



## MINUTES

# EXTRAORDINARY MEETING OF COUNCIL

at 5.30 pm

Monday 16 January 2017

### Present

Lord Mayor – Councillor Bradbery OAM (in the Chair), Councillors Kershaw, Connor, Brown, Takacs, Merrin, Blicavs, Dorahy (until 5.31 pm), Colacino, Crasnich, Curran and Petty

### In Attendance

General Manager – D Farmer, Director Corporate and Community Services – Creative, Engaged and Innovative City (Acting) – K Hunt, Director Infrastructure and Works – Connectivity, Assets and Liveable City (Acting) – G Doyle, Director Planning and Environment – Future, City and Neighbourhoods – A Carfield, Manager Governance and Information (Acting) – J Reilly and Manager Property and Recreation – P Coyte

### Apologies

Min No.

- 1 COUNCIL'S RESOLUTION** - RESOLVED UNANIMOUSLY on the motion of Councillor Kershaw seconded Councillor Crasnich that the apology tendered on behalf of Councillor Martin be accepted.

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## DISCLOSURE OF INTERESTS

Councillor Dorahy declared a pecuniary interest in Item A as he is a minor shareholder in the business which is the subject of the Notice of Motion. Councillor Dorahy advised that he would depart the meeting during the debate and voting on Item A. Councillor Dorahy departed the meeting at this stage, the time being 5.31 pm.

Councillor Curran declared a non-pecuniary, non-significant interest in Item A as she was previously a Council employee, however did not work on this matter. She also advised that she was a previous member of Wollongong Against Corruption, Protect our Parks Incorporated and several State-wide groups which are interested in governance and management of Crown Land. Councillor Curran advised that she would remain at the meeting during debate and voting on the matter.

## ITEM A - NOTICE OF MOTION – COUNCILLOR MERRIN - DEVELOPMENT APPLICATION DA-2014/306 - SKYDIVE THE BEACH

MOVED by Councillor Merrin seconded Councillor Takacs that -

- 1 An urgent, comprehensive report come to Council for consideration at the meeting of 20 February 2017 on the Stuart Park Reserve Trust, the Plan of Management, as well as previous, current and proposed leases and licences for Stuart Park, and development applications.
- 2 The report include:
  - a all decisions on these matters under delegated authority and Council resolution;
  - b a chronology of the dealings and agreements with Skydive the Beach, and their occupation and activities in Stuart Park, including information on the terms of all current leases (if any) and licences;
  - c all legal advice and all documents associated with the current and previous development applications;
  - d reasons as to why these licences and leases (if any) have not been included on Council's Public Register;
  - e an update of where the process is up to regarding any proposed new leases and licences for tourist or private recreation facilities and uses in Stuart Park Reserve;
  - f details of how the current proposal by Skydive the Beach complies, or does not comply, with the current Stuart Park Plan of Management;
  - g studies undertaken by Council or Skydive the Beach in response to the 2015 request by the Independent Hearing and Assessment Panel (IHAP) regarding alternative sites for the proposed building and activities;
  - h details of how Council will ensure proper market-testing of any lease or licence to Skydive The Beach, having regard to the profitability of similar activities elsewhere and the lack of a transparent competitive tender process;
  - i all advice and directions given to Council, as Trustee for Stuart Park Public Reserve, by the Department of Industry-Lands and the Office of Local Government, regarding leases, development applications (DAs), and renewal of leases for development and uses in Stuart Park;
  - j any advice, direction, responses and approvals by the Minister administering Crown Lands in regard to the Stuart Park Reserve Trust including the plans of managements, DAs, leases and licences for tourism and for-profit organisations or companies.

- 3 The report also include independent senior legal advice which addresses the following:
  - a The legality of Council's decisions in the case of the recommendations of the IHAP being adopted and the DA approved, having regard to the provisions of:
    - i the Trustee Act;
    - ii the recent Talus decision (*Application of Willoughby City Council [as manager of the Talus Reserve Trust], Equity Division, Supreme Court NSW, 2016*);
    - iii the Crown Lands Act;
    - iv the Rutledge principles (*The Municipality of Randwick vs Rutledge, High Court, 1959*), which still apply today, and hold that "Crown land held on trust for public recreation requires the land to remain open to the public generally as of right and not be a source of private profit. Public profits are allowed provided they are reinvested in the trust"; and,
    - v the Local Government Act, especially the provisions relating to Plans of Management;
  - b Council's obligations and responsibilities under the relevant Acts, as Trustee for Stuart Park Public Reserve, in regard to:
    - i financial accounting and reporting practices, and,
    - ii Council's ability to issue leases or licences to for-profit organisations or companies.
- 4 Until the above reports are received and considered by Council on 20 February 2017, all delegated responsibility for Development Application 2014/306 be suspended, and no approvals or decisions be taken or executed under previous delegated responsibility or resolutions of Council.
- 5 DA-2014/306 be determined by elected Councillors.

A PROCEDURAL MOTION was MOVED by Councillor Brown that the motion be put. The PROCEDURAL MOTION on being PUT to the VOTE was CARRIED.

Councillor Merrin's MOTION on being PUT to the VOTE was LOST.

**In favour** Councillors Takacs and Merrin

**Against** Councillors Kershaw, Connor, Brown, Blicavs, Colacino, Crasnich, Curran, Petty and Bradbery

## **THE MEETING CONCLUDED AT 5.59 PM**

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Confirmed as a correct record of proceedings at the Ordinary Meeting of the Council of the City of Wollongong held on 30 January 2017.

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Chairperson