

IN ATTENDANCE

Councillors W J Polglase (Mayor), L F Beck (Deputy Mayor), G B Bell, M R Boyd, R D Brinsmead, B J Carroll, S Dale, D M Holdom, H James, G J Lawrie, J F Murray.

Also present were Dr John Griffin (General Manager), Mr Reg Norvill (Executive Manager-Office of the General Manager), Mr Mike Rayner (Director Engineering and Operations), Mr Noel Hodges (Director Planning & Environment), Mr Don Buckley (Director Environment & Community), Mr Neil Baldwin (Governance Officer/Public Officer) and Mrs Meredith Smith (Minutes Secretary)

Cr Carroll was not present at the commencement of the meeting.

PRAYER

The meeting opened with a Prayer by Council's Chaplain, Father Harry Reuss.

"Prayer for the Presentation of Christ in the Temple: Holy Day - 2 February 2005

*Almighty and everliving God,
We humbly pray
That, as your only Son was presented in the temple
So we may be dedicated to you with pure and clean hearts;
Through Jesus Christ our Lord,
Who lives and reigns with you and the Holy Spirit
One God, now and for ever. Amen.*

*Spirit of justice and truth,
Grant to the Tweed Shire Council and all who serve in public life,
Wisdom, skill, imagination and energy;
Help them to commit themselves to the common good
That our Shire may be a place of peace and prosperity for all
This we ask through Jesus Christ the Print of Peace. Amen."*

INTRODUCTION OF GOVERNANCE OFFICER/PUBLIC OFFICER

The Executive Manager, Mr Reg Norvill introduced Councillors to a new staff member, Mr Neil Baldwin, Governance Officer/Public Officer.

CONFIRMATION OF MINUTES

Minutes of the Ordinary Council Meeting held 19 January 2005

51 RESOLUTION:

Cr G J Lawrie
Cr J F Murray

The Minutes of 19/1/2005 were amended at Minute No 25-Item 19 to reflect to change to Point 1 to read 'Tweed Heritage Caravan Park'.

RESOLVED that the Minutes of the Council Meeting held 19 January 2005 be adopted as a true and accurate record of proceedings of that meeting subject to amendment of Minute No 25-Item 19 [EC] Application and Request to Install Unregistrable Moveable Dwelling as follows.

... *that:*

1. *Council refuses the application by Mrs Patricia Rees to install an unregistrable moveable dwelling in the **Tweed Heritage Caravan Park**.*
2. *Mr FJ & EG Criddle be advised that the previous resolution of 15 September 2004 remains valid, and the request to install an unregistrable moveable dwelling in the Drifters Van Village, Chinderah is refused.*

FOR VOTE - Unanimous
ABSENT. DID NOT VOTE - Cr Carroll

APOLOGIES

Nil.

DISCLOSURE OF INTEREST

Nil.

ITEMS TO BE MOVED FROM ORDINARY TO CONFIDENTIAL - CONFIDENTIAL TO ORDINARY

Nil.

SCHEDULE OF OUTSTANDING RESOLUTIONS

Schedule of Outstanding Resolutions

52 RESOLUTION:

Cr M R Boyd
Cr H James

RESOLVED that this report be received and noted.

FOR VOTE - Unanimous
ABSENT. DID NOT VOTE - Cr Carroll

MAYORAL MINUTE

Mayoral Minute

53 RESOLUTION:

Cr W J Polglase

RESOLVED that the Mayoral Minute be adopted.

FOR VOTE - Unanimous
ABSENT. DID NOT VOTE - Cr Carroll

ITEMS DEFERRED

**[ID] [PE] Development Application DA03/1578 for a Shopping Centre at Lot 123 DP
1049552 Botanical Circuit, Banora Point**

54 RESOLUTION:

Cr M R Boyd
Cr L F Beck

RESOLVED that this item be dealt with at Item 2 of this Agenda (Minute No 56 refers).

FOR VOTE - Unanimous
ABSENT. DID NOT VOTE - Cr Carroll

REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM DIRECTOR PLANNING & ENVIRONMENT

- 1 [PE] Development Application DA04/1132 for Road Works and Traffic Improvements at Shallow Bay Drive, Eastlakes Drive, Soorley Street & Minjungbal Drive, Tweed Heads South

55 RESOLUTION:

Cr M R Boyd
Cr J F Murray

RESOLVED that Development Application DA04/1132 for road works and traffic improvements at Shallow Bay Drive, Eastlakes Drive, Soorley Street & Minjungbal Drive, Tweed Heads South be approved subject to the following conditions: -

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos WK00146/01 to WK001146/12 Issue A prepared by Tweed Shire Council and dated 05/02/04, except where varied by these conditions.

[GEN0010]

PRIOR TO COMMENCEMENT OF WORK

2. Prior to commencement of works all required sedimentation and siltation control measures are to be installed and operational to the satisfaction of Council.

Erosion and sediment control shall be in accordance with *the "Tweed Urban Stormwater Quality Management Plan"* (adopted by Council 19 April 2000) section 5.5.2 "Stormwater Objectives During the Construction Phase of New Development". This section requires all new development to comply with Appendix E of the Plan *"Tweed Shire Council Aus-Spec D7 - Stormwater Quality"* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works". Erosion and sediment controls shall remain in place until final approval is given.

[PCW0190]

3. Prior to the commencement of work, advice from all relevant service authorities is required with regard to any requirements they may have for the provision of conduits or other infrastructure needs.

[PCWNS01]

DURING CONSTRUCTION

4. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742-1991 (Manual for Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR0040]

5. No filling to is be placed hydraulically within twenty metres (20m) of any boundary that abuts private land that is separately owned. Fill adjacent to these boundaries is to be placed mechanically.

No filling of any description is to be deposited, or remain deposited, within adjacent properties.

[DUR0560]

6. All work associated with this approval is to be carried out so as not to cause a nuisance to residents in the locality from noise, water or air pollution.

[DUR0870]

7. All necessary precautions shall be taken to minimise impact from dust during filling operations from the site and also from construction vehicles.

[DUR0880]

8. Construction site work including the entering and leaving of vehicles is to be restricted to between 7.00 am and 7.00 pm Monday to Saturday and no work on Sundays or public holidays.

[DUR0900]

9. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:

A. Short Term Period - 4 weeks.

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

B. Long term period - the duration.

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0910]

10. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited.

[DUR0920]

11. All excavation works are to be carried out in accordance with the submitted management statement for Acid Sulfate Soils.

[DUR1430]

12. The development shall be carried out in accordance with the provisions of the acoustic advice from Craig Hill Acoustics for Shallow Bay and Eastlakes Drive Tweed Heads South upon Existing Residential Properties, dated 8 April 2004 (Ref No: TSC080404/1).

13. Any pumps used for dewatering operations are to be electrically operated only. Diesel pumps are not to be used unless otherwise approved by Council's Director Environment and Community Services.
14. All pumps used for dewatering operations are to be installed on site in a location that will minimise any noise disturbance to neighbouring residential developments. Such location shall be to the satisfaction of Council's Director Environment and Community Services.
15. Practical measures to the satisfaction of Council's Director Environment and Community Services are to be taken to acoustically shield all pumps used for dewatering purposes.
16. Where any pumps used for dewatering operations are proposed to be used on a 24 hour basis, then the owners of adjoining residential premises shall be notified accordingly prior to commencement of such operations.
17. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50 mg/kg. The contractor shall nominate a person responsible for monitoring of the quality of such discharge waters on a daily basis and the results recorded. Such results shall be made available to Council's Environmental Health Officer(s) upon request.
18. All work associated with this approval is to be carried out so as not to cause a nuisance to residents in the locality from noise, water or air pollution.
19. All necessary precautions shall be taken to minimise impact from dust during filling operations from the site and also from construction vehicles.

[DURNS01]

[PTV0030]

[PTV0040]

GENERAL TERMS OF APPROVAL UNDER SECTION 201 OF THE FISHERIES MANAGEMENT ACT (Permit To Carry Out Dredging Or Reclamation Work)

1. A permit under s198-202 of the Fisheries Management Act 1994 for dredge and reclamation activities obtained prior to commencement of the works if works are to occur below HAT.
2. Environmental safeguards (silt curtains, booms etc) are to be utilised during construction / installation of the revetment wall to ensure there is no escape of turbid plumes into the aquatic environment. Erosion and sediment controls must be in place prior to commencing, during and after works.
3. Only clean rock fill, timber and logs are to be used for the revetment works.
4. Sand, gravel silt and topsoil or other materials must not be stockpiled within 50 metres of the water unless surrounded by sediment control measures.

DPI Fisheries recommend that to facilitate maintenance of the stormwater outlet a sill boarded by a ~150mm nib be set at the end of the stormwater pipe indicated in the plans. The sill could be sized to accommodate the bucket of a long reach excavator. Installing this device at construction will facilitate maintenance that is likely to be required with accumulation of sediment and mangrove recruits.

GENERAL TERMS OF APPROVAL UNDER SECTION 116 OF THE WATER ACT 1912 (Licence to commence sinking a bore to enlarge, deepen or alter a bore)

General Conditions

The purposes of these conditions are to -

- define certain terms used in other conditions
- specify the need to obtain a license, permit or authority before commencing any works
- specify that, in most cases an approval will only be issued to the occupier of the lands where the works are to be located (as required by the Water Act)
- require existing approvals to be cancelled or let lapse when a license is issued (if applicable)
- require the safe construction and operation of all works
- require the use of appropriate soil conservation measures
- limit vegetation destruction or removal to the minimum necessary
- require the separate authorisation of clearing under the NVC Act
- allow conditions to be imposed for management of fuel (petroleum)
- require the payment of fees on the issuing of an approval

In the following conditions relating to an approval under the Water Act 1912:

- "the Department" means the Department administering the Water Act 1912;
"approval" means a license, permit, authority or approval under that Act;
"river" has the same meaning as in Section 5 of the Water Act 1912;
"work" means any structure, earthwork, plant or equipment authorised under the approval to be granted, as defined in Section 5 and 105 of the Water Act 1912;
"controlled work" means any earthwork, embankment or levee as defined in Section 165 of the Water Act 1912.
- Before commencing any works or using any existing works for the purpose of Temporary Dewatering for Construction Purposes, an approval under **Part 5** of the Water Act 1912 must be obtained from the Department. The application for the approval must contain sufficient information to show that the development is capable of meeting the objectives and outcomes specified in these conditions.
 - An approval will only be granted to the occupier of the lands where the works are located, unless otherwise allowed under the Water Act 1912.
 - When the Department grants an approval, it may require any existing approvals held by the applicant relating to the land subject to this consent to be surrendered or to let lapse.
 - All works subject to an approval shall be constructed, maintained and operated so as to ensure public safety and prevent possible damage to any public or private property.
 - All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry of sediments into any river, lake, waterbody, wetland or groundwater system.
 - The destruction of trees or native vegetation shall be restricted to the minimum necessary to complete the works.
 - All vegetation clearing must be authorised under the Native Vegetation Conservation Act 1997, if applicable.
 - The approval to be granted may specify any precautions considered necessary to prevent the pollution of surface water or groundwater by

- petroleum products or other hazardous materials used in the construction or operation of the works.
- A license fee calculated in accordance with the Water Act 1912 must be paid before a license can be granted.
 - Any license so issued, from the date of issue, will be subject to Annual Cost Recovery Water Management Charges as set by the Independent Pricing and Regulatory Tribunal.

Conditions relating to water entitlements

The purposes of these conditions are to -

- allow rules for water transfers to be applied
- specify an annual entitlement (regulated and unregulated streams)
- allow the placement of limitations as to when water may be taken to ensure a flow remains for other users and the environment (unregulated streams)
- A transfer of an entitlement shall be subject to the provisions of the Water Act 1912 the regulations made thereunder and the transfer rules applying at the time of application as determined by the Department
- The authorised annual entitlement will not exceed 10 megalitres.
- Extraction of water under the approval to be issued shall be subject to conditions with regard to availability of supply and such restrictions as are deemed necessary by the Department from time to time to ensure an adequate flow remains for other water users and the environment.

Conditions for water use

The purposes of these conditions are to -

- allow the department obtain an accurate measure of water use where necessary
- specify the purpose(s) for which the water may be used
- specify conditions to protect water quality and the environment
- ensure proper management of tailwater drainage
- ensure accessions to groundwater systems are restricted.
- If and when required by the Department, suitable devices must be installed to accurately measure the quantity of water extracted or diverted by the works.
- All water measuring equipment must be adequately maintained. It must be tested as and when required by the Department to ensure its accuracy.
- The use of water shall be conditional on no tailwater drainage being discharged into or onto -
 - any adjoining public or crown road
 - any crown land
 - any river, creek or watercourse
 - any groundwater aquifer
 - any area of native vegetation
 - any wetlands

Conditions for Bores and Wells

See also "general conditions" and "conditions for water use"

The purpose of these conditions are to -

- set a limited time for bore construction
- allow DIPNR access for inspection and testing
- specify procedures if saline or polluted water found
- specify procedures if the bore is abandoned
- require advice if water found
- specify the volumetric allocation for each purpose of the entitlement
- identify lands that may be irrigated
- specify the volumetric allocation for the works purpose
- allow DIPNR to alter the volumetric allocation at any time
- Works for construction of bores must be completed within such period as specified by the Department.
- Within 2 months after the works are completed the Department must be provided with an accurate plan of the location of the works and notified of the results of any pumping tests, water analysis and other details as are notified in the approval.
- Officers of the Department or other authorised persons must be allowed full and free access to the works for the purpose of inspection and testing.
- Water shall not be pumped from the works for any purpose other than dewatering for construction purposes.
- The use of water shall be conditional on no tailwater drainage being discharged into or onto -
 - any adjoining public or crown road
 - any crown land
 - any river, creek or watercourse
 - any groundwater aquifer
 - any area of native vegetation
 - any wetlands
- The work shall be managed in accordance with the constraints set out in the "Amended Acid Sulfate Soil and Dewatering Management Plan" as detailed in a Tweed Shire Council Inter-divisional Memo from Greg Newland to Garry Smith dated 28 October 2004.
- The volume of groundwater extracted as authorised must not exceed 10 megalitres.
- The Department has the right to vary the volumetric allocation or the rate at which the allocation is taken in order to prevent the overuse of an aquifer.
- The licence shall lapse within six (6) months of the date of issue of the licence.

FOR VOTE - Unanimous

ABSENT. DID NOT VOTE - Cr Carroll

ATTENDANCE AT MEETING

Cr Carroll attended the meeting at 04:06 PM

2 [PE] Development Application DA03/1578 for a Shopping Centre at Lot 123 DP 1049552 Botanical Circuit, Banora Point

56 RESOLUTION:

**Cr J F Murray
Cr H James**

RESOLVED that:-

1. The applicant and land owner be advised that Council would support the advertising of an amendment to Development Control Plan No. 3 if additional land is provided to optimise the access buffer areas and urban design aspects of the proposed complex.
2. A workshop be held on this particular proposal at a suitable time and that the Workshop includes a presentation by the proponents.

AMENDMENT

**Cr M R Boyd
Cr S M Dale**

PROPOSED that this item be deferred to allow a Workshop to be scheduled on this proposal.

The Amendment was **Lost**

FOR VOTE - Cr Holdom, Cr Carroll, Cr Boyd, Cr Dale

AGAINST VOTE - Cr Polglase, Cr Murray, Cr Brinsmead, Cr Beck, Cr Bell, Cr Lawrie, Cr James

The Motion was **Carried**

FOR VOTE - Cr Polglase, Cr Murray, Cr Brinsmead, Cr Beck, Cr Bell, Cr Lawrie, Cr James

AGAINST VOTE - Cr Holdom, Cr Carroll, Cr Boyd, Cr Dale

- 3 [PE] Development Application DA03/1241 Four (4) Lot Residential Subdivision, Development Application DA03/1300 for the Erection of a Dual Occupancy & Development Application DA03/1406 for a 3 Lot Re-Subdivision

57 RESOLUTION:

Cr M R Boyd
Cr D M Holdom

RESOLVED that Council's Solicitors be instructed to take preliminary action to defend the three Appeals pending a decision on the applications for review of determination:-

1. DA03/1241 sought approval for the re-subdivision of Lots 28 and 29 into four residential allotments; and
2. DA03/1300 sought approval for the erection of a dual occupancy at Lot 34; and
3. DA03/1406 sought approval for the re-subdivision of Lots 12 and 13 into three residential allotments.

FOR VOTE - Unanimous

- 4 [PE] Plan of Management - Lot 490, South Kingscliff

58 RESOLUTION:

Cr M R Boyd
Cr D M Holdom

RESOLVED that Council notes the contents of the draft Plan of Management for Lot 490, South Kingscliff.

FOR VOTE - Cr Polglase, Cr Murray, Cr Bell, Cr Lawrie, Cr Holdom, Cr Carroll, Cr Boyd, Cr Dale, Cr James
AGAINST VOTE - Cr Brinsmead, Cr Beck

REPORTS FROM EXECUTIVE MANAGER - OFFICE OF THE GENERAL MANAGER

5 [OGM] Corporate Quarterly Report - October to December 2004

59 RESOLUTION:

**Cr B J Carroll
Cr M R Boyd**

RESOLVED that this report be:

1. Received and noted.
2. Placed in the Tweed Heads, Kingscliff and Murwillumbah libraries for public information.

FOR VOTE - Unanimous

6 [OGM] Organisation Structure

**Cr B J Carroll
Cr M R Boyd**

PROPOSED that:-

1. This item be deferred until the following matters are clarified for the information of the new Council given that the restructuring commenced before being considered by this Council and that Council has not been informed about the purpose and benefits of the restructuring being implemented; and given that on May 21 2003 the General Manager's contract was extended to 2006 to facilitate the restructuring and a report on the progress of this has yet to be furnished to Council.
2. A report be prepared:
 - (i) outlining the background rationale and key processes involved in moving from a four to a two divisional structure so that the new Council may make a more informed decision about its ratification,
 - (ii) clarifying why some original details of the restructure have changed from what was conveyed to the previous Council by the Mayor and General Manager on 21 May 2003 including:
 - the decision to not externally advertise the newly structured Director positions as a regulatory requirement, (when the necessity to externally advertise was emphasised to the previous

Council and Directors), the timing and reason for this changed decision and when it was conveyed to the Directors in the previous four Divisional structure so they could have a clear understanding of the process and its future impact on them.

- the decision to retain the Director of Environment and Community Services position after the two newly restructured positions were implemented, and the extent to which he has been conducting his usual duties, the extent to which some or any of these duties have been transferred to the Director of Environment and Planning from the commencement of the new position to this point; and what further transition will occur in 2005/2006.
 - the decision to incorporate management of 'community services' within Environment and Planning rather than Operations and Engineering as was originally proposed.
 - whether the contracts and remuneration schedules for both new positions have reflected the transitional structure and whether there will be any variations to these contracts to reflect the final structure post-July 2005.
- (iii) evaluating the progress of the restructuring from late 2003 to this point including
- the numbers and type of executive and management positions at the commencement of the restructuring; numbers and positions in the transitional phase and what they will be when the restructuring is fully implemented.
 - - what cost – efficiencies, have and will result from the restructuring including a comparison between the remuneration schedules for the two new positions and the remuneration paid previously to the Director of Engineering Services and the Director of Development Services under the old structure.
 - - what service delivery efficiencies have, and will result, from the restructuring for the Tweed community
 - - what organisational efficiencies have and will result from the restructuring.
- (iv) Identifying any significant organisational or operational issues that have arisen over the last year connected to the restructuring that have, or may require, a response in relation to executive management and governance - for example:
- the effectiveness of operational configurations within any of the three new Divisions - the Office of the General Manager; Engineering and Operations and Planning and Environment or

- re - distribution of work load, redesign of operational staffing structure and its impact on existing staff, staff training needs, new communication protocols between staff and supervisors.
- (v) Outlining what processes and standards are to be applied in evaluating the Directors' performance in the two newly structured positions; and the General Manager's and Executive Manager's (within the Office of the General Manager) performance and when will the first performance evaluation occur.
- (vi) Indicating how, and for what time period into the future will the implementation of the new structure will be monitored and reported

60 RESOLUTION:

**Cr M R Boyd
Cr H James**

RESOLVED that an extension of 5 minutes be granted to Cr B J Carroll.

FOR VOTE - Cr Polglase, Cr Murray, Cr Brinsmead, Cr Bell, Cr Lawrie, Cr Holdom, Cr Carroll, Cr Boyd, Cr Dale, Cr James

AGAINST VOTE - Cr Beck

61 AMENDMENT 1:

**Cr L F Beck
Cr R D Brinsmead**

RESOLVED that Council endorses the organisation structure as shown in July 2005 Organisation Chart and notes that the January 2005 Organisation Chart shows the transitional organisational structure until July 2005.

Amendment 1 was **Carried** and became the Motion.

FOR VOTE - Cr Polglase, Cr Murray, Cr Brinsmead, Cr Beck, Cr Bell, Cr Lawrie
AGAINST VOTE - Cr Holdom, Cr Carroll, Cr Boyd, Cr Dale, Cr James

AMENDMENT 2:

**Cr M R Boyd
Cr S M Dale**

PROPOSED that this matter be deferred to allow a workshop to be scheduled as soon as practicable with a comprehensive report to be presented at that Workshop.

Amendment 2 was **Lost**

FOR VOTE - Cr Holdom, Cr Carroll, Cr Boyd, Cr Dale, Cr James

AGAINST VOTE - Cr Polglase, Cr Murray, Cr Brinsmead, Cr Beck, Cr Bell, Cr Lawrie

Amendment 1 on being the Motion was **Carried**

FOR VOTE - Cr Polglase, Cr Murray, Cr Brinsmead, Cr Beck, Cr Bell, Cr Lawrie, Cr James

AGAINST VOTE - Cr Holdom, Cr Carroll, Cr Boyd, Cr Dale

7 [OGM] Request for Assistance with Legal Costs - Hurstville City Council

62 RESOLUTION:

Cr L F Beck

Cr G J Lawrie

RESOLVED that Council provide a contribution of \$590.00 to the Local Government and Shires Associations of NSW to assist Hurstville City Council with its legal costs.

FOR VOTE - Cr Polglase, Cr Murray, Cr Brinsmead, Cr Beck, Cr Bell, Cr Lawrie, Cr Carroll, Cr Dale

AGAINST VOTE - Cr Holdom, Cr Boyd, Cr James

8 [OGM] Policy on Payment of Expenses and Provision of Facilities to the Mayor, Deputy Mayor and other Councillors

63 RESOLUTION:

Cr L F Beck

Cr J F Murray

RESOLVED that :-

1. Council's Policy 9.4 - Councillors' Fees, Expenses and Facilities be amended as follows :-

Spouses/Partners

- a) Accommodation (shared basis) will be met by Council, provided that there are no additional costs incurred by Council.

- b) Council will not make payment or reimburse any expense incurred by the spouse or partner of a Councillor.

Mobile Phones

Provision of a mobile telephone, with the cost of calls on Council business up to a maximum of \$ 400 per month for the Mayor and \$ 200 per month for other Councillors to be met by Council. Any calls over this limit including all private calls are to be met by the individual Councillor.

2. Council Policy 9.2 Annual Conferences be amended as follows:-
Delete reference to payment of expenses for spouses/partners.
3. In accordance with Sect 253 of the Local Government Act, Council gives at least 28 days public notice of the proposal.

FOR VOTE - Unanimous

9 [OGM] Tweed Tourism Forum

64 RESOLUTION:

**Cr G B Bell
Cr G J Lawrie**

RESOLVED that this report be received and noted.

FOR VOTE - Unanimous

10 [OGM] Tweed Economic Development Corporation (TEDC) Quarterly Performance Report - October to December 2004

65 RESOLUTION:

**Cr G B Bell
Cr G J Lawrie**

RESOLVED that this report be received and noted.

FOR VOTE - Unanimous

REPORTS FROM DIRECTOR ENGINEERING AND OPERATIONS

11 [EO] Classification of Land as Operational - Sewer Pump Station - Lot 2 in DP 1069663 - Terranora

66 RESOLUTION:

**Cr M R Boyd
Cr G B Bell**

RESOLVED that Council classifies Lot 2 in DP 1069663 as operational pursuant to the provisions of section 31 of the Local Government Act, 1993.

FOR VOTE - Unanimous

12 [EO] Subdivision of Lot 236 in DP 1015373 - Drainage Reserve - Flame Tree Park, Banora point

67 RESOLUTION:

**Cr R D Brinsmead
Cr G J Lawrie**

RESOLVED that:-

1. Council signs the linen plan and s88B instrument, being a subdivision of Lot 236 in DP 1015373 and Lot 357 in DP 1073160, as landowner of Lot 236 to enable Stage 9B of Flame Tree Park development to register.
2. All necessary documentation be executed under the Common Seal of Council.

FOR VOTE - Unanimous

13 [EO] Compulsory Acquisition of Lot 3 in DP 1064338 for Road - River Terrace, Tweed Heads

68 RESOLUTION:

**Cr M R Boyd
Cr G B Bell**

RESOLVED that

1. Council approves an application being made to the Minister for the compulsory acquisition of Lot 3 in DP 1064338 under the provisions of the Land Acquisition (Just Terms Compensation) Act 1991;
2. Council dedicates Lot 3 in DP 1064338 as public road following acquisition; and
3. All necessary documentation be executed under the Common Seal of Council.

FOR VOTE - Unanimous

14 [EO] Application to Close and Purchase Part of Road Reserve - Broadwater Esplanade, Bilambil Heights

69 RESOLUTION:

**Cr M R Boyd
Cr J F Murray**

RESOLVED that:-

1. Council approves the closure of part of the road reserve comprised in Lot 352 DP 31041 Broadwater Esplanade, Bilambil Heights;
2. The applicant bears all the survey and legal costs and purchases the subject land as determined in value by the State Valuation Office;
3. The title of the closed road be consolidated with the adjacent land;
4. Easements be created over public authority reticulation services, if any; and
5. All necessary documentation be executed under Common Seal of Council.

FOR VOTE - Unanimous

15 [EO] Classification of Land as Operational - SALT - Surf Life Saving Facility

70 RESOLUTION:

**Cr J F Murray
Cr R D Brinsmead**

RESOLVED that

1. Lot 173 in DP 1075495 in the SALT development at Kingscliff be classified as operational following transfer pursuant to section 31 of the Local Government Act, 1993;
2. Council approves entering into a Lease agreement with the body corporate of the SALT resort for the single storey facility for \$1.00 per year for a period of ten years following transfer of Lot 173 in DP 1075495; and
3. All necessary documentation be executed under the Common Seal of Council.

FOR VOTE - Unanimous

LATE ITEM

71 RESOLUTION:

**Cr H James
Cr G B Bell**

RESOLVED that Item a15 being an Addendum item be dealt with and it be ruled by the Chairman to be of great urgency.

FOR VOTE - Unanimous

a15 [EO] Weeping Figs - Cudgen Village

**Cr L F Beck
Cr G B Bell**

PROPOSED that this item be deferred to allow consultation with the RSL, the Cudgen Community and the Cudgen Primary School to have a plan to plant trees other than Weeping Figs in Cudgen Road and Crescent Street, Cudgen.

72 AMENDMENT

Cr R D Brinsmead
Cr J F Murray

RESOLVED that :-

1. The Cudgen Progress Association, the Kingscliff Ratepayers Association and the RSL be notified in writing of the proposal and an article be placed in the Tweed Link.
2. The fig trees in Cudgen Road and Crescent Street, Cudgen undergo remedial pruning, removing approximately 60% of the canopy.

The Amendment was **Carried**

FOR VOTE - Cr Polglase, Cr Murray, Cr Brinsmead, Cr Bell, Cr Lawrie, Cr Holdom, Cr Carroll, Cr Boyd, Cr Dale, Cr James
AGAINST VOTE - Cr Beck

The Amendment on becoming the Motion was **Carried**

FOR VOTE - Cr Polglase, Cr Murray, Cr Brinsmead, Cr Bell, Cr Lawrie, Cr Holdom, Cr Carroll, Cr Boyd, Cr Dale, Cr James
AGAINST VOTE - Cr Beck

ADJOURNMENT OF MEETING

Adjournment for dinner at 6.44pm.

RESUMPTION OF MEETING

The Meeting resumed at 7.44pm

REPORTS FROM DIRECTOR ENVIRONMENT & COMMUNITY

Nil.

DELEGATES REPORTS

Nil.

OUTSTANDING INSPECTIONS

Nil.

ITEMS OF INFORMATION AND INTEREST

Nil.

ORDERS OF THE DAY

1 [NOR] Legal Privilege

NOTICE OF RESCISSION:

Cr M R Boyd
Cr B J Carroll

PROPOSED that Council resolves itself into a Confidential Committee of the Whole to discuss this item.

The Motion was **Lost**

FOR VOTE - Cr Holdom, Cr Carroll, Cr Boyd, Cr Dale

AGAINST VOTE - Cr Polglase, Cr Murray, Cr Brinsmead, Cr Beck, Cr Bell, Cr Lawrie, Cr James

73 RESOLUTION:

Cr W J Polglase
Cr G J Lawrie

RESOLVED that Council resolution at Confidential Minute No C4 in relation to Item a1 of the Meeting held 19 January 2005 being:-

"That: -

- 1. Council waives legal professional privilege with Mr Tony Smith of Stacks the Law Firm - Northern Rivers to allow Mr Smith to give evidence at the Public Hearings of the Tweed Shire Council Public Inquiry.*
- 2. The General Manager informs the Commissioner and Mr Smith of Council's decision."*

be rescinded.

FOR VOTE - Cr Polglase, Cr Murray, Cr Brinsmead, Cr Beck, Cr Bell, Cr Lawrie

AGAINST VOTE - Cr Holdom, Cr Carroll, Cr Boyd, Cr Dale, Cr James

2 [NOM] Lot 490 - Removal of Rubbish

NOTICE OF MOTION:

**Cr D M Holdom
Cr M R Boyd**

PROPOSED that Council writes to the administrator of Lot 490 (Mr Richard Dunning) seeking consent to clear rubbish (derelict car bodies, glass, household waste etc) from Lot 490.

The Motion was **Lost**

FOR VOTE - Cr Holdom, Cr Carroll, Cr Boyd, Cr Dale, Cr James

AGAINST VOTE - Cr Polglase, Cr Murray, Cr Brinsmead, Cr Beck, Cr Bell, Cr Lawrie

3 [NOM] Donation to Assist the Victims of South Australia's Bushfires

NOTICE OF MOTION:

74 RESOLUTION:

**Cr L F Beck
Cr G B Bell**

RESOLVED that Council, on behalf of the ratepayers and residents, donates \$5,000 to assist the victims of the recent bush fires in South Australia in which 9 people lost their lives.

FOR VOTE - Cr Polglase, Cr Beck, Cr Bell, Cr Lawrie, Cr Carroll, Cr Boyd, Cr Dale

AGAINST VOTE - Cr Murray, Cr Brinsmead, Cr Holdom, Cr James

LATE ITEM

75 RESOLUTION:

**Cr G B Bell
Cr H James**

RESOLVED that Orders of the Day Items a3, b3 and c3 being an Addendum items be dealt with and it be ruled by the Chairman to be of great urgency.

FOR VOTE - Unanimous

- a3 [NOR] [PE] Development Application D91/0236.02 for an Amendment to Development Consent D91/0236 for Extensions to an Existing Caravan Park to Accommodate 9 Long Term and 14 Short Term Sites & Associated Filling at Lot 2 DP 508325, No. 8-10 Philp Parade,

NOTICE OF RESCISSION:

76 RESOLUTION:

**Cr W J Polglase
Cr R D Brinsmead**

RESOLVED that Council resolution at Minute No 8 in relation to Item of the Meeting held 19 January 2005 being:-

"... that the applicant be advised that s94 contribution levies are applicable in full and the request to waive the s96 application fee ("D91/0236.03) is not supported."

be rescinded.

FOR VOTE - Unanimous

- b3 [NOM] [PE] Development Application D91/0236.02 for an Amendment to Development Consent D91/0236 for Extensions to an Existing Caravan Park to Accommodate 9 Long Term and 14 Short Term Sites & Associated Filling at Lot 2 DP 508325, No. 8-10 Philp Parade,

NOTICE OF MOTION:

77 RESOLUTION:

**Cr W J Polglase
Cr J F Murray**

RESOLVED that the applicant be advised that s94 contribution levies are applicable in full but may be paid in quarterly instalments over a period not exceeding 2 years.

FOR VOTE - Unanimous

c3 [NOM] Shires Association A Division Meeting - Agenda Item to Working Party on Election Funding Reform

NOTICE OF MOTION:

78 RESOLUTION:

**Cr H James
Cr D M Holdom**

RESOLVED that Council requests the Shires Association A Division to make the following submission to the LGSA Working Group on Local Government Election Funding:

"Introduction

Division A of the Shires Association welcomes the decision of the Local Government and Shires Association to set up a working party to investigate reform to the rules governing electoral funding.

The aim of the current administrative regime governing conflict of interest arising from electoral donations is to require a certain level of disclosure. The regulations require that:

- *Electoral expenditure and donations be declared following an election.*
- *Councillors consider whether they should declare a conflict of interest when matters come before council involving donors to their campaign.*

Division A believes that disclosure is the best means for dealing with what is a difficult problem, but the current administrative arrangements are not achieving this aim nearly well enough.

Division A makes the following observations on inadequacies of the current administrative regime and some suggestions for change.

Summary of submission

- *Conflict of interest arising from electoral donations is a systemic problem for local government throughout NSW.*
- *The problem has long existed but has become worse with increases in the size and sophistication of campaigns.*
- *The influence the development industry has gained with electoral donations is now completely disproportionate in some local government areas.*
- *The amount of electoral donations invested by parts of the development industry (and therefore the size of the problem) is likely to continue to increase.*

- *In areas of rapid urban growth or redevelopment, conflict of interest that arises from electoral donations has significant consequences for planning outcomes and these consequences have reached unacceptable proportions in some places.*
- *Apart from the material adverse consequences for planning outcomes, the perception of conflict of interest is causing a loss of confidence in the planning system and government.*
- *Conflict of interest the result of electoral donations is also a problem for the state government, and more particularly ministers that make decisions under parts 3 and 4 of the Environmental Planning and Assessment Act.*
- *The influence that the development industry has gained through electoral donations cannot be solved by sacking individual councils, but should be the subject of systematic, comprehensive reform.*
- *Division A supports the decision of the Local Government and Shires Association to set up a working party to examine the issue and the view it has initially taken that reform should focus on improvements to currently inadequate requirements for disclosure.*
- *Reform is required not only to provisions governing disclosure of the real source of electoral donations but also to requirements on decision-makers to disclose at every occasion that a conflict of interest arises as a result of electoral donations.*
- *The reforms proposed should be mirrored by requirements on state government ministers that make decisions under parts 3 and 4 the Environmental Planning and Assessment Act (EPA Act).*
- *There is some doubt that the Election Funding Authority investigates even significant irregularities in electoral expenditure and funding declarations. Unless government ensures that it does, there would be little value in reforming the rules governing the declaration of election expenditure and funding.*
- *In addition to the reforms proposed above, disproportionate influence of campaign donations could be significantly reduced if votes were to be cast exclusively by post. Alternatively the distribution of how-to-vote and other materials at polling places could be prohibited, and instead the registered flow of distributions for each group or candidate could be prominently displayed at each polling booth.*

Problems with the current administrative regime and possible solutions are set out below in more detail under the following headings:

- *Disclosure of electoral expenditure and donations*
- *Disclosure of conflict of interest arising from matters before council involving campaign donors*
- *Reforms should apply to ministers that make planning decisions*
- *Reforms to methods of voting*

Disclosure of electoral expenditure and donations

Disclosure is seriously undermined by lack of rules with regard to excess of expenditure over donations

The problem

There is nothing to prevent groups and individuals required to lodge declarations under the Election Funding Act from spending more than they get in donations before the end of the disclosure period. It could be reasonably assumed that when the gap is large the risk has been taken only because there are informal arrangements with potential donors for payment after the disclosure period in order that the donors' identities are not revealed for as long as possible. Indeed, under current arrangements they are buried until after the next election at the very best. There are at least two serious consequences. Decisions can be affected because councillors with quite serious conflicts of interest can very easily avoid disclosure and participate in the decisions. Further, even by the time of the next election, voters will not know of the failure to disclose and the planning decisions affected and so are unable to take these matters into consideration at that election.

The solution

We suggest the administrative regime should be changed to prohibit the spending of more at an election than is made in donations by the end of the disclosure period.

An alternative but much less satisfactory reform would be to require that declarations clearly identify the gap between donations made and expenditure incurred and provide explanation as to how the gap is to be filled.

Small amounts provisions do not apply to third party declarations

The problem

The provisions of Section 89(a) of the Election Funding Act do not apply to third parties. Accordingly, unlike political parties, groups and candidates, third parties are not required to provide information about the number of donations less than the reportable amount or their total.

The solution

We suggest that third parties should be required to provide information about the number of donations less than the reportable amount and their total.

Other provisions that do not apply to third party declarations

The problem

Apart from Section 89(a) referred to above, there are a number of other provisions of the Act and Regulations that apply to political parties, groups and candidates but not to third parties. Once again, there appears to be no justification.

They are:

- *Section 89(c) of the Act – provision of details regarding fundraising events.*
- *Clause 9 of the Regulations - vouching for political contributions.*
- *Clause 10 of the Regulations - vouching for election campaign advertising expenditure.*
- *Clause 33 of the Regulations - keeping copies of video tapes or films used for advertising.*

There are no provisions for third parties equivalent to those for political parties, groups and candidates in clauses 11 to 28 of the Electoral Funding Regulations.

The solution

We suggest the administrative regime should be changed so that the provisions referred to above apply to third parties just as they do to political parties, groups and individuals.

Reportable amounts too high and inconsistent

The problem

We suggest that the problem referred to in the following paragraphs arises because the Election Funding Act applies not only to local government but also state government elections, and some of its provisions are more suited to state government elections.

We believe the reportable amounts are too high for local government. Given the sometimes relatively small decisions made by local government, some decision-makers could be influenced by donations only slightly smaller than \$1,500 or \$1,000. Further, the high thresholds for reporting could encourage the parties to disguise the source of large donations by splitting them up and attributing the smaller, individual donations to a number of separate entities. \$10,000 is a relatively large donation in local government terms and it could be fairly easy to disguise it by splitting it up.

We can see very little justification for setting different reportable amounts for political parties, groups, candidates and third parties in local council elections. The administrative problems that might arise with low reportable amounts in state elections for political parties and (in the case of the Legislative Council election) groups, would not be encountered in most instances at local government level because the number of donations be relatively small.

We note that in Victoria where the standard is set in the Local Government Act itself rather than in an Act that serves both state and local government elections, the reportable amount is the same for all categories and is set at \$200.

The solution

We suggest that \$200 this should be the reportable amount is the same for all categories.

Voucher books for small donations not made public

The problem

The Election Funding Authority refuses to allow interested parties access to voucher books. As voucher books are the only record of the source of donations less than the reportable amount, it is not possible to check whether reporting has been avoided by splitting donations into less than the reportable amounts and attributing them to a number of parties that are related.

The solution

Make the voucher books available for viewing.

Provisions regarding gifts from trusts or foundations inadequate

The problem

Provisions regarding the disclosure of donations made through trusts and foundations are inadequate for at least two reasons.

Firstly, they do not demand provision of the names of the beneficiaries of the trust or foundation and there is no relatively simple alternative way for voters to get this information. In the case of donations made by obscure companies, at least voters have the option to discover the names and addresses of directors and often also the shareholders from the databases held by ASIC.

Secondly, in the case of a person making a donation through a solicitor's trust fund, there would not be much point in knowing only the name of the solicitor trustee and his or her address.

The solution

We suggest that the donations from trusts and foundations should simply be prohibited because it may be more trouble than it is worth to devise rules that clearly require sufficient disclosure in all or the great majority of circumstances.

Alternatively, the rules should be amended so that they clearly require sufficient disclosure in all or the great majority of circumstances.

Councillors claim not to know the identity of their campaign donors

The problem

When councillors have had the benefit of campaigns organised and funded by third parties, they sometimes claim not to know the identity of the companies and individuals that made contributions to the third party organiser. This claim is sometimes made even when the third party organiser has made sizable cash donations to councillors.

Solution

The Election Funding Authority should provide all councils with copies of all declarations for their area and the General Manager of each council should provide copies to all councillors.

This arrangement could actually help reduce the workload of the Election Funding Authority because councils rather than the Authority could answer most enquiries about declarations made.

Little or no investigation of declaration irregularities

The problem

The Election Funding Authority appears to be unwilling or unable to investigate even large declaration irregularities.

The solution

This failure should be the subject of investigation to discover the source of the problem and make suggestions on solutions.

Declaration forms fail to give accurate and clear guidance on requirements

The problem

The forms published for third party declarations by the Election Funding Authority appear to give the impression that "amounts received totalling \$1000 or more" need only be disclosed if they are "used for the purpose of making a gift or donation" directly to candidates or groups. In other words, donations greater than \$1000 need not be disclosed if they are used for "electoral expenditure other than gifts or donations". As far as we can tell, this advice is contrary to the provisions of the Election Funding Act. If it is not, it ought to be. There may be similar problems with declaration forms for other categories of campaign organisers

The solution

We suggest that the forms need to be amended to give accurate and clear guidance on the information required.

Disclosure of conflict of interest arising from matters before council involving campaign donors

The problems

- *This class of conflict of interest is not given sufficient prominence.*
- *The only reference to it is in the Model Code of Conduct for Local Councils. The reference creates uncertainty because it says that “matters before council involving campaign donors may give rise to a non-pecuniary conflict of interest” (emphasis added) but no further guidance is given.*
- *Many councillors assume that the rule requiring complete withdrawal from debate in the case of pecuniary conflict of interest applies also to non-pecuniary conflict such as arises from electoral donations. Some councillors response is to not declare the conflict of interest at all rather than withdrawing from the debate for what they see as a minor conflict.*
- *The tendency to assume that complete withdrawal from the debate is the only option could lead to a lack of quorum occurring regularly in some local government areas and is a reason councillors might not declare conflicts of interest.*
- *The sanctions available for failure to declare are limited to censure or suspension not exceeding one month. Dismissal is not available as a sanction, regardless of the seriousness of the conflict of interest, the consequences for the community or how often a councillor fails to declare.*
- *It is difficult for the media and public to get a measure on the relative performance of councillors because the only record of instances when conflict of interest are declared is buried deep in the minutes of meetings.*

The solutions

In summary, we suggest the solution to the problem is for the administrative regime to require councillors to always put their hands up high and declare conflicts of interest that arise from electoral donations, but leave to it to councillors to decide whether they withdraw from the debate and/or the vote.

We suggest that to put such a regime into effect it would be useful to create a special class of conflict of interest that is distinct from pecuniary and non-pecuniary conflict of interest. One advantage of having a separate class is that it would help draw councillors’ attention to the importance of this class of conflict of interest. Another is that it would facilitate the prescription of a range of sanctions.

We suggest that a range of sanctions should be available, and it should include suspension and dismissal. We suggest that dismissal would be appropriate for repeated failures to declare and / or for failure to declare in very serious cases.

We suggest that, in addition to the record currently kept in the minutes of meetings, councils should be required to keep a separate, readily accessible record of all disclosures made by councillors of all types of conflicts of interest, including of course conflicts that arise as a result of electoral donations.

Reforms should apply to ministers that make planning decisions

The reforms proposed should apply also to state government, both with respect to improvements in the disclosure of electoral donations and expenditure and the disclosure of conflict of interest that arises for ministers that make decisions under parts 3 and 4 of the EPA Act.

As for councils, state government should keep a separate, readily accessible record of all disclosures of conflicts and ministers' failure to disclose should result in their suspension or dismissal.

Reforms to methods of voting

Reforms to the method of voting could also help reduce the disproportionate advantage gained by candidates funded by the development industry. If votes were to be cast exclusively by post it would eliminate the great disadvantage that relatively poorly resourced candidates face in finding help to distribute how-to-vote material at all booths on election day. This is a particularly large task in undivided local government areas.

In the alternative, the distribution of how-to-vote materials at polling places could be prohibited, and instead the registered flow of distributions for each group or candidate could be displayed at each polling place."

79 RESOLUTION:

Cr G B Bell
Cr L F Beck

RESOLVED that an extension of 2 minutes be granted to Cr R D Brinsmead.

FOR VOTE - Unanimous

PROCEDURAL MOTION

80 RESOLUTION:

Cr G B Bell

RESOLVED that the Motion be put.

FOR VOTE - Unanimous

The Motion was **Carried**

FOR VOTE - Cr Polglase, Cr Bell, Cr Lawrie, Cr Holdom, Cr Carroll, Cr Boyd, Cr Dale, Cr James
AGAINST VOTE - Cr Murray, Cr Brinsmead, Cr Beck

WORKSHOPS

Nil.

QUESTION TIME

1 [QT] Department of Primary Industries "Bug Farm"

Cr L F Beck

Asked:-

1. Could arrangements be made for those Councillors who are interested to visit the "bug farm" at the Department of Primary Industries station at Bribie Island.
2. Could Council request Mr Michael Dalton to advise the date of the public meeting that he agreed to hold at the last meeting with him.

The General Manager responded that the Director Planning and Environment would advise Councillors of arrangements for this visit and would also make enquiries of Mr Michael Dalton to ascertain the date of the public meeting.

2 [QT] Commission of Inquiry

Cr M R Boyd

Commented that a number of public statements have been made recently by Councillors Lawrie, Brinsmead and the Mayor, Cr Polglase, about Council going to the Supreme Court and if necessary to the High Court apparently to challenge the findings of the Commissioner of Inquiry and/or to challenge the decision of the Minister.

Cr Boyd asked whether Councillors expected that the huge costs of these proceedings should be borne by the ratepayers.

The Mayor responded that any decision regarding action by Councillors regarding the outcome of the Inquiry would need to be by resolution of Council.

3 [QT] Meeting Program Schedule

Cr L F Beck

Asked that if the Commission of Inquiry is to be held on Wednesday, 16 February 2005, then can it be arranged that there is not conflict with Council's Ordinary Meeting so that those wishing to attend both will be catered for.

The General Manager advised that the Commission of Inquiry Hearing times are 10.00am to 12 noon and 2.00pm to 4.00pm during the duration of the Inquiry Hearings and that Council could resolve to amend the starting time of the Council Meeting program for the duration of the Inquiry Hearings.

81 RESOLUTION:

**Cr R D Brinsmead
Cr J F Murray**

RESOLVED that for the duration of the Commission of Inquiry that the Council Meeting program commences at 5.00pm.

FOR VOTE - Unanimous

COMMITTEE OF THE WHOLE

82 RESOLUTION:

**Cr H James
Cr J F Murray**

RESOLVED that Council resolves itself into a Confidential Committee of the Whole.

FOR VOTE - Unanimous

The General Manager reported that the Confidential Committee of the Whole had excluded the press and public from the whole of the Committee Meeting because, in the opinion of the Committee, publicity of the proceedings of the Committee would be prejudicial to the public interest, by reason of the confidential nature of the business to be transacted, and made the following recommendations to Council:-

12 RESOLUTION:

That the Minutes of the Council Confidential Meeting held 19 January 2005 be adopted as a true and accurate record of proceedings of that meeting.

FOR VOTE - Unanimous

83 RESOLUTION:

**Cr G J Lawrie
Cr J F Murray**

RESOLVED that the report and recommendations of the Confidential Committee of the Whole be adopted.

FOR VOTE - Unanimous

There being no further business the Meeting terminated at 9.30pm.



Minutes of Meeting Confirmed by Council

at Meeting held

**I hereby certify that I have authorised the affixing of my
electronic signature to the previous pages numbered 1 to 34 of these Minutes**

Chairman