

**SHIRE OF WILLIAMS**

**MINUTES OF SPECIAL MEETING HELD IN THE COUNCIL CHAMBERS AT 4.05PM ON  
WEDNESDAY 14<sup>TH</sup> FEBRUARY 2007**

**ATTENDANCE:**

Cr John Cowcher	President
Cr Ashley Stone	Deputy President
Cr Robert Bowden	
Cr Richard Johnstone	
Cr Moya Carne	
Cr David Earnshaw	
Cr Greg Cavanagh	
 V. Epiro	 Chief Executive Officer

**APOLOGIES:**

Cr Gary Cowcher  
Cr Graham Prowse

**PUBLIC QUESTION TIME**

Nil

**BUSINESS:**

To consider resumption of the communications tower site on Williams location 12026 Bates Road, Williams.

**Background:**

Following the resolution (No 115/07) from the Council meeting held 20<sup>th</sup> December 2006, a registered letter was forwarded to Mr RN Petchell again expressing Council's preference for renewal of the lease for the communications site on location 12026.

It was also resolved to investigate re-location to another site if this was feasible in regard to cost and locality. Should negotiations for renewal of the lease be unsuccessful and re-location of the tower not viable, then compulsory acquisition of the land would be pursued.

Contact was made with FESA (Paul Boase) regarding relocation and advice received via e-mail that the estimated cost of relocation was around \$50,000 and that following a map search, and visit to Williams, another suitable site could not be identified. Paul Boase concluded that "the present site's performance is superb in its coverage of the area and it would be a huge cost to complete a re-location of the Bates Road repeater infrastructure".

On Thursday 1<sup>st</sup> February 2007, Bob Petchell phoned the President Cr John Cowcher to advise him that he was invoking clause 19(d) of the lease which states that if within thirty (30) days after the termination of the lease (30<sup>th</sup> January 2007) the Shire has not removed its fixtures and fittings, such fixtures shall become his property.

Cr Cowcher contacted the CEO (Jim Epiro) and it was agreed that legal advice be sought from McLeods (Barristers & Solicitors) regarding the action proposed by Mr Petchell (i.e. seizure of the fixtures and fittings and removal of access to the site).

Contact (by phone) was made with Elisabeth Stevenson (McLeods) and a letter detailing the issues relating to the lease/site forwarded on the 1<sup>st</sup> February 2007.

On the 6<sup>th</sup> February, a faxed letter was received from Gibson, Tovey & Associates, Barristers and Solicitors representing RN Petchell, requiring Council to remove the fixtures and fittings within 30 days of the letter (3<sup>rd</sup> March 2007), failing which tenders will be called for the tower's sale and removal on the basis that the tower has become Mr Petchell's property pursuant to clause 19(d) of the lease.

The faxed letter also advised that the access gates to the property are currently locked and will remain so.

This letter was faxed to McLeods on the 6<sup>th</sup> February 2007 for their advice on the action being proposed by Mr Petchell.

McLeods forwarded a response on the 7<sup>th</sup> February 2007 which summarised various options, with excerpts as follows:

8. "in our view, despite the provisions of the lease in regard to the fixtures remaining after termination, the communications tower is a public work under the provisions of the *Public Works Act 1902*. Under section 2 of the *Public Works Act*, any work undertaken by a Local Authority under the authority of any statute is a public work. Under section 120 of the Act, it is an offence to remove or interfere with a public work. A private agreement cannot negate the effect of statute unless the statute specifically permits such negation.

11. Access to the site may be given by the Minister for Lands under section 185 or 186 of the *Land Administration Act 1997*, subject to 7 days notice of any entry being given to the owner.

13. That the Department of Planning and Infrastructure should be contacted to initiate any requisition of land under the *Land Administration Act 1997*.

The above correspondence from both Gibson, Tovey & Associates and McLeods was forwarded to all Councillors with the notice of the special meeting.

Council needs to resolve a course of action regarding access to the site, compulsory acquisition of the tower site and a response to the faxed letter received from Gibson Tovey & Associates.

***Johnstone/Earnshaw***

1. That the Department for Planning and Infrastructure (Land Asset Management Services) be requested to:

(A) Seek authority under sections 185 and 186 of the *Land Administration Act 1997* to allow Council access to the communications tower site for any repair or maintenance work.

(B) Initiate action for compulsory acquisition of the communication tower site on Williams location 12026 Bates Road Williams.

Council to be responsible for the survey of the site and to indemnify the Department for Planning and Infrastructure and Minister for Lands against all claims for compensation and associated costs, including other interest holders in the land to be taken.

2. That McLeods be requested to respond to the faxed letter from Gibson, Tovey & Associates outlining Council's position and action to be taken in regard to the communications tower site.

**Carried 7/0  
Resolution 129/07**

**CLOSURE**

Meeting closed 4.25pm