

HERBERT RIVER IMPROVEMENT TRUST

GENERAL MEETING MINUTES

THURSDAY 5TH JULY, 2012

AT 9.00 A.M.



A. ATTENDANCE – Present were Mr. W.H. Pickering (Chairperson), Cr. W.G. Skinner (Member), Cr. D.G. Carr (Member), Mr. R.W. Clark (Trust Secretary), Mr. B.E. Leach (Trust Engineer), and Mr. S. Hall (Trust Works Manager).

B. APOLOGY – An apology was received from Catchment Coordinator and Acting Terrain NRM, Hinchinbrook Area Team Leader, Mr. Michael Nash.

C. MINUTES -

Confirmation of Minutes of the General Meeting held on the 7th June, 2012 and Special Meeting held on the 7th June, 2012.

Resolved – That the minutes of the General Meeting held on the 7th June, 2012 be approved.
(Crs. Skinner and Carr - Carried)

Resolved – That the minutes of the Lower Herbert Levee Study Group Meeting held on the 7th June, 2012 be approved.
(Crs. Carr and Skinner - Carried)

D. WORKS REPORT –

Consideration of Trust Engineer's June, 2012 report of works performed to date and activities in progress.

Resolved – That the Report be received and noted.

That the landholders included in the 2011 / 2012 Annual Works Program be advised that the NDRRA eligibility is unclear and consequently the Trust cannot proceed with the works at this stage.
(Crs. Skinner and Carr - Carried)

E. ACCOUNTS FOR PAYMENT -

1. The Secretary submitted accounts for payment as hereunder and statements of receipts and disbursements for the period up to 5th July, 2012:-

<u>General Fund</u> -	Cheque	\$Nil
	EFT.....	\$511,832.43
		<u>\$511,832.43</u>

Resolved – That payment of accounts as submitted be approved and the unaudited statement of receipts and disbursements be received and noted.

(Crs. Carr and Skinner - Carried)

Consideration was also given to drafting up a 2012 / 2013 Budget based on information known at this stage.

It was noted that a draft 2012 / 2013 Budget will be prepared for consideration at the 2nd August, 2012 General Meeting.

F. SESSION WITH MICHAEL NASH OF HERBERT RIVER CATCHMENT COORDINATING COMMITTEE.

Consideration of discussions held with the Catchment Coordinator and Acting Terrain NRM, Hinchinbrook Area Team Leader, Mr. Michael Nash

The Trust noted Michael Nash's apology due to annual leave.

G. CORRESPONDENCE –

1. LGM QUEENSLAND, Newstead, 6th June, 2012, forwarding 2012/2013 Membership Contribution Invoice, an updated Certificate of Currency, updated Membership Schedule, Statutory Disclosure and Important Notices for consideration and attention. (093/0005)

Resolved – That the notification be received and noted.

(Crs. Skinner and Carr - Carried)

2. BMT WBM PTY. LTD., Melbourne, 12th June, 2012, forwarding copies of the Final Report for the Herbert River Levee Modelling Study and CD containing pdf version of the Report. (500/0753)

Resolved – That the Final Report be received and it be distributed to the Study Group Members and the Hinchinbrook Shire Council.

That the Trust arrange a deputation with the Hinchinbrook Shire Council to discuss the Report.

(Mr. Pickering and Cr. Skinner - Carried)

3. QUEENSLAND AUDIT OFFICE, Brisbane, 13th June, 2012, confirming ongoing audit arrangements for Trust, however drawing the Trust's attention to a number of key changes as follows:-

- The presentation and reporting disclosures for non-current assets;
- Revised audit fees and billing arrangements which will become effective for the 2012 / 2013 and subsequent audit years; and
- Requests for additional information regarding the payment of secretarial fees.

Further advising that the Auditor-General has assigned Mr. Nick George the responsibility of conducting the audit assisted by an audit team of Peter Hockey (Team Leader) and Scott Sinclair. Requesting all documentation is provided by the close of business on Friday 27th July, 2012 and if the Trust is unable to meet this date the Trust is required to negotiate a revised date as soon as possible. Explaining Client Strategy, Scope of Audit Engagement, and NRM's Annual Reporting Requirements. (101/0001)

Resolved – That the advice be received and noted.
(Crs. Skinner and Carr - Carried)

4. HON. ANDREW CRIPPS MP, MINISTER FOR NATURAL RESOURCES & MINES, Brisbane, 13th June, 2012, responding to the Trust's letter of 8th May, 2012 seeking an extension of time for the Trust to comply with accrual accounting practices and advising that he is currently examining the issue and will liaise with the Treasurer on such an extension. Further advising that the Department of Natural Resources & Mines intends to assist Trusts with eventual compliance with the Financial and Performance Management Standard by producing a handbook and encouraging the Trust to continue to work with the Department to provide information to contribute to the handbook. Also reaffirming that the State Government will not be forcing the transition of Trusts to local government. (104/0001)

Resolved – That the advice be received and noted.
(Crs. Carr and Skinner - Carried)

5. JOHN SCOTT, Toowong, 19th June, 2012, advising that the Trust carried out works on his property on the bank of Dalrymple Creek in the 2007/2008 financial year to which he financially contributed and it was then the Trust's intention to place a Section 11 Notice on that section of bank, which would then become a Trust asset and the Trust would be committed to maintaining this section of bank. In approximately 2009 the full length of the repaired bank slumped and the formation of a "soil cliff" approximately three to four metres in height resulted and this cliff has continued to erode over the past three years. Trust officers and contractors have visited the site and verbal discussions with the contractors indicate that the Trust do not intend to recommend repair of the wall. Seeking an indication of the intent of the Trust with regard to this property. (103/0003)

Resolved – That Mr. Scott be advised that the Trust will inspect the location at its next Meeting on the 2nd August, 2012.
(Mr. Pickering and Cr. Carr - Carried)

6. L. & R. CERVELLIN, Ingham, 2nd July, 2012, referring to the Trust's previous correspondence regarding the banks of Insulator and Mosquito Creeks which converge on their property and advising that the estimated cost of the project appears high for the quantity of work to be carried out. Advising their resources are limited and the most they could contemplate contributing to such a job is \$12,000. Noting that the Trust's previous rock work to protect the banks has remained very stable. Further advising they are willing to work with the Trust within their limited capacity. (103/0004)

Resolved – That advice be given that the Trust cannot reduce the landholder contribution further and that the Trust has delayed this project pending clarification of asset eligibility for NDRRA restoration funding and future maintenance.
(Crs. Skinner and Carr - Carried)

7. THE HON. ANDREW CRIPPS MP, MEMBER FOR HINCHINBROOK, Ingham, 11th May, 2012, making representation on behalf of Mr. Brian Butler of 100 Eddleston Drive, Cordelia regarding a large tree which was situated on the riverbank behind his home and which fell down during Cyclone Yasi. Mr. Butler contacted Council following Cyclone Yasi regarding removal of this tree as at that time it was overhanging his shed which housed a caravan being used by Mr. Butler as sleeping quarters. Further representations were also made with Operation Clean-Up however no assistance was forthcoming. Mr. Butler has cleared away a number of smaller branches however as the tree is so large many branches are either too big or too high to reach from either the shed roof or ground level. A number of these branches are now dying and beginning to fall and Mr. Butler is fearful of someone being hurt should a branch fall while he or someone else is in his backyard. The tree was originally on the riverbank and it is uncertain whether any riverbank erosion has occurred as a result of this area enduring a couple of floods during the last 12 months. While the roots and stump are still on the riverbank, large branches have encroached on Mr. Butler's property and are now posing a danger from falling branches. Requesting the Trust to inspect the property to ascertain what assistance can be offered to Mr. Butler regarding the removal of this tree as well as ensuring the riverbank is sound any posing a threat to Mr. Butler's property through erosion or washout. (103/0025)

Trust Secretary's Comment – This matter was deferred from the 7th June, 2012 Trust meeting to review the history of this matter.

The Trust considered Mr. Butler's request at its 3rd March, 2011 General Meeting and wrote to him on the 11th May, 2011 outlining that the Trust could not remove the trees from the top of the riverbank, and that the Trust was unable to assist and to contact DERM as the appropriate authority re: clearing trees. The Trust Engineer did inspect the damage on the 16th May, 2011 and advised Mr. Butler that the removal of the tree is not something that either Council or the Trust can do under the NDRRA package and suggested he might like to try the Premier's Relief Fund. Andrew Cripps then wrote on the 30th June, 2011 on behalf of Mr. Butler and the Trust responded on the 13th July, 2011 providing a copy of the Trust's response to Mr. Butler dated 11th May, 2012.

Resolved – That the Trust reiterate its advice to the Member for Hinchinbrook that the Trust cannot assist Mr. Butler to remove the tree as it is outside the responsibility of the Trust and that there is no bank damage in this locality.
(Crs. Carr and Skinner - Carried)

8. DEPARTMENT OF ENVIRONMENT & RESOURCE MANAGEMENT, Townsville, 23rd April, 2012, Manager, Water Management & Use, Mr. Gary Jensen responding to the Trust's letter dated 4th April, 2012 regarding Section 11 Notices for the Alligator Ponds Drainage and Halifax Levee. Advising that Section 11 assumes that this section does not require works to be on a riverbank before it applies. Regarding the Alligator Ponds Drainage and the Halifax Levee, if interfering with vegetation or the levee would be likely to cause or contribute to any damage already done by flood or cyclone to any bank of any river within a river improvement area, it is the Manager's view that Trusts could issue an improvement notice for these works, both vegetative and levee. These views are only those reflected by officers within this department and should not be relied on as legal advice. The Department does not provide legal advice to statutory bodies and he recommends that the Trust obtain their own legal advice on these issues. (103/0005)

Trust Secretary's Comment – This matter was considered at the last Trust Meeting and it was decided to examine the River Trust Act and determine at the next meeting if a legal opinion is warranted.

As pointed out by the Department, the *River Trust Act* allows river improvement notices to be placed on land to prevent activities that could be the cause of or contribute to any damage to any bank of any river either now or in the future.

The Act contains the following definitions:-

banks, in relation to any river, includes all elevations or slopes confining or tending to confine waters flowing in, into, or out of that river during the period of any flood or cyclone to the bed thereof.

and

river, includes any stream of water, whether perennial or intermittent, flowing in a natural channel, or in a natural channel artificially improved, or in an artificial channel which has changed the course of the stream of water and any affluent, confluent, branch, or other stream into or from which the river flows and, in the case of a river running to the sea or into any coastal bay or inlet or into a coastal lake, includes the estuary of such river and any arm or branch of same and any part of the river subject to the ebb and flow of the tide at ordinary spring tides.

The question posed to the Department was could we apply a Section 11 Notice to the Alligator Ponds Drain and the Halifax Levee? It seems to me that the definition of river would include the Alligator Ponds Drain, as my understanding is the drain was improved by the Trust as part of the Catherina Creek flood gate and overflow channel, and as DNRM have advised us, it is clearly an asset of the Trust. Placing a Section 11 Notice to protect vegetation works would I believe constitute a legal application to protect the banks of the drain.

In relation to the Halifax Levee it appears that to place a Section 11 Notice over the levee may not conform with the Act as there would need to be a clear connection between the levee and the Herbert River bank. If the levee was constructed on the bank of the river, I think it would then conform to the definition of "banks" in the Act i.e., "any elevation or slope confining waters flowing out of that river during the period of any flood or cyclone to the bed thereof".

It is unlikely that any residential landholder adjacent to the levee would knowingly do anything to jeopardise the structural integrity of it. Perhaps the best approach is not to apply Section 11 Notices to the levee but rely on this, and where necessary request landholders to desist from doing any acts which may threaten the levee. Surely they would comply because the structure protects their property.

In the case of Trust levee works done on and adjacent to land owned by Mahony's in order to be able to lawfully apply the Section 11 Notice, I think you would have to prove that you are protecting the banks of the Herbert River. This may be difficult to achieve. The State Government are reviewing the *River Trust Act* and perhaps a solution is to include therein a power for Trusts to apply Section 11 Notices over Trust assets as well as the banks of a "river". We should also be mindful that Section 11 (5) of the Act requires the Trust to pay compensation if consequent to a landowner complying with a notice, damage results to a cultivated crop growing on the land. To apply a Section 11 Notice to Mahony's land could expose the Trust to compensation.

Resolved – That no action be taken pending the clarification of asset eligibility for NDRRA restoration funding and future maintenance.
(Mr. Pickering and Cr. Skinner - Carried)

9. HRIT NDRRA RESTORATION ISSUES.

Consideration of The Hon. Andrew Cripps MP, Minister for Natural Resources & Mines' correspondence dated 23rd June, 2012 to Mr. Andrew Buckley of Department of Natural Resources & Mines forwarding copy of Trust letter dated 22nd June, 2012 to the Minister regarding the Trust's Timely and Preventative Works applications, 2011 NDRRA submissions, and the NDRRA eligibility criteria for Trust assets. Requesting his Officer, Mr. Andrew Buckley to forward the Trust's correspondence on to Mr. Nigel Kelly and Gary Jensen and for them to liaise with the Trust and resolve the matters or alternatively provide a brief for the Minister to meet with the Trust at the Townsville Community Cabinet weekend on the 1st July, 2012.

Consideration was also given to correspondence from Trust Engineer, Mr. Bruce Leach to The Hon. Andrew Cripps MP, Minister for Natural Resources & Mines dated 26th June, 2012 advising of his discussions with Mr. Nigel Kelly on the 26th June, 2012 regarding arrangements as requested by the Minister to which Mr. Kelly had indicated he is happy to meet with the Trust later on in the week. Further advising the Minister that Mr. Kelly had mentioned that any decisions made by the Department to date were final and would not be subject to any discussions and the Trust would receive a letter to that effect signed by the Minister. Advising the Minister that the Trust will accept his direction, however is concerned that the Department has apparently ruled out any discussion on the decisions to which the Trust feels aggrieved, and which were the subject to the Trust's recent representation to the Minister.

Further consideration was also given to the Trust's meeting with Mr. Nigel Kelly and Mr. Gary Jensen on Thursday 28th June, 2012, followed by a Deputation with The Hon. Andrew Cripps, Minister for Natural Resources & Mines in Townsville on Monday 2nd July, 2012.

Resolved – That the Minister be thanked for receiving our Deputation and he be requested to overturn the Acting Director General's decision to reject our 2011 Timely & Preventative Works and NDRRA Restoration Submissions and also that we appreciated his intention to seek Federal Government agreement for the 2011 Asset Restoration Damage Submission and generally for the benefit of all Trusts clarification of the essential asset infrastructure definition under NDRRA restoration funding guidelines.

(Mr. Pickering and Cr. Carr - Carried)

10. TERRAIN NRM CRITICAL WATERCOURSE RIPARIAN AND BEACH RECOVERY PROJECTS.

Consideration of whether or not the Trust will proceed with these projects in view of the uncertainty surrounding the eligibility of riverbank protection work assets being eligible for NDRRA restoration funding should they be damaged in a future natural disaster.

Resolved – That the landholders involved in these projects be advised that the NDRRA eligibility is unclear and consequently the Trust cannot proceed with the works at this stage.

(Crs. Skinner and Carr - Carried)

11. CATTLE / FRANCES CREEKS FLOODING ISSUES.

Consideration was given to a proposed shed meeting at Charlie Barbagallo's shed on Pinnacle Hill Road on Monday 16th July, 2012 at 11.00 a.m. to discuss initiatives for weed control in the Cattle Creek Wetland area, guidelines for landholders regarding de-silting and debris removal, process for obtaining permits, and process for forming a new division of the Lower Herbert Water Management Authority. The Trust has been invited to attend this meeting.

Resolved – That the Trust Chair attend the Meeting.

(Crs. Skinner and Carr - Carried)

12. APPOINTMENT PROCESS FOR CHAIR AND COMMUNITY REPRESENTATIVES ON THE HERBERT RIVER IMPROVEMENT TRUST.

Consideration of information received regarding the process necessary to call nominations for the appointments and the selection process to occur to allow the appointment of a Trust Chair following the expiry of the current Chair's term on the 11th July, 2012 and also if the Trust desires to appoint community representatives.

Trust Secretary's Comment – Mr. Pickering will continue as the Trust Chair until such time as a decision is made on his position. I have received information from DNRM including guidelines which they believe will assist us in calling nominations and the selection process including liaising with Mr. Gary Jensen, Manager, Water Management and Use, Townsville.

Once candidates are chosen, searches are carried out and once approved by the DNRM Minister, the appointments are sent to the Premier and then Governor in Council after which we are advised of the outcome. The process does allow for Mr. Pickering to re-nominate if he would like to remain in the position.

Resolved – That the Trust commence the process to appoint a Chairperson and two (2) Community Members for a term of five (5) years ending 30th June, 2017.
(Cr. Carr and Mr. Pickering - Carried)

13. DEPARTMENT OF ENVIRONMENT & RESOURCE MANAGEMENT, Townsville, 29th March, 2012, inviting the Trust to provide the Department with submissions for restoration of assets under the State and Federal agreement and outlining the two step process by the Department to assess the application against the general eligibility criteria as defined in the Queensland Guidelines.

Resolved – That the decision to ignore the section in the Guidelines relevant to Trusts and Drainage Boards be referred to the State Council of River Trusts for their information and appropriate representation to the State Government and the Department be requested to advise why these are being ignored.
(Crs. Carr and Skinner - Carried)

H. CONCLUSION – The meeting concluded at 3.40 p.m.

(Sgd) Cr. W.H. Pickering,
TRUST CHAIRPERSON.