



AGENDA

EXTRAORDINARY ORDINARY COUNCIL MEETING

Tuesday 13 January 2009

Mayor: Cr J van Lieshout

Councillors: Cr B Longland, Deputy Mayor
Cr D Holdom
Cr K Milne
Cr W Polglase
Cr K Skinner
Cr P Youngblutt

COUNCIL'S CHARTER

Tweed Shire Council's charter comprises a set of principles that are to guide Council in the carrying out of its functions, in accordance with Section 8 of the Local Government Act, 1993.

Tweed Shire Council has the following charter:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;
- to exercise community leadership;
- to exercise its functions in a manner that is consistent with and actively promotes the principles of multiculturalism;
- to promote and to provide and plan for the needs of children;
- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development;
- to have regard to the long term and cumulative effects of its decisions;
- to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible;
- to facilitate the involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and co-ordination of local government;
- to raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when appropriate, by borrowings and grants;
- to keep the local community and the State government (and through it, the wider community) informed about its activities;
- to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias, particularly where an activity of the council is affected;
- to be a responsible employer.

ITEMS FOR CONSIDERATION OF COUNCIL:

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ABORIGINAL STATEMENT

The Mayor acknowledged the Bundjalung Aboriginal Nation with the following statement:

"We wish to recognise the generations of the local Aboriginal people of the Bundjalung Nation who have lived in and derived their physical and spiritual needs from the forests, rivers, lakes and streams of this beautiful valley over many thousands of years as the traditional owners and custodians of these lands."

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REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE GENERAL MANAGER

1 [GM-CM] Application for Costs - Terry Patrick Sharples v Minister for Local Government and Others

ORIGIN:

General Manager

SUMMARY OF REPORT:

Tweed Shire Council was the Third Respondent in the abovementioned subject Land and Environment Court case, which:

“... mainly concerned (with) the capacity of a misleading representation to vitiate an administrative decision and with one requirement of the applicable guidelines referred to in s 508A(3) of the Local Government Act 1993. On that basis, the applicant challenged the validity of two determinations made by the Minister for Local Government in 2006 and 2007 to increase Tweed Shire Council’s general income under s 508A.”

Justice J. Biscoe handed down his judgment on 30 December 2008, His Honour concluded that the applicant’s claim was unsuccessful and dismissed the further amended summons. Costs were reserved. Any application for costs is to be made within six weeks; otherwise there will be no order as to costs.

RECOMMENDATION:

That:-

- 1. Council instructs its legal representatives (Marsdens Law Group) to endeavour to reach an agreement with the applicant’s solicitors (Woolf Associates) in relation to costs.**
- 2. Should an agreement be unsuccessful, then Marsdens Law Group be instructed to make application to the Land and Environment Court prior to 10 February 2009, for Justice Biscoe, to make a determination as to costs.**
- 3. Council increases the Financial Services legal budget in the December Quarterly Budget Review by \$15,000 to fund the application for costs.**

REPORT:

Tweed Shire Council was the Third Respondent in the abovementioned subject Land and Environment Court case, which:

"... mainly concerned (with) the capacity of a misleading representation to vitiate an administrative decision and with one requirement of the applicable guidelines referred to in s 508A(3) of the Local Government Act 1993. On that basis, the applicant challenged the validity of two determinations made by the Minister for Local Government in 2006 and 2007 to increase Tweed Shire Council's general income under s 508A."

Justice J. Biscoe handed down his judgment on 30 December 2008, His Honour concluded that the applicant's claim was unsuccessful and dismissed the further amended summons. Costs were reserved. Any application for costs is to be made within six weeks; otherwise there will be no order as to costs.

His Honour stated that he will hear the parties as to costs if they are not agreed.

At this point in time, Council has incurred an amount of \$249,292.61 in defending the matter. This figure does not include the internal expenditure in regards to the preparation of Council's defence and attendance by staff at the proceedings (e.g. salaries, travel costs, accommodation) nor does it reflect the costs of the other two respondents in this matter - Minister for Local Government and the NSW Department of Local Government (the First and Second Respondents respectively).

It is estimated that it would cost Council \$10,000 - \$15,000 to pursue an application for costs if an agreement cannot be reached.

As the case was a Class 4 Appeal it enables the payment of costs against an unsuccessful applicant. However, in pursuing any application for costs Council should also note:

1. Regulation 4.2(1) of the Land and Environment Court Rules 2007, which states:

"The Court may decide not to make an order for payment of costs against an unsuccessful applicant in any proceedings if it is satisfied that the proceedings have been brought in the public interest."

2. His Honour in his judgment also stated:

"It may be appropriate to make no order as to costs having regard to the applicant's measure of success in establishing that there was a misleading representation to the public and the special rule concerning costs where proceedings are brought in the public interest."

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

There are no funds available in the Financial Services legal budget for the recommendation, Council will be required to increase the budget allocation in the December Quarterly Budget Review.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

1. Land & Environment Court Judgment dated 30 December 2008 - Terry Patrick Sharples v Minister for Local Government & Ors (DW 1960783).
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