

# Broulee Surfers Surf Life Saving Club Inc



<b>Subject:</b>	<b>Minutes of May 2020 Extra-Ordinary, Committee Meeting</b>	
<b>Location:</b>	Broulee Surf Club (via Zoom)	
<b>Date:</b>	Wednesday 13 <sup>th</sup> May 2020	<b>Meeting opened:</b> 7:00pm
<b>Meeting Chaired by</b>	David Law	
<b>Attendees:</b>	David Law (President), Allan Veness, (Vice President), Andrew Edmunds (Club Captain), Wendy Law (Secretary), Lynda McKay (Treasurer), Todd Haywood, Jason Domeny, Melinda Brogan, Rob Wildman, Gary Pettigrove, Claire Forbes, Steve Corcoran, Kirsty Campbell, John Edmunds, Darren Drewson, Kerry Evans, Nat Browning, Gordon Harris, John Costin, Peter McKay, Geoff Wells.	
<b>Apologies:</b>	Cherise Walker. <i>The Secretary informed that Cherise had indicated support for the Motion to be tabled.</i>	

	<b>ACTION ITEM</b>	<b>For Action By:</b>
<b>1</b>	<p><b><u>Opening.</u></b></p> <p>The President welcomed all attending the extra-ordinary meeting. The purpose of the meeting is to hear the report of the Evaluation Committee, whose task was to review the two submitted tender quotes for the building of the Stage Two Clubhouse Extension and Patrol Tower, and to provide recommendations to the Club Committee. The President invited the Chairman (The Chair) of the Evaluation Committee (EC) to present their assessment.</p>	
<b>2</b>	<p><b><u>2.0 Presentation of the Evaluation Committee. (EC)</u></b></p> <p>The Chair, thanked the President and also acknowledged the previous work of the Building Committee members and the work of the EC. The Chair provided four information slides (attached to the Minutes) to support his presentation and recommendation of the EC to the Club Committee. The Chair informed that the EC members were unable to reach a unanimous decision, however, the recommendation of the EC was made on the basis of a four votes to two majority in favour of the recommendation presented. The Chair explained the process that was used by the EC to make their decision. He also noted that the outcome of the process left the two tender quotes with little score difference between them. Before closing, The Chair declared that he was an employee of the organisation that had provided a large portion of the grant money to the Club. He indicated that he had informed his supervisor of his involvement with the Broulee Surfers SLSC. His supervisor advised, that as he had played no role in the awarding of the grant, there was no conflict of interest for The Chair. The Chair summarised the work done by the EC over the period of the preceding week and proposed the following motion should be put to the Club Committee.</p>	

**MOTION:** *That Broulee Surfers SLSC proceed in procuring Responder A (P&L Loutit Total Construction Services Pty Ltd).*

**Moved:** Andrew Edmunds.

**Seconded:** Steve Corcoran.

### **2.0.1 Discussion.**

Before a vote was called, the Club Committee members were given the opportunity to speak for and against the motion. The President supported the idea of allowing speakers to alternate in turn between those for and against the motion, including those with questions of fact about the motion and evaluation process. The Chair informed the Club Committee that the funds were not club funds and therefore came under the scrutiny of both Federal and State bodies. He was comfortable, that given the level of internal assessment applied to the evaluation process, all the State and Federal grant conditions have been adequately met.

The Chair spoke for the motion, highlighting the differences in material quality selected by each builder helping to influence the recommendation. He saw this as justification for the higher expense of recommended builder as representing best value for the club. It was also acknowledged that both builders could produce a building of good quality and standing.

Questions were directed toward whether the extra funds would be better spent on subsequent additions during or after the build that would enhance the facility, given both builders would need to construct a building to the specified code for the location. It was stated that the DA was approved in 2014 and that building codes have possibly changed since then. One builder chose to quote with fire resistant building materials for more of the build, while the other quoted according to the tender documentation provided. Geoff Wells spoke to how the whole matter had affected his health with worry about the outcome. He'd been unable to sleep because of the worry the build would be delayed and not finish on time. Based on previous experiences in the Defence Force he believed that the procurement processes had been followed and that we didn't have time to hold the build process up any further. He believed the EC and building committee had done an excellent job and thanked them for their contributions. He supported the recommendation and looked forward to the build commencing.

The secretary advised that she had been part of the building committee and was disappointed that there had been little consultation between the building committee members. She had only been able to view the completed decision matrix an hour before the previous report had been tabled. No discussion had occurred at the building committee level surrounding the matrix as it had not been completed until after the final meeting. She added that insufficient due diligence had been done to clearly identify why the recommended builder should be selected. As the Secretary was unable to include her dissent in the Building Committee Report tabled on the 5<sup>th</sup> May 20, it was submitted for inclusion with the Minutes of this meeting to complete the records. The Secretary highlighted that due process had not been followed. The Club Committee was also informed that she had spoken with State SLS representatives involved with awarding the grant moneys. They informed her that they could provide an independent assessment committee to review the tender quotes at no charge to the club, with minimal imposition to the building start date. State had advised that they do this process regularly for clubs around the State with large grant fundings. The Secretary emphasised she had no bias toward either builder, but did not believe sufficient work had been done to present a transparent process of tender selection to survive an external audit. The Secretary was of the opinion that the Club was almost

certain to face an audit of the grant expenditure, given the background to the partly Federal grant monies was already under investigation. The Secretary informed that received SLSA legal advice suggested a negative audit outcome could possibly have impacts beyond the Club and have consequences in their family business as company directors. As such the Secretary informed she would be abstaining from the vote and would need to resign her position if the motion was carried.

Further comments were made in favour of the motion highlighting that value does not necessarily mean lowest price. Value for money is paramount in selecting a winning tender and in this case, value was attributed to the materials being used, and knowledge of the recommended builder.

The President informed that if the motion is carried, selection of the builder remains provisional until it is re-approved by the NSW Sport and Recreation Office who part funded the project. Their grant condition being: ...3 quotes, *independent to the Club...*, as this was not satisfied in this case because one of tenderers (proposed in the motion) was an active Club member and known socially by many on the committee. He also informed that he would be abstaining and need to step down from his position as President of the Club for the same reasons as stated by the Secretary if the motion was passed.

Todd Haywood identified as one of the EC members who voted against the recommendation. (Dissention included in the EC report) then spoke. He indicated that an assessment for value for money could not be undertaken. Emphasis had been placed on the recommended builder using fire rated timbers in the construction, beyond those required for external verandas and structures. However, no value was placed upon one builder choosing to use galvanised handrails over the other using powder coated rails in the coastal environment. He also had concerns with the recommended builder failing to submit requested tender documentation in the time allowed and yet was still considered in the tender process.

Tender technical assessment difficulties had been discussed at length by the EC he said and the conclusion by the group was that they could not comment on Materials as it was not in the scope of their Tender evaluation plan, and yet disappointingly these had been included within the EC report. He commented that the EC report included misleading information as no cost value analysis could be completed by the panel however a value for money comparison was nonetheless included in the report although the actual price difference between the builders was in fact higher than reported. Any assessments on building materials and costs were outside the scope of the evaluation and beyond the skills and expertise of the EC.

He also quoted a couple of excerpts from the governance guide of the ACNC regarding Conflicts of interest – Real or perceived, they existed and that the Club should be seeking an external assessment of the tenders regardless of the skill level of our committee members. It was the only way to deal with the issues. He raised concerns with how the tender process would be viewed from people outside the Club. He also advised that he would be abstaining, resigning and despite the outcome, would report this to the Australian Charities and Not for Profit Commission (ACNC). He was compelled by his occupation to report this matter as he saw it.

Melinda Brogan identified as one of the EC members who voted against the recommendation. (Dissention included in the EC Report) Melinda also informed the Club Committee that she would be abstaining from the vote and would be resigning her position from the Club Committee should the motion be carried. Melinda informed that she believed the tender process had not been transparent. Involvement with the motion or process further would expose her to an untenable position that would threaten possible loss of her

accreditations and she wouldn't take the chance that she might be liable financially.

Gary Pettigrove spoke in favour of the Motion and that people stating concerns about conflict of interest and impact upon their business interest were over reacting. He stated in his experience within the Australian National Audit Office, that no auditing body would be concerned by the developments here. It is a small community with local relationships and the notions of people's business interests being threatened by conflicts of interest was scare mongering and unnecessary.

Darren Drewson informed that he had no association with either builder and did not have a preference. He suggested that no matter who won the contract, that a project manager to oversee the project on behalf of the Club should be appointed.

Steve Corcoran spoke for the motion and stated that he had dealt with many tender processes over the years and he saw what the EC report covered as a comprehensive justification for the motion.

Claire Forbes spoke for the motion and insisted that if the assessment was done externally it couldn't just be surfclub members from up north, it would have to be someone who had oversight of Commonwealth Procurement guidelines as well.

Peter Halkett stated that he undertook works for P & L Louttit and as such would be abstaining.

Rob Wildman spoke against the Motion on the basis that it did not need to proceed and force people into untenable positions that would require resignation from the committee. An avenue had been offered by State Office to have an independent assessment of the tendered quotes at no charge to the club. It was identified this could be done within the available timeframe for the proposed start date of the build. What did we have to lose to get the decision correct and pass audit?

Nat Browning informed the Club Committee that she had been advised by her Director (employment) not to participate in the vote and therefore would also be abstaining.

The Chair then closed the discussions with a summary of what the EC group had covered and the faith that they all had in their process that every aspect of governance was satisfied.

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### **7.0 Decision**

With no further discussion, the Motion was restated to the Club Committee and a vote taken. Each member was requested to declare if they had a relationship with either builder who had tendered quotes before they voted. One member declared a business relationship and abstained from voting.

**Votes for the Motion: 15**

**Votes against the Motion: 1**

**Abstained from vote: 6**

**Carried.**

**7.0.1** Todd Haywood informed he would be standing down from his positions of Boutique and Website Manager forthwith, and lodging a report with the ACNC.

**7.0.2** Melinda Brogan advised she would be standing down from her positions of First Aid Officer and Branch Rep forthwith.

**7.0.3** Wendy Law informed the Committee that she would be standing down from her positions of Secretary, Radio Officer, Chief Training Officer, Child Protection Officer, WH & S Officer, and Officials Coordinator forthwith.

**7.0.4** David Law informed that he was standing down from his position as President forthwith and passed the Chairman's role to the Vice-President.

**7.0.5** Steve Corcoran stated his disappointment with the outcome of events. He indicated that in our roles as Nipper Managers, Patrol captains and Club Members, we take risks each day and that the process of selecting a builder was no different. We undertake the risk assessments and that we do the best we can. We can't be asked to do more than that.

**7.0.6** Darren Drewson noted that he had been involved in a number of surfclubs and rugby clubs over the years and that this club was by far the best run and governed and the most passionate about what we do. Darren indicated the level of commitment of the building and evaluation committee to get the process right impressed him. He suggested that the Committee should not accept the resignations and that the affected members have a cooling off period in the interests of the Club.

**7.0.7** With no further business the Acting President closed the meeting.

**MEETING CLOSED – 8:35 PM**

**SIGNED:**

**MINUTES SECRETARY: ROB WILDMAN**

**PRESIDENT:**

### **DISSENTING OPINION PERTAINING TO BUILDING COMMITTEE REPORT TABLED 5<sup>TH</sup> MAY**

As a member of the Building committee throughout this process, I am registering the fact that I'm not in support of the Report published 5<sup>th</sup> May.

I was not able to include my dissention within the committee, within the Report itself or during the meeting on 5<sup>th</sup> May, so therefore I am tabling it at this Special Meeting, 13<sup>th</sup> May.

- when we first decided on what the decision matrix would look like (prior to tenders being received), the fact that it included "Innovation and Value Adding" as a criteria was discussed, BECAUSE WE HAD NOT ASKED FOR INNOVATION ANYWHERE IN OUR REQUEST FOR TENDER. The building committee on that day decided then that we would all score that criteria as equal for both builders, so that we didn't need to alter the matrix. We all agreed. Unfortunately, the building committee minutes don't document this discussion, and there were no minutes produced for the following meeting at all.

- When tenders formally closed on 24<sup>th</sup> April, P & L Louttit had not included insurances, licences or references with their submission. All items that were clearly requested in the tender. Discussion took place at the building committee meeting surrounding this and it was decided to allow them to submit these items when the first round of clarification items was requested from each tenderer. Technically, their tender was originally non-compliant.

- At our final building committee meeting on 3<sup>rd</sup> May a list of further clarifications was brought up as being required from the South Building tender. As we were working through these items, a member decided that we were going to run out of time with the build if we waited for further details to come back, and that they preferred P & L Louttit as the successful tenderer. The remaining three other members all then said the same. AT THIS STAGE WE HAD NOT COMPILED A DECISION MATRIX OR EVEN HAD THE CHANCE TO LOOK AT OUR DECISION TOOL. I stated that I was not in favour of this, our individual score sheets for both builders were then collected, I was advised that the finished matrix would be compiled, and that the Report would be provided from this committee to the Executive the following day. I left that meeting devastated that we had not followed proper process.

- When the Report issued the following day, I quickly replied to the building committee my concerns that the process had not been followed and that the matrix should be included in the report. I received replies from two members stating that the decision should stand and that the 'feel' of the first tender response from P & L Louttit gave them the edge despite the obvious greater tendered price. The matrix was sent through on the evening of our Club meeting.

In light of all these issues, I confirm that I cannot support this report as published. In my opinion a transparent objective assessment of both tenders was unfortunately not completed by this building committee.

Wendy Law