



Minutes

Special Council Meeting

**Held on Tuesday, 4 October 2016
commencing at 6:30pm
in the Council Chambers,
Level 2, Administration Building,
4-20 Eton Street, Sutherland**

PRESENT: The Mayor, Councillor Pesce, together with Councillor Boyd, Councillor Collier, Councillor Croucher, Councillor Forshaw, Councillor Johns, Councillor Nicholls, Councillor Plibersek, Councillor Provan, Councillor Riad, Councillor Scaysbrook, Councillor Simone, Councillor Simpson and Councillor Steinwall.

Staff in attendance were the General Manager, Director Corporate Support, Director Shire Services, Director Shire Planning, Acting Director Shire Infrastructure (Phil Mansfield), Corporate Governance Manager (Samantha Charlton) and Executive Officer Governance (Karen Barrass).

Acknowledgement of Country

The Mayor, Councillor Pesce, opened the meeting with an Acknowledgement of Country.

Disclosures of Interest

File Number: 2015/14239

Councillor Simpson declared a pecuniary interest in the following matter:

CCL004A-17 Request for Financial Assistance - Legal
Assistance to Councillors and Staff Policy
File Number: 2015/14163

advising that he is the proposed recipient of legal assistance.

Min No: 97 APOLOGY:

RESOLVED: (Councillor Scaysbrook/Councillor Simpson)

That an apology tendered on behalf of Councillor McLean be accepted and leave of absence granted.

Min No: 98

MM004-17

Mayoral Minute

Congratulations to Cronulla Sutherland Sharks

File Number: 2016/248002

On behalf of the Sutherland Shire community I want to congratulate the Cronulla Sutherland Sharks for a well deserved win. Up Up Cronulla! The boys in the black, white and blue!

Min No: 98 Cont'd

MM004-17

The Shire was with the Sharks every step of the way, every tackle, every try and collectively holding our breath in the last couple of minutes. This victory was 50 years in the making and the loyal supporters and die-hard fans share in this sweet success.

The leadership of Sharks captain Paul Gallen and coach Shane Flanagan was second to none and the whole team played their hearts out all season.

The Shire has come alive with celebrations and camaraderie and the positive impact will continue to be felt for years to come.

It was fantastic to join the thousands of Sharks fans to welcome the players back to Shark Park on Sunday night and then again at the community barbecue at the Sharks Fan Session on Monday. On behalf of an ecstatic Shire community, I was thrilled to present the keys to the Shire to Paul Gallen, Shane Flanagan and the team.

Congratulations to Sharks players James Maloney and Valentine Holmes who have been selected in the Australian Kangaroos side for the upcoming Four Nations tour.

I'd also like to extend the Shire's congratulations to the Cronulla-Caringbah Sharks Women's team which took out the Sydney Metropolitan Women's Rugby League premiership against the Tigers at Leichhardt Oval in September. Women's Rugby League has seen unprecedented growth this year and the Sharks team led the way with a fantastic performance.

Both of our local teams have certainly done the Shire proud delivering double premierships – Up Up Cronulla!

RESOLVED: (The Mayor, Councillor Pesce/Councillor Simone)

That Council publically acknowledge our premiership winning teams the Cronulla Sutherland Sharks and Cronulla-Caringbah Sharks.

Min No: 99

CCL026-17

Council Meeting Structure

File Number: 2015/904

RESOLVED: (Councillor Scaysbrook/Councillor Steinwall)

THAT:

1. The proposed meeting structure outlined in the report be endorsed.

Min No: 99 Cont'd

CCL026-17

2. Upon consultation with Councillors and with the concurrence of the Deputy Mayor, the Mayor provide the General Manager with a list of Councillors nominated for appointment as members of each Standing Committee and Sub-Committee as Council representatives on External Bodies as listed in Appendix "A".
3. The schedule of meeting dates contained in Appendix "B" to the report be adopted.
4. The Anzac Youth and Recreation Centre Advisory Committee and the Surf Life Saving Clubs Working Party be retained as sub committees.
5. The charter of the Economic Development and Tourism Committee be reviewed.
6. The naming of Standing Committees be finalised after the drafting of their respective charters.

Min No: 100

CCL027-17

2015/16 Annual Financial Statements

File Number: 2016/253676

RESOLVED: (Councillor Johns/Councillor Riad)

THAT:

1. With regard to the General and Special Purpose Financial Reports of the Council for the year ended 30 June 2016, it is the opinion of Council that:
 - a. The Annual Financial Reports have been drawn up in accordance with:
 - i. the Local Government Act 1993 and the Regulations; and
 - ii. the Local Government Code of Accounting Practice and Asset Accounting Manual; and
 - iii. the Australian Accounting Standards.
 - b. The reports present fairly the Council's financial position and operating result for the year.
 - c. The reports are in accord with the Council's accounting and other records.
 - d. The Council is unaware of anything that would make the financial reports false or misleading in any way.
2. Pursuant to Section 418 of the Local Government Act 1993, public notice be given that the Council will present its audited financial reports and auditor's report at the Ordinary Meeting of Council to be held on 24 October 2016.

Min No: 101 Business Without Notice
Withdrawal of Development Application No. 15/1382 from
IHAP Meeting on 6 October 2016
File Number: DA15/1382

Councillor Collier requested that Business Without Notice concerning Withdrawal of Development Application No. 15/1382 from IHAP Meeting on 6 October 2016 be considered as a matter of urgency.

RESOLVED: (Councillor Collier/Councillor Johns)

That permission be granted to bring forward Business Without Notice regarding Withdrawal of Development Application No. 15/1382 from IHAP Meeting on 6 October 2016.

The Mayor, Councillor Pesce, ruled in accordance with Clause 19(3)(b) of Council's Code of Meeting Practice that the matter was of great urgency.

Min No: 102
BWN002-17 Withdrawal of Development Application No. 15/1382 from
IHAP Meeting on 6 October 2016
File Number: DA15/1382

RESOLVED: (Councillor Collier/Councillor Johns)

THAT:

1. Development Application No. 15/1382 for the construction of a 141 place child Care Centre at the corner of View Street and Wandella Rd, Miranda [(Lots 5, 6 & 7 DP 26332 - (No.1-5)] listed for IHAP on 6 October 2016 be withdrawn from that IHAP list and deferred to a later IHAP, to allow affected residents the opportunity to consider the findings of a Traffic Study completed by Council in August and initially listed for Traffic Committee on 7 October - now scheduled for November.
2. Ward Councillors and all other interested councillors be provided a copy of the Traffic Study.

A Division was requested on the Resolution and the following votes were recorded:

In Favour of the Resolution were the Mayor, Councillor Pesce, together with Councillors Boyd, Collier, Croucher, Forshaw, Johns, Nicholls, Plibersek, Provan, Riad, Scaysbrook, Simone, Simpson and Steinwall.

The decision was unanimous.

Min No: 103 CONSIDERATION OF BUSINESS OF CLOSED SESSION (7.15 pm)

The Mayor, Councillor Pesce, asked the General Manager if any representations had been received from the public on any of the items Council will be discussing in Closed Session.

The General Manager replied that no representations had been received to talk to the items in Closed Session.

The Mayor, Councillor Pesce, asked if there were any members of the public gallery who would like to speak on the reasons Council proposes to consider the items in Closed Session.

There were none.

RESOLVED: (Councillor Johns/Councillor Provan)

That in accordance with Section 10(A)(1) of the Local Government Act, 1993 the following matters be considered in Closed Session of Council for the reasons provided:

**CCL004A-17 Request for Financial Assistance - Legal
Assistance to Councillors and Staff Policy
File Number: 2015/14163**

Section 10A(2)(g) Advice Concerning Litigation, or Advice that would Otherwise be Privileged from Production in Legal Proceedings on the Grounds of Legal Professional Privilege.

This matter was considered in Closed session as it relates to the receipt and consideration of legal advice concerning litigation; or which would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege. On balance, the public interest in preserving the confidentiality of information relating to legal privileged information outweighs the public interest in maintaining openness and transparency in council decision-making because the disclosure of this information may result in council waiving its right to claim legal professional privilege in any relevant legal action which may lead to loss or damage by council.

Min No: 104**CCL004A-17****Request for Financial Assistance - Legal
Assistance to Councillors and Staff Policy
File Number: 2015/14163**

*** Councillor Simpson declared a pecuniary interest in this matter, left the Chamber, took no part in the discussion and did not vote.

MOTION: (Councillor Collier/Councillor Scaysbrook)

THAT:

1. Council provides Councillor Simpson with financial assistance to a maximum of \$5,000 for the express purpose of obtaining legal advice as to defamation proceedings contemplated by him and arising from a letter published in the *St George and Sutherland Shire Leader* newspaper on September 21, 2016, subject to the following conditions:
 - (i) that a "brief to advise" be prepared by a solicitor, other than the in-house Council solicitor;
 - (ii) that a junior barrister practising defamation law be engaged by Councillor Simpson to provide oral and/or written advice (as appropriate) to him, including advice as to:
 - (a) the conduct of defamation proceedings;
 - (b) the prospects of success;
 - (c) the quantum of damages if successful; and
 - (d) the likely costs of instituting and continuing such proceedings.
 - (iii) that on the basis of such advice and subject to legal professional privilege, Councillor Simpson be permitted to make a further application for legal assistance from Council; and
 - (iv) that Councillor Simpson fully reimburse Council's costs, including those associated with (i) and (ii), and (iii) in the event of legal proceedings being pursued, and irrespective of any outcome.
2. In keeping with Council's Legal Assistance To Councillors And Staff Policy adopted on 26 September 2016, that this particular decision of Council not be regarded as setting a precedent for future applications by Councillors.

AMENDMENT: (Councillor Plibersek/

THAT:

1. Council provide a \$5,000 loan to Councillor Simpson to investigate his legal rights in regards to this matter.
2. The \$5,000 be repaid to Council during the course of this term of Council.

Min No: 104 Cont'd
CCL004A-17

The Amendment lapsed for want of a seconder.

AMENDMENT: (Councillor Croucher/Councillor Provan)

That Council reject Councillor Simpson's request for financial assistance.

The Amendment on being put to the Meeting was declared lost.

A Division was requested on the Amendment and the following votes were recorded:

In Favour of the Amendment were Councillors Croucher, Plibersek, Provan and Simone.

Against the Amendment were the Mayor, Councillor Pesce, together with Councillors Boyd, Collier, Forshaw, Johns, Nicholls, Riad, Scaysbrook and Steinwall.

FURTHER AMENDMENT: (Councillor Steinwall/Councillor Johns)

THAT:

1. Council provides Councillor Simpson with financial assistance to a maximum of \$5,000 for the express purpose of obtaining legal advice as to defamation proceedings contemplated by him and arising from a letter published in the *St George and Sutherland Shire Leader* newspaper on September 21, 2016, subject to the following conditions:
 - (i) that a "brief to advise" be prepared by a solicitor, other than the in-house Council solicitor;
 - (ii) that a junior barrister practising defamation law be engaged by Councillor Simpson to provide oral and/or written advice (as appropriate) to him, including advice as to:
 - (a) the conduct of defamation proceedings;
 - (b) the prospects of success;
 - (c) the quantum of damages if successful; and
 - (d) the likely costs of instituting and continuing such proceedings.
 - (iii) that Councillor Simpson reimburse Council if legal action proceeds and the legal action is successful.
2. In keeping with Council's Legal Assistance To Councillors And Staff Policy adopted on 26 September 2016, that this particular decision of Council not be regarded as setting a precedent for future applications by Councillors.

The Further Amendment then became the Amendment which on being put to the Meeting was declared lost.

Min No: 104 Cont'd

CCL004A-17

A Division was requested on the Further Amendment and the following votes were recorded:

In Favour of the Further Amendment were Councillors Boyd, Johns, Forshaw and Steinwall.

Against the Further Amendment were the Mayor, Councillor Pesce, together with Councillors Collier, Croucher, Nicholls, Plibersek, Provan, Riad, Scaysbrook and Simone.

SECOND FURTHER AMENDMENT: (Councillor Scaysbrook/Councillor Boyd)

That the consideration of the report be deferred pending legal advice on Council's actions in regards to financial assistance to Councillor Simpson.

The Second Further Amendment then became the Amendment which on being put to the Meeting was declared lost.

A Division was requested on the Second Further Amendment and the following votes were recorded:

In Favour of the Second Further Amendment were Councillors Boyd and Scaysbrook.

Against the Second Further Amendment were the Mayor, Councillor Pesce, together with Councillors Collier, Croucher, Johns, Forshaw, Nicholls, Plibersek, Provan, Riad, Simone and Steinwall.

THIRD FURTHER AMENDMENT: (Councillor Johns/Councillor Steinwall)

THAT:

1. Subject to legal advice and the approval of the General Manager, the Mayor and the Deputy Mayor, Council provides Councillor Simpson with financial assistance to a maximum of \$5,000 for the express purpose of obtaining legal advice as to defamation proceedings contemplated by him and arising from a letter published in the *St George and Sutherland Shire Leader* newspaper on September 21, 2016, subject to the following conditions:
 - (i) that a "brief to advise" be prepared by a solicitor, other than the in-house Council solicitor;
 - (ii) that a junior barrister practising defamation law be engaged by Councillor Simpson to provide oral and/or written advice (as appropriate) to him, including advice as to:
 - (a) the conduct of defamation proceedings;
 - (b) the prospects of success;
 - (c) the quantum of damages if successful; and
 - (d) the likely costs of instituting and continuing such proceedings.

Min No: 104 Cont'd

CCL004A-17

(iii) That Councillor Simpson reimburse Council if legal action proceeds and the legal action is successful.

2. In keeping with Council's Legal Assistance To Councillors And Staff Policy adopted on 26 September 2016, that this particular decision of Council not be regarded as setting a precedent for future applications by Councillors.

The Third Further Amendment then became the Amendment which on being put to the Meeting was carried to become the Motion.

A Division was requested on the Third Further Amendment and the following votes were recorded:

In Favour of the Third Further Amendment were Councillors Collier, Croucher, Forshaw, Johns, Nicholls, Provan, Riad, Simone and Steinwall.

Against the Third Further Amendment were the Mayor, Councillor Pesce, together with Councillors Boyd, Plibersek and Scaysbrook.

The Motion on being put to the Meeting was carried to become the RESOLUTION of the Council **(as shown in the Third Further Amendment)**.

A Division was requested on the Resolution and the following votes were recorded:

In Favour of the Resolution were the Mayor, Councillor Pesce, together with Councillors Boyd, Croucher, Forshaw, Johns, Nicholls, Provan, Riad, Scaysbrook, Simone and Steinwall.

Against the Resolution were Councillors Collier and Plibersek.

The Meeting closed at 8.18 pm.