

Minutes 8 NOVEMBER 2011



Minutes of Extra-Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 8 November 2011, commencing at 5.33pm.

PRESENT: Councillors R. Westbury (Mayor); G. Dingle; S. Dover; G. Francis; K. Jordan (Deputy Mayor); P. Kafer; B. MacKenzie; J. Nell; S. O'Brien; S. Tucker; F. Ward; General Manager; Corporate Services Group Manager; Facilities and Services Group Manager; Acting Sustainable Planning Group Manager; Commercial Services Group Manager and Executive Officer.

	Councillor Ken Jordan Councillor Shirley O'Brien
	It was resolved that the apology from Cr Caroline De Lyall be received and noted.

	No Declaration of Interests were received.

INDEX

SUBJECT

PAGE NO

GENERAL MANAGER'S REPORT	3
1. COUNCIL'S APPROACH TO LEGAL ACTION.....	4

GENERAL MANAGER'S REPORT

PETER GESLING
GENERAL MANAGER

ITEM NO. 1

FILE NO: PSC2011-04260

COUNCIL'S APPROACH TO LEGAL ACTION

REPORT OF: PETER GESLING
GROUP: GENERAL MANAGER

RECOMMENDATION IS THAT COUNCIL:

- 1) Delegate to a Legal Committee of Council the authority to give instructions to Council's lawyers for the conduct and resolution of matters referred by the Council or the General Manager;
- 2) Establish the Legal Committee as a 355(c) Committee under the NSW Local Government Act;
- 3) Accept the Mayor's recommendation for initial membership of the Legal Committee;
- 4) Council refer the "Melaleuca" and "Waterhouse" matters to the Legal Committee.

EXTRA-ORDINARY COUNCIL MEETING 8 NOVEMBER 2011

	Councillor Bruce MacKenzie Councillor Ken Jordan
	That the recommendation be adopted.

The Motion on being put was lost.

AMENDMENT

	Councillor Geoff Dingle Councillor Frank Ward
	That critical legal matters be brought before Councillors for discussion and agreement on the way forward as Committee or Extra-Ordinary meetings when immediate decisions are required.

The amendment on being put was lost.

FORESHADOWED AMENDMENT

Councillor John Nell Councillor
That Council: <ol style="list-style-type: none">1. Delegate to a Legal Committee of Council the authority to give instructions to Council's lawyers for the conduct and resolution of matters referred by the Council or the General Manager;2. Establish the Legal Committee as a 355(c) Committee under the NSW Local Government Act;3. Accept the Mayor's recommendation for initial membership of the Legal Committee;4. Council refer the "Melaleuca" and "Waterhouse" matters to the Legal Committee.5. That critical legal matters be brought before Councillors for discussion and agreement on the way forward as Committee or Extra-Ordinary meetings when immediate decisions are required.

The foreshadowed amendment lapsed due to there being no seconder.

BACKGROUND

The purpose of this report is to recommend that Council establish a Legal Committee to assist the General Manager in Council's approach to complex legal matters. The Committee would be established as a 355(c) under the NSW Local Government Act 1993.

Council has a history of significant legal actions over time. In the past Council has used a Committee to assist the General Manager in case management with its legal representatives. At times there is a need to make decisions in response to the other parties' actions within short timeframes where it is not always possible to obtain a Council resolution, where the General Manager is unable to use the delegations of the NSW Local Government Act.

Further there is a rationale to limiting the number of people who have detailed knowledge of negotiations. Recent discussion with Council's Lawyers regarding the "Melaleuca" and "Waterhouse" matters have raised the issues again to protect Council's position, manage Council's reputation and act in a timely manner.

Therefore it is recommended that Council delegate authority to a Legal Committee of Council to undertake this role. In discussion with the Mayor to schedule this extraordinary meeting, he has suggested this Committee comprise the Mayor, Deputy Mayor, Councillor Nell and the General Manager.

FINANCIAL/RESOURCE IMPLICATIONS

Legal matters have had a significant impact on Council's finances; often due to the way a matter is pursued by the other party. In the Waterhouse matter, the Supreme Court found that the other party has acted in a manner to defraud the Council and to increase the costs of the matter. While Council has made approaches to settle this matter the response has been unacceptable to the principles and use of public monies in the circumstances.

LEGAL, POLICY AND RISK IMPLICATIONS

Council has endeavoured to manage its responsibilities of public assets and to uphold the principles of fairness and equity for the community.

Council always considers the risk of not pursuing its rights to recover costs, but Council's approach to this policy issue has been for the community and individuals to understand that the Council will endeavour to seek costs and redress.

Council is unable to control other parties' actions to avoid responsibility. The current proposal can assist in achieving a balanced approach to future actions.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Council does consider the merits of all legal action and seeks to mediate and settle matters where appropriate.

CONSULTATION

Mayor, Harris Wheeler and Executive Staff.

OPTIONS

- 1) Adopt the recommendation;
- 2) Amend the recommendation;
- 3) No action with the General Manager to continue to case manage legal matters.

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

MINUTES FOR EXTRA-ORDINARY MEETING – 8 NOVEMBER 2011

There being no further business the meeting closed at 6.25pm.

I certify that pages 1 to 7 of the Open Ordinary Minutes of Council 8 November 2011 were confirmed by Council at its meeting held on 22 November 2011.

.....
Cr Bob Westbury
MAYOR