

19.3 NOTICE OF MOTION: TALUS STREET RESERVE

RESPONSIBLE OFFICER:	DEBRA JUST – GENERAL MANAGER
AUTHOR:	DEBRA JUST – GENERAL MANAGER
CITY STRATEGY LINK:	6.1.1 A COUNCIL THAT IS OPEN, ACCOUNTABLE AND REPRESENTS ITS CONSTITUENTS
MEETING DATE:	7 AUGUST 2017

Purpose of Report

Councillor Hooper has indicated his intention to move the following Notice of Motion.

Motion

That irrespective of any negotiations that might be taking place in respect of the 2013 litigation:

1. The Talus Street Reserve Trust land be returned to public recreation forthwith.
2. Council engage an independent expert to determine the commercial value of profits derived by the current and past occupiers occupation and use of the Talus Street Reserve Trust land since 1999.
3. Council take immediate action to recover those profits from the current and past occupiers and for those profits to then be vested in the Talus Street Reserve Trust.

Background

- A. When negotiating the rent for the lease of the Talus Street Reserve Trust land in 1999, representatives of one or more of Northern Suburbs Tennis Club (“NSTC”), its sister entity Northern Suburbs Tennis Association (“NSTA”), Love ‘N Deuce Pty Limited (“LnD”) and Humpty Dumpty Foundation Limited (“Humpty”) told WCC the activities on the Talus Street Reserve Trust land were community based and that Humpty was staying rent free (“statements”). WCC relied on these statements when it agreed to levy a peppercorn rent (instead of a commercial rent) under the lease that was finally made with NSTC on 6 December 2000. This lease was assigned to NSTA in 2001. As a result of revelations made since 27 June 2011 by various parties, it is now known these statements were false and that various “for-profit” activities have been conducted on Talus Street Reserve Trust land and that Humpty has been paying rent to LnD for years. It is also known these profits have not been invested in the Talus Street Reserve Trust as required by the Rutledge Principles.
- B. In 2013 proceedings were commenced against Willoughby City Council et al by concerned residents known as the “2013 litigation”.
- C. By way of separate proceedings (not the 2013 litigation) on 5 December 2016, His Honour Mr Justice Brereton delivered his judgment in Council’s Trustee Application. His Honour held the lease to NSTA was “**unlawful and void**”, noting that: “**The demise of the whole of the Reserve to a private association, whose members have priority rights to use of the Reserve, is plainly not a use for public recreation.**” His Honour also held that the Talus Trustee would not be justified in consenting to the proposed new sublease in favour of LnD. The Rutledge Principles were reaffirmed as applying to

the Talus Street Reserve Trust land.

- D. On 12 December 2016, WCC's General Manager advised Council that the judgment was binding on Council and that the lease to NSTA "**is not valid**" (Tapes, around 49:36).

General Manager's Comments

Council has previously considered in detail the implications of Justice Brereton's findings, and options arising from that, at its meetings held on 12 December 2016 and 13 February 2017 and at a briefing held on 30 January 2017. Council's legal advisers were in attendance to answer Councillors' queries, and to provide advice on the options before Council in ensuring public recreation, amongst other matters, on the Talus Street Reserve.

The Notice of Motion (NOM), tended at the last Council meeting of this Council's term, seeks to commit at an incoming Council to a direction which will likely involve significant legal costs and protracted time frames well beyond the current lease expiry date of April 2018. Justice Brereton stated that the findings were not binding on Northern Suburbs Tennis Association or Love N Deuce.

Council's legal adviser is currently on leave. Council will not have the benefit of his knowledge at the meeting; albeit that the matters and approach flagged in the NOM have previously been considered by Council in detail at prior meetings and briefings.

At its meeting held on 13 February 2017, Council adopted a strategy after considering a fulsome range of matters, including those covered in the NOM, and reaffirmed the existing delegation to the General Manager to undertake negotiation and legal processes. The implementation of the strategy and negotiations are underway in accord with Council's resolution.

The matter was considered in a closed session at the meeting held on 13 February 2017 under provisions of section 10A(2)(g) of the *Local Government Act 1993* as it related to advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege.

Accordingly, relevant excerpts from the Council's adopted strategy, and a copy of the 13 February 2017 report, which includes an overview of the Brereton J judgement, are provided in the closed section of these papers for Councillors' reference in considering this Notice of Motion.

OFFICER'S RECOMMENDATION

That Council consider the Notice of Motion from Councillor Hooper.

