

MINUTES

WARRINGAH COUNCIL MEETING

held at the Civic Centre, Dee Why on

TUESDAY 23 APRIL 2013

(2013/5)

warringah.nsw.gov.au



Warringah Council

Minutes of the Ordinary Meeting of Council**held on Tuesday 23 April 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 6:02pm), R Harrison, S Heins, J Menano-Pires and V Moskal

Officers

Rik Hart	General Manager
John Warburton	Deputy General Manager Community
Malcolm Ryan	Deputy General Manager Environment
Vivienne Ingram	Executive Legal Counsel
Melissa Lee	Governance Manager
Anna Moore	Coordinator Governance
Greg Karageuzian	IM&T Support Officer
David Walsh	Chief Financial Officer
Campbell Pfeiffer	Group Manager Building Property & Spatial Information
Adam Vine	Group Manager Business & Risk
Peter Bell	Group Manager Customer Support & Library Services
Graham Middleton	Group Manager Marketing & Communications
Adrian Turnbull	A/Group Manager Natural Environment
Paul Trigg	Group Manager Procurement, Fleet & Plant
Michael Keelan	Group Manager Parks, Reserves & Foreshores
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 due to lack of quorum at 6:32pm, resumed at 6:47pm, adjourned due to lack of quorum at 7:10pm, resumed at 7:15pm and concluded at 7:41pm

1.0 APOLOGIES

070/13 **RESOLVED**

Cr Regan / Cr De Luca

That an apology for non-attendance be received from Councillor Duncan Kerr.

VOTING

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

Against the resolution: Nil

CARRIED

NOTE: Councillor Gobert was not present for voting on this item

2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF ORDINARY MEETING OF COUNCIL HELD 26 MARCH 2013

071/13 **RESOLVED**

Cr Regan / Cr Heins

That the Minutes of the Ordinary Meeting of Council held 26 March 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, Menano-Pires, Moskal and Regan

Against the resolution: Nil

CARRIED

NOTE: Councillor Gobert was not present for voting on this item

Councillor Gobert entered the chamber at 6:02pm

2.2 MINUTES OF EXTRAORDINARY MEETING OF COUNCIL HELD 9 APRIL 2013

072/13 **RESOLVED**

Cr Regan / Cr Menano-Pires

That the Minutes of the Extraordinary Meeting of Council held 9 April 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, Gobert, Harrison, Heins, Menano-Pires, Moskal and Regan

Against the resolution: Nil

CARRIED**3.0 DECLARATION OF PECUNIARY AND CONFLICTS OF INTEREST**

Councillor Regan declared a significant, non pecuniary interest in relation to Item 6.1, due to his personal and professional relationship with the Deputy Mayor, Councillor Bob Giltinan and his family, and would take no part in debate or voting on the Item.

Councillor Giltinan declared a pecuniary interest in relation to Item 6.1, as he is the current licensee of the tennis complex, and would take no part in debate or voting on the Item.

Councillor Daley declared a significant, non pecuniary interest in relation to Item 6.1, as he has an association with Councillor Giltinan in relation to B ward and the Liberal Party in Manly, and would take no part in debate or voting on the Item.

Councillor De Luca declared a less than significant, non pecuniary interest in relation to Item 6.1, 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.

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.

4.1 Mr Doug Price representing Mackellar Girls Campus Northern Beaches Secondary College Parents in his official role of member of the Parents & Citizens Association addressed Item 6.1, RFT 2012/103 - Licence for District Park Tennis Complex.

4.2 Mr Tracey Lake addressed Item 6.1, RFT 2012/103 - Licence for District Park Tennis Complex.

PROCEDURAL MOTION - EXTENSION OF TIME***Cr De Luca***

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

NOTE: The motion lapsed for want of a seconder

4.3 Mr Jack Tilburn asked the following question regarding the Frenchs Forest Aquatic Centre:

Question

- A. With the 50 metres pool costing some \$700,000 to maintain for a year, is it feasible to make two by 25 metres pools to lower these costs?
- B. With the overall costs of \$1,200,000 to maintain the Aquatic Swimming Centre, is it feasible to undertake some major reconstructions to reduce these costs?
- C. Are there enough marketing operations undertaken to boost attendances?
- D. Does the swimming Centre attract interest from all the schools in the areas and other municipalities on a regular basis, and if not, then why not?

Answer

The Deputy General Manager Community provided the following responses:

- A. The 50 metre pool could be split and Council resolved recently to investigate some reconfiguration options at the Warringah Aquatic Centre. It should be noted that running 50 metre Olympic pools is a very expensive business and benchmarking across Australia shows on average it costs \$700,000 a year which explains why the private sector tends not to invest in them. Council, over the next coming months as part of the Aquatic Centre masterplan process, will be looking at the configuration and the possibility of splitting the pool into two 25 metre pools.
- B. Council will be examining whether it is feasible to undertake some major reconstructions to reduce these costs as part of the reconfiguration. We have been doing the masterplanning process looking at the right mix of facilities. Modern aquatic centres tend to have a wide mix of facilities which attract a lot more people to the centre. This is the problem with the Warringah Aquatic Centre at the moment as it is not in line with contemporary needs such as having fitness suites, sports halls and health and wellness centres.
- C. Each year the Warringah Aquatic Centre prepares a marketing plan and has a marketing budget and markets itself through the Local Government area, advertising on Council's website, through the Manly Daily and through special promotions. Attendance figures have reduced from 350,000 to 330,000 over the last ten years which again reflects and was shown in the masterplan consultants report that the centre doesn't reflect contemporary needs, people aren't leaving the centre because of marketing but because it's just not the right facility for modern times.
- D. Over the last 12 months a total of 37 local schools have attended the Warringah Aquatic Centre for school carnivals and in addition 15 schools regularly attend the centre for Learn To Swim, Water Polo and Bronze Medallion training. There is an issue with the Department of Education using the Warringah Aquatic Centre as water safety is not currently on the school curriculum and Council has been on peak bodies to try and lobby to get water safety onto the NSW school curriculum. There are also a number of high level risk assessment requirements for aquatic based excursions which does put schools off and we have found that school usage has been declining mainly for these reasons.

PROCEDURAL MOTION - ITEMS MOVED BY EXCEPTION**073/13 RESOLVED*****Cr Regan / Cr Gobert***

That the Order of Business be changed so Items 7.1, 8.1, 9.1, 9.2, 9.4, 9.5, 9.6, 9.7, 9.8, 14.1 and 14.2 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, Menano-Pires, Moskal and Regan

Against the resolution: Nil

CARRIED**ITEMS RESOLVED BY EXCEPTION:****7.1 MONTHLY FUNDS MANAGEMENT REPORT MARCH 2013****074/13 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**8.1 BEACH PARKING PERMIT POLICY CS-PL 01 - EXTENSION TO ADDITIONAL AREAS****075/13 RESOLVED*****Cr Regan / Cr Gobert***

That the proposed amendments to the Beach Parking Permit Policy (CS-PL 01) be placed on public exhibition for 28 days and outcomes of the exhibition be the subject of a future report to Council.

RESOLVED BY EXCEPTION

9.1 REVIEW OF THE POLICY FOR THE MANAGEMENT OF SMOKING IN PUBLIC PLACES (STR-PL 825)**076/13 RESOLVED*****Cr Regan / Cr Gobert***

That the draft Smoke-free Public Places Policy 2013 be placed on public exhibition for a period of 28 days.

RESOLVED BY EXCEPTION**9.2 DRAFT SUSTAINABLE TRANSPORT STRATEGY****077/13 RESOLVED*****Cr Regan / Cr Gobert***

That

- A. The draft Sustainable Transport Strategy be placed on public exhibition for a period of at least 28 days.
- B. Following the public exhibition, a further report including submissions from the public be considered by Council.

RESOLVED BY EXCEPTION**9.4 LOCAL GOVERNMENT REFORM****078/13 RESOLVED*****Cr Regan / Cr Gobert***

That Council note the report.

RESOLVED BY EXCEPTION**9.5 INTERIM REPORT NARRABEEN LAGOON RECREATIONAL DREDGING****079/13 RESOLVED*****Cr Regan / Cr Gobert***

That the assessment of short-listed sites for Narrabeen Lagoon recreational dredging proceed to the final stage of investigation.

RESOLVED BY EXCEPTION

9.6 PUBLIC EXHIBITION OF THE FINAL DRAFT MANLY LAGOON FLOOD STUDY080/13 **RESOLVED*****Cr Regan / Cr Gobert***

That Council approves the Draft Manly Lagoon Flood Study (March 2013) to be placed on public exhibition for a period of 28 days.

RESOLVED BY EXCEPTION**9.7 REPORTING OF STRATEGIC REFERENCE GROUP MINUTES**081/13 **RESOLVED*****Cr Regan / Cr Gobert***

That the Draft Minutes of the Environmental Sustainability and Recreation and Open Space Strategic Reference Group meetings and Notes of the Infrastructure and Development Strategic Reference Group meeting held on 3 April 2013 be noted.

RESOLVED BY EXCEPTION**9.8 2013 MUNICIPAL ASSOCIATION OF VICTORIA CONFERENCE - FUTURE OF LOCAL GOVERNMENT NATIONAL SUMMIT**082/13 **RESOLVED*****Cr Regan / Cr Gobert***

That Council authorise Councillor Harrison to attend the 2013 Municipal Association of Victoria Conference – Future of Local Government National Summit to be held in Melbourne from 22-23 May 2013.

RESOLVED BY EXCEPTION**14.1 ALTERNATIVE PROCUREMENT FOR TREE PRUNING AND REMOVAL CONTRACT**083/13 **RESOLVED*****Cr Regan / Cr Gobert***

That Council

- A. Exercise its authority under Section 55 (3) of the Local Government Act and approve an alternative procurement process for the provision of Tree Pruning and Removal Service for a period of 7 (seven) months.

The proposed alternative procurement is based on “extenuating circumstances” including:

- a. The withdrawal of service by a service provider for a essential service to Council
- b. The requirement to continue an essential service to Council until a new contract is developed, tendered and awarded in September 2013

- c. Sydney Metro Tree Services has provided services for Council until February 2013 and is familiar with the works required by Council
- B. Delegate authority to the General Manager to enter into negotiations with Sydney Metro Tree Services for Tree Pruning and Removal Services for a 7 month period and if successful execute a negotiated contract on behalf of Council.

RESOLVED BY EXCEPTION**14.2 RFT T11213 SHOROC - PRINTING OF RATES NOTICES**084/13 **RESOLVED****Cr Regan / Cr Gobert**

- A. That Council accepts the evaluation panel recommendation and engage Forms Express to print and produce Council's rates notices for a fee of \$39,848 per annum (excluding GST) for the period 1 July 2013 to 30 June 2015 with a further one (1) year x one (1) year extension at Council's option.
- B. That Council delegate authority to the General Manager to execute the contract with Forms Express.

RESOLVED BY EXCEPTION**PROCEDURAL MOTION - CHANGE TO ORDER OF BUSINESS**085/13 **RESOLVED****Cr Regan / Cr Menano-Pires**

That the Order of Business be changed so Item 6.1 be brought forward and dealt with immediately.

VOTING

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

Against the resolution: Nil

CARRIED

The Mayor, Councillor Regan left the chamber at 6:23pm due to a declared significant non-pecuniary conflict of interest

The Deputy Mayor, Councillor Giltinan left the chamber at 6:23pm due to a declared pecuniary interest

Councillor Daley left the chamber at 6:23pm 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.

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

Cr Menano-Pires / Cr Heins

That:

- A. Pursuant to Clause 178(1)(b) of the Local Government (General) Regulation 2005, and in accordance with the advice of the independent Tender Evaluation Committee, Council declines to accept the tender submission received for RFT 2012/103.
- B. 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 control over all functions associated with the management of all facilities and professional services provided by and to the tennis complex at District Park.
- C. Pursuant to Clause 178(e) of the Local Government (General) Regulation 2005, Council delegates to the General Manager the authority to enter into negotiations with any person(s) (whether or not the person(s) was a tenderer) or organisations and to enter into contracts for the provision of the services associated with the tennis complex at District Park.
- D. Council develops these services into a flexible model by allowing multiuse activities at the tennis complex at District Park.
- E. Council reviews the interim Management Model arrangement within 6 months of the District Park Plan of Management being adopted.
- F. Council extends the holdover agreement with the existing lessee for the tennis complex at District Park to 31 August 2013 to allow an efficient transition.

AMENDMENT

Cr De Luca

That in view of the correspondence from McCooe Raves & Poole solicitors dated 23 April 2013, which I table, that advises of its opinion that Mr Giltinan's rights over the lease actually continue for quite some time, as Council has asserted, and given that the ending paragraph states "Should council ignore this notification and pass resolutions that have a negative impact on our clients, our clients will then apply to the Supreme Court of New South Wales for injunctive relief until such time as their foreshadowed ADT application is determined. Should this course of action be necessary, our clients will also seek an order against Council for full indemnity costs of the injunctive proceedings and the full proceedings that follow" and given that Councillor Menano-Pires has advised that he has referred himself to the Independent Commission Against Corruption over allegations of possible misconduct, it is prudent on this Council to defer this matter pending the outcome of any proceedings in the ADT or before the Small Business Commissioner and also a determination from Independent Commission Against Corruption regarding the handling of this matter by Council staff and any others to date.

NOTE: The motion lapsed for want of a seconder

Councillor De Luca left the chamber at 6:32pm

NOTE: At this stage a quorum was not present. Councillors Gobert, Harrison, Heins Menano-Pires and Moskal were present in the Chamber.

NOTE: In accordance with Clause 6.1(b) and 6.2(b) of the Warringah Council Code of Meeting Practice, Councillor Menano-Pires with the agreement of Councillors Gobert, Harrison, Heins and Moskal, being all of the councillors present, adjourned the meeting until 6:47pm in the Council Chambers. Councillors present agreed that the meeting would resume at Item 7.1 to allow the business on the agenda to be dealt with.

NOTE: At 6:47pm the meeting resumed with all councillors present.

NOTE: It was agreed by councillors present to resume the meeting at Item 5.1 and continue through the agenda in order.

5.0 MAYORAL MINUTES

5.1 MAYORAL MINUTE NO 8/2013 - AMALGAMATIONS

BACKGROUND

Warringah Council is in the strongest position it has been in for decades. We are financially stable and have a large and increasing approval rating from the community. We have just been named by the NSW Treasury Corporation as one of only three councils that will be financially sustainable as at 2016. This achievement has been made thanks to the hard work of Councillors, staff and the community and while Council has maintained infrastructure and the delivery of services for the community.

We are rightly proud but also mindful that so much more needs to be done. Local governments across the State and around the world are in trouble. The model does not work and most of us recognise that reform is needed.

I want to take this opportunity to reiterate my strong belief that local government is in need of change and I welcome the current review into Local Government Reform. The roles of State and Local Governments need to be clearly defined before any models for change can be considered.

While I have publicly stated that I believe that forced amalgamations are not acceptable, I will add that I am not opposed to amalgamations per se. However, any amalgamation or model to be recommended by the review must be in the best interests of its local community and certainly not forced. I can see anecdotal evidence that one bureaucracy across several Council areas would create significant savings and reduce duplication. There is no reason why each area could not keep their local and unique identities - as demonstrated within the New Zealand models of local government.

Given Warringah has worked incredibly hard over the last four years to deliver the sound position we are in today, I certainly do not wish to see a model forced onto this Council which would negate our efforts thus far, delivering lesser results or higher costs for our community.

This is undoubtedly clear recognition of the efforts of this Council and its staff and our strong and responsible approach to managing the business of Council ultimately benefitting all of our residents and ratepayers.

At a recent SHOROC meeting, it was resolved that each Council including Warringah endorse the position - *To agree, to a policy that SHOROC member councils continue to collaborate regionally on policy and operational issues as an alternative to forced amalgamations.*

I think we should go one step further and propose that staff engage an independent third party to investigate and report back to Council on the pros and cons of new models, clearly outlining the potential benefits and possible negative impacts that such a model would present for Warringah. We owe it to our residents and ratepayers - and I believe to our neighbouring councils - to present the facts so an informed decision about any reforms can be made in the future.

Both State and Local Government need serious reform and this requires a detailed, informed

discussion with our community. If done correctly and in proper consultation with our residents and ratepayers, a reshaped local council could retain a strong local voice, while also achieving better strategic decisions in areas such as lagoon management, infrastructure planning and road maintenance. There could be many direct benefits for local residents, ranging from coordinated, consistent policies on tree removal and boat parking to the provision of a single beach parking sticker for the entire region. A strong, large Council would provide consistency and stability and could fill a decision making void which would stop decisions and costs being shifted between State and Local Governments.

It is certainly incumbent on us as Councillors to represent the residents and ratepayers effectively. We need to demonstrate clearly that we are looking at the best value for their rates, keeping our debts low, maintaining our infrastructure, delivering new infrastructure, providing better services but overall, continuing to drive efficient and effective systems and create a culture of excellence and improvement for the community.

I understand funding is available under existing operating budgets to undertake this work.

086/13 **RESOLVED**

Cr Regan

That Council:

- A. Notes that Warringah is one of only 3 Councils in this State judged independently by the NSW Treasury Corporation to be in a strong and sustainable position beyond 2016
- B. Notes that Our Community Satisfaction ratings and internal staff surveys continue to trend upward and are seen as a benchmark for other Councils
- C. Notes that Council has delivered 4 continuous years of genuine surplus budgets whilst reducing its backlog of infrastructure and building new and key infrastructure for the next generations
- D. Is committed to reform and not opposed to Amalgamations where it is demonstrated to be in the best interests of its community
- E. Agrees that SHOROC member councils continue to collaborate regionally on policy and operational issues as an alternative to forced amalgamations
- F. Propose that staff prepare a report via an independent third party that examines reform models for councils that highlights both the benefits and negative impacts for current and any proposed neighbouring residents and
 - a. Agrees to look at an expanded Region of Councils that is not limited to SHOROC councils as part of a draft report
 - b. Report back to Council with the findings of the investigation within 3 months of the Local Government Reform "Future Directions" Paper being published.
 - c. Funds to be allocated from existing operational budgets
- G. Applies to the State Government and any interested local councils for funding of this report.

VOTING

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

Against the resolution: Crs De Luca and Giltinan

CARRIED**5.2 MAYORAL MINUTE NO 9/2013 - NSW PLANNING WHITE PAPER****BACKGROUND**

The NSW Department of Planning released the White Paper which essentially redefines a planning system that has been in place for over 30 years in this State.

The White Paper follows on from feedback received on the State Government's Green Paper which was released last year. The State Government are now seeking further comments from all stakeholders including the public prior to the legislation being drafted and put to Parliament later in the year.

The White Paper is a very comprehensive document which outlines hugely significant changes to the current planning system and will have a major impact on the business of council, businesses and the general public in relation to planning and development matters in the future.

The State Government is responsible for informing all stakeholders on the changes proposed and I understand there may be workshops being arranged similar to those held to discuss the Green Paper. While I believe staff are currently reviewing the implications for Warringah as a local government organisation, I believe it is also vital that we provide the local community an opportunity to hear our interpretation of the changes and to gain their input prior to Council submitting its formal submission which I understand is due by the end of June 2013.

This is a significant piece of legislation which the Minister for Planning has stated looks at a number of key elements including community participation. So given this is a key element, I believe it is vital to inform our residents at our own community forums of our understanding of the changes so they are in a better position to make their own informed submissions.

Finally, I think it is important that we re-enforce the extension (already sought by staff) to the deadline for submissions. As I said, this is a comprehensive document and extremely complex and requires very close consideration by our staff in terms of the changes required to our business practices and structures. I would imagine many stakeholders will also be seeking an extension.

087/13 RESOLVED***Cr Regan***

That Council:

- A. Holds a community workshop on the NSW Planning White Paper and proposed legislation in June 2013, in order to inform our local community about the NSW planning reforms.
- B. Formally requests the Minister for Planning and Infrastructure to extend the consultation period to allow Councils and all stakeholders adequate time to consider the legislation and consult with their local communities.

VOTING

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

Against the resolution: Cr Menano-Pires

CARRIED

5.3 MAYORAL MINUTE NO 10/2013 - PROPOSAL FOR COUNCIL TO JOIN PLANNED NORTHERN BEACHES UNIVERSITY STEERING COMMITTEE

BACKGROUND

Resulting from the previous Council Meeting's Mayoral Minute No. 7/2013 - Accommodation Opportunity For Schools Within The Proposed Community Hub Precinct, representatives from Pittwater Business Limited have approached Warringah Council to determine the feasibility and appetite for a world-class university campus to be based within Warringah Council, potentially at the proposed Dee Why Community Hub site.

While having been first envisaged in 2005, this concept is still in it's formation stage, but a position paper has been widely circulated through levels of state government. To progress this concept development into a feasible opportunity, Pittwater Business Limited is now forming a Steering Committee and has requested that Council be represented, specifically:

- The Mayor
- A senior council officer from the relevant area

The concept of a Northern Beaches University based within the Community Hub in Dee Why is an attractive proposition that would likely drive the revitalisation of Dee Why, bring a range of businesses and most importantly create a tertiary education option for the Northern Beaches Community. As such I believe that Council should support this endeavour.

I have been advised by staff that this motion can be carried out within current operational budget.

088/13 RESOLVED

Cr Regan

That Council support the:

- A. Progression of the Northern Beaches University concept
- B. Proposal for the Mayor and a suitable senior council officer, to be nominated by the General Manager, to be part of the Steering Committee

VOTING

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

Against the resolution: Nil

CARRIED

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

The Mayor, Councillor Regan left the chamber at 7:09pm due to a declared significant non-pecuniary conflict of interest

The Deputy Mayor, Councillor Giltinan left the chamber at 7:09pm due to a declared pecuniary interest

Councillor Daley left the chamber at 7:09pm due to a declared significant non-pecuniary conflict of interest

Councillor De Luca left the chamber at 7:09pm

NOTE: At this stage a quorum was not present. Councillors Gobert, Harrison, Heins Menano-Pires and Moskal were present in the Chamber.

NOTE: In accordance with Clause 6.1(b) and 6.2(b) of the Warringah Council Code of Meeting Practice, Councillor Menano-Pires with the agreement of Councillors Gobert, Harrison, Heins and Moskal, being all of the councillors present, adjourned the meeting until 7:15pm in the Council Chambers. Councillors present agreed that the meeting would resume at Item 7.2 to allow the business on the agenda to be dealt with.

NOTE: At 7:15pm the meeting resumed with all councillors present.

7.2 TREASURY CORPORATION NEW SOUTH WALES FINANCIAL ASSESSMENT, SUSTAINABILITY AND BENCHMARKING REPORT FOR WARRINGAH COUNCIL

089/13 **RESOLVED**

Cr Regan / Cr Moskal

That the NSW Treasury Corporation Financial Sustainability and Benchmarking Report be noted.

VOTING

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

Against the resolution: Nil

CARRIED

8.2 FRENCHS FOREST SHOWGROUND CAFE SCOPING STUDY

090/13 **RESOLVED**

Cr Regan / Cr Harrison

That this item be deferred for a future councillor briefing and that the contents of the report be noted.

VOTING

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

Against the resolution: Nil

CARRIED

9.3 WARRINGAH EMPLOYMENT STUDY 2013091/13 **RESOLVED*****Cr Heins / Cr Regan***

That

- A. Council endorse the Warringah Employment Study 2013 as a strategic planning background study.
- B. A summary document be prepared and be made publicly available through Council's website.
- C. A protocol be implemented to collect data relating to development applications for additional floorspace, re-use of floorspace and associated job numbers for approved commercial development in the Brookvale-Dee Why Major Centre.
- D. The findings of the Warringah Employment Study 2013 be utilised to inform the comprehensive Warringah Local Planning Strategy; Council's guiding document for housing, employment and land use integration.

VOTING

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

Against the resolution: Nil

CARRIED**10.0 NOTICES OF RESCISSION**

Nil

11.0 NOTICES OF MOTION**11.1 NOTICE OF MOTION NO 9/2013 - IMPROVING OPPORTUNITIES FOR LOCAL BUSHLAND PROJECTS**092/13 **RESOLVED*****Cr Heins / Cr Regan***

That

- A. Staff prepare a short report within 4 months to explore whether community requests for local park or bushland improvements could be given a higher priority and resourced.
- B. The Local Federal Member for Warringah and Leader of the Opposition Tony Abbott be written to and asked that Warringah Local Government Area be included in the Greencorp activities should the Coalition win Government.

VOTING

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

Against the resolution: Nil

CARRIED

11.2 NOTICE OF MOTION NO 10/2013 - DA 2013/0273 - 781 WARRINGAH RD, FORESTVILLE

093/13 **RESOLVED**

Cr Harrison / Cr Regan

- A. That Council raise objection to the proposed development for a boarding house at 781 Warringah Rd Forestville, on the grounds that:
- a. The inappropriate characteristics of the development including height, build form bulk and scale is that is out of character with the traditional low-density housing in the area;
 - b. The proposal is a gross overdevelopment of the site;
 - c. The landscaping and open space is totally insufficient and inappropriate to a development of the proposed size;
 - d. There is insufficient onsite parking;
 - e. The area provides inadequate availability of public transport for residents of the development;
 - f. The creation of an undesirable precedent for similar types or scales of development and
 - g. The development will create a sense of enclosure, negative visual impact, loss of privacy and sunlight along with increased noise for surrounding neighbours.
- B. That Council write to the Minister for Planning and Infrastructure, raising concerns regarding the insufficient provision of car parking outlined in SEPP Affordable Rental Housing. The existing requirements for parking under the SEPP should be applied to Boarding Houses located in the inner city or close to railway stations. Boarding Houses in the suburbs where public transport is often insufficient should have a higher requirement for on-site parking.

VOTING

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

Against the resolution: Nil

CARRIED

NOTE: The General Manager reported the resolutions on confidential matters passed by exception:

14.1 ALTERNATIVE PROCUREMENT FOR TREE PRUNING AND REMOVAL CONTRACT

083/13 **RESOLVED**

Cr Regan / Cr Gobert

That Council

- A. Exercise its authority under Section 55 (3) of the Local Government Act and approve an alternative procurement process for the provision of Tree Pruning and Removal Service for a period of 7 (seven) months.

The proposed alternative procurement is based on “extenuating circumstances” including:

- a. The withdrawal of service by a service provider for a essential service to Council
 - b. The requirement to continue an essential service to Council until a new contract is developed, tendered and awarded in September 2013
 - c. Sydney Metro Tree Services has provided services for Council until February 2013 and is familiar with the works required by Council
- B. Delegate authority to the General Manager to enter into negotiations with Sydney Metro Tree Services for Tree Pruning and Removal Services for a 7 month period and if successful execute a negotiated contract on behalf of Council.

RESOLVED BY EXCEPTION

14.2 RFT T11213 SHOROC - PRINTING OF RATES NOTICES

084/13 **RESOLVED**

Cr Regan / Cr Gobert

- A. That Council accepts the evaluation panel recommendation and engage Forms Express to print and produce Council's rates notices for a fee of \$39,848 per annum (excluding GST) for the period 1 July 2013 to 30 June 2015 with a further one (1) year x one (1) year extension at Council's option.
- B. That Council delegate authority to the General Manager to execute the contract with Forms Express.

RESOLVED BY EXCEPTION

12.0 QUESTIONS ON NOTICE

Nil

13.0 RESPONSES TO QUESTIONS ON NOTICE

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

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

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

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

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

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

The meeting concluded at 7:41pm

This is the final page of the minutes comprising 19 pages
numbered 1 to 19 of meeting 2013/5 of Warringah Council
held on Tuesday 23 April 2013 and confirmed on Tuesday 28 May 2013

Mayor

General Manager

23 APRIL 2013**McCOOE RAVES & POOLE**

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Our ref ;JBMc.

22 April 2013

URGENT

The General Manager
Warringah Council
Civic Center
725 Pittwater Road
Dee Why NSW 2099

By Facsimile 99714522

Dear Sir,

**RE: DISTRICT PARK TENNIS AND SQUASH COMPLEX, CORNER KENTWELL AND
PITTWATER ROADS NORTH MANLY**

We are the solicitors for Mr Robert Gary Giltinan and Bob Giltinan Corporate Tennis Pty Ltd. Robert Gary Giltinan is the current Lessee of the District Park Tennis and Squash Complex, corner Kentwell and Pittwater Roads North Manly ("the leased premises" and/or "the premises" as the case may be).

Our clients have instructed us that there is a Motion on the Agenda for Council's meeting next Tuesday 23rd April, which if passed would result in:

1. Council declining to accept the Tender by our client Bob Giltinan Corporate Tennis Pty Ltd (the only Tender received by council in response to it's latest Tender process commenced in December 2012 ("the 2012/2013 tender process").
2. Council taking over the leased premises and operating the tennis and squash center itself.

Our clients' former solicitor Mr. Peter Wood of Messrs Wood Marshall Williams solicitors at Brookvale (a senior practitioner of many years standing) put Council on notice that it is our client's position that Robert Gary Giltinan has existing rights of occupation to the leased premises which do not expire until the 18th of November 2017. Mr Wood also notified Council that the participation of Mr Giltinan's related corporation Bob Giltinan Corporate Tennis Pty Ltd in the 2012/2013 tender process was without prejudice to Mr Giltinan's other claims of entitlement to occupy the premises. We refer you to Mr Wood's letters of:

- 14th February 2013.
- 25th February 2013.
- 1st March 2013.

We are instructed to reissue these notifications. Robert Gary Giltinan has existing rights of occupation to the leased premises which do not expire until the 18th of November 2017 and the participation of Mr Giltinan's related corporation Bob Giltinan Corporate Tennis Pty Ltd in the 2012/2013 tender process was without prejudice to Mr Giltinan's other claims of entitlement to occupy the premises.

We note from Council's responses to Mr Wood's correspondence that Council is of the view that Mr. Giltinan's rights of occupation of the District Park Tennis and Squash Center are governed by a Lease dated 5th March 1998 which was for a 10 year term commencing on 9th November 1997 and terminating on 18th November 2007. This lease contained two options for renewal each for a 5 year period and Council asserts that neither of these options were exercised with the result that Mr. Giltinan has been holding over as a monthly tenant under an expired lease since the 18th November 2007.

Our client disputes Council's stated view and continues to assert that his rights of occupation do not expire until the 18th November 2017. There is an obvious dispute about Mr. Giltinan's right to remain in occupation of the premises

Application Of Retail Leases Act 1994

The lease dated 5th March 1998 ("the 1998 Lease") allowed the tenant (Robert Gary Giltinan) the right to use the leased premises (Lot 3 in Deposited plan 829465) for the following purposes:

- Tennis Courts and Squash courts for public hire.
- Sale of refreshments.
- Sale and repair of tennis and squash equipment.
- Tennis coaching
- Squash coaching
- Coordinated tennis teams for coaching
- Squash competition
- Such other uses as are ancillary to such uses or as may be from time to time approved by the Lessor (Warringah Council) in accordance with the adopted District Park Plan of Management.

The 1998 lease at Clause 1 on page 4 of Annexure A incorrectly records and incorrectly represents that the New South Wales Retail Leases Act of 1994 ("the RL Act") shall not apply to the lease. In addition to being inaccurate, this statement is by its nature and prominence false and misleading. The RL Act did at the time the Lease was entered into apply to this particular tenancy.

Sporting goods shops are specifically identified in the RL Act as usages/businesses covered by that Act. Our clients instruct us that at the commencement of the Lease in November 1997 and for some years prior, the Pro-Shop and squash court buildings were used for the retail sale of sporting goods including tennis and squash racquets, tennis and squash balls, tennis and squash clothing, shoes and other sporting apparel. We are also instructed that the Pro-Shop also sold take away food and beverages which is another usage identified as a retail usage in the RL Act.

It is our client's position that his lease of the Pro-Shop and the Squash Courts building is governed by and has always been governed by the provisions of the RL Act 1994. It is also possible that the remainder of the leased premises are governed by the same legislation, however, further investigation is necessary before our client can make a determination on whether this is the case.

The 1998 Lease placed obligations on the tenant to do certain work at the tenant's cost. This work is listed in a schedule of works which is annexure C to the 1998 Lease. Work to the Pro-Shop and squash courts was included in this work. The RL Act precludes landlords requiring tenants to pay any amount in respect to capital costs of the building in which the retail shop is located (Section 23 of the Retail Leases Act 1994).

Our client has continues to spend considerable money on capital works to the Pro-Shop and the Squash Courts. The RL Act provides that he should not have been required to spend this money. Mr. Giltinan is entitled to reimbursement of part of his capital contributions.

Administrative Decisions Tribunal

We have received instructions from our client to prepare and file an application under Section 72 of the Retail Leases Act 1994 in the Administrative Decisions Tribunal (ADT"). This application will seek:

- An order for re-imbursement of part of the capital cost contributions paid by Robert Gary Giltinan to Council, and
- A determination of the term of Robert Gary Giltinan's occupancy rights, and
- A declaration of unconscionable conduct (by Council) pursuant to Section 62 of the Retail Leases Act, and
- A Declaration of misleading or deceptive conduct by Council pursuant to Section 62 of the Retail Leases Act, and
- Damages resulting form unconscionable conduct, and
- Damages resulting form misleading or deceptive conduct.

Before Mr. Giltinan can apply to the ADT, he must request the Registrar of the Retail Tenancy Unit at the ADT to arrange mediation or alternatively apply himself to the NSW Small Business Commissioner for mediation in an attempt to resolve the disputes concerning our client's occupancy rights, determination of breaches of the Retail Leases Act by Council and any reimbursement of capital expenditure or compensation that may flow as a result of those breaches.

It is our opinion that it is inappropriate for Council to vote on the motions that are on the Agenda for next Tuesday's meeting or any similar motions until such time as the ADT mediation process has been exhausted and/or our clients ADT application has been determined.

Should council ignore this notification and pass resolutions that have a negative impact on our clients, our clients will then apply to the Supreme Court of New South Wales for injunctive relief until such time as their foreshadowed ADT application is determined. Should this course of action be necessary, our clients will also seek an order against Council for full indemnity costs of the injunctive proceedings and the full proceedings that follow.

23 APRIL 2013

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We would be grateful to receive your urgent confirmation that all motions concerning the District Park Tennis and Squash Complex listed included in the Agenda for Council's meeting on Tuesday 23rd April 2013 will not proceed and have been withdrawn from the Agenda.

Yours faithfully,
MCCOOE RAVES & POOLE

