

**Chair:** Tr K Milne

**Trustees:** G Bagnall (Deputy Chair)  
C Byrne  
B Longland  
W Polglase  
P Youngblutt

## Agenda

### **Tweed Heads Jack Evans Boat Harbour Reserve Trust Meeting Thursday 19 May 2016**

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

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## Items for Consideration of the Trust:

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2	<b>[CONMIN-JEBH-EXT] Confirmation of the Extraordinary Tweed Heads Jack Evans Boat Harbour Reserve Trust Meeting held Monday 9 May 2016</b>	<b>7</b>
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## CONFIRMATION OF MINUTES

- 1 [CONMIN-JEBH] Confirmation of Minutes of Tweed Heads Jack Evans Boat Harbour Reserve Trust Meeting held Thursday 21 April 2016

SUBMITTED BY: Corporate Governance

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## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
  - 1.2 Improve decision making by engaging stakeholders and taking into account community input
  - 1.2.2 Decisions made relating to the allocation of priorities will be in the long-term interests of the community
- 

### SUMMARY OF REPORT:

The Minutes of the Ordinary Tweed Heads Jack Evans Boat Harbour Reserve Trust Meeting held Thursday 21 April 2016 are attached for information and adoption by the Trust.

### RECOMMENDATION:

**That the Tweed Heads Jack Evans Boat Harbour Reserve Trust Meeting held Thursday 21 April 2016 be adopted as a true and accurate record of proceedings of that meeting.**

**REPORT:**

As per Summary.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Code of Meeting Practice Version 2.5.

**b. Budget/Long Term Financial Plan:**

Not applicable.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

**Inform** - We will keep you informed.

**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](http://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).*

Attachment 1

Tweed Heads Jack Evans Boat Harbour Reserve Trust Meeting held Thursday 21 April 2016 (ECM 4036027).

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**2 [CONMIN-JEBH-EXT] Confirmation of the Extraordinary Tweed Heads Jack Evans Boat Harbour Reserve Trust Meeting held Monday 9 May 2016**

**SUBMITTED BY: Corporate Governance**

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## **Civic Leadership**

### **LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

- 1 Civic Leadership
  - 1.2 Improve decision making by engaging stakeholders and taking into account community input
  - 1.2.2 Decisions made relating to the allocation of priorities will be in the long-term interests of the community
- 

### **SUMMARY OF REPORT:**

The Minutes of the Extraordinary Tweed Heads Jack Evans Boat Harbour Reserve Trust Meeting held Monday 9 May 2016 are attached for information and adoption by the Trust.

### **RECOMMENDATION:**

**That the Minutes of the Extraordinary Tweed Heads Jack Evans Boat Harbour Reserve Trust Meeting held Monday 9 May 2016 be adopted as a true and accurate record of proceedings of that meeting.**

**REPORT:**

As per Summary.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Code of Meeting Practice Version 2.5.

**b. Budget/Long Term Financial Plan:**

Not applicable.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

**Inform** - We will keep you informed.

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Attachment 1

Minutes of the Extraordinary Tweed Heads Jack Evans Boat Harbour Reserve Trust Meeting held Monday 9 May 2016 (ECM 4054073).

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## REPORTS THROUGH THE EXECUTIVE MANAGER OF THE TRUST

### REPORTS FROM DIRECTOR PLANNING AND REGULATION

#### ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - SECT 79C

##### 79C Evaluation

(1) Matters for consideration-general In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

- (i) any environmental planning instrument, and
- (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
- (iii) any development control plan, and
- (iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and
- (v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979 ),

that apply to the land to which the development application relates,

- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest.

**Note:** See section 75P (2) (a) for circumstances in which determination of development application to be generally consistent with approved concept plan for a project under Part 3A.

The consent authority is not required to take into consideration the likely impact of the development on biodiversity values if:

- (a) the development is to be carried out on biodiversity certified land (within the meaning of Part 7AA of the Threatened Species Conservation Act 1995 ), or
- (b) a biobanking statement has been issued in respect of the development under Part 7A of the Threatened Species Conservation Act 1995 .

- (2) Compliance with non-discretionary development standards-development other than complying development If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority:
- (a) is not entitled to take those standards into further consideration in determining the development application, and
  - (b) must not refuse the application on the ground that the development does not comply with those standards, and
  - (c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards,
- and the discretion of the consent authority under this section and section 80 is limited accordingly.
- (3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:
- (a) subsection (2) does not apply and the discretion of the consent authority under this section and section 80 is not limited as referred to in that subsection, and
  - (b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.
- Note:** The application of non-discretionary development standards to complying development is dealt with in section 85A (3) and (4).
- (4) Consent where an accreditation is in force A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the Building Code of Australia if the building product or system is accredited in respect of that requirement in accordance with the regulations.
- (5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).
- (6) Definitions In this section:
- (a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and
  - (b) "non-discretionary development standards" means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.

### **3 [PR-JEBH] Dinner in the Sky Jack Evans Boat Harbour**

**SUBMITTED BY: Development Assessment and Compliance**

#### **SUMMARY OF REPORT:**

Council has received a request from the CEO of Events in the Sky for a letter of support to establish a temporary, "Dinner in the Sky" dining activity at Jack Evans Boat Harbour for a total operational period of 12 days (including bump in and bump out) in mid 2016. The proposal involves the use of a crane, and elevated dining platform, an "amusement device", marquee and kitchen facilities. The concept has been running for nearly 10 years, in both Australia and overseas.

Similar to the recent aquaSplash proposal, a letter of support from Council is required so the proponents can commence their Crown Land licence application processes. The proposed activity will require development consent from Council and approvals from the Department of Primary Industry - Lands, the Jack Evans Boat Harbour Trust and Council as owners and or managers of Jack Evans Boat Harbour. These processes are separate to the current request and any initial indication of support does not pre-empt the statutory processes.

Prior to advancing any support for individual proponents such as Dinner in the Sky, Council will need to conduct a Tender process to provide an equitable opportunity for other commercial proponents to use Jack Evans Boat Harbour.

It is therefore considered that at this stage, Council is only in a position to provide a letter of support to enable the proponent of Dinner in the Sky to further investigate this concept, but that it cannot commit to any commercial agreement or owners consent for a future development application until a tender process for the use of Jack Evans Boat Harbour has been determined by Council.

It is recommended that Council provides the letter of conditional support.

#### **RECOMMENDATION:**

**That the Executive Manager of the Trust advises the firm Events in the Sky in writing of the following:**

- 1. Council generally supports that they continue to investigate the Dinner in the Sky concept and any necessary licences/approvals from the Department of Primary Industry – Lands for a trial use at Jack Evans Boat Harbour;**
- 2. The proposed activity requires development consent from Council and the above support does not pre-empt or fetter any discretion Council exercises for the assessment and determination of a development application or any other statutory function Council has for Jack Evans Boat Harbour;**

- 3. Prior to advancing any support for individual proponents such as Dinner in the Sky, Council will need to conduct a Tender process to provide an equitable opportunity for other commercial proponents to use Jack Evans Boat Harbour; and**
- 4. Any future development application submitted to Council must include but not be limited to the following:**
  - a. Evidence of consultation with residents of Seascape, Twin Towns, Centro Shopping Centre, Tweed Heads Residents Association, Tweed Heads Chamber of Commerce and Big Trev Water Sports;**
  - b. A report on the potential ecological impacts on the waterway including water quality monitoring for the duration of the use and recommended mitigation measures if required; and**
  - c. Carparking and traffic analysis**

## REPORT:

Council has received a request from the CEO of Events in the Sky for a letter of support to establish a temporary, "Dinner in the Sky" dining activity at Jack Evans Boat Harbour for a total operational period of 12 days (including bump in and bump out) in mid 2016. The proposal involves the use of a crane, and elevated dining platform, an "amusement device", marquee and kitchen facilities. The concept has been running for nearly 10 years, in both Australia and overseas.

A more detailed explanation of the proposal was provided to Council through an email dated 4 May 2016:

*"The Dinner in the Sky concept has been running nearly 10 years, worldwide. I am Best Practice Director for all Dinner in the Sky operations worldwide, in addition, I am the owner of the businesses in Australia, NZ, Japan, Vietnam and Singapore.*

*The business operates as a Temporary popup restaurant, with the addition of the Amusement device component.*

*Ideally, we would hope to operate at Jack Evans Boat Harbour Park for an operation period of 12 days, 2 days Bump in (Build), 9 days open to the public and 1 day Bump out. We may factor a stand down period of a few days break into the program.*

*We have previously operated within NSW at:*

*City of Sydney  
City of Parramatta  
City of Newcastle  
City of Bathurst*

*In the above Council regions we have not been required to submit a Development Application. We have been required to make application for a Section 68 Temporary Structures Permit and various other compliance elements like, Food Safety, Electrical certification and Amusement Device inspections.*

*On a typical day:*

*We have a definite maximum number of guests per day 132*

*We wish to operate for 9 days*

*9 x 132 = 1188*

*At any one time, no more than 50 people are onsite.*

*Our hours of operation would normally be 10.30 am to 10.00 pm.*

*We play gentle lounge music, and operate as a relaxed fine dining venue.*

*Alcohol is served via a set menu offering, so RSA is ensured.*

*There are no transactions onsite, Guests pay online and offsite prior to attendance.*

*We can break up the schedule for the event such that we do not operate for more than 7 days concurrently.*

*Our event setup is a fully enclosed safety area, containing the crane and Amusement device, and an adjoining Meet and Greet lounge (Hired Marquee) as well as a fully compliant Shipping container based commercial kitchen.*

*The total area required for our event is 20m x 45m.*

*Since we host only 132 people per day, operate inside of normal trading hours, do not cause any disruption to nearby businesses and are a compliant AS3533 Amusement Device, we would very much like to be considered a Medium sized event under Council and avoid the lengthy DA process. Councils Major Events Application states that 1500 or more people define Major Event, however the total number of Guests we will host is 1188 over a 9 day period.*

*The object of opening for a short period of trade at Tweed Heads is to begin a road show type of medium term business operations, whereby Dinner in the Sky can attract guests and incorporate regional suppliers and providers and chef talent.*

*We have exceptional support from the Tweed and Gold Coast community having received countless requests for us to bring the event to the region.*

*I will complete as comprehensively as possible both the Small/Medium Event application and the Major Events Application form today for further detailing of our operation and your initial consideration.*

*In the meantime I attached some indicative renders of our event setup.*

*Please review this email and comment so that we can cooperate and effect a positive outcome."*

Jack Evans Boat Harbour is Crown Land with part of it administered by Council. The location of the facility within the Harbour has not been determined yet but would be subject to consultation and suitability/capability assessment through a development application lodged with Council.

A letter of support from Council is required so the proponents can commence their Crown Land licence application processes. The proposed activity will require development consent from Council and approvals from the Department of Primary Industry - Lands, the Jack Evans Boat Harbour Trust and Council as owners and or managers of Jack Evans Boat Harbour. These processes are separate to the current request and any initial indication of support does not pre-empt the statutory processes.

Prior to advancing any support for individual proponents such as Dinner in the Sky, Council will need to conduct a Tender process to provide an equitable opportunity for other commercial proponents to use Jack Evans Boat Harbour.

It is therefore considered that at this stage, Council is only in a position to provide a letter of support to enable the proponent of Dinner in the Sky to further investigate this concept, but

that it cannot commit to any commercial agreement or owners consent for a future development application until a tender process for the use of Jack Evans Boat Harbour has been determined by Council.

**OPTIONS:**

1. Provide a letter of support in accordance with the recommendation.
2. Provide a letter of support with other identified information/conditions.
3. Not offer a letter of support.

The officers recommend Option 1.

**CONCLUSION:**

Council has two functions with Jack Evans Boat Harbour being an administrator of the foreshore and part of the waterway under the Crown Lands Act and as the consent authority under the Environmental Planning and Assessment Act. The proponent has requested a letter of support from Council and the Trust for the facility to enable them to commence the process with the Department of Primary Industries- Lands. Prior to any such support being provided Council will need to undertake a Tender process to provide an equitable opportunity for other commercial proponents to use Jack Evans Boat Harbour.

**IMPLICATIONS:**

**a. Policy:**

Any proposal will need to be assessed against the Jack Evans Boat Harbour Plan of Management.

**b. Budget/Long Term Financial Plan:**

Council has the opportunity to gain additional income in respect of this proposal.

**c. Legal:**

Statutory approvals for this proposal are required under both the Crown Lands Act and the Environmental Planning and Assessment Act.

**d. Communication Engagement**

It is expected that any advancement of this proposal would require a community engagement process.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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