



TWEED
SHIRE COUNCIL

Mayor: Cr K Milne

Councillors: G Bagnall (Deputy Mayor)
C Byrne
B Longland
W Polglase
P Youngblutt

Addendum Agenda

**Ordinary Council Meeting
Thursday 27 October 2016**

held at **Harvard Room, Tweed Heads Administration
Building, Brett Street, Tweed Heads**
commencing at 5.00pm

Principles for Local Government

The object of the principles for Tweed Shire Council, as set out in Section 8 of the Local Government Amendment (Governance and Planning) Bill 2016, is to provide guidance to enable council to carry out its functions in a way that facilitates a local community that is strong, healthy and prosperous.

Guiding Principles for Tweed Shire Council

(1) Exercise of functions generally

The following general principles apply to the exercise of functions by Tweed Shire Council:

- (a) Provide strong and effective representation, leadership, planning and decision-making.
- (b) Carry out functions in a way that provides the best possible value for residents and ratepayers.
- (c) Plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (d) Apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements.
- (e) Work co-operatively with other councils and the State government to achieve desired outcomes for the local community.
- (f) Manage lands and other assets so that current and future local community needs can be met in an affordable way.
- (g) Work with others to secure appropriate services for local community needs.
- (h) Act fairly, ethically and without bias in the interests of the local community.
- (i) Be responsible employers and provide a consultative and supportive working environment for staff.

(2) Decision-making

The following principles apply to decision-making by Tweed Shire Council (subject to any other applicable law):

- (a) Recognise diverse local community needs and interests.
- (b) Consider social justice principles.
- (c) Consider the long term and cumulative effects of actions on future generations.
- (d) Consider the principles of ecologically sustainable development.
- (e) Decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.

(3) Community participation

Council should actively engage with the local community, through the use of the integrated planning and reporting framework and other measures.

Items for Consideration of Council:

ITEM	PRECIS	PAGE
	REPORTS FROM THE GENERAL MANAGER	4
a6	[GM-CM] Destination Tweed - Change of Corporate Structure	4
	REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES	8
c14	[CNR-CM] Black Rocks Sportsfield	8

REPORTS FROM THE GENERAL MANAGER

a6 [GM-CM] Destination Tweed - Change of Corporate Structure

SUBMITTED BY: Economic Development

Validms



Strengthening the Economy

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 3 Strengthening the Economy
 - 3.1 Expand employment, tourism and education opportunities
-

SUMMARY OF REPORT:

In August this year Destination Tweed notified Council that it was intending to change its corporate structure from an incorporated body to a limited by guarantee company.

This report reviews the implications to Council's funding and performance agreement with Destination Tweed and recommends that Council acknowledge this change.

RECOMMENDATION:

That Council:

1. Formally acknowledges Destination Tweed's intention to change its corporate structure to a limited by guarantee company.
2. Accept the proposed change to Destination Tweed Draft Constitution to have the Mayor or Deputy Mayor appointed as a Director of Destination Tweed as a limited by guarantee company.
3. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-
 - (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.

REPORT:

On 30 August 2016 Destination Tweed's Board resolved at a Special General Meeting to proceed to change its corporate structure from an incorporated association to a limited by guarantee company. This proposed change in structure came at the request of Fair Trading NSW who notified Destination Tweed that the current size of their financial statements and returns had triggered a request to move from an incorporated body.

In response to this, Council sought legal advice to ensure that this proposed change will not impact on Destination Tweed's requirements under the current contract with Council. This advice recommended that Council request the following documents from Destination Tweed. Specifically this was:

What are the implications of Destination Tweed transferring registration to become a company limited by Guarantee under the Corporations Act for Council's requirement that a Council representative sit on the Board of Destination Tweed.

Council should request that a copy of proposed new constitution for Destination Tweed be provided before it is adopted. Council should review the proposed new constitution and determine its acceptability to Council. In particular, the proposed new constitution will need to contain a provision requiring that one of Destination Tweed's Directors be a representative nominated by Council. The writer would be happy to assist with this if you wish, and we invite you to instruct us so to do.

What are the implications of Destination Tweed transferring registration to become a company limited by Guarantee under the Corporations Act for the Contract.

Destination Tweed transferring its registration as an association incorporated under the Act, to become a company limited by Guarantee under the Corporation Act, does not have the effect of creating a new legal entity. Accordingly, the rights and obligations of Destination Tweed and Council under the Contract will continue, and the Contract will not need to be renewed.

On 6 September Council forwarded a letter requesting that Destination Tweed supply a copy of the draft constitution. A copy of this has been received and is attached as a confidential attachment to this report. The draft constitution as presented to Council has a clause added to allow for the current Mayor of Tweed Shire to be represented on the Board.

20.6 APPOINTED DIRECTORS

In addition to the Elected Directors, the Directors will appoint the sitting Mayor of Tweed Shire Council as a Director, this person will be known as an 'appointed Director'.

This arrangement represents a similar scenario to the current Destination Tweed board structure which has the Mayor holding a board position with the Deputy Mayor representing in his/her absence.

Further advice was requested in relation to the draft Constitution presented to Council. This resulted in a request being forwarded to Destination Tweed on 21 October 2016 to consider a modification to whether the Board would be open to amending Rule 20.6 so as to empower Council to appoint the Mayor a director, and the Deputy Mayor an alternate director, without requiring any action on the part of the other directors.

This was considered by Destination Tweed and the following response was provided on 26 October 2016:

DT's application has not gone to ASIC yet, to complete this process the members of DT need to approve the Constitution which will be voted at the AGM on 22 November. If the Constitution is adopted at this meeting, we can inform Council that the Constitution has been formally adopted.

Once the Constitution is adopted, the application to ASIC can be made, at this point we can provide a copy of the application to Council.

“One significant question Council would like to pose is whether Destination Tweed would be open to amending Rule 20.6 so as to empower Council to appoint the Mayor as director, and the Deputy Mayor an alternate director, without requiring any action on the part of the other directors.”

The Board have discussed the above request and sought independent external advice from Prevention Partners who concur that the request is unusual considering the purpose of having a representative from Council on the Board (with the purpose being to provide the Mayor a position on the Board to ensure transparency for both DT and Council; assist in reporting requirements; and provide due diligence).

DT with the above in mind, the position of the Mayor on the Board is equitable to that of the elected Directors. The wording Appointed is due to the nature of their appointment, they are not elected by the members of DT but appointed by the Board in line with the Constitution. Given the busy role of the Mayor, it is appropriate to offer a substitute in the Deputy Mayor. Accordingly, the Board are agreeable to amended clause 20.6 to allow for the Mayor or Deputy Mayor.

*To delete clause **20.6 Appointed Directors** and amend clause **20.1 Number of Directors** to read:*

‘There must not be less than five directors and not more than seven directors. One of which must be the sitting Mayor of Tweed Shire Council as a Director, and the Deputy Mayor an alternate Director.’

We appreciate that time is short in order to get this to Council on the 28th, if you have any question can you please direct them to DT Chairman Aymon, as I am out of the office for the rest of the week.

OPTIONS:

Council has two options available:

- 1. Accept the proposed structural change of Destination Tweed.**
- 2. Enter into discussions with the Board of Destination Tweed about their proposed restructure.**

CONCLUSION:

This report reviews the implications to Council’s funding and performance agreement with Destination Tweed and recommends that Council acknowledge this change.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

Yes, legal advice has been attached.

Yes, legal advice has been received.

d. Communication/Engagement:
Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

(Confidential) Attachment 1. Confidential Attachment Change of Corporate Structure
10 October 2016 – Legal Advice Stacks the Law Firm
(ECM4254630)

(Confidential) Attachment 2. Confidential Attachment Change of Corporate Structure
20 October 2016 – Legal Advice Stacks the Law Firm
(ECM4277018)

REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES

c14 [CNR-CM] Black Rocks Sportsfield

SUBMITTED BY: Design

Validms



Supporting Community Life

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

2	Supporting Community Life
2.5	Provide vibrant and accessible town, community and business centres
2.5.2	Facilitate the development of a network of neighbourhood centres and community places to meet the needs of local residents

SUMMARY OF REPORT:

At its meeting held on 15 September 2016 Council resolved to grant a licence to the Pottsville and District Men's Shed Inc. over part of Lot 301 DP 1125090, at the Black Rocks Sportsfield.

RESOLVED that Council:

1. Approves the granting of a five year licence to the Pottsville & District Men's Shed Inc. over part of Lot 301 in DP 1125090 at Pottsville.
2. Executes all necessary documentation under the Common Seal of Council.

Subsequent to that meeting Council officers obtained advice from the Department of Local Government to the effect that it was necessary to seek public submissions in relation to the granting of the licence, pursuant to section 47A of the *Local Government Act, 1993*, prior to finalising the licence.

Notices were published in the Daily News on Saturday 24 September 2016 and in the Tweed Link on Tuesday 27 September 2016. The closing date for submissions was 25 October 2016.

This report details the total number of submissions received and issues raised both for and against the granting of the licence, within those submissions.

RECOMMENDATION:

That:

- 1. Council accepts the local community support to grant the licence to the Pottsville and District Men's Shed Inc. at the Black Rocks Sportsfield, in accordance with Council's resolution of 21 August 2014 and reaffirms its resolution of 15 September 2016.**

RESOLVED that Council:

- 1. Approves the granting of a five year licence to the Pottsville & District Men's Shed Inc. over part of Lot 301 in DP 1125090 at Pottsville.*
 - 2. Executes all necessary documentation under the Common Seal of Council.*
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- 2. ATTACHMENTS 1 to 8 are CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because they contain:
(a) personnel matters concerning particular individuals (other than councillors).**

REPORT:

At its meeting held on 15 September 2016 Council resolved to grant a licence to the Pottsville and District Men's Shed Inc. over part of Lot 301 DP 1125090, at the Black Rocks Sportsfield.

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Notices were published in the Daily News on Saturday 24 September 2016 and in the Tweed Link on Tuesday 27 September 2016. The closing date for submissions was 25 October 2016.

This report details the submissions received and the issues raised, both for and against the granting of the licence.

As at close of business on 25 October 2016 there was a total of 409 submissions received, where 234 supported and 175 against the licence at the Black Rocks Sportsfield.

The following is an overview of the submissions:

Submission Overview

Number of submissions received	In support of licence at Black Rocks	Against the licence at Black Rocks
409	234	175

Common Issues raised in submissions

Common issues raised against	Common issues raised in support	Response
1. destruction of trees and noise associated with the construction		1. As the sportsfield is a cleared area, there will be no removal of trees for the construction of the shed. Development consent conditions require that plant and construction equipment must be muffled and acoustically baffled, with limitations on noise levels which must not exceed background noise by more than 15-20 decibels. It is to be noted that construction of dwellings are ongoing in adjacent

Common issues raised against	Common issues raised in support	Response
		residential areas to the sportsfield.
2. Councillors in breach of 21 Aug 2014 resolution to pursue alternative viable sites for Men's Shed		2. Alternative sites assessed by Council officers for a P & DMS shed site include: <ul style="list-style-type: none"> • Part of Lot 3 Centennial Drive (Rubbish Depot & Sanitation reserve) • Part of Pottsville North Holiday Park, within Ambrose Brown park • Part of Lot 7338 off Coronation Avenue, Pottsville (vacant Crown administered Crown Land) • Part of the future Dunloe Park industrial development
3. Lot 3 at Centennial Drive, Pottsville is a far more suitable site		3. Lot 3 is Crown Land reserved for Rubbish Depot Sanitation Purposes and is known to contain contamination which would require remediation by the Crown prior to any use of the land can be approved. Any lease of part of Lot 3 will have to be granted directly by the Crown.
4. Council has ignored advice from OLG to avoid making contentious decisions before Council election		4. The OLG expressed no concerns relating to the report being determined by the current Council and confirmed that the decision to issue the licence falls outside the s393B caretaker period provisions.
	5. An increase of physical, social and mental wellbeing for older and retired men in the community	
	6. The community support given by P & DMS to other voluntary organisations	

Other issues raised

Tenure

20 of the supporting submissions sought the provision of a second five year term to be added to the licence to be granted to Pottsville and District Men's Shed Inc. group.

Alternative sites

Many of the submissions objecting to the Men's Shed at Black Rocks have commented that Council is in breach of its resolution of 21 August 2014 to bring a report about alternative sites, indicating that no assessment of other sites was given. The resolution of 21 August 2014 was:

- "1. That in the event that the Pottsville Men's Shed seeks a licence or lease to operate from the site at the Black Rocks Sports Field that Council consider granting a limited use licence to operate the Men's Shed for a maximum term of 5 years at the site;*
- 2. Requests that the shed construction be of the type that it can be fully dismantled and reassembled at an alternative site;*

3. *Council officers be requested to continue to pursue alternative sites including future development or appropriately zoned sites that could accommodate the Men's Shed in the longer term on a permanent basis."*

Since this resolution was made, each item has been actioned, that is, a resolution to grant the lease, upon request from the Pottsville and District Men's Shed Inc., was made on 15 September 2016.

At its Council meeting dated 16 October 2014 it was resolved that:

"Council prepares and lodges the Development Application or Part 5 Application (whichever is applicable) for a Men's Shed at Lot 301 DP 1125090 (Black Rocks Sports Field), in accordance with their concept design and the Council resolution of 21 August 2014, whereby the construction is to be of the type that it can be fully dismantled and reassembled at an alternative site."

Development consent for the shed was issued on 14 December 2015.

The assessment of alternative sites has remained ongoing and will continue to do so during the tenure of the licence to be granted to the Men's Shed. The granting of this licence will not supersede the resolution of 21 August 2014. A brief overview of alternative sites is set out below:

1. Lot 3 Centennial Drive, Pottsville



This parcel is managed by Council as Trustee of Reserve 74096 for Rubbish Depot and Sanitation Purposes and is known to be contaminated. The parcel is also affected by Tree

Preservation Order 2011 (Koala Habitat) and will require the removal of trees for any development, as well as clarity on the contamination and remediation required, which should be undertaken by the Crown prior to any consideration of this parcel for development. Further, any tenure, must be for activities that fall within the reserve purpose, if Council, as Trustee grants a lease or licence. Any other activity, such as the Men's Shed, will require a direct lease or licence from the Minister, and as the land requires remediation before any tenure can be extended, it is considered unlikely that the Crown will grant such tenure for this site.

2. Pottsville North Holiday Park

Pottsville North Holiday Park is situated on Crown Land reserved for the purpose of caravan park and camping, which precludes the Men's Shed from operating within the Holiday Park. Future development of the Holiday Park, adopted in the Tweed Coast Holiday Parks Business Plan by the Trust and endorsed by Crown Lands, further precludes any use of the Holiday Park for a Men's Shed.

3. Lot 7338 Coronation Drive, Pottsville



This parcel is Crown Administered Crown Land, which is affected by SEPP 14 - Coastal Wetlands, and is fully vegetated. This parcel is affected further by Tree Preservation Order 2011 (Koala Habitat) which severely impacts on any development within the parcel. As such, this parcel is unsuitable for a Men's Shed.

4. Future Dunloe Park Industrial subdivision

Councillors attended a workshop relating to alternative sites with Council staff, and discussed this option. The Statement of Environmental Effects for the development application for the shed at the Black Rocks sportsfield outlined the outcome of the workshop where the elected members did not support the concept of establishing a Men's Shed at a future industrial estate within Dunloe Park based on cost. Further the PDMS did not support this location.

Pro forma letters

The majority of the submissions, both for and against the licence, were comprised of pro forma letters, where names, addresses and signatures were given. There were several pro formas for each argument. There were also individual submissions received for and against the granting of the licence.

In support of the licence at Black Rocks, there were six variations of pro forma letters, four of them are included below, these were the most utilised pro formas for the supporting submissions:

Sent from my iPhone

Begin forwarded message:

Subject: Support for Pottsville & District Men's Shed

General Manager
Tweed Shire Council
Murwillumbah

Dear Sir,

I refer to the Public Notice in the Tweed Daily News edition 24/9/2016, regarding the proposed Licence for the site for the Pottsville & District Men's Shed on the Black Rocks Sports Field, Pottsville.

I wish to register my strong support for this worthy organisation and urge the Council to grant the necessary Licence, which will provide an option for renewal on the expiry of the initial five years. The importance for men's health issues is my main reason for the support of this Licence and the continued five year renewal option.

Mr Troy Green
General manager
Tweed Shire Council

PO Box 816
Murwillumbah
NSW 2484

PUBLIC NOTICE

LOCAL GOVERNMENT ACT 1993 – Section 47A

Tweed Shire Council hereby gives notice of its intention to grant a licence to Pottsville & District Mens Shed Inc. for a term of five (5) years in respect of part of Lot 301 in DP 1125090 comprising a proposed shed for Mens Shed activities located at Overall Drive, Pottsville.

Any person may make submissions to the Tweed Shire Council with respect to the proposed licence. Any such submissions should be made in writing, addressed to the General Manager, Tweed Shire Council, PO Box 816, Murwillumbah, NSW, 2484, within twenty eight (28) days from the date of this notice. A plan identifying the area proposed to be leased is available for inspection during normal business hours at the following places: Murwillumbah Civic Centre, Tumbulgum Road, Murwillumbah and Tweed Civic Centre, Brett Street, Tweed Heads.
General Manager, Tweed Shire Council, 22 September 2016

Support for the Pottsville and District Men's Shed Licence at Black Rocks, Overall Drive Pottsville.

Dear Troy,

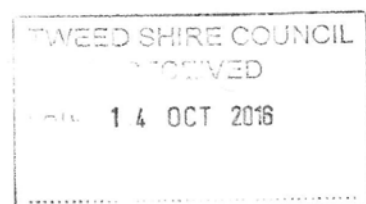
I strongly support the granting of the licence for the PADMS to construct their shed and operate from the site on the Black Rocks Sports Field.

The Men's shed at Black Rocks will provide a much needed expanded space for the organisation to grow and offer men a wider variety of activities and the opportunity to form friendships whilst chatting or working on projects.

The Men's Shed movement is now recognised as one of the most powerful tools in addressing the health and wellbeing of men in our community.

I urge the Tweed Shire Council to show their support for this much needed relocation to Black Rocks Sports Field.

Yours Sincerely,



The General Manager,
Tweed Shire Council
Tumbulgum Road,
Murwillumbah 2484

Dear Sir,

I support the Pottsville and District Men's Shed's location on Black Rocks Sports Field and wish council would proceed and sign the licence so that they can build their shed.

I am a current member and am fully in support of the issuing of the Licence forthwith.

General Manger
Tweed Shire Council

Dear Sir,

I support the Pottsville & District Men's Shed's location on Black Rocks Sports Field and wish council would get on with it and sign the licence so they can build their shed.

There were 27 variations of pro forma letters against the licence at Black Rocks, of these there were only two or three submissions made for each. The greatest number for one pro forma letter was 16 submissions. As there was a high degree of variation, no pro formas are included in this report. The balance of submissions were individual letters, or emails.

All submissions are confidential attachments to this report.

Discussion

Council has taken all actions in accordance with resolutions previously made regarding the granting of tenure at Black Rocks for the Pottsville and District Men's Shed Inc. The purpose of this report is to report on the submissions made in response to the statutory notice given under section 47A of the Local Government Act, 1993.

There is a large body of the Pottsville community that supports the Men's Shed operating from the Black Rocks Sports field, as the majority supporting submissions was from Pottsville residents.

It is notable that there was a high number of negative submitters which do not live in Pottsville or the Tweed area.

The submissions against the licence for the Men's Shed at Black Rocks were focused largely on the protection of the koalas in the adjacent koala habitat land.

The negative submissions raised issues that have been addressed by Council officers, as part of the assessment of the development application for the shed, as well as the review of alternative sites. The Statement of Environmental Effects for the development application for the shed also discussed those alternative sites that have attracted public attention, and were considered since the August 2014 resolution, and rejected.

The caretaker provisions are not breached by this report being considered immediately prior to a Council election, this was confirmed with a senior officer of the Office of Local Government. The current Council holds the background information and history with this issue, which justifies their consideration of the public submissions relating to the granting of the licence.

OPTIONS:

1. To accept the broad local community support to grant the licence to the Pottsville and District Men's Shed Inc. at the Black Rocks Sportsfield, and in accordance with Council's resolution of 21 August 2014.
2. To not approve the finalisation of the granting of the licence to the Pottsville and District Men's Shed Inc. at the Black Rocks Sportsfield.

CONCLUSION:

It is recommended that Council proceeds to finalise the granting of the licence to the Pottsville and District Men's Shed Inc. at the Black Rocks Sportsfield in response to the majority community submissions in support of this location, demonstrated by the submissions received in response to the notice of intention published by Council.

COUNCIL IMPLICATIONS:

a. Policy:

Not applicable.

b. Budget/Long Term Financial Plan:

No financial implications arise from this report.

c. Legal:

Notice of intention to grant a licence for a term of five years was published in local media on 24 and 27 September, 2016 pursuant to section 47A of the *Local Government Act, 1993*.

d. Communication/Engagement:

Consult-We will listen to you, consider your ideas and concerns and keep you informed.

This report provides the results of public consultation regarding the granting of a licence to the Pottsville and District Men's Shed Inc. at Black Rocks Sports fields.

UNDER SEPARATE COVER/FURTHER INFORMATION:

- (Confidential) Attachment 1. Majority pro forma submissions of support received -Part 1 (ECM 4276887)
 - (Confidential) Attachment 2. Majority pro forma submissions of support received - Part 2 (ECM 4277001)
 - (Confidential) Attachment 3. Miscellaneous pro forma submissions received in support (ECM 4277004)
 - (Confidential) Attachment 4. Individual submissions received in support (ECM 4277005)
 - (Confidential) Attachment 5: Miscellaneous pro forma submissions received opposing the granting of the licence - Part 1 (ECM 4277006)
 - (Confidential) Attachment 6. Miscellaneous pro forma submissions received opposing the granting of the licence - Part 2 (ECM 4277019)
 - (Confidential) Attachment 7. Individual submissions received opposing the granting of the licence (ECM 4277030)
 - (Confidential) Attachment 8 Copy of submission received opposing the granting of the licence with attachments (ECM 4277034)
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