

24 January 2018

The Berry Forum
BERRY NSW 2535

Attention: David Carter (Chair), Stuart Coughlan
(Secretary)

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Dear The Berry Forum

The Berry Forum - Request For Information

We refer to our letter dated 21 December 2017 and to your email dated 10 January 2018.

As a preliminary matter, our client apologises for any concern or disruption caused by our request for information. That was not the intention of our letter. However, our client does not agree that the tone of our letter was in any way threatening, nor does he accept that it contained a “demand” for a response within 28 days as indicated in your email of 10 January 2018.

As you are no doubt aware, Shoalhaven City Council (**Council**) is currently undertaking a review of the policies and guidelines that govern Consultative Community Bodies (**CCBs**), including The Berry Forum (**Forum**). It is our client’s intention to conduct a review of the Forum’s activities and to submit an information package to Council in February 2018 for consideration during its review process. Our client initially sought to rely on the information published by the Forum via its website <http://berryforum.org.au> when undertaking his review. However, as stated in our previous letter, upon reviewing the website, our client became concerned about the lack of published information regarding the Forum’s activities. It is for this reason that our client instructed us to write to the Forum and request the information referred to in our previous letter.

Below we outline our client’s concerns regarding the information available on the Forum’s website.

Minutes

Our client is concerned that the minutes of meetings published on the Forum’s website do not adhere to the format specified in the *Guidelines for the Conduct of Community Consultative Bodies 2016* (**Guidelines**). In particular, our client has observed that:

1. Section 4.9 of the Guidelines states that “*The minutes are the official record of business conducted at the CCB meeting and **must** record ...voting on any decisions (i.e. number for and against, or if unanimous)*”;
2. In many instances, numbers for and against are not recorded in the minutes where votes were taken at Forum meetings;

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3. In many instances it did not appear that votes were taken, or were not recorded, at Committee meetings;
4. In at least one instance, the minutes published on the Forum's website were amended following their initial publication; and
5. The level of information supplied in the minutes appeared to be lacking in detail, specifically with regard to Committee meetings.

On the above basis, our client has formed the opinion that the minutes published on the Forum's website have been abridged or otherwise condensed for the sake of easy web publication.

Submissions and Correspondence from the Forum to Council

Despite reviewing the Forum's website, our client has been unable to find a navigation tab that directs to the submissions and correspondence that have been submitted by the Forum to Council on behalf of the community.

Financial Reports

Our client has located what appears to him to be abridged financial statements in the form of a balance sheet on The Forum's website. This information however is not signed by the Chairman or Treasurer of the Forum and does not provide a breakdown or any information regarding the donations received by the Forum.

Corporate Structure

Our client is aware that there is no legal requirement for a CCB to be an incorporated entity and that the Guidelines for CCBs leave this decision up to the individual CCB. However, our client also notes that where a CCB is not incorporated, then the CCB is not afforded the protection of Council's Public Liability Insurance as detailed in section 3.6 of the Guidelines.

Further, our client notes that the following information is contained in the minutes of the Committee Meeting dated 20 July 2015 on the Forum's website:

Constitution

The draft prepared by Laurie and Margot was discussed and quorums for Committee member attendance were agreed. It was also agreed that the Management Committee would elect officers. The final version, when endorsed by the Forum, will be displayed on the noticeboard and website.

ACTION: Laurie to check on incorporation and circulate final version

Our client has been unable to find any further reference to the progress of the incorporation of the Forum or any formal decision by which it was agreed that incorporation of the Forum was not to take place.

Donations

In our previous letter, we conveyed our client's request for you to explain the reason for why the Forum is not registered for charitable status with the Australian Charities and Not-For-Profits Commission. In response to this, your email of 10 January 2018 states that the Guidelines provide that "CCBs do not need to be incorporated and that they can accept donations to assist with running costs." Our client considers that you have misunderstood his request.

Our client understands that unincorporated not-for-profit associations are regulated by a number of pieces of legislation. Some specific kinds of associations, such as charities which wish to raise money by requesting donations from the public for a charitable purpose, may need to be registered under various state Acts. There may also be other implications for unincorporated associations and their office bearers and committee members when considering calling for or accepting donations from the public to assist with fulfilling their functions.

On that basis, our client would appreciate the Forum's assistance in gaining an understanding of the following matters:

1. The purpose for which the Forum accepts donations;
2. Does the Forums Committee consider its purpose to be charitable in nature;
3. The systems which are in place for receiving and managing those donations; and
4. How those donations are allocated.

Our client's position

It is for the above reasons that our client made the request for the information referred to in our previous letter.

Our client appreciates that the Forum is an association of volunteers and he does not wish to place an unreasonable burden on the valuable time that the committee donates in performing its functions on behalf of the community.

Our client was not aware that a request for information, such as was made in our previous letter, would result in a cumbersome challenge for the Forum. Our client assumed that the information requested would be readily accessible and could simply be forwarded via email. The above notwithstanding, our client now appreciates that this may not be the case and has separately made a request under the *Government Information (Public Access) Act 2009 (NSW)* (**GIPAA**) with Council to obtain some of the information previously requested from the Forum.

The GIPAA request covers the following information:

1. Minutes of meetings supplied by the Forum to Council;
2. Submissions made by the Forum to Council on behalf of the community; and
3. Correspondence from the Forum to Council.

Given that our client's GIPAA request covers much of the information previously requested by our client, this will hopefully lessen the burden on the Forum in replying to our client's request. Our client would, however, still appreciate the Forum's response and assistance via the provision of the following information:

1. Copies of the Forum's annual financial reports, together with the contact details for the independent accountant tasked with auditing the Forum;
2. Confirmation that the Forum has voted not to adopt an incorporated structure. If this is the case, please provide to our client, or direct our client to the appropriate records on the Forum's website, where this was proposed and voted on; and
3. An explanation of the purpose for which the Forum accepts donations, the systems which are in place for receiving and managing those donations and how those donations are allocated.

Further, our client has become aware that, whilst there was previously access to the Forum Meeting Agendas on the Forum's website, these pages appear to have now been removed. On that basis, in addition to the information requested above, our client has instructed us to request copies of the following information:

1. The Forum's Meeting Agendas;
2. The Committee's Meeting Agendas; and
3. Presentations produced and presented by the Committee at Forum Meetings.

Our client notes that, in your email of 10 January 2018, you have indicated that both the Mayor and Deputy Mayor have reaffirmed their support for the Forum following a review of our previous letter. Our client would like to request that you provide some clarification in respect of this statement as it is unclear to our client what "support" was reaffirmed.

Our client would appreciate a response to this request for information within 28 days of the date of this letter.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Holding Redlich', is written over a faint, illegible printed name.

Holding Redlich