

**EUROBODALLA SHIRE COUNCIL**

**PUBLIC FORUM**

All members of the community who have registered have been advised that they have a **maximum of five minutes** to put their case.

Ordinary Meeting of Council on 8 December 2015

<b>Name</b>	<b>Subject/Comments</b>
<b>Agenda Items – 10.00am</b>	
Maureen Kinross	PSR15/059 DA 87/16 Bridge Plaza Clyde Street Batemans Bay (Re Ned Kelly building) DID NOT PROVIDE A SUBMISSION
Ewan Morrison, Batemans Bay Historical Society	PSR15/059 DA 87/16 Bridge Plaza Clyde Street Batemans Bay (Re Ned Kelly building)
Peter Cormick	GMR15/041 – IAC Review of Huntfest Report FBC15/084 Code of Practice – Licensing of Public Reserves
Jim Bright	GMR15/041 – IAC Review of Huntfest Report FBC15/084 Code of Practice – Licensing of Public Reserves
Susan Cruttenden	GMR15/041 – IAC Review of Huntfest Report
Peter Bernard	GMR15/041 – IAC Review of Huntfest Report

## Outline speech to Council 8 Dec 2015

### PSR15/059 DEVELOPMENT APPLICATION 87/16 - BRIDGE PLAZA CLYDE STREET, BATEMANS BAY

*Presentation by Ewan MORRISON*

- I would like to thank Council for the Opportunity to speak about this matter.
- I am the President of the Clyde River and Batemans Bay Historical Society and it is with a heavy heart that I speak to you today.
- The development proposal before you seeks the partial demolition of the two oldest built structures in Batemans Bay.
- Francis GUY built his home at 7 Clyde Street and his Warehouse at 5 Clyde Street around 1869. We say around because Guy's timber mill was opened in Batemans Bay in 1868 and reference to these two buildings and Guy's Mill appear in a report in the Empire (a Sydney Newspaper) dated 30 May 1874. It should be noted that Francis GUY also lived in Nelligen.
- In many ways, GUY was the father of Batemans Bay – his timber mills (the largest of which was later sold to the Perry family) exported to the British Colonies of New Zealand, Victoria and South Australia as well as the South Pacific.
- To aid him in his business endeavours Francis GUY funded the building of ships in the Clyde and as a diligent member of this community, he was on the original school boards of Nelligen and Batemans Bay Public Schools. Francis GUY and his sons made significant contributions to the history of this Shire and the economic foundation of it.
- His home at 7 Clyde Street and his Warehouse next door were the hub of his entrepreneurial and community endeavours.

- Throughout their history, these buildings have been repurposed to meet the changing needs of Batemans Bay.
- 5 Clyde Street, for example, was the newsagency that was owned and operated by Mrs Thomsen for many years. She was a foundation member of the Batemans Bay CWA and it was she who enabled the (now demolished) Bush Nursing Hospital in North Street to be established by renting the building to the community for a nominal amount.
- In their most recent iterations, 7 Clyde Street is used as three shops – a real estate agent, a locksmith and an ice cream parlour; while number 7 was the discount department store Ned Kelly's.
- The Clyde River and Batemans Bay Historical Society thought that it had gained heritage listing for these two buildings some years ago.
- For one reason or another, those listings were recorded on the Council website, but didn't make it to the LEP or State heritage register.
- When Mrs BUTT brought that matter to our, and Council's attention, earlier this year, we sought to rectify the matter in a letter to council dated 26 January 2015.
- As many of you will understand, matters before Council move with slow haste.
- As a consequence, this developer was not aware of the historical significance of these buildings.
- The Historical Society is not opposed to changes to the town – in fact it is us who maintains both the stories of our town and records the way it changes over the years.

- But this is a very heavy blow – particularly as the proposal is to replace parts of these buildings with a car park.
- The submission before you has an erroneous statement where it says of the Warehouse that *the building has been altered from its original form*.
- It has always been a big rectangular box; its form has not changed in some 150 years.
- Indeed, the information that we have been given is that the Warehouse building and another in Tathra are the last two buildings of this type on the South Coast.
- The alterations to the current building are the introduction of a concrete floor, rendering of the walls, the addition of aluminium windows and a roller door. Otherwise it's as it was in 1870.
- The house has been radically changed to accommodate shops.
- I suspect that you will neither be swayed by the historical significance of these buildings nor any argument that I can propose to keep them and repurpose them yet again.
- If that is so, I urge you to require the developers to protect the history of the buildings by:
  - ✓ Undertaking and completing the work at 3 and 5 Clyde Street that they have outlined in their revised proposal;
  - ✓ Undertaking and completing the work at 3 and 5 Clyde Street that has been recommended by the Council's heritage adviser;
  - ✓ Engaging a heritage architect to photograph each of the buildings at 3 and 5 Clyde Street such that a 3 dimensional

model of each them (internally and externally) can be created for both a digital and physical display;

- ✓ As a commitment to the heritage of Batemans Bay, engage a heritage architect to photograph each of the buildings that are the subject of this development application such that a 3 dimensional model of the affected streetscapes can be created for both a digital and physical display; and
  - ✓ All digital and physical models be made available to the Clyde River and Batemans Bay Historical Society prior to commencement of works associated with this application.
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- If I have been persuasive, I urge you to require the developers to preserve the history of the affected streetscapes by engaging a heritage architect to photograph each of the buildings that are the subject of this development application such that a 3 dimensional model of the affected streetscapes can be created for both a digital and physical display.
  - Indeed, it would help our society if this last point was added as requirement for all development applications for the Central Business Districts of Batemans Bay and other towns in our purview where it is proposed that buildings be demolished or partially demolished.
  - Thank you for your time.

## **Public Forum 8 December 2015 – Peter Cormick**

### **Agenda item GMR15/041**

#### **Independent Audit Committee review of Huntfest Report**

1. It is clear to me that the Independent Audit Committee has expended considerable effort and time in undertaking its review of the General Manager's earlier review of the Huntfest approval process. And for that I am grateful. Also, I have no doubt of the members' integrity and independence in conducting the review.
2. But that said, I am very disappointed - though not at all surprised - with the outcome: that the General Manager was correct in finding that her staff had handled the Huntfest approval process correctly.
3. At page 16 of the report we see that the outcome could not have been otherwise. The General Manager's finding was based on the opinion of a Mr Gray, from Sparke Helmore Lawyers. In its review, the committee spoke with Mr Gray and asked him if he stood by his earlier opinion: that council had followed due process. Naturally, he said "yes". So, it came down to Mr Gray giving an opinion on his own opinion – which the committee accepted as conclusive of council having followed due process.
4. Why the committee did not also seek to speak with the Environmental Defenders Office – in order to bring some balance to the review – I have no idea. SAFE would certainly have facilitated such a communication.
5. I think that we are all agreed that we will get no further on this matter unless it is taken to court.

## **Public Forum 8 December 2015 – Peter Cormick**

### **Agenda Item FBD15/084**

#### **Code of Practice - Licensing of Public Reserves**

1. The intention to improve the process of the licensing of public reserves - to make those processes more transparent – is of course highly desirable. But, in my view, the report needs to be worked on.
2. For a start, councillors are not presented with the obvious option of actually forming a view on the code and possibly suggesting an amendment here and there. Rather, you are asked to simply receive and note the report and, therefore the code itself.
3. It has been said that the code is no more than an administrative or operational matter and not one of policy – and therefore is not really the concern of councillors. But how can councillors be confident that the policy, of a transparent licensing process, is properly represented in the code put before you, unless you have first examined it and then, after possibly making amendments, actually given your approval to it? It is my view that councillors ought to do more than simply receive and note the report and code. I suggest that the code be regarded as a draft, for your consideration.
4. On the third page of the report, under the heading of Social Impact, nothing is said of social impact but, rather, we are told that all interested parties will have a “fair and equal opportunity to apply for use of a council controlled reserve and associated buildings”. But how can it be fair if one applicant is granted the use of a reserve for 5 years on top of an existing 2 years – 7 years in total? For that period, no one else can get a go. Everyone else is locked out.
5. In my view, it is nonsense to argue that such lengthy licensing periods are desirable for the sake of the applicant– providing “surety of tenure”, as it is put. This is public land we are dealing with. Opportunities need to be spread out, for the community as a whole, not confined to one applicant, for that one applicant’s benefit. And so, for this reason, I am opposed to the issuing of 5 year licences and certainly so in the case where an applicant already has 2 years to run before the proposed 5 year period commences. Sounds very greedy and something like a monopoly on the space in question.

6. I am also opposed to the first section of the proposed schedule on page 139 of the agenda. We see that the first EOI process is proposed to take place over the forthcoming holiday period. We all know that that sort of practice is contrary to good governance. As it stands, the current applicants would be manifestly advantaged over the wider community. They already have their hats in the ring and any competition will very likely not be paying that much attention over the holiday period. I suggest therefore, that the second schedule be made the only schedule, in which the first call for expressions of interest takes place on 1 February 2016, at the earliest.
7. On the code itself, I would like to see “Social and Environmental Impact” included as one of the criteria. There is much more to the use of public land than the dollars involved. Hasn’t council heard of the triple bottom line? Let’s see it applied here, please.
8. Finally, I would have hoped that once councillors have satisfied themselves with the proposed code that it be put on public exhibition, with the final version taking account of community input.

**INDEPENDENT AUDIT COMMITTEE REVIEW OF HUNTFEST REPORT  
(GMR15/041)**

**CODE OF PRACTICE – LICENSING OF PUBLIC RESERVES  
(FBD15/084)**

MY NAME IS JIM BRIGHT. I'M A RESIDENT OF NAROOMA AND I'M HERE TO ADDRESS TWO OF TODAY'S AGENDA ITEMS

THE FIRST ITEM IS THE AUDIT COMMITTEE'S REVIEW OF THE GENERAL MANAGER'S 'HUNTFEST' REPORT.

THE SECOND ITEM IS THE PROPOSED CODE OF PRACTICE FOR THE LICENSING OF PUBLIC RESERVES.

FIRSTLY - THE HUNTFEST REPORT.

UNFORTUNATELY THE REPORT HAS BEEN MADE AVAILABLE TO THE COMMUNITY IN ONLY THE LAST FEW DAYS AND - FOR REASONS THAT ARE NOT IMMEDIATELY OBVIOUS TO ME – IS BEFORE THE COUNCIL FOR ENDORSEMENT AND ACCEPTANCE TODAY - RATHER THAN AT SOME LATER MEETING.

I COULD PROBABLY SPEND ALL MORNING ON THE PROBLEMS THAT I HAVE WITH THE REPORT – BUT OBVIOUSLY THAT'S NOT AVAILABLE TO ME SO I'LL GO AS SUCCINCTLY AS POSSIBLE TO ONE OR TWO OF THE PRINCIPAL PROBLEM AREAS WITH THE AUDIT COMMITTEE'S REVIEW.

AS WE KNOW, BOTH THE GM'S REPORT, AND THE COMMITTEE'S REVIEW OF THAT REPORT, WERE FOCUSSED ON THE QUESTION OF WHETHER OR NOT THE COUNCIL HAD ACTED APPROPRIATELY IN THE MANNER IN WHICH IT WENT ABOUT OBTAINING ADVICE ON - AND IN ASSESSING - ITS LEGAL OBLIGATIONS WITH REGARD TO APPROVAL OF HUNTFEST ACTIVITIES.

WHEN IT COMES TO SEEKING LEGAL ADVICE AND THEN ACTING ON THAT ADVICE, IT IS VITALLY IMPORTANT TO UNDERSTAND THAT, AS A GOVERNMENT BODY, A COUNCIL HAS SOME FUNDAMENTALLY DIFFERENT OBLIGATIONS TO THOSE OF NON GOVERNMENT AND PRIVATE SECTOR ORGANISATIONS AND OF PRIVATE INDIVIDUALS.

THESE PARTICULAR OBLIGATIONS THAT A COUNCIL HAS ARE SET OUT IN CONSIDERABLE DETAIL IN VARIOUS PARTS OF THIS DOCUMENT. ('Good Conduct and Administrative Practice – Guidelines for state and local government, 2<sup>nd</sup> edition')

AS STATED BY THE NSW OMBUDSMAN IN HIS FORWARD TO THESE GUIDELINES – IT IS FUNDAMENTAL TO OUR SYSTEM OF CONSTITUTIONAL DEMOCRACY THAT GOVERNMENT AGENCIES EXERCISE THEIR POWERS IN A MANNER CONSISTENT WITH THE ACCEPTED PRINCIPLES OF GOOD CONDUCT IN PUBLIC ADMINISTRATION THAT ARE SET OUT IN THIS DOCUMENT.

IN BRIEF, WHAT THESE INSTRUCTIONS SAY IS THAT ALL GOVERNMENT BODIES INCLUDING THIS COUNCIL ARE OBLIGED AT ALL TIMES TO BE MODEL CITIZENS AND

MODEL LITIGANTS. THE COUNCIL MUST AT ALL TIMES ACT WITHIN THE LETTER AND THE SPIRIT OF THE LAW. IT MUST NOT SEEK OPINIONS OF CONVENIENCE FROM ITS LEGAL ADVISERS.

IT MUST SEEK THIS TYPE OF LEGAL ADVICE REGARDLESS OF THE INDIVIDUAL VIEWS AND PREFERRED OUTCOMES OF THE GM, THE MAYOR AND EVEN OF A MAJORITY OF COUNCILLORS.

BECAUSE THIS IS USUALLY NOT THE RELATIONSHIP THAT A PRIVATE SECTOR FIRM OF LAWYERS WILL HAVE WITH ITS CLIENTS, THESE GUIDELINES MAKE IT VERY CLEAR THAT A COUNCIL MUST EXPLICITLY EXPLAIN ALL OF THIS TO ITS LAWYERS.

SUCH EXPLICIT INSTRUCTIONS ARE FUNDAMENTAL TO THE EXISTENCE OF A PROPER LEGAL RELATIONSHIP BETWEEN THE COUNCIL AND ITS LEGAL ADVISORS.

NOW DESPITE THE FACT THAT THIS ISSUE HAS BEEN RAISED REPEATEDLY - TO DATE THE COUNCIL HAS BEEN EITHER UNWILLING OR UNABLE TO INDICATE THAT ANY SUCH EXPLICIT INSTRUCTIONS HAVE EVER BEEN ISSUED TO ITS LEGAL ADVISORS – THAT IS, TO SPARKE HELMOR LAWYERS. I THINK THAT WE CAN PROBABLY NOW SAFELY ASSUME THAT THIS HAS NEVER HAPPENED.

THIS IS A FATAL FLAW IN THE COUNCIL'S LEGAL PROCEDURES AND SHOULD HAVE BEEN IDENTIFIED AS SUCH IN THE AUDIT COMMITTEE'S REPORT – BUT IT WASN'T.

NOW TO ANOTHER SIGNIFICANT PROBLEM WITH THE COMMITTEE'S REPORT.

BASED ON THE INFORMATION CONTAINED IN THE AUDIT COMMITTEE'S REPORT, IT WOULD APPEAR THAT THE COMMITTEE, IN UNDERTAKING ITS REVIEW, HAS NOT SOUGHT ANY EXTERNAL INDEPENDENT ADVICE ON ANY OF THE ISSUES UNDER ITS EXAMINATION.

INCREDIBLY, A CAREFUL EXAMINATION OF THE COMMITTEE'S REPORT REVEALS THAT THE COMMITTEE, IN REACHING ITS CONCLUSIONS, SEEMS TO HAVE RELIED ENTIRELY ON DOCUMENTATION GENERATED BY THE GM AND OTHER COUNCIL STAFF AND ON INFORMATION AND OPINIONS GAINED THROUGH MEETINGS THE COMMITTEE HAD WITH THE GENERAL MANAGER AND THE COUNCIL'S LEGAL ADVISOR.

I GUESS IT SHOULD HAVE COME AS NO SURPRISE TO ANYONE THAT THE ADVICE THE COMMITTEE GOT FROM BOTH THE GENERAL MANAGER AND HER LEGAL ADVISOR WAS THAT EVERYTHING HAD BEEN DONE PROPERLY.

PAGE 16 OF THE REPORT CONTAINS A NUMBER OF EXAMPLES OF THE COMMITTEE'S UNQUESTIONED ACCEPTANCE OF THE COUNCIL SOLICITOR'S VIEWS ON EACH MATTER THAT IT RAISED WITH HIM.

CLEARLY THE COMMITTEE SHOULD HAVE TAKEN REASONABLE STEPS TO GET A BALANCE OF OPINION. IT COULD HAVE SPOKEN TO THE ENVIRONMENTAL DEFENDERS OFFICE WHICH HAD CAREFULLY EXAMINED THE COUNCIL'S ACTIONS IN THIS MATTER. IT COULD HAVE SOUGHT ADVICE FROM VARIOUS AGENCIES SUCH AS THE OMBUDSMAN'S OFFICE, THE ICAC, THE NSW AUDIT OFFICE AND THE OFFICE OF LOCAL GOVERNMENT.

BUT NONE OF THIS OPTIONS SEEM TO HAVE BEEN EXPLORED.

IN SUMMARY, THERE ARE TWO SERIOUS FLAWS IN THE REVIEW PROCESS AND THE RESULTING REPORT -

1. THE COMMITTEE FAILED TO IDENTIFY THE CRUCIAL FACT THAT THERE IS NO EVIDENCE TO CONFIRM THE EXISTENCE OF A PROPER LEGAL ADVISORY RELATIONSHIP BETWEEN THE ESC (A GOVERNMENT AGENCY) AND ITS PRIVATE SECTOR LEGAL ADVISORS, AND

2. THE ESC FAILED TO HAVE INCLUDED IN ITS INSTRUCTIONS TO THE COMMITTEE THE APPROPRIATENESS OF THE COMMITTEE ACCESSING INDEPENDENT LEGAL AND TECHNICAL ADVICE WHERE NECESSARY TO ENSURE A ROBUST AND BALANCED REPORT.

I HAVE OBVIOUSLY RUN OUT OF TIME TO ADDRESS THE SECOND AGENDA ITEM REGARDING THE PROPOSED CODE OF PRACTICE. SO I WILL JUST TAKE THE OPPORTUNITY TO INDICATE MY SUPPORT FOR ALL ASPECTS OF MR CORMICK'S EARLIER SUBMISSIONS TO YOU ON THIS MATTER.

JIM BRIGHT  
8 DECEMBER 2015

## **Comment on the Independent Audit Committee Review**

I found the review of the review of the procedures leading to HuntFest with sale of guns was disappointing as it made little or no mention of the democratic decision making and community involvement that should be an integral part of any important decision making.

In the course of the investigation the council was said to have followed due process so that specified variations were sought and approval or consent provided and that “the proposed activities sought to be permitted at HuntFest 2014 were legal and did not breach any Council’s policy”.

In the absence of terms of reference from Council, the Audit Committee appears to have chosen for itself very narrow terms specifically excluding consideration of morality or ethics.

The review of the review is heavy on “due process and procedures”, but makes no mention of the scant attention paid to the community consultation which was sadly lacking according to the report of the Environment Defenders Office which the Audit Committee apparently chose to ignore.

Council’s revised Events Policy in 2013 states the aims of events on council land as being:

- To build strong communities
- Strong community health and well being
- Strengthen participation in culture and recreation
- Enhance the Shire’s reputation as a tourism, leisure and event destination known for its unique natural beauty.

How can this be achieved on a controversial issue such as sale of guns without an overwhelming degree of community consensus? We are not talking about something as inconsequential as the siting of traffic lights but a matter which the majority of ratepayers believe will have far reaching consequences for the shire: a matter they feel they are entitled to make a democratic decision on.

I waded through page after page of review without finding any reference to community engagement or consultation, and yet these are things regarded as an integral part of local council decision making.

In a learned thesis on the role of local government for a contemporary Victorian community it is stated that Councils should provide opportunities for community consultation. The author of this thesis is our General Manager, Dr Dale.

Where were the opportunities for ratepayers to give their opinion on the unpublicised licensing of HuntFest in 2012, and on its transformation from “just an event” to a retail outlet for guns?

Community attempts to alter Council’s mindset have been ignored, derided or treated with contempt as at the end of 2014 when a rushed decision to sell guns as part of HuntFest was made by a small majority of councillors, in spite of Danielle Brice’s amendment to defer the decision till after the holidays. There were cries of “Shame; Councillors shame!” and expressions of disbelief from opponents of HuntFest as they left the Council building.

Even more shameful the wrong conclusion gained from formal submissions made by ratepayers on the matter of gun sales. When 81% of responding ratepayers said they didn’t want gun sales in the town as part of HuntFest, Council gave equal weight to gun lobbyists from anywhere in Australia and beyond, so the decision was made to convert the Sports and Recreation Centre into a retail outlet for guns.

What next? So far an exhibition of hunting photographs has evolved into promotion of the Shooters and Fishers Party, of safaris to Africa, free admission to children, as well as sale of guns and ammunition.

Mayor Brown in a statement at the recent White Ribbon Rally said “I will stand up, speak out and act to prevent men’s violence against women” So why has he supported the sale of guns in the Sports and Recreation Centre? How does he feel after the very recent hostage event in Victoria involving a domestic dispute and a gun.

Citizens who have struggled against powerful forces to make their voices heard and their wishes carried out will continue to do so, especially in view of the rumoured license extension of HuntFest beyond 2017, and the feared consequences of introducing more guns into this peaceful, idyllic environment of the Eurobodalla Shire.

It has been the American experience that:

**More guns + Weaker gun laws = More Violence**

Please don't let it happen here.

If you truly represent the people who live here you will stop trying to justify your unpopular decisions with review after review and move to stop the frightening consequences of gun proliferation by cancelling a celebration that encourages the availability, affordability, and desirability of gun ownership to the men, women and children of our town.

Susan Cruttenden  
Dalmeny

## **Huntfest Review -Of July 2015 Address 8<sup>th</sup> December 2015**

**Mr Mayor and all councillors**

**After reading the letter from the audit committee signed by Mr Ken Mitchell, Shalene Cohen and Mark Barraclough I fail to see how this council could pass the recommended resolutions. Whilst this committee may say “ due process and procedures “ have been carried it out comes from an audit committee , as I understand it, has its expertise centred around financial matters but very little experience in the many other Local Government fields .Even in those matters there is an under current in the community that are many financial issues of the ESC require greater in depth investigation by other Government and independent authorities .**

**The recommendations (1) and (2) from the auditors would seem to me “a slap on the knuckles “to the Councillors and involved staff. Recommendations (3) and (4) seemed to be couched in terms that insufficient foresight was made by the ESC.**

**Mr Mayor -There are too many resolutions regarding “the information be noted “and replies “taken on notice “. All existing councillors should unite and stamp this practice out. There to many issues being swept under the carpet in this manner which will eventually reflect on following councillors and thereby increasing the notoriety of this council. The transparency issues of the Huntfest Issue is far from over and I know from experience that it will be hounded until that it is resolved . Mr Mayor again our community has been embroiled in an issue involving political ambitions**

**Peter Bernard**

**8-12-2015**

19 October 2015

Councillor Lindsay Brown (Mayor)  
Councillor Rob Pollock  
Councillor Danielle Brice  
Councillor Gabi Harding  
Councillor Liz Innes  
Councillor Milton Leslight  
Councillor Neil Burnside  
Councillor Peter Schwarz  
Copy to Dr Dale, General Manager

Eurobodalla Shire Council  
Moruya NSW 2537

Dear Councillors

The Panel of Independent Members of the Audit Committee has now completed its task to review the HUNTFEST REVIEW July 2015 (hereafter referred to as *The Dale Report*) and hereby submit our report for your consideration.

In the course of our investigation the Independent Review Panel:

Find that for each of HUNTFEST's 2013, 2014 and 2015, that Council did follow due process and specified variations were sought and approval/consent provided and that "the proposed activities sought to be permitted at HUNTFEST (2014) are legal and do not breach any Council's policy".

Conclude that *The Dale Report* incorporates information that provides a very clear and compelling evidentiary trail that shows that due processes and procedures have been undertaken by Council, including obtaining and relying on legal advice, in an appropriate manner for both of the requirements by Council (Development Application and the Licence).

Recommend that ESC:

1. Set the highest standards of transparency of independence and integrity for all future ESC independent reviews.
2. Future independent reviews be issued with clear Terms of Reference.
3. Independent Reviewers to make a suitable declaration.
4. for future events, particular where they are based on/or compared with interstate international events that they might foreseeably be viewed as trying to gradually grow into and therefore render consideration against this potential to set clearer ground rules from commencement.

Yours sincerely

  
Ken Mitchell  
Chair

  
Sharlene Cohen

  
Mark Barraclough

**Independent Review the ESC "HUNTFEST REVIEW of July 2015"**