on any matters relating to the Tennis Centre. We note your colleague, Councillor Pat Daley, who was present when discussing the above matters, has, on several occasions, declared a significant conflict of interest in the matter, and subsequently has abstained from discussion and voting. You should obtain independent advice in relation to these matters. Our client's intention if, notwithstanding this correspondence, you

Neale Marshall
Solicitor, Public Notary &
Registered Migration
Agent 9688015

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26 MARCH 2013**WOOD MARSHALL WILLIAMS**

- 2 -

participate in debate and vote on any matters relating to the Centre or to our client's lease, our client will lodge a Code of Conduct complaint and report the matter to the Independent Commission Against Corruption for investigation.

Yours faithfully
WOOD MARSHALL WILLIAMS

Peter Wood
pwood@wmw.com.au