

MINUTES

WARRINGAH COUNCIL MEETING

held at the Civic Centre, Dee Why on

TUESDAY 5 JUNE 2012

(2012/07)

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Warringah Council

**Minutes of an Extraordinary Meeting of Council
held on Tuesday 5 June 2012
at the Civic Centre, Dee Why
Commencing at 6:30pm**

ATTENDANCE:

Members

Councillor M Regan (Mayor), Councillor J Sutton (Deputy Mayor) and Councillors V De Luca OAM, R Giltinan, Dr C Harris, Dr C Kirsch and Dr H Wilkins

Officers

Rik Hart	General Manager
John Warburton	Deputy General Manager Community
Malcolm Ryan	Deputy General Manager Environment
Vivienne Ingram	Corporate Lawyer
Eskil Julliard	Legal Officer
Melissa Lee	Governance Manager
Anna Moore	Coordinator Governance
Fiona Stuart	Administration Officer Governance
Dinesh Mishra	IM&T Support Officer
Graham Middleton	Group Manager Marketing & Communications
Todd Dickinson	Group Manager Natural Environment
Don McQueen	A/Group Manager Building Property & Spatial Information
David Kerr	Group Manager Strategic Planning
Gary Penfold	Group Manager Warringah Aquatic Centre
Belinda Noble	Media and Content Manager

NOTES

The meeting commenced at 6.31pm, moved into closed session at 8:05pm, resumed in open session at 8:36pm and concluded at 8:38pm

1.0 APOLOGIES

172/12 **RESOLVED**

Cr Regan / Cr De Luca

That apologies for non-attendance be received from Cr Falinski, Cr Ray and Cr Laugesen.

VOTING

For the resolution: Crs De Luca, Kirsch, Giltinan, Wilkins, Harris, Sutton and Regan

Against the resolution: Nil

CARRIED

2.0 DECLARATION OF PECUNIARY AND CONFLICTS OF INTEREST

Councillor Dr Harris declared a less than significant, non pecuniary interest in relation to Item 5.1, as she lives within the affected area. (Declared at Item 5.1)

3.0 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.

3.1 Mr Jack Tilburn addressed Item 4.1, Compulsory Acquisition of Land for Northern Beaches Hospital by New South Wales Health and Infrastructure and asked the following questions.

- a) Will the total sale price of \$5,739,000 for the three parcels of land at Frenchs Forest for the new hospital attract capital gains tax and if not, then why not?
- b) Will the unexpected windfall money be put towards some new community facilities or reducing rates on the 55,000 ratepayers?
- c) Has the Council drawn up a list of any new community facilities to spend this money on consultation with the councilors?
- d) Will the Council try to allocate some of this money for the Warringah Biodiversity Conservation Study and if not, then why not?

Answer:

Deputy General Manager Community, Dr John Warburton provided the following answers:

- a) No, Council is a tax exempt entity under Federal Law.
- b) Yes, the money will be put towards community facilities and Council has a policy for the allocation of proceeds from the sale of Council real property (*GOV-PL-915 -Allocation of Proceeds from the Sale of Council Real Property*) which requires that such money must be used either for community assets or community facilities, it will not be put towards reducing rates because under this policy that is not an allowable use under the policy.

- c) No, however Council's Strategic Community Plan has a long list of projects that could be potentially funded from any such money. All changes in funding would need to be approved by councillors.
- d) No, that is not an allowable use of this money. The intent of GOV-PL-915 -Allocation of Proceeds from the Sale of Council Real Property policy is to ensure that Council uses any such money from the sale of property for community assets and does not use it for operational purposes.

3.2 Mr Andrew Lo addressed Item 4.1, Compulsory Acquisition of Land for Northern Beaches Hospital by New South Wales Health and Infrastructure.

3.3 Ms Jackie Marlow representing Friends of Narrabeen Lagoon Catchment addressed Item 4.1, Compulsory Acquisition of Land for Northern Beaches Hospital by New South Wales Health and Infrastructure.

3.4 Ms Mandy Beaumont addressed Item 4.1, Compulsory Acquisition of Land for Northern Beaches Hospital by New South Wales Health and Infrastructure.

The Mayor, Councillor Regan left the chamber at 6:45pm and the Deputy Mayor, Councillor Sutton, took the Chair.

PROCEDURAL MOTION - EXTENSION OF TIME

173/12 **RESOLVED**

Cr Dr Harris / Cr Dr Kirsch

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

VOTING

For the resolution: Crs De Luca, Kirsch, Giltinan, Wilkins and Harris

Against the resolution: Cr Sutton

CARRIED

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

3.5 Ms Ann Sharp addressed Item No 5.1, Progression of Joint Project to Resolve the Issue of The Warringah LEP 2011 Deferred Matters

Councillor Regan returned to the chamber at 6:49pm and resumed the Chair.

PROCEDURAL MOTION - PERMISSION TO ADDRESS COUNCIL ON CONFIDENTIAL ITEM IN OPEN SESSION**174/12 RESOLVED*****Cr Dr Harris / Cr Sutton***

That Ms White be granted permission to address Council on the confidential item in open session.

VOTING

For the resolution: Crs De Luca, Kirsch, Giltinan, Wilkins, Harris, Sutton and Regan

Against the resolution: Nil

CARRIED

3.6 Ms Sally White addressed Item No 10.1, Notice of Motion No 19/2012 - Purchase of Lot 447 Joalah Rd Duffys Forest - Additional Actions to Resolution

3.7 Mr Tony Backhouse addressed Item No 4.1, Compulsory Acquisition of Land for Northern Beaches Hospital by New South Wales Health and Infrastructure

PROCEDURAL MOTION - EXTENSION OF TIME**175/12 RESOLVED*****Cr De Luca / Cr Dr Kirsch***

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

VOTING

For the resolution: Crs De Luca, Kirsch, Giltinan and Harris

Against the resolution: Crs Wilkins, Sutton and Regan

CARRIED

Councillor Sutton left the chamber at 6:58pm and returned at 6:59pm

3.8 Ms Mary Armstrong addressed Item No 4.1, Compulsory Acquisition of Land for Northern Beaches Hospital by New South Wales Health and Infrastructure

REPORTS TO COUNCIL MEETING

4.0 COMMUNITY DIVISION REPORTS

4.1 COMPULSORY ACQUISITION OF LAND FOR NORTHERN BEACHES HOSPITAL BY NEW SOUTH WALES HEALTH AND INFRASTRUCTURE

Cr Regan / Cr Giltinan

That Council:

1. authorises Compulsory Acquisition by agreement to New South Wales Health Infrastructure of:
 - a. Lot 1 DP 119383.
 - b. Lot 11 DP 792918.
 - c. Bantry Bay Road reserve between Warringah Road and Frenchs Forest Road, Frenchs Forest.
2. authorises the General Manager to sign and affix Council's seal to all documentation necessary in order to give effect to this resolution.
3. calls upon the Minister to also consider the retention of the continuous strip of trees on the Warringah Road frontage, which is currently zoned as open space, and the wildlife corridor as the established canopy adds to the leafy character of the hospital site.
4. calls upon the Minister to also consider the provision of pedestrian access from Warringah Road to Frenchs Forest Road on the western side of the hospital site and that this be formalised by way of caveat or right of way for residents to use in the future.
5. calls upon the Minister to ask that the Duffys Forest Ecological Community be protected.
6. calls upon the NSW Government to ensure that adequate funding be provided to Mona Vale and Manly hospitals while planning and construction of the Frenchs Forest site takes place.
7. applies to the NSW Police Citizens Youth Club for consideration for a Police Citizens Youth Club to be located at the corner of Kingsway and Fisher Road as part of a car park and Youth and Recreation centre being considered for this site.
8. applies all funds realised from the compulsory acquisition of council's land by NSW Health to the development of community facilities on the Civic Centre site including a Police Citizens Youth Club if Council is successful in its application.

AMENDMENT

Cr Dr Harris / Cr Dr Kirsch

That Council:

1. authorises Compulsory Acquisition by agreement to New South Wales Health Infrastructure of:
 - a. Lot 1 DP 119383.

- b. Lot 11 DP 792918.
 - c. Bantry Bay Road reserve between Warringah Road and Frenchs Forest Road, Frenchs Forest.
- 2. authorises the General Manager to sign and affix Council's seal to all documentation necessary in order to give effect to this resolution.
 - 3. calls upon the Minister to also consider the retention of the continuous strip of trees on the Warringah Road frontage, which is currently zoned as open space, and the wildlife corridor as the established canopy adds to the leafy character of the hospital site.
 - 4. calls upon the Minister to also consider the provision of pedestrian access from Warringah Road to Frenchs Forest Road on the western side of the hospital site and that this be formalised by way of caveat or right of way for residents to use in the future.
 - 5. calls upon the Minister to ask that the Duffys Forest Ecological Community be protected.
 - 6. calls upon the NSW Government to ensure that adequate funding be provided to Mona Vale and Manly hospitals while planning and construction of the Frenchs Forest site takes place.
 - 7. put all monies received from the acquisition excluding the roads reserve \$1,386k towards the acquisition of sensitive bushland

VOTING

For the amendment: Crs De Luca and Harris

Against the amendment: Crs Kirsch, Giltinan, Wilkins, Sutton and Regan

LOST

PROCEDURAL MOTION – MOTION DEALT WITH AD SERIATIM

Cr Dr Kirsch / Cr Dr Harris

That the motion be dealt with ad seriatim

VOTING

For the motion: Crs De Luca, Kirsch and Harris

Against the motion: Crs Giltinan, Wilkins, Sutton and Regan

LOST

176/12 RESOLVED – MOTION BE NOW PUT

Cr Sutton

That the motion be now put.

VOTING

For the resolution: Crs Giltinan, Wilkins, Sutton and Regan

Against the resolution: Crs De Luca, Kirsch and Harris

CARRIED

177/12 RESOLVED

Cr Regan / Cr Giltinan

That Council:

1. authorises Compulsory Acquisition by agreement to New South Wales Health Infrastructure of:
 - a. Lot 1 DP 119383.
 - b. Lot 11 DP 792918.
 - c. Bantry Bay Road reserve between Warringah Road and Frenchs Forest Road, Frenchs Forest.
2. authorises the General Manager to sign and affix Council's seal to all documentation necessary in order to give effect to this resolution.
3. calls upon the Minister to also consider the retention of the continuous strip of trees on the Warringah Road frontage, which is currently zoned as open space, and the wildlife corridor as the established canopy adds to the leafy character of the hospital site.
4. calls upon the Minister to also consider the provision of pedestrian access from Warringah Road to Frenchs Forest Road on the western side of the hospital site and that this be formalised by way of caveat or right of way for residents to use in the future.
5. calls upon the Minister to ask that the Duffys Forest Ecological Community be protected.
6. calls upon the NSW Government to ensure that adequate funding be provided to Mona Vale and Manly hospitals while planning and construction of the Frenchs Forest site takes place.
7. applies to the NSW Police Citizens Youth Club for consideration for a Police Citizens Youth Club to be located at the corner of Kingsway and Fisher Road as part of a car park and Youth and Recreation centre being considered for this site.
8. applies all funds realised from the compulsory acquisition of council's land by NSW Health to the development of community facilities on the Civic Centre site including a Police Citizens Youth Club if Council is successful in its application.

VOTING

For the resolution: Crs Giltinan, Wilkins, Sutton and Regan

Against the resolution: Crs De Luca, Kirsch and Harris

CARRIED

5.0 ENVIRONMENT DIVISION REPORTS

5.1 PROGRESSION OF JOINT PROJECT TO RESOLVE THE ISSUE OF THE WARRINGAH LEP 2011 DEFERRED MATTERS

Cr Regan / Cr Dr Wilkins

A. That Council participate in Part 1 of the Strategic review as of the Belrose North and Oxford Falls valley areas in accordance with the following scope as proposed by the Department of Planning and Infrastructure;

1. Review existing information on constraints imposed by the physical environment (eg bushfire risk, flora and fauna, topography) and existing infrastructure in the deferred areas;
2. Identify existing land uses and establish whether existing and continuing use rights apply in the deferred areas;
3. Review Category 3 uses that currently apply under the Warringah LEP 2000 and identify those that are suitable for the deferred area based on the findings of tasks 1 and 2;
4. Determine an agreed policy position in relation to the use of special uses zones and additional uses for future planning controls under Warringah LEP 2011 in the deferred areas;
5. Identify sites in the deferred areas where:
 - i the E3 Environmental Management zone should remain as exhibited;
 - ii additional uses could be added to the E3 zoning; and
 - iii a different zone could apply such as SP2 Infrastructure, RU4 Primary Production Small Lots or R5 Large Lot Residential;
6. Review proposed changes to the E3 zone in the deferred area and consider implications of Clause 6.6 'Erection of dwelling houses in Zone E3 Environmental Management' of the LEP on land holdings within the proposed zone;
7. Undertake a community engagement and consultation event to present findings and gather views of key stakeholders; and
8. Recommend proposed land use zones and other controls for inclusion in a planning proposal.

B. That the results of Part 1 of the Strategic review be reported back to Council.

C. That Council confirm its commitment to the completion of the studies as recommended by the Planning and Assessment Commission in 2009.

NOTE: Councillor Dr Harris declared a less than significant, non pecuniary interest in relation to Item 5.1, as she lives within the affected area.

AMENDMENT***Cr De Luca***

- A That Council participate in Part 1 of the Strategic review into all areas proposed to be zoned E3 in draft LEP 2009 in accordance with the following scope as proposed by the Department of Planning and Infrastructure;
1. Review existing information on constraints imposed by the physical environment (eg bushfire risk, flora and fauna, topography) and existing infrastructure in the deferred areas;
 2. Identify existing land uses and establish whether existing and continuing use rights apply in the deferred areas;
 3. Ensure that all Category 2 uses that currently apply under the Warringah LEP 2000 are maintained in any new proposed zoning (as per the intent of the translation from LEP 2000 to draft LEP 2009) and review Category 3 uses that currently apply under the Warringah LEP 2000 and identify those that are suitable for the deferred area based on the findings of tasks 1 and 2;
 4. Determine an agreed policy position in relation to the use of special uses zones and additional uses for future planning controls under Warringah LEP 2011 in the deferred areas;
 5. Identify sites in the deferred areas where:
 - i the E3 Environmental Management zone should remain as exhibited;
 - ii additional uses could be added to the E3 zoning; and
 - iii a different zone could apply such as SP2 Infrastructure, RU4 Primary Production Small Lots or R5 Large Lot Residential;
 6. Review proposed changes to the E3 zone in the deferred area and consider implications of Clause 6.6 'Erection of dwelling houses in Zone E3 Environmental Management' of the LEP on land holdings within the proposed zone;
 7. Undertake a community engagement and consultation event to present findings and gather views of key stakeholders; and
 8. Recommend proposed land use zones and other controls for inclusion in a planning proposal.
 9. Review the undertakings given to residents when IDO51 was put in place
- B. That the results of Part 1 of the Strategic review be reported back to Council.
- C. That Council confirm its commitment to the completion of the studies as recommended by the Planning and Assessment Commission in 2009.

NOTE: The amendment lapsed for want of a seconder

178/12 RESOLVED***Cr Regan / Cr Dr Wilkins***

- A. That Council participate in Part 1 of the Strategic review as of the Belrose North and Oxford Falls valley areas in accordance with the following scope as proposed by the Department of Planning and Infrastructure;
1. Review existing information on constraints imposed by the physical environment (eg bushfire risk, flora and fauna, topography) and existing infrastructure in the deferred areas;
 2. Identify existing land uses and establish whether existing and continuing use rights apply in the deferred areas;
 3. Review Category 3 uses that currently apply under the Warringah LEP 2000 and identify those that are suitable for the deferred area based on the findings of tasks 1 and 2;
 4. Determine an agreed policy position in relation to the use of special uses zones and additional uses for future planning controls under Warringah LEP 2011 in the deferred areas;
 5. Identify sites in the deferred areas where:
 - i the E3 Environmental Management zone should remain as exhibited;
 - ii additional uses could be added to the E3 zoning; and
 - iii a different zone could apply such as SP2 Infrastructure, RU4 Primary Production Small Lots or R5 Large Lot Residential;
 6. Review proposed changes to the E3 zone in the deferred area and consider implications of Clause 6.6 'Erection of dwelling houses in Zone E3 Environmental Management' of the LEP on land holdings within the proposed zone;
 7. Undertake a community engagement and consultation event to present findings and gather views of key stakeholders; and
 8. Recommend proposed land use zones and other controls for inclusion in a planning proposal.
- B. That the results of Part 1 of the Strategic review be reported back to Council.
- C. That Council confirm its commitment to the completion of the studies as recommended by the Planning and Assessment Commission in 2009.

VOTING

For the resolution: Crs De Luca, Kirsch, Giltinan, Wilkins, Sutton and Regan

Against the resolution: Cr Harris

CARRIED

10.0 CONFIDENTIAL MATTERS – CLOSED SESSION

179/12 **RESOLVED**

Cr Regan / Cr Sutton

- 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 10.1 Notice of Motion No 19/2012 - Purchase of Lot 447 Joalah Rd Duffys Forest - Additional Actions to Resolution

Matters to be Discussed During Closed Session - Section 10D

Item 10.1 Notice of Motion No 19/2012 - Purchase of Lot 447 Joalah Rd Duffys Forest - Additional Actions to Resolution

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

Item 10.1 10A(2)(c) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business

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 Kirsch, Giltinan, Wilkins, Harris, Sutton and Regan

Against the resolution: Cr De Luca

CARRIED

Councillor De Luca left the meeting at 8:05pm

The meeting moved into closed session at 8:05pm

The meeting resumed in open session at 8:36pm

11.0 REPORT OF RESOLUTIONS PASSED IN CLOSED SESSION

The Deputy General Manager Environment reported on resolutions passed in closed session:

10.1 NOTICE OF MOTION NO 19/2012 - PURCHASE OF LOT 447 JOALAH RD DUFFYS FOREST - ADDITIONAL ACTIONS TO RESOLUTION

180/12 **RESOLVED**

Cr Dr Harris / Cr Regan

That Council:

- A. Proceeds to make the expression of interest for the purchase of Lot 447 Joalah Road in accordance with the resolution of 22 May 2012
- B. Delegates to the General Manager the authority to approach the vendor mortgagee bank to request that it consider contributing to the purchase of the land by Council
- C. Writes to the Deputy Premier and Premier asking that the State Government join with Council to acquire this land for conservation and recreation purposes

VOTING

For the resolution: Crs Kirsch, Wilkins, Harris and Regan

Against the resolution: Crs Giltinan and Sutton

CARRIED

The meeting concluded at 8:38pm.

This is the final page of the Minutes comprising 13 pages numbered 1 to 13 of meeting 2012/07 of Warringah Council held on 5 June 2012 and confirmed on 26 June 2012.

Mayor

General Manager