



# Minutes

## Special Meeting of Council

Wednesday 25 February 2015 at 7:00pm

Queenscliff Town Hall  
50 Learmonth Street, Queenscliff

### **Distribution**

### **Councillors**

Cr. Helene Cameron (Mayor)

Cr. Susan Salter (Deputy Mayor)

Cr. Graham J Christie, JP

Cr. Bob Merriman

Cr. Sue Wasterval

### **Officers**

Lenny Jenner - Chief Executive Officer

Lynne Stevenson - General Manager Corporate & Community Services

Phil Josipovic - General Manager Planning & Infrastructure



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## Appendices

<b>Appendix</b>	<b>Title</b>	<b>Agenda Item</b>	<b>Distribution</b>
Appendix 1	PLSLSC Site Review Process and dated 23 January 2015	4.1 Point Lonsdale Surf Life Saving Club	Under separate cover

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**1. OPENING OF MEETING**

The meeting opened at 7:03pm

**2. PRESENT & APOLOGIES**

*Present:*

Cr. Helene Cameron (Mayor)

Cr. Susan Salter (Deputy Mayor)

Cr. Graham J Christie, JP

Cr. Bob Merriman

Cr. Sue Wasterval

Lenny Jenner - Chief Executive Officer

Lynne Stevenson - General Manager Corporate & Community Services

Phil Josipovic - General Manager Planning & Infrastructure

*Apologies:*

Nil

**3. PECUNIARY INTEREST & CONFLICT OF INTEREST DISCLOSURES**

*Councillors must disclose a conflict of interest in accordance with Section 79 of the Local Government Act 1989.*

Councillors: Nil

Officers: Nil

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#### 4. GOVERNANCE & FINANCE

##### 4.1 Point Lonsdale Surf Life Saving Club

<b>File:</b>	<b>QG042-06-02</b>
<b>Report Author:</b>	<b>Chief Executive Office</b>
<b>Strategic Objective:</b>	<b>A proactive and accountable Council</b>
<b>Portfolio:</b>	<b>Governance &amp; Finance</b>
<b>Portfolio Holder:</b>	<b>Cr Bob Merriman</b>

#### Purpose

This report provides information to Council regarding the work of the Point Lonsdale Surf Life Saving Club Taskforce (chaired by local State Member of Parliament, the Hon. Lisa Neville, Member for Bellarine) that has examined the siting of the organisation's future clubhouse and seeks Council's endorsement to publish a public notice of its intent to transfer Council owned land currently used by and leased to the Point Lonsdale Surf Life Saving Club (PLSLSC) in accordance with Section 189 of the Local Government Act (1989). The Council owned land is located at 56 Ocean Road, Point Lonsdale (lot 19 LP77357) adjacent to PLSLSC owned land on which its current club house is located.

#### Background

At its Ordinary Meeting in September 2013, Council considered a request from PLSLSC for in principle support to use part of Ganes Reserve in Point Lonsdale to locate a new clubhouse. After reviewing the possible future clubhouse sites and considering Council's strategic priorities, Council rejected the PLSLSC request. In doing so, Council underlined its Council Plan commitment to continue to seek a positive resolution regarding the location of the future PLSLSC clubhouse. The pertinent component of its September 2013 Council resolution states: *'that officers continue to work with the PLSLSC to identify a suitable Crown land site and finally if this was not achieved, to then examine the option of selling the Council owned land adjacent to the PLSLSC to the PLSLSC, if the current site is deemed to be the most appropriate and all Council and legislative requirements can be met'*. Since that time Council officers have worked with the PLSLSC to identify a suitable site, including Crown Land.

On 30 July 2014, Council's CEO received an email from the President of PLSLSC advising that the PLSLSC at its Annual General Meeting on 26 July 2014 unanimously resolved that the club's strong preference was to re-develop its clubhouse facility on the current site.

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In the lead up to the November 2014 State Government election, the Hon Lisa Neville, MP, local State Member for Bellarine, stated her commitment to chairing a joint taskforce involving representatives from PLSLSC and the Borough of Queenscliffe Council to examine siting options and determine the most suitable location for the future PLSLSC clubhouse.

## Key Issues

The key issues for consideration by Council are:

- Determining the most suitable site for the future PLSLSC clubhouse
- If Council were to conclude that the existing PLSLSC site was the most suitable location for the future clubhouse, a further key issue would be for Council to determine its preparedness to undertake a process for assessing and resolving long term use of the Council owned land (currently leased by the PLSLSC) by the PLSLSC.

## Discussion

### *Site Assessment*

Since the November 2014 State Government election, two meetings of the PLSLSC Taskforce have taken place. These meetings were organised and chaired by the local State MP, Member for Bellarine, Lisa Neville. The first meeting was held on the 19 December 2014 and determined the process for assessing possible sites for the future clubhouse and the proposed timing of future meetings. The second meeting on 23 January 2015 included a systematic analysis of all sites and isolated the priority location/s for the future clubhouse. This meeting was attended by representatives from the PLSLSC Committee of Management, Borough of Queenscliffe Council and senior officers of the State Government Department of Environment, Land, Water and Planning.

A systematic analysis of the potential sites for the future PLSLSC clubhouse was undertaken by members of the PLSLSC Committee of Management and Facility Management Sub Committee and presented to the Taskforce meeting. This is attached as **Appendix 1** (titled PLSLSC Site Review Process and dated 23 January 2015). While one could debate some minor variances in the specific scores against criteria for particular sites, Council officers concur with the final site criteria and scoring matrix summary in the attached assessment report that concludes the most suitable sites for the future clubhouse in priority order are as follows:

<b>Priority 1:</b>	<b>Existing PLSLSC clubhouse site in Ocean Road</b>
Score:	19.84
Land ownership:	Site includes portion of land owned by PLSLSC and leased Council land
Officer Assessment:	This site represents the most suitable location given the PLSLSC needs and strategic and statutory planning considerations. The PLSLSC have indicated a high level of confidence in raising funds to meet the State Government Surf Life Saving grant program funding ratios.
Key Challenge/s:	Council determining the merits of providing the PLSLSC with guaranteed long term use of the Council owned land. This requires a formal process consistent with the Local Government Act.



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<b>Priority 2:</b>	<b>Utilisation of a section of Ganes Reserve to construct the clubhouse</b>
Score:	19.25
Land ownership:	Council owned and managed land used as public open space
Officer Assessment:	Council has formally resolved not to support the construction of a future PLSLSC clubhouse on the Ganes Reserve site due to the significant loss of limited public open space. This resolution is consistent with Council officers' assessment and conclusions.
Key Challenge/s:	Not Applicable given the formal Council resolution.
<b>Priority 3:</b>	<b>Utilisation of the most prominent site in the Point Lonsdale Lighthouse Reserve (PLLR).</b>
Score:	17.81
Land ownership:	This is Crown land and Council is the Committee of Management
Officer Assessment:	The proposed site is positioned with views to the Point Lonsdale Front Beach. The proposal would include a 600 square metre building and additional functional area of 1500 square metres giving a total development site of 2100 square metres on the most prominent area of the Point Lonsdale Lighthouse Reserve. This would have a major impact on the public use and functionality of the entire Reserve. This proposal is inconsistent with the dominant views expressed in the recent community consultation related to the future of the PLLR.
Key Challenge/s:	This proposal is likely to generate significant negative response from the community given the dominant views expressed in the recent community consultation related to the future of the PLLR. Proposed utilisation of the most prominent site in the Point Lonsdale Lighthouse Reserve is also likely to come under significant scrutiny from State Government and Council in the statutory planning phase.

The PLSLSC Site Review Process report determined that the remaining three sites of the Crown land dune area opposite Ganes Reserve in Ocean Road (scoring 13.70), 'Frog Hollow' (or 'Stonemakers Park') on Crown land in Ocean Road (scoring 14.10) and Rip View carpark on Crown land (scoring 14.60) were not viable options for the future Clubhouse. In reviewing this report, Council officers have reached the same conclusion.

As stated in this report, the current site meets the needs and clubhouse building requirements identified by the PLSLSC. The most significant challenge involves Council determining the merits of providing the PLSLSC with guaranteed long term use of the Council owned land.

For the reasons detailed in the attached site assessment report and summarised above, all parties involved in the 23 January 2015 Taskforce meeting concluded that the most suitable site was the current location in Ocean Road, Point Lonsdale. Given the conclusion reached by the Taskforce that the current site of the PLSLSC was the preferred and best location for a future Clubhouse, the Taskforce Chair, State Member of Parliament, The Hon Lisa Neville, Member for Bellarine, requested Council consider gifting the Council land at 56 Ocean Road, Point Lonsdale, to the Club to provide security of tenure when updated facilities are completed.

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### **Future land tenure arrangements**

There are two options available to ensure long term use of the Council owned land by the PLSLSC, namely transfer of ownership or a long term lease. When considering transfer of ownership of the Council land to the PLSLSC for a nominal amount, it is important to understand the legal requirements under the Local Government Act (Act) with respect to dealing with land before deciding on this matter. Under section 5(2)d of the Act, Council is able to acquire, hold, deal with or dispose of property (including land) for the purpose of performing its functions and exercising its powers.

Before selling or exchanging land, Council is required to do certain things under section 189 of the Act, which states:

#### **189 Restriction on power to sell land**

- (1) Except where section 181 or 191 applies, if a Council sells or exchanges any land it must comply with this section.*
- (2) Before selling or exchanging the land the Council must—*
  - (a) ensure that public notice of intention to do so is given at least 4 weeks prior to selling or exchanging the land; and*
  - (b) obtain from a person who holds the qualifications or experience specified under section 13DA(2) of the **Valuation of Land Act 1960** a valuation of the land which is made not more than 6 months prior to the sale or exchange.*
- (3) A person has a right to make a submission under section 223 on the proposed sale or exchange.*
- (4) Subsection (3) does not apply to the sale of land that formed part of a road that has been discontinued and which the Council has resolved to sell as the result of a Council exercising its powers under clause 3 of Schedule 10*

Note: Sections 181 and 191 do not apply in this scenario.

In 2009, Local Government Victoria and the Government Land Monitor released a document titled the **Local Government Best Practice Guideline for the Sale, Exchange and Transfer of Land**. The general principles guiding sale of land in these guidelines are shown below:

- 1. All sales, exchanges and transfers of land must comply with the provisions of the Local Government Act 1989.*
- 2. Sales should be conducted through a public process (i.e. public auction, public tender or by registration of expressions of interest) unless circumstances exist that justify an alternative method of sale, for example the sale or exchange of land by private treaty. A council should explain to its community the circumstances which led to its decision to use an alternative method of sale in the interests of probity, public accountability and transparency.*
- 3. Sales, exchanges and transfers of land should be in the best interests of the community and provide the best result, both financial and non-financial, for the council and the community.*
- 4. Generally, all sales and exchanges of land should occur at not less than the market value assessed by a valuer engaged by the council. However, in the event that land is sold for less than the market value or exchanged for land of a lesser value, the council should explain the*



*circumstances, reasons or factors which led to the decision to accept a sale price that is less than market value or land on exchange with a lower value.*

- 5. Prior to being offered for sale, property should be appropriately zoned. This will ensure that the ultimate use of the land is determined by that zone and the highest possible sale price is achieved.*

Given the above, sale by private treaty (e.g. dealing exclusively with the PLSLSC) is possible as long as section 189 of the Act is adhered to (and section 223 should any submissions be received). Considering the Act and the guidelines discussed above, the recommended process to follow to effect a transfer of the Council owned land to the PLSLSC is as follows:

1. Publish a notice of intent to transfer the land. This notice should include details of the land, the intent to transfer to the PLSLSC and the consideration (assumed to be \$1 to legally transfer ownership), the justification for the transfer (e.g. community benefit PLSLSC provides, exhausted other site options, long term user of land, etc).
2. Obtain a certified valuation of the Council owned land. This is a mandatory requirement of section 189 of the Act no matter what Council ultimately decides to sell the land for.
3. Consider any submissions received. If submissions are received, Council would need to consider these and offer the submitters an opportunity to present to Council at a meeting.
4. A formal report to Council with a recommendation whether or not a transfer to the PLSLSC should be pursued. If the recommendation is made to transfer the land, clear justification will be required to be made why the land is to be transferred significantly below valuation.

In the case of Council deciding to transfer the land, it is also recommended that should the PLSLSC cease to exist or provide the service it currently does, ownership of the land transferred to it by Council be reverted to Council. Preliminary investigation by Council officers indicates that this could be achieved by two means, a Section 173 agreement (under the Planning and Environment Act) and a restrictive covenant registered on title. It is considered that a Section 173 Agreement and restrictive covenant can be used to protect Council's interest should the PLSLSC cease to exist or seek to sell its assets. The Section 173 and Restrictive Covenant would be prepared if and when legal documentation is being prepared for the transfer of land.

The second option to secure long term use of the Council owned land by the PLSLSC is a long term lease. Section 190 of the Act restricts Council leasing any land to a maximum of 50 years. This section also requires Council to advertise by way of a public notice any lease over 10 years and consider any public submissions. It should be noted that the Council owned lease is currently leased to the PLSLSC for \$500 per annum. This lease is due to expire in 2025.

## **Financial**

The Council owned land is estimated to be valued at between \$800,000 and \$1 Million should it be available for public sale.

The total cost of an upgraded clubhouse is estimated at up to \$3 Million and the PLSLSC is reliant on part of that cost being offset by a State Government grant. The PLSLSC's upgrade of its



clubhouse is unlikely to be achieved should they need to fund purchasing of Council land at market value. The transfer of Council owned land to the PLSLSC for a nominal amount would ensure that the ongoing vital community service provided will continue.

The PLSLSC has a long historical association with the area and is an active community organisation. Further details on the PLSLSC's community benefits are included in the Social section of this report.

## **Social**

The PLSLSC was established in 1947. Since that time, over 1,720 rescues have been performed. Since 2002, some 7,300 preventative actions have taken place. In the 2013–2014 season, the PLSLSC had a total of over 1,214 registered members. 230 were active patrolling members, 470 were junior (Nipper) and Cadet members, 380 were associate members. Many of the members are also members of other locally based community groups including the Point Lonsdale Boardriders, local Rotary, Lions, Football, Cricket, Tennis, Golf and Bowls Clubs.

The PLSLSC is an active community organisation, including conducting community demonstrations / training for Cottage By The Sea and Camp Wyuna.

The life saving service is considered a critical emergency service and is highly valued by coastal communities. The ongoing surf life saving services provided by the PLSLSC provide safer beaches for local residents and visitors alike, particularly over the busy holiday periods. Point Lonsdale Back Beach is officially rated by Life Saving Victoria as one of the four most dangerous beaches in Victoria.

## **Environmental**

While there are no significant environmental issues associated with this report, use of the current site eliminates the risk of environmental impacts if other sites were selected.

## **Risk Management**

The major risk associated with this report is the long term tenure and effective service provision by the PLSLSC should a suitable site for upgraded facilities for the PLSLSC not be secured.

## **Officer Direct or Indirect Interest**

*Under Section 80C (1) (2) of the Local Government Act 1989, Council staff and persons engaged under a contract to provide advice or a report to a meeting of the Council or a special committee, and who have a direct or indirect interest in a matter to which the advice or report relates, must disclose the type of interest when providing the advice or report and before the advice or report is consider by the Council or the committee.*

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Officers involved in developing the report have no direct or indirect interests.

## **Conclusion**

As discussed earlier in this report, the site assessment undertaken has been thorough and the identified preferred and best site (i.e. current location) endorsed by the Taskforce. Council officers have reached the same conclusion and concur with the Taskforce's conclusion.

It is considered that, given the conclusion that the most suitable site for development of a new Clubhouse for the PLSLSC is their current site including Council owned land, a transfer of ownership of the Council owned land is the most effective way of ensuring security of tenure for the PLSLSC. Council and community interest in the land can be preserved in the case of the PLSLSC relocating its service or ceasing to exist by way of a Restrictive Covenant and Section 173 Agreement on the Council owned land should a transfer of ownership be effected.

A long term lease provides for a maximum term of 50 years which is less than what a new Clubhouse building's useful life would be. The PLSLSC is expected to invest up to \$3 million in the new Clubhouse building and associated facilities if funding from the State Government can be secured. Given the restrictions of the Act, there can be no legal guarantees offered of future extensions of a lease beyond 50 years. For these reasons a long term lease is not considered the most appropriate option to provide security of tenure for the PLSLSC over the life of the proposed new Clubhouse facility.

### **Councillors Merriman / Christie:**

#### **That Council:**

- 1. Endorse the officers' conclusion that the current site of the Point Lonsdale Surf Life Saving Club (Club) is the most suitable site for a new clubhouse given the site assessments contained in the Point Lonsdale Surf Life Saving Club Site Review (as per Appendix 1);**
- 2. Publish a notice of Council's intent to transfer the land known as 56 Ocean Road, Point Lonsdale (lot 19 LP 77357) to Point Lonsdale Surf Life Saving Club for a nominal amount in accordance with Section 189 of the Local Government Act;**
- 3. Requests the CEO to ensure the notice is published on Council's web site, The Geelong Advertiser and the Echo newspapers;**
- 4. Request CEO include the following information in the notice:**
  - a. details of the transfer of land conditions as outlined in this report ensuring that should the land no longer be required for the intended use by the Point Lonsdale Surf Life Saving Club, the land is returned to Council ownership;**
  - b. Pursuant to Section 223 of the Act, any person wishing to make a submission on the proposal must do so in writing to the CEO by the end of four weeks after the last notice is published.**
  - c. Persons making such submissions may request in writing to be heard in person or have a person appear on their behalf in support of their submission before a meeting of Council at a time and venue to be determined and advised in writing.**



- 5. Will consider all submissions in accordance with Section 223 of the Act. Following consideration of submissions, Council may resolve to sell or not to sell the land.**
- 6. Request the CEO to prepare a report to Council once all the legislative requirements outlined above have been fulfilled.**

**Carried Unanimously**



**5. CLOSE OF MEETING**

The meeting closed at 7:26pm

