



## **MISSION AND VALUES OF COUNCIL**

*"A Sustainable Community that is inclusive, attractive, healthy and pleasant to live in, that uses our land so as to preserve our history and environment, respects the rights and equality of our citizens and manages our future growth wisely."*

# **MINUTES**

**FOR THE**

**SPECIAL MEETING OF COUNCIL  
HELD IN COUNCIL CHAMBERS AT 5.00PM**

**1 FEBRUARY 2007**

## **OUR MISSION**

***"To provide a quality range of affordable and sustainable services to our community with a strong commitment to customer focus so that our citizens and visitors enjoy a quality lifestyle."***

## **CORE VALUES OF THE SHIRE**

***The core values that underpin the achievement of the mission will be based on a strong customer service focus and a positive attitude:***

**Communication**

**Respect**

**Integrity**

**Transparency**

**Courtesy**

**SHIRE OF BROOME**  
**SPECIAL COUNCIL MEETING**  
**1 FEBRUARY 2007**

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## NOTICE OF MEETING

Dear Council Member,

The next Special Meeting of the Shire of Broome will be held on Thursday 1 February 2007, in the Council Chambers, Corner Weld and Haas Streets, Broome, commencing at 5.00pm, for the purpose of discussing:

- A Rescission Motion in relation to Item 9.3.3 – Application to Conduct Camel Tours on Cable Beach, from the Ordinary Council Meeting of 18 January 2007.
- A Rescission Motion in relation to Item 12.1 – Extra-Ordinary Election 2007, from the Ordinary Council Meeting of 18 January 2007.

Regards



Ian Bodill  
Chief Executive Officer

25 January 2007

**1. OFFICIAL OPENING**

The Chairperson welcomed members and declared the meeting open at 5.00pm.

**2. ATTENDANCE AND APOLOGIES**

Attendance	Cr G T Campbell Cr C R Mitchell Cr C M Maher Cr M L B Albert Cr V L Wevers Cr P D Matsumoto Cr E R M Foy	Shire President
Leave of Absence		
Apologies	Cr A C Griffiths	
Officers	Ian Bodill Jason Lyon Darryl Butcher Jo Durbridge	Chief Executive Officer Director Corporate Services Director Development Services Media & Promotions Officer
Public Gallery	Dale Miller Eliza Borrello Alison Bird Allen Bird Steve Madden Chris Hill Abdul Casley Rob Lander	Broome Advertiser Broome Advertiser Broome Camel Safaris Broome Camel Safaris Cable Beach Camel Safaris Christopher Hill Camels Ships of the Desert

**3. DECLARATIONS OF FINANCIAL INTEREST**

Councillor	Item No	Page	Item	Nature of Interest

**4. PUBLIC QUESTION TIME**

Nil

**5. CONFIRMATION OF MINUTES**

N/A

**6. ANNOUNCEMENTS BY PRESIDENT WITHOUT DISCUSSION**

Nil

**7. PETITIONS**

N/A

**8. MATTERS FOR WHICH MEETING MAY BE CLOSED**

Possibility if Councillors needed to discuss confidential legal advice in relation to Item 9.3.1.

**9.**

**REPORTS**

**OF**

**OFFICERS**

# 9.1

## LEADERSHIP / GOVERNANCE

AND

## ORGANISATION



### OUTCOME

*To provide open, transparent and good governance  
to the community.*



**9.1 A RESCISSION MOTION IN RELATION TO ITEM 12.1 – EXTRA-ORDINARY ELECTION 2007, FROM THE ORDINARY COUNCIL MEETING OF 18 JANUARY 2007.**

A Rescission Motion in relation to Item 12.1 – Extra-Ordinary Election 2007, from the Ordinary Council Meeting of 18 January 2007 was received on 25 January 2007.

Cr G T Campbell advised that he wished to withdraw support for the proposed Motion and as such the Motion would lapse under Clause 3.10(6) of the Shire of Broome Standing Orders Local Law. Subsequently this item of business was not considered by Council.

Reason:

*The reason for withdrawal of support was that following advice from the Department of Local Government and Regional Development that a written, signed, dated resignation takes effect on the cessation date and that such resignation could not be subjectively altered or withdrawn. Accordingly the resolution of 18 January 2007 in this matter was invalid and a revocation not required.*

**Council notes the advice from the Department of Local Government & Regional Development that with respect to the previous resolution of 18 January 2007 that this matter is simply set aside, and that a Motion to Revoke Council's previous decision is not required.**

## **9.3**

### **DEVELOPMENT**

### **SERVICES**



### **OUTCOME**

***To pursue sustainable development that will protect and enhance the Shire's unique heritage and environment and facilitate increased employment.***

Prior to this item being considered the Shire President addressed Council and made the following statement:

"Council's Solicitors advise that it is not open to Council to entertain the Revocation Motion. The reason for this advice is that action has been taken to implement the decision, Item 9.3.3 – Ordinary Council Meeting of 18 January 2007."

### **9.3.1 PROPOSED RESCISSION OF ITEM 9.3.3 ORDINARY MEETING OF COUNCIL 18 JANUARY 2007**

<b>LOCATION/ ADDRESS:</b>	N/A
<b>APPLICANT:</b>	N/A
<b>FILE:</b>	ENH22.8
<b>AUTHOR:</b>	Director Development Services
<b>CONTRIBUTOR/S:</b>	Nil
<b>RESPONSIBLE OFFICER:</b>	Director Development Services
<b>DISCLOSURE OF ANY INTEREST:</b>	N/A
<b>DATE OF REPORT:</b>	31 January 2006

**SUMMARY:** A motion to rescind Item 9.3 .3 on the Ordinary Meeting of Council held on 18 January 2007 to award a licence to Cable Beach Camel Safaris to trade on Cable Beach until 31 March 2007.

## **BACKGROUND**

### Previous Considerations

OCM – 25 May 2004 – Item 9.2.5  
 OCM – 9 November 2004 – Item 9.2.7  
 OCM – 21 December 2005 – Item 9.1.10  
 OCM – 8 February 2005 – Item 9.3.6  
 OCM – 22 March 2005 – Item 9.3.7  
 OCM – 14 July 2005 – Item 9.3.12  
 OCM – 6 October 2005 – Item 9.3.7  
 OCM – 13 April 2006 – Item 9.3.7  
 OCM – 13 April 2006 – Item 9.3.7  
 SCM – 8 June 2006 – Item 9.3.1 x 2  
 SCM – 8 July 2006 – Item 9.3.5  
 SCM – 27 June 2006 – Item 9.3.2  
 OCM – 28 September 2006 – Item 12.2  
 OCM – 21 December 2006 – Item 9.3.1  
 OCM – 21 December 2006 – Item 9.3.3  
 OCM – 18 January 2007 – Item 9.3.3

At its OCM held on 18 January 2007 Council resolved:

- "1. That Council grants a license to 31 March 2007 in accordance with the other camel licences issued and under the same conditions which applied pre 31 December 2006 which allows 10 camels to operate.
2. That Mr Madden be invited to make application for a new license for the period 1 April to 31 December 2007."

Mr Madden was in attendance at the meeting and was formally advised of Council's resolution by letter dated 22 January 2007.

At its OCM held on 21 December 2006 Council resolved to vary the existing Camel tour licences to trade on Cable Beach for Ships of The Desert, Broome Camel Safaris and Red Sun Camels to be valid up to and including 31 March 2007. At that meeting Council also resolved to rescind its trading policy and affirmed its position that the aggregate number of camels to be permitted on the beach is 48 and that each licence would be for a total of 16 camels per tour.

A notice to rescind the resolution of Council of 18 January 2007 was received from Councillor Maher with the support of Councillors Wevers and Albert on 25 January 2007. The Notice states the following reasons:

- *There was insufficient clarity regarding the status of the "Trading Licences At Cable Beach For Activities Other Than Camel Tours" policy with some Councillors believing it was rescinded at the December OCM and others believing it was still effective.*
- *There was insufficient clarity regarding the impact of point 2 of motion 9.3.1 OCM 21 December 2007, Provision for Camel Tours on Cable Beach "affirms the aggregate number of camels to be permitted on cable beach at any time is 48 and that each licence be for a total of 16 camels per tour".*
- *There was insufficient clarity regarding the information presented by the licence applicant Mr Stephen Madden.*

Cable Beach Camel Safaris (CBCS) held a licence to conduct camel tours on Cable Beach with 10 camels up to 31 December 2006 at which time the licence expired. During 2006 CBCS was one of a number of tenderers for a licence to trade on cable beach for five years from 1 January 2007.

At its meeting on 8 June 2006 Council resolved that three tenderers including CBCS not be assessed due to the fact that the tenderers had not demonstrated that they met the essential criteria for appropriately zoned land. Council's subsequent decision to grant licences to Red Sun Camels and effectively refuse to grant licences to all other tenderers was later set aside by the State Administrative Tribunal (SAT) and referred back to Council for determination.

Mr Madden has submitted an application for a Trading Licence pursuant to Council's resolution of 18 January 2007 but the application is not being processed at this stage pending the outcome of the proposed rescission.

A Notice of Directions Hearing by the SAT was received on 30 January 2007, with regard to a request by Mr Madden for a review of Council's decision on 21 December 2006 to extend three camel tour licences. The Directions Hearing was held on 31 January 2007 and was adjourned until 6 February 2007 to be able to be informed by the outcome of Council's rescission motion.

## **COMMENT**

### Trading Policy

Council's policy 4.2.4 "Commercial and Tourism Activities on Cable Beach" was adopted following extensive consultation with the traders and the public generally. It contained

provisions requiring trading licences to be issued following a tender process including tender price as a criteria. The SAT determination requires Council to adopt a revised policy that does not include price as a determining criteria for the issue of a licence. The review of the policy will require consultation and would not have been possible to complete prior to the extinguishment of the trading licences on 31 December 2006.

There was insufficient time to put in place the required elements to issue new licences before the existing ones expired on 31 December 2006. It was therefore necessary to extend the existing licences to 31 March 2007 to allow time for fees to be established, and applications made and determined for new licences to operate from 1 April 2007 to 31 December 2007. These new licences will allow trading to continue on Cable Beach while Council completes the review of the policy contents.

The policy could not be used for the issue of the new licences because it contained the requirement for a tender process and price criteria. The policy was rescinded to allow the new licences to be invited and determined without reference to a tender process.

The policy covered all trading on cable beach not just camel tours and the rescission was included in an item headed "Trading Licences At Cable Beach For Activities Other Than Camel Tours". While it is claimed that the rescission of the policy is unclear, it either had to be dealt with in the item concerning activities other than camel tours or the item dealing with camel tours or in a separate item. A separate item would have avoided any confusion.

#### Camel Numbers

Council's previous policy "Commercial And Tourism Activities On Cable Beach" provided for only Three (3) Camel Tours (each with a maximum 16 camels on Cable Beach at any one time). The policy contained this limitation on camel numbers because:

1. The possible congestion of the beach;
2. Pollution of the beach itself by way of animal faeces;
3. Hazards to other users of the beach;
4. The possible detraction from the aesthetic integrity of Cable Beach.
5. Potential safety issues for the passengers on camel tours where conflict between beach users occurs due to congestion and crowding.

While the particular number (48) was arrived at over time by incremental decisions, it was subject to extensive consultation prior to Council adopting the policy. The reasoning contained in the policy with regard to camel numbers is still valid and this was the basis of the recommendation in Item 9.3.1 OCM 21 December 2006:

*"That Council affirms the aggregate number of camels to be permitted on cable beach at any time is 48 and that each licence be for a total of 16 camels per tour".*

Some uncertainty has been expressed as to whether this resolution was to apply immediately or only to the new licences for which applications were invited. The resolution of 21 December 2006 did not vary any of the existing licences so as to change the number of camels; the only variation to three of the licences was to extend their operation to 31 March 2007. The affirmation of the camel numbers was intended to apply to the new licences only. It would have been preferable if this part of the resolution had contained the words "for the period from 1 April 2007 to 31 December 2007".

It is likely that there will be more than three applications with trading licences to conduct camel tours on Cable Beach after 31 March 2007, whether Council's resolution is

rescinded or not. It is therefore considered important for Council to be quite clear regarding its intentions for camel numbers on Cable Beach. A separate report on this matter is proposed to be included in the agenda for the 15 March meeting.

#### Additional Information

At the meeting held on 18 January 2007 Mr Madden mentioned as additional information that Shire staff had withheld information that it had supported the provision of land for CBCS in mid-2006 and that he had now received advice from State Land Services that it proposed to offer him the lease of a portion of lot 3090.

State Land Services (SLS) advised by letter dated 31 May 2006 that they were thinking of changing their approach to finding land for Mr Madden to see if he could be accommodated on Lot 3090 rather than create another separate lot. The Shire responded by letter dated 30 June 2006 supporting this approach. There was nothing conclusive at that stage and Mr Madden did not mention any of this in his tender documentation. At its Special Council Meeting on 8 June 2006 Council resolved that the tender from CBCS not be assessed because it did not satisfy the essential criteria for appropriately zoned land.

The report for the assessment of tenders for the SCM on 8 June 2006 contained the following information:

*"It is understood that Cable Beach Camel Safaris is in the process of obtaining access to a parcel of land in the rural living zone but there is no mention of this in the tender. It is doubted access to appropriately zoned land and the necessary approvals can be finalised by 1 January 2007 and it is therefore considered this tender does not meet this essential criterion."*

No formal advice has been received from SLS regarding any lease arrangement for Mr Madden with regard to Lot 3090. It is therefore assumed that the matter has still not been concluded.

#### Rescission Implications

Mr Madden attended the meeting on 18 January 2007 and was aware of Council's resolution. As soon as the notice of rescission motion was received Mr Madden was advised he should not act on Council's decision until the rescission motion had been dealt with. This was some three days after the letter advising of Council's original decision was sent.

Under Standing Order 14.1 (3)(a) and (b) Council shall not vote on a motion to revoke a decision if at the time notice is given:

- (a) Action has been taken to implement that decision;
- (b) where the decision concerns the issue of an approval or authorisation of a licence, the licence has been put into effect by the Council in writing to the applicant by an employee of the Council authorised to do so;

without having considered a Statement of Impact prepared at the direction of the CEO of the legal and financial consequences of the proposed revocation.

The separate document contains confidential legal advice on the effects of the proposed revocation and the financial consequences (if any).

### Natural Justice

The proposed rescission would remove the licence granted to Mr Madden by Council's resolution of 16 January 2007 and it would therefore be necessary in the interests of natural justice to give Mr Madden the Opportunity to present his reasons why the resolution should not be rescinded before Council considers the motion.

### **CONSULTATION**

Nil

### **STATUTORY ENVIRONMENT**

Local Government Act 1995

Local Government (Administration) regulations

Shire of Broome (Standing Orders) local Law

Shire of Broome Trading, Outdoor Dining and Street Entertainment Local Law 2003

### **POLICY IMPLICATIONS**

Nil

### **FINANCIAL IMPLICATIONS**

As outlined in the separate confidential document.

### **STRATEGIC IMPLICATIONS**

#### **1. Social**

Nil

#### **2. Environmental**

Nil

#### **3. Economic**

Nil

### **VOTING REQUIREMENTS**

Absolute Majority: Five (5) Councillors are required to support this rescission motion.

**SUPPORT OF RECISION MOTION**

Councillors Maher, Albert and Wevers support a motion to revoke the resolution of Agenda item 9.3.3 of the 18 January 2007 Ordinary Council Meeting.

**REPORT RECOMMENDATION**

That Council rescinds its resolution of Item 9.3.3 of the Ordinary Council Meeting held on 18 January 2007:

- “1. That Council grants a license to 31 March 2007 in accordance with the other camel licences issued and under the same conditions which applied pre 31 December 2006 which allows 10 camels to operate.
2. That Mr Madden be invited to make application for a new license for the period 1 April to 31 December 2007.”

**COUNCIL RESOLUTION****Moved:****Seconded:****FOR:****AGAINST:****MOTION LAPSED**

[Attachment: 6 pages](#) (Includes 2 pages Confidential attachment for Councillors)

Cr C M Maher advised that given the legal advice received, that he wished to withdraw support for the proposed motion. As such, the motion would lapse under clause 3.10(6) of the Shire of Broome Standing Orders Local Law. Subsequently this item of business was not considered by Council.



<b>10</b> <b>MEETING CLOSURE</b>
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There being no further business the Chairperson declared the meeting closed at 5.06pm.