

# Mercury Bay Multi-Sport Complex

## Resolution to Exclude the Public

### Section 48, Local Government Official Information and Meetings Act 1987

<b>General Subject of each matter to be considered</b>	<b>Reason for passing this Resolution in Relation to Each Matter</b>	<b>Ground(s) Under Section 48(1) for the Passing of the Resolution</b>
<b>Mercury Bay Multi-Sport Complex</b>	<p><b>(7)(2)(g)</b> – Maintain legal professional privilege.</p> <p><b>(7)(2)(i)</b> – Enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).</p>	<p><b>(48)(1)</b> – Subject to subsection (3) of this section, a local authority may by resolution exclude the public from the whole or any part of the proceedings of any meeting only on one or more of the following grounds:</p> <p><b>(48)(1)(a)</b> – That the public conduct of the whole or the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.</p>

### **Purpose of the Report**

To seek delegated authority from Council to enable a new Reserve Contribution Deed to be finalised with Whitianga Waterways Ltd for the development of a new Multi-Sport Complex in Whitianga.

### **Recommendation**

That the Thames-Coromandel District Council:

1. Receives this report;
2. Determines that the decision it is making in relation to this matter constitutes a significant decision;
3. Determines that it believes it has complied with the decision-making provisions of the Local Government Act 2002 to the extent necessary in relation to this decision; and in accordance with the provisions of section 79 of the Act determines that it does not require further information prior to making a decision on this matter;
4. Determines that it wishes to proceed with the development of the Multi-Sport Complex on the ten hectare Whitianga Waterways Ltd site and that it does not require a further business case to be developed before making this decision;
5. Notes the progress that has been made in negotiating a new Reserve Contribution Deed and delegates authority to the Mayor and Chief Executive to finalise and execute a new Reserve Contribution Deed with Whitianga Waterways Ltd;
6. Notes that following execution of the Deed, there will be a need to record the financial implications of the transaction in Council's financial records including recognition of the debt that Council will have to WWL until they have completed the subsequent stages of their development;

7. Approves the following allocation of funding for the development of the Mercury Bay Multi-Sport Complex.

<b>Activity</b>	<b>Year</b>	<b>Option 1</b>
Land Development	2010/2011	\$3,000,000
Roading and other facilities	2011/2012	\$2,200,000
Facility development		\$800,000
Total		\$6,000,000

8. Determines that it will enter into a contract with Hopper Construction Ltd for construction of the Mercury Bay Multi-Sport Complex and notes that this decision is inconsistent with its Procurement Policy and, therefore, constitutes an inconsistent decision in accordance with the provisions of section 80 of the Local Government Act 2002;
9. Determines that it is making this decision due to the contractual commitment that it has with Whitianga Waterways Ltd to allow that company to have first right of refusal to progress development of the Multi-Sport Complex and the significant savings, estimated as being in the order of \$700,000 that can be made by progressing development of the Multi-Sport Complex in conjunction with the works that Whitianga Waterways Ltd need to complete to prepare the site for its vesting in Council;
10. Determines that it will not be reviewing its Procurement Policy as a result of making this decision;
11. Delegates authority to the Chief Executive to negotiate a suitable contract with Hopper Construction Ltd for development of the Mercury Bay Multi-Sport Complex.

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**TO** Thames-Coromandel District Council

**FROM** Steve Ruru - Chief Executive

**APPROVED BY** Leadership Team

**DATE** 22 June 2010

**SUBJECT** **Mercury Bay Multi-Sport Complex**

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**REPORT PURPOSE***For Decision***Decision-Making Requirement** *Decision-making Requirements Met**Significance has been considered and the decision is deemed* *Significant*  *Non-Significant***Resolution to Exclude the Public****Section 48, Local Government Official Information and Meetings Act 1987****Reason for passing this Resolution in Relation to Each Matter****(7)(2)(g)** – Maintain legal professional privilege.**(7)(2)(i)** – Enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).**Ground(s) Under Section 48(1) for the Passing of the Resolution****(48)(1)** – Subject to subsection (3) of this section, a local authority may by resolution exclude the public from the whole or any part of the proceedings of any meeting only on one or more of the following grounds:**(48)(1)(a)** – That the public conduct of the whole or the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.**Purpose of the Report**

To seek delegated authority from Council to enable a new Reserve Contribution Deed to be finalised with Whitianga Waterways Ltd for the development of a new Multi-Sport Complex in Whitianga.

**Issue Definition**

At its 15 June 2010 meeting, Council determined that its preferred option for the development of the new Mercury Bay Multi-Sport Complex was to proceed with the ten hectare option on the Whitianga Waterways Ltd (WWL) site. Staff have now progressed negotiations to the point in which a draft Deed has been produced. There is a need for Council to approve the Deed that is being progressed and put in place delegations to enable it to be finalised.

**Recommendation**

That the Thames-Coromandel District Council:

1. Receives this report;
2. Determines that the decision it is making in relation to this matter constitutes a significant decision;
3. Determines that it believes it has complied with the decision-making provisions of the

Local Government Act 2002 to the extent necessary in relation to this decision; and in accordance with the provisions of section 79 of the Act determines that it does not require further information prior to making a decision on this matter;

4. Determines that it wishes to proceed with the development of the Multi-Sport Complex on the ten hectare Whitianga Waterways Ltd site and that it does not require a further business case to be developed before making this decision;
5. Notes the progress that has been made in negotiating a new Reserve Contribution Deed and delegates authority to the Mayor and Chief Executive to finalise and execute a new Reserve Contribution Deed with Whitianga Waterways Ltd;
6. Notes that following execution of the Deed there will be a need to record the financial implications of the transaction in Council's financial records including recognition of the debt that Council will have to WWL until they have completed the subsequent stages of their development;
7. Approves the following allocation of funding for the development of the Mercury Bay Multi-Sport Complex.

<b>Activity</b>	<b>Year</b>	<b>Option 1</b>
Land Development	2010/2011	\$3,000,000
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Total		\$6,000,000

8. Determines that it will enter into a contract with Hopper Construction Ltd for construction of the Mercury Bay Multi-Sport Complex and notes that this decision is inconsistent with its Procurement Policy and, therefore, constitutes an inconsistent decision in accordance with the provisions of section 80 of the Local Government Act 2002;
9. Determines that it is making this decision due to the contractual commitment that it has with Whitianga Waterways Ltd to allow that company to have first right of refusal to progress development of the Multi-Sport Complex and the significant savings, estimated as being in the order of \$700,000 that can be made by progressing development of the Multi-Sport Complex in conjunction with the works that Whitianga Waterways Ltd need to complete to prepare the site for its vesting in Council;
10. Determines that it will not be reviewing its Procurement Policy as a result of making this decision;
11. Delegates authority to the Chief Executive to negotiate a suitable contract with Hopper Construction Ltd for development of the Mercury Bay Multi-Sport Complex.

## Background

At its 15 June 2010 meeting, Council considered a report on the progress that had been made in negotiating a new Reserve Contribution Deed with WWL following the decision made at its February meeting to approve the business case for development of the Mercury Bay Multi-Sport Complex on the Moewai Road site. As a result of its deliberations, Council passed the following resolution:

### Resolved

*That the Thames-Coromandel District Council:*

1. *Receives this report;*
2. *Determines that this decision constitutes a significant decision in accordance with the provisions of the Local Government Act 2002;*
3. *Determines that it believes it has complied with the decision-making provisions of the Local Government Act 2002 to the extent necessary in relation to this decision; and in accordance with the provisions of section 79 of the Act determines that it does not require further information prior to making a decision on this matter.*
4. *Determines that its preferred option is to proceed with the development of the Multi-Sport Complex on a ten hectare Whitianga Waterways Ltd site satisfactory negotiation of a new Reserve Contribution Deed subject to the payment of all facility contributions;*
5. *Delegates authority to the Chief Executive to complete negotiations with Whitianga Waterways Ltd in relation to a new Reserve Contribution Deed subject to the final Deed being confirmed by Council.*

**Moved/Seconded By:** *Barriball/Hewlett*  
*Unanimous*

Staff have progressed, in conjunction with WWL, the development of a new Reserve Contribution Deed. A copy of the Deed, available at the time that this order paper was being written, is attached (**Attachment A**). It is expected that the Deed will be close to being finalised by the time of the 30 June Council meeting. As a result it will either be tabled at the meeting or a verbal update provided on the position that has been reached.

In addition to the Deed, staff have also been progressing discussions with Hopper Construction regarding the physical works that are needed to progress the initial sports field development. Hopper Construction are keen to progress the physical construction works and from these discussions to date staff have been able to negotiate contract prices that are considered favourable.

## Strategic Fit

The manner in which this project meets Council's Strategic Programme and the District Community Outcomes are described in the Ten Year Plan. The Mercury Bay Multi-Sport facility is specifically identified as an important project for the Mercury Bay community.

## Factors to Consider

### Reserve Contribution Deed - Provisions

The main features of the new Reserve Contribution Deed that has been agreed in principle with WWL are as follows:

- WWL will transfer the approximately 10ha of land for the Multi-Sport Complex. The final area would be determined from a survey once Council has finalised its development plans.

- The value of the Multi-Sport Complex land will be recorded as being \$8.045 million. This will be the asset cost to be recorded in the financial accounts and development contributions model. Note that the initial asset cost will reduce significantly when the land is valued due to its classification as reserve;
- Council will provide non-reserve development contribution credits to a value of \$1.6 million. The \$1.6 million is to be converted into a number of Household Unit Equivalent (HUE) credits which WWL can use to offset future development contributions that it might be required to pay on the Retirement Village complex. They are being converted to credits, rather than being maintained in dollars so that they maintain their value;
- WWL will vest reserves generally in accordance with the WWL structure plan and any future consents over the life of its development. The reserves to be vested shall equate to a minimum land area of at least 20m<sup>2</sup> per HUE over the life of the WWL development. The number of HUEs to which this minimum requirement would apply will be reduced by 110 HUEs being the number within the proposed Retirement Village. This trade-off is being made in settlement of the Cooks Beach Developments Ltd reserve contribution issue. From a practical perspective this trade-off is not expected to have any significant implications for Council given the nature of the Retirement Village development and that WWL have traditionally sought to vest more rather than less reserves in Council;
- WWL will have the 'freedom' to undertake the development of reserves to be vested provided they are developed in accordance with a set of guidelines that are to be agreed between WWL and Council;
- WWL will pay all development contributions other than the neighbourhood reserve contribution;
- It is agreed that WWL has no claim against the roading contribution credit implied in the 2002 Council resolution relating to relocation of the state highway and development of Joan Gaskell Drive.

A copy of the draft Deed that has been developed between WWL and Council is attached (**Attachment A**). While a new Deed has been agreed in principle there is still some 'fine tuning' of the Agreement that needs to occur between WWL and Council.

As part of this process there is also a need for Council to finalise the development plans, survey the area of land to be acquired and then for WWL to proceed through the subdivision process so that it has a legal title to be transferred to Council.

To enable this work to progress and not be unnecessarily delayed by the timing of Council meetings, it is proposed that Council formally delegate authority to the Mayor and Chief Executive to execute the final Reserve Contribution Deed with WWL.

#### Development Proposal

Under the Reserve Contribution Deed, WWL is required to level and grass the sports ground before it is returned to Council. The cost of completing this work is estimated as being in the order of \$400,000.

There are a number of efficiencies to be gained from having Hopper Construction integrate construction of the sports fields with preparation of the site for transfer to Council. The integration of all Council's civil works with the WWL work scope enables all subsurface work and grade forming to be completed as part of the earthworks that WWL need to complete. All of the hard-standing areas will also be able to be completed in place of top soil and grass sowing. These activities will have a shared cost and can be offset against costs that WWL would have otherwise incurred where appropriate. By combining these activities, it is estimated that there will be savings to Council of at least \$700,000.

Staff have worked with Hopper Construction to establish the cost estimates of developing the full sports fields desired under the 10 hectare option. This work has indicated that it

would cost approximately \$6 million to complete development of the full sports ground requirement over a two to three year period. The facilities that would be developed for this cost include:

- Four rugby fields with two overlay cricket pitches;
- One football field;
- Six netball courts;
- A hard stand area (3600m<sup>2</sup>) for future indoor stadium;
- One building containing changing rooms and ablutions; and
- Car parking for 150 vehicles.

It is proposed that the most effective method of managing the contractual arrangements will be by establishing a "measure and value" (based on fixed unit rates) contract. This approach will allow the work completed and chargeable to WWL to be determined separately to that completed for Council. All materials will be via direct charge to each party as appropriate. This approach will allow a high level of integration of activity throughout the construction period without creating financial disadvantage to either party. It ensures that the most economical and efficient use is made of the resources employed.

Staff are of the view that the unit rates that have been negotiated with Hopper Construction are favourable and reflect the current difficult contracting environment. It is also important, given the level of cost savings that development of the sports ground proceed in conjunction with the works that WWL need to complete to get it to a stage where it is ready to be returned to Council. As indicated above the savings coming from this approach are estimated to be in the order of \$700,000.

Staff are having the proposed contracting approach and unit rates peer reviewed by Alan Bickers from Jayal Enterprises so that Council can have an added level of assurance that the approach being used is reasonable.

#### Business Case

Council's draft Procurement Policy<sup>1</sup> requires that a full business case be developed for capital works projects in excess of \$500,000. Under this policy, there is also a requirement for the physical works of the value relating to the Multi-Sport Complex to be procured through a competitive tender process.

The Mercury Bay Community Board and/or Council has previously considered three business cases relating to the development of a new Multi-Sport Complex in Whitianga. These were presented in September 2006, December 2007 and February 2010.

Collectively, these business cases have outlined the justification, from a community needs perspective, for the development of a new Multi-Sport Complex and evaluated the different options between Moewai Road and the WWL site. These business cases have also highlighted the estimated development costs and financial risks associated with each option.

What these business cases do not cover is the contracting methodology, updated development cost estimates and risks associated with the current WWL proposal. A number of these issues have, however, been discussed in the order paper presented to the 15 June Council meeting and in this report. While Council's draft Procurement Policy would suggest that a new business case should be developed for the final proposal now being considered, staff are also of the view that it would be reasonable for Council to determine that it does not require a further business case to be developed.

In relation to the procurement method, it is noted that Council had an existing contractual

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<sup>1</sup> The draft Procurement Policy has been adopted by the Audit Committee.

obligation, via the existing Reserve Contribution Deed, to give WWL 'first option' to decide whether it wishes to undertake the facility development works. A modified version of this obligation has been transferred to the new Reserve Contribution Deed.

#### Community/Sporting Group Views

During the community consultation process associated with development of the Moewai Road business case considered by Council in February 2010, it was identified that the community preference was to proceed with the development of an indoor stadium facility and only two full size sports fields initially.

Under the current proposal, Council would develop all of the outdoor sports facilities so as to take full advantage of the efficiencies to be gained from progressing development of the outdoor facilities in conjunction with the work that needs to be completed by WWL. Under this proposal, development of an indoor stadium facility would be deferred to beyond the timeframe covered by the 2009 Ten Year Plan.

The approach currently proposed has the benefit of allowing time for the sporting groups to look at how they might contribute to the development of a new indoor facility rather than place the full onus on Council. The option of joint community/Council input to the development of an indoor stadium is consistent with the approach that was being proposed by the Zoom Zone group in Thames.

#### Financial Implications

To progress development of the Multi-Sport Complex in conjunction with the work that needs to be completed by WWL, there is a need for the development of the complex to proceed in the 2010/11 and 2011/12 financial year.

In approving the Moewai Road business case in February, Council did agree to bring forward funding for this project relative to that provided in the 2009 Ten Year Plan. The current proposal would involve funding being brought forward further again. The following table provides a comparison of the different funding allocations.

#### **Funding Schedule**

<b>Year</b>	<b>LTCCP</b>	<b>Moewai Road Feb 10</b>	<b>WWL Option June 10</b>
2010/2011	\$572,000	\$876,000	\$3,000,000
2011/2012	0	\$1,702,000	\$2,200,000
2012/2013	\$571,000	\$1,075,000	\$800,000
2013/2014	\$3,513,000	\$3,801,000	
2017/2018	\$3,914,000		
<b>Total Stage 1</b>	<b>\$8,570,000</b>	<b>\$7,454,000</b>	<b>\$6,000,000</b>

Council needs to be cognisant of the cumulative potential impact of this project and others on its debt limits. Section 7.10 of the Liability Management Policy details the 'specific borrowing limits that the Council has chosen to impose on itself as a matter of policy' - "That Council's net debt will not exceed 150% of total revenue".

The 2009 Ten Year Plan adopted by Council in June 2009 forecast a breach in its borrowing limits in 2009/2010. Borrowing was then forecast to return to within the policy limits in year two of the Plan being 2010/2011.

In developing its draft Annual Plan for 2010/2011, Council has sought to reduce the rates increase from the 7.5% indicated in the Ten Year Plan to 3.15% due to rates affordability concerns. As a consequence of this reduction in forecast revenue, borrowing is now forecasted not to return to within set policy limits for 2010/11. Council has determined that it will allow the internally set borrowing limits to be exceeded for 2009/2010 and 2010/2011 (as per the approved draft Annual Plan).

A decision to bring forward the forecast expenditure (and, therefore, borrowing) on the Mercury Bay Multi-Sport Complex from that portrayed in either the 2009 Ten Year Plan and the 2010/2011 Annual Plan will increase the extent to which Council is breaching its limits in the short term and place further pressure on its ability to remain within its borrowing limits in the medium term.

In making a decision on this proposal, Council must recognise the potential for changes in other areas, the range of financial risks it needs to manage and the impact they may have on Council's projected borrowing requirements now and into the future. This may mean that decisions made today could effectively, by default, decide decisions yet to be considered tomorrow.

#### Ratepayer Impact

As per the 2009 Revenue and Financing Policy, the Parks and Reserves Activity is funded as follows.

		<b>Boards</b>
		Funding Portion
Fees and Charges		Low
<b>Rates</b>	<b>Locality</b>	
General rate	District	
Uniform annual general charge	District	
Targeted rate - land value	Board	Med/high
Targeted rate - capital value	Board	
Targeted rate - fixed charge	Board	Med/low

This means that the Mercury Bay Multi-Sport Complex operational expenditure will be funded from within the Mercury Bay Board area, along with any fees and charges generated. A decision to bring forward the capital expenditure will increase the short term rates pressures. It is expected that the increased capital expenditure will increase the local rate by approximately \$50 per property in 2011/12. The increased maintenance costs associated with maintaining the complex are not reflected in this increase. Overall, however, there will be a saving against the level of capital expenditure projected. This will reduce the medium term rating impacts. A decision to approve the WWL site and development proposed will also avoid a number of the financial risks highlighted in the Moewai Road business case.

#### **Options**

The options that exist include:

##### ***Option A - Approve the WWL Proposal***

Under this option, Council would:

- Approve proceeding with the development on the 10 hectare WWL site;

- Note the progress that has been made with negotiation of a new Reserve Contribution Deed and then give delegated authority to the Mayor and Chief Executive to finalise the Deed;
- Approve the funding needed to enable the facilities required to be developed over the next two years;
- Give delegated authority to the Chief Executive to enter into a contract with Hopper Construction for the development of the new facilities to be provided on the site.

### ***Option B - Not Approve***

Under this option, Council would not approve the new Deed and proposed procurement method outlined above and would require that further changes be negotiated with WWL.

Council would need to provide clear guidance on the areas in which it would like to see further change.

### **Assessment of Options**

Option A will allow development of the new Multi-Sport Complex to proceed in a timely way and for Council to take full advantage of the efficiencies to be gained by the facilities being completed in conjunction with the works that WWL need to complete. Under this option, the initial sports fields could potentially be used during 2011.

Council should adopt Option B if there are aspects of the proposed new Reserve Contribution Deed or contracting approach that it would like to see changed.

### **Preferred Option**

The preferred option is ***Option A***.

This option will allow Council to proceed with development of the Multi-Sport Complex in a timely way.

### **Significance Assessment**

The Council is required to comply with the decision making provisions outlined in Part 6 of the Local Government Act 2002. Council's Policy on significance details thresholds and criteria that Council has determined it should consider in deciding whether a decision is significant.

In this paper, Council is being asked to approve the new Reserve Contribution Deed that has been negotiated with WWL following the decision made by Council at its 15 June meeting to proceed with development of the Multi-Sport Complex on the WWL site. Hence, Council is being asked to confirm the approach to be taken and give the appropriate delegations so that the necessary contractual arrangements can be put in place.

Approval of the proposal would also see a significant level of capital expenditure being 'bought forward'. While there are significant savings to be achieved by doing this, Council does need to be aware of the impacts on its overall debt levels and the flow impacts that this may have for other capital works if Council is to aim to manage within its existing borrowing limits.

Given the above, the decisions that Council is being asked to make in this paper are seen as being significant.

### **Next Actions**

Following approval of the final Deed, WWL will arrange for the land to be vested in Council. Staff will also develop the formal contractual documentation needed for the site development works contract with Hopper Construction.

**References-Tabled/Agenda Attachments**

***Attachment A***