



Hawkesbury City Council

ordinary meeting business paper supplementary

date of meeting: 9 December 2003

location: Council Chambers

time: 7.00pm

ORDINARY MEETING

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1. Election of Federal Leader - Australian Labor Party

Council would like to congratulate Mr Mark Latham who has recently been elected as Federal Leader of the Australian Labor Party.

Mr Latham represents the Western Sydney seat of Werriwa (once held by the Hon Gough Whitlam). Prior to his election to Canberra, Mr Latham was a Liverpool City Councillor and Mayor as well as President of WSROC.

Councillor Mark Greenhill, President of WSROC, recently said that he hoped that Mr Latham's election would lead to increased awareness on the national stage of the issues facing Australia's outer urban regions and, in particular, Western Sydney.

Recommendation

That Council send a letter congratulating Mr Mark Latham on his election as Federal Leader of the Australian Labor Party and as Leader of the Opposition.

2. University of Western Sydney - Request Support for The Walks Project and the Western Sydney Biopark

Correspondence has been received from the University of Western Sydney seeking in principle support for two sustainability initiatives in the Gomebeeree Environs at the Hawkesbury Campus. The University is considering making two expressions of interest to the Environmental Trust, Integrated Environmental Management Program focussing on the enhancement of the Richmond Water Re-use Scheme, through a Water Walks Project and the development of an adjacent Western Sydney Biopark for total funding in the vicinity of \$2.5-\$3 million. The projects aim to realise integrated educational, research, community development, conservation, ecotourism and employment benefits.

The Walks Project

The Walks Project would build carefully selected educational, recreational and experiential facilities in strategic locations across the site of the Richmond Water Re-use Scheme situated along a segment of the proposed Great River Walk. It would seek to bring about an understanding, realisation, and personal acceptance of behavioural change toward more sustainable water use and management. It is anticipated that the project would be built over several years. The Water Walks Project would also provide a strong focus for gaining community acceptance and trust in the appropriate use of recycled water - a key issue facing Sydney's sustainable future.

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Western Sydney Biopark

The Western Sydney Biopark would build on and complement the Water Walks Project. It would illustrate the practical application of recycled water to regenerate and stabilise local ecologies. A visitor to the Biopark would see precious, threatened Hawkesbury Swamp Woodland and River Flat Forests being regenerated and stabilised, providing once more the conditions for sustainable populations of threatened and previously extinct native animals.

The University is seeking a letter of support from Council in relation to the two projects and assistance in providing initial cost estimates for components such as vehicular access, car and bus parking, paths and walkways. The expressions of interest for the projects must be submitted by 19 December 2003.

Recommendation

I recommend that Council provide a letter of support to the University of Western Sydney in relation to the expressions of interest for the Water Walks Project and the Western Sydney Biopark and also assist with indicative estimates for the engineering components of the project.

oooO END OF MAYORAL MINUTES Oooo



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section

reports
for determination

ITEM: 206 Three Town Sewerage Committee**FILE NUMBER:** 79351/FNC/ORL09LAX.G15

REPORT:

Council approval is sought for the fixed term appointment (six to twelve months) of a coordinator to assist the Committee in gaining support from the relevant agencies to achieve Council's objective in relation to the three town sewerage proposal.

Council, by way of Resolution on 14 October established the Three Town Sewerage Committee comprising of Councillors Paine, Rasmussen and Williams, members of staff and community representatives. Subsequent to advertising for expressions of interest from the public, Mrs Karen Conte, Mr Derek Major and Mr Bill Snedden were appointed as community representatives. The Committee met on Thursday, 4 December 2003 and elected Councillor Christine Paine as Chairperson of the Committee

Amongst the objectives set by the Committee for itself were:

- to achieve an irrevocable commitment for sewerage funding for Glossodia, Wilberforce, Freemans Reach and Agnes Bank in the 2004/2005 State Government Budget for works in 2007;
- to recommend to Council in February a constitution suitable for the Committee pursuant to the *Local Government Act* (1993);
- to expedite Committee business by facilitating Committee discussion and resolution by way of e-mail, facsimile and telephone;
- to seek Council approval as soon as possible for a fixed term appointment of six to twelve months for a coordinator with expertise and experience relevant to both environmental issues and interaction with Government and other agencies. The appointment, whilst fixed term, would be subject to contract with key deliverables required of the contracted employee set in the context of the Committee's objective to gain an irrevocable commitment for sewer funding for the three towns sewerage (and Agnes Banks) in the 2004/2005 State Budget.

The Committee is of the view, and Management concurs, that it is necessary to negotiate the corridors of State Government agencies and bureaucracies to gain support for Council's position as a cornerstone for Council's strategy in achieving its desired outcome. An important component in the fixed term contract for the successful appointee will be to assist Council to become familiar with relevant decision makers within State Government Departments with a view to not only achieving Council's objective, but also to develop the in-house lobbying ability of Hawkesbury's elected officials.

RECOMMENDATION:

That:

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1. Council note the progress to date of the Three Town Sewerage Committee, and the appointment of the Chairperson and three community representatives: Mrs Conte, Mr Major and Mr Snedden.
2. Council approve the appointment of a coordinator, suitably qualified in Environmental issues and with experience in interacting with State and Federal agencies to achieve outcomes on a fixed term contract for a period of between six and twelve months, and request the GM to expedite recruitment of a suitable individual pursuant to section 335(2) of the *Local Government Act* (1993).
3. Council approve unbudgeted expenditure of up to \$30,000 (thirty thousand dollars) for the appointment of the coordinator referred in (2), with funds being adjusted in the quarterly review.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 206 Oooo

ITEM: 207

Legal Action - Mr and Mrs White - Lessees 292-296 George Street, Windsor - CONFIDENTIAL *(It is recommended that this matter be Confidential under Section 10(2)(g) of the Local Government Act, 1993, advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege)*

FILE NUMBER: 75483/CSV/ORL09LAX.C14

REPORT:

Council purchased 292-296 George Street, Windsor from Mr and Mrs Palmer in January 2002. The property contains 3 (three) residential flats on the first floor and 2 (two) commercial premises on the ground floor. On purchase, the premises were leased to Mr David and Mrs Suzanne White for a pine furniture outlet. Council purchased the building with the existing leases.

The combined rent payable by the Whites for the 2 (two) shops was \$49,535.71 (forty nine thousand, five hundred and thirty five dollars and seventy one cents) plus GST per annum (\$54,489.28 (fifty four thousand, four hundred and eighty nine thousand dollars and twenty eight cents) per annum). As soon as Council owned the building the Whites advised there were many things wrong with the building although they had been in possession for some time before. The Whites suffered damage due to a storm event. Council's building services section organised all the maintenance issues to be rectified, however, the Whites were still not satisfied and refused to pay rent.

Council commenced proceedings for possession of the premises and the rent owing. Judgement was obtained in Council's favour on both counts and possession was obtained on the 29 July 2003.

The debt owing when judgement was issued was \$68,111.70 (sixty eight thousand, one hundred and eleven dollars and seventy cents) and a bankruptcy notice was served. The Whites have applied to have the judgement set aside due to their solicitor's failure to provide adequate legal representation and there is the possibility that they could be successful. Council's legal advice has been to settle the matter with the Whites out of court on the basis of half rent owing, being \$34,000.00 (thirty four thousand dollars) and payment of half of Council's legal costs being \$13,000.00 (thirteen thousand dollars). They are currently in the process of selling their home and payment would be made immediately upon settlement. It is noted that their sale cannot proceed until this matter is settled and the judgement withdrawn due to the bankruptcy notice. White's legal representatives have indicated that their client is prepared to settle the matter on this basis.

RECOMMENDATION:

That:

1. That Council give delegation to the General Manager to negotiate settlement with Mr David White and Mrs Suzanne White in accordance with Council's legal advice.

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2. That the Council Seal be affixed to all necessary legal documents.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 207 Oooo

ITEM: 208 **420 Old Stock Route Road, Pitt Town - CONFIDENTIAL** *(It is recommended that this matter be Confidential under Section 10(2)(g) of the Local Government Act, 1993, advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege)*

SUBJECT DETAIL: **Hawkesbury City Council vs Sammut**

FILE NUMBER: 9200,11078,9068/EVD/ORL09LBX.V11

PREVIOUS ITEM: 28, Ordinary (09.04.2002)

REPORT:

This matter was last reported to Councils Ordinary Meeting on 9 April 2002 and it is a long standing legal matter between Council and Mr Daniel Sammut concerning the construction and use of a shed at 420 Old Stock Route Road, Pitt Town. Council will recall the matter was now to be negotiated for a settlement rather than returning to the Land and Environment Court to seek orders to demolish the shed.

The issues surrounding the settlement of this matter are as follows:

1. The removal of the existing large shed.
2. The construction of a smaller shed.
3. Re-shaping of the land.
4. The revegetation of the land after it has been shaped.
5. The colour of the fence between Mr Sammut's property and Ms Maddens property.
6. The compensation to be paid to Mr Sammut resulting from the awarding of costs in his favour.
7. The use of the shed.

Negotiations have taken place between Mr Sammut, Mr Hagar and Ms Madden and Council's solicitors and Mr Sammut's solicitors in order to arrive at a solution. Currently there is an agreement on some issues, but not on others. Council has received advice from Abbott Tout that this matter should be resolved by having the Court issue orders to finalise the Class 4 proceedings between Council and Mr Sammut. The following is a discussion of the outstanding issues:

1. The Removal of the Large Shed

All parties agreed that the large shed should be removed. Mr Sammut has approval at 67 Joshua Road, Freemans Reach for the construction of a 360 (three hundred and sixty) square metre shed for the storage of hay arising from agricultural use of that property. It is open to Mr Sammut to seek amendment to that consent to allow the shed to be transported from 420 Old Stock Route Road to that property.

2. Construction of a Smaller Shed

The proposal from Mr Sammut was to construct a 216 (two hundred and sixteen) square metre shed at 420 Old Stock Route Road to replace the current shed. The shed will be oriented with its long axis facing north, that is towards Ms Madden's property, and the narrow axis facing west to Old Stock Route Road.

A revegetation and management plan was prepared by Rose Deco Design, which showed the location of the new shed, together with some earth works to trim the current fill that has been placed on the site and its re-stabilisation with new vegetation. In a submission received from Ms Madden on behalf of some land owners in the area, they would prefer the shed to not exceed 175 (one hundred and seventy five) square metres in size and that the shed be moved one and a half metres further to the north than proposed. It would then be unnecessary to amend the top embankment as proposed by the Rose Deco Design proposal, but the shed must face Old Stock Route Road. The residents, however, do not wish to have the extensive revegetation plan carried out in return for the reorientation of the shed.

In a letter dated 24 November 2003, Solicitors, Storey and Gough, on behalf of Mr Sammut are happy not to carry out the revegetation plan but wish the shed to remain orientated to the north and to be at least 216 (two hundred and sixteen) square metres.

Mr Sammut wishes the shed to be orientated to the north so he can see the doorway from his house, whilst Ms Madden is concerned that the activities in the shed generate a significant amount of noise and that orientating the shed to the west would help reduce this.

The plan prepared by Rose Deco Design shows the shed orientated to the north with extensive reshaping and revegetation. In view of the fact that the shed is only to be used for domestic matters and not for any commercial or industrial purposes, there should not be any noise issuing from the shed that should disturb the neighbours. It is quite clear, however, that Ms Madden still remains concerned about this issue. In respect to the size of the shed, Mr Sammut maintains he needs a shed of 216 (two hundred and sixteen) Square metres to allow him to park his large rigid truck, which is associated with his business which is carried out elsewhere, whereas the neighbours are concerned that Council will set a precedent in granting consent to a shed larger than the development control plan limit of 170 (one hundred and seventy) square metres. Mr Sammut is in agreement, however, to relocate the shed one and a half metres to the north, which will enable a gentler slope to the adjacent southern property.

3. Reshaping the Land

The original proposal prepared by Rose Deco Design was extensive reshaping of the land to produce a more natural slope and the replacement of some of the excavation carried out for construction of the large shed. By moving the shed one and a half metres to the north, a more gentle slope can be constructed to the southern boundary, which is agreed by both parties. This would mean that the bank on the northern side can not be reshaped as much. The reorientation of the shed facing Old Stock Route Road, would mean that material in front of the shed would have to remain, whereas with north south orientation, the material can be removed and relocated.

4. The Revegetation Plan

The original proposal was to revegetate the land cleared for construction of the large shed to return as far as possible the Cumberland Plain Woodland that existed prior to development. Mr Sammut has requested that Council hold a bond to the sum of \$20,000 (twenty thousand dollars) for the carrying out of this work, and once he has completed the work, this sum will be paid to him. If the works are not carried out, then Council would retain the bond and it should also be noted that if the works are not to be carried out, and these were the subject of orders of the Court, that Council could return to Court to have them implemented.

In the proposal from the neighbours the revegetation plan is not required, providing that the shed is reorientated. Mr Sammut is happy to accept and remove the revegetation requirements, but still insists on the shed being orientated to the north.

5. The Dividing Fence

It was proposed to both parties that Council meet the cost of painting the dividing fence between Mr Sammut's property and Ms Maddens property, which is currently a white colorbond and it would be painted on both sides. Ms Madden agreed with this, however, Mr Sammut wishes to retain the white colour on his side and is happy for the colour facing Ms Madden to be changed to green. It should be noted, however, that the other neighbours in the district can still view this fence and they have expressed the desire that both sides be painted green.

6. Compensation

Costs were awarded against Council in the Court of Appeal decision and Council needs to pay Mr Sammut the costs arisen from action taken by Council against him. Both parties have agreed that the sum of \$70,000 (seventy thousand dollars) is appropriate for this compensation and this has been recommended by Council's solicitors. This will be a final payment and no further action can be taken by Mr Sammut against Council.

7. Use of the Shed

The neighbours are concerned that Mr Sammut will use the shed for a commercial / industrial purpose associated with his business. It is considered appropriate that an order be made that it should only be used for the storage of vehicles associated with the house or his business and no work be carried out on those vehicles and it should not be used for the maintenance of any turf cutting machinery associated with Mr Sammut's business. In short the shed becomes a garage for his house. Mr Sammut agrees with this proposal.

In conclusion

This matter has reached a point where it appears that neither party now is prepared to negotiate any further, however, the opportunity now exists to settle this matter once and for all so that no further action can be taken by Mr Sammut against Council in respect of further compensation and that the large shed is actually removed from the property and replaced by a much smaller shed. It should be

noted that this is primarily an action by Council against Mr Sammut to seek removal of the large shed and an attempt to settle any further claims by Mr Sammut against Council and to return the most appropriate development on the site contained with an appropriate landscaping.

RECOMMENDATION:

That Council's solicitors, Abbott Tout be instructed to seek the following orders from the Land and Environment Court to finalise this matter.

1. The shed that exists on 420 Old Stock Route Road be removed.
2. Mr Daniel Sammut be ordered to build a shed not greater than 216 (two hundred and sixteen) square metres to replace the large shed on the property. This shed be located one and a half metres further to the north than shown on the proposed plans by Rose Deco Design and the land to be reshaped accordingly. The shed is to be oriented with its long axis to the north.
3. The reshaping of the land proposed by Rose Deco Design subject to the modifications outlined above be carried out.
4. The revegetation plan proposed by Rose Deco Designs subject to the modification outlined above be carried out.
5. The repainting of the dividing fence between Mr Sammut and Ms Maddens property take place at Councils expense.
6. Council pay \$70,000 (seventy thousand dollars) to Mr Sammut for the full and final settlement of legal costs and any further claims against Council.
7. The proposed shed on 420 Old Stock Route Road be used for purposes associated with the dwelling house only.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 208 Oooo



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