

ADDITIONAL REPORT

27 July 2011
To the Ordinary Meeting

General Manager's Report
General Manager's Unit

7.12 Process Review of Item 7.2 Commercial Agreements (portion relating to Central Coast Mariners Football Club Pty Ltd) from the Ordinary Meeting of Council of 13 July 2011

TRIM REFERENCE: F2004/07942 - D02700051
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SUMMARY

Late report setting out legal advice received in respect to the portion of Item 7.2 of the Ordinary Meeting of Council on 13 July 2011 that concerns the Central Coast Mariners Football Club Pty Ltd ("Mariners").

RECOMMENDATION

That Council receive the report on Process Review of Item 7.2 Commercial Agreements (portion relating to Central Coast Mariners Football Club Pty Ltd) from the Ordinary Meeting of Council of 13 July 2011.

BACKGROUND

At the Ordinary Meeting of Council of 13 July 2011 Council considered, in confidential session, a report regarding Item 7.2 Commercial Agreements and *purportedly* resolved the following in respect to that part of Item 7.2 that concerned the Mariners:

"RESOLVED on the motion of Councillor Eaton and seconded by Councillor McNamara:

That Council in relation to the Central Coast Mariners Football Club Agreement Council resolved as follows:

- a That Council endorse funding for the Central Coast Mariners generally as set out in report 7.2 under a formalised commercial agreement and authorise the General Manager to negotiate, complete and execute the proposed agreement.*
- b That Council express its support and commitment for our only national and international sporting team representing our region but note its disappointment that Wyong Council's financial support is not reciprocated by Gosford City Council and that our regional team's ability to more fully represent our region is impaired accordingly and that this lack of regional perspective is unfortunately expressed in many other areas to the detriment of our region as a whole.*
- c That, in view of the unanimous support of both Wyong and Gosford Councils to consider consolidation as expressed in the two Mayoral Minutes and in light of the CCROC's support for this process, mirrored by Wyong Council's continued support at its extraordinary meeting of 30 June 2011 and noting that the creation*

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and roll out of the Central Coast Water Corporation will significantly further deteriorate Wyong Council's financial sustainability by some \$9m per annum, then Council formally advise Mr Page, the Minister for Local Government, that it proposes an amalgamation with Gosford City Council and this advice is given pursuant to S.218E of the Local Government Act.

- d That, given the significance of this decision, it be implemented immediately by the Mayor advising the Minister with all such supporting documentation as the Mayor believes appropriate but including all relevant Council resolutions."*

After the Ordinary Meeting of Council of 13 July 2011 a number of Councillors approached me to express their concern about the validity of the above resolution. They made a number of assertions about the manner in which the relevant part of the 13 July 2011 meeting was conducted. I was unable to provide them with a response as I was not present at the 13 July 2011 meeting.

I initiated a review of the confidential session of the 13 July 2011 meeting. I reviewed the audio recording of that confidential session and directed the senior Council officers that were present at that session to individually prepare written statements, which I then reviewed. I also sought preliminary legal advice from General Counsel and read the endorsed draft minutes.

Taking the information from the above process into consideration I formed the view that it was prudent to seek independent legal advice from Mr Bret Walker SC and Mr Patrick Larkin, and instructed General Counsel to seek that advice from them. Mr Walker SC and Mr Larkin have advised that the subject resolution is invalid and, if challenged in Court, would likely be declared to be invalid. I attach a copy of the advice provided by Mr Walker SC and Mr Larkin, which is subject to client legal privilege.

I am of the opinion the best way forward is for Council to consider carefully the contents of this report and at the extraordinary meeting at 7pm on 27 July 2011 that Council consider correcting this anomaly.

ATTACHMENTS

- 1 Legal Advice from Mr Bret Walker SC and Mr Patrick Larkin (CONFIDENTIAL - Distributed under separate cover) - D02696700