

Free Beach Action NSW

Group Meeting

Wednesday 12 November 2008

St George Rowing Club

In attendance: Gerald Ganglbauer, Pete Dee, Chris Efstathiou, Mark Trenholme, Juan Mellado, Katina Mellado, Stuart Baanstra, Linda Hunter, Graham Grant, John Martin, Vince Bussa, Kevin Boggs, Silvana Boggs, Karen Merritt.

Apologies: Mario Conti, Luke Bigucci & Ikumi

Our fourth meeting was opened at 7.18pm with our founder Gerald back from Europe and present.

An attendance sheet was passed around whilst apologies were noted for the record before the present meeting's agenda and associated literature was handed out. Introductions and apologies formed **Item 1** on the agenda.

Item 2: Minutes tabled from last meeting – St George Rowing Club 15/10/08.

The minutes from the first meeting were adopted by Mark and seconded by John. Pete again reminded everyone to access the NSW Free Beach Action Group site to **read** the minutes prior to each meeting. www.freebeach.info

At extremely short notice Chris did a great job in chairing the last meeting as Pete had a bad chest infection. Well done and thanks again Chris!

Item 3: Petitions.

As of the 12/11/08 we have approximately 800 signatures on our petitions with 700 copied and ready for service on Randwick City Council, Minister Carmel TEBBUTT and Minister Barbara PERRY. A big thank you to everyone who obtained signatures on these petitions, particularly Mark who has completely canvassed the beach itself many times over. More than

a few of the Free Beach Action Group are heading to River Island Nature Retreat during the Australian Nude Week Friday 21/11 to Sunday 23/11 with more petition forms.

EDIT: All 3 sets of the first 700 petitions have been served.

13/11/08 – Randwick City Council & Carmel TEBBUTT

20/11/08 – Barbara PERRY

Item 4: Southern Courier Poll and article dated 4/11/08.

Copies of the Southern Courier dated 4/11/08 were on hand for the group to review the article concerning the beach with word from the Crime Prevention Officer at Maroubra Police that 15 'No Nudity' signs had been removed in the middle of the night. Pete made the point that our group must not be involved in any vandalism of these signs as it will compromise any good standing we have within the community. The article went on to mention Chris' letter to Deputy Premier TEBBUTT who as the Minister for the Environment, Climate Change and Water has the National Parks & Wildlife Service portfolio. Chris called for a two year trial of lawful nudity on the beach so we can prove our case without fear of prosecution whilst reporting any inappropriate behaviour including trespassing into the dune area to the authorities. The proposal for the two year nudity-trial led to the Southern Courier conducting an online poll which one week later demonstrated overwhelming support for the beach being legally clothing optional for at least the two year trial period. 91% (320) Yes votes compared to a mere 9% (32) No votes.

The next article in the Southern Courier dated 11/11/08 has a photo of councillor BELLELI who continues to live in denial of the massive support our proposal for the beach being gazetted legally clothing optional has, but why is the councillor pointing west from La Perouse towards Prince of Wales Drive at Port Botany? Does the councillor even know where Little Congwong Beach is? Nick from the Southern Courier had agreed to be present and cover the delivery of the 700 petitions to Randwick City Council the next morning (13/11/08).

EDIT: Unfortunately Nick rang Pete on the morning of Thursday 13/11/08 to state he couldn't attend the delivery of the petitions, however his photographer Erin would still attend. At short notice Katina agreed to a telephone interview with Nick for the article covering the delivery of the petitions to Council. Also unfortunately most of what Katina told Nick was omitted from the article appearing on the 18/11/08.

Item 5: Correspondence/communication with relevant authorities or media.

Since our last meeting the following correspondence has been sent by group members:

- Letter to Carmel TEBBUTT from Chris (Carmel TEBBUTT is Chris' local member)
- Article for the Australian Nudist Federation newsletter by Pete
- Article for Australian Sun and Health Magazine by Pete
- Letters to the Southern Courier by Stuart, Juan, Katina, Paula and others. Stuart's letter was published on 11/11/08.

The group agreed to continue writing letters to various media outlets, including the Southern Courier.

Katina had also written to Peter BERNER of the MMM FM radio network to inquire whether he'd like to cover the issue of the beach and our plight to have it legalized. Unfortunately Mr BERNER cannot become involved in 'local' issues as his program is broadcast nationally, yet in the past he's proudly declared experience of naturism on-air.

Chris has also contacted ABC radio with no reply. Chris' letter to Carmel TEBBUTT has not been responded to, although receipt of it has been acknowledged.

Vince is still awaiting a reply from Verity FIRTH, the former NSW Minister for Local Government who has since moved onto the Education portfolio.

Item 6: Present status of the signs and any return visits by police.

At the time of this meeting on 12/11/08 all three signs were missing and none of the group were aware of any return visits to the beach by police.

Apparently NPWS rangers visited the beach a few Sundays ago either 26/10/08 or 2/11/08 to request naturists to cover up, but no infringements were issued.

John also made the point that a textile couple aged late 30's attended the beach and were happy to inform naturists the beach wasn't a nude beach anymore.

During this discussion Chris made the point that councillor Belleli is actually popular with local ratepayers as he frequently attends local school presentations and similar community functions.

EDIT: On Friday 14/11/08 three new signs appeared on the approaches to the beach. These signs were erected by NPWS with the post being fashioned from a small RSJ or I beam used in construction. The sign itself is now also encased in laminated glass.

Item 7: Discussion and handout re Criminal Infringement Notices (CINs) Issued by Police.

For the benefit of group members not present at this meeting, here is word for word the handout provided:

'NATURISTS ISSUED CRIMINAL INFRINGEMENT NOTICES (CINs) BY POLICE ON LITTLE CONGWONG BEACH 2ND OCTOBER 2008.

By now, most of our group are aware that four male naturists were issued with CINs at Little Congwong Beach on Thursday 2nd October 2008 for the offence of 'OFFENSIVE

CONDUCT'. These CINs are a \$200 on the spot fine police issued after identity of the recipients was verified. If the fine is paid within 28 days no criminal conviction is recorded. Of course the recipient has the option to defend the CIN and have the matter heard in Court.

One of the male naturists issued with a CIN was laying face down on a towel.

The following is information about the proofs, definitions and key points about Offensive Conduct – Section 4 of the NSW Summary Offences Act, 1988.

PROOFS:

1. Defendant/accused
2. Conducted himself/herself in an offensive manner
3. In, near or within view or hearing of a public place or school

DEFINITIONS:

Offensive Conduct – There is no useful distinction between behaviour and conduct; it has a broad meaning and may apply to sexual harassment, throwing of missiles, fighting, urinating in public, insulting words/sounds directed to people, calculated to wound or offend the feelings of others, arouse anger or resentment or disgust or outrage in the mind of a **reasonable person**.

Public place – Under the definition, Little Congwong Beach and the surrounding water is a public place.

School – We all know what a school is, but there's no relevance to the beach as it is not within view of any schools.

KEY POINTS:

An objective test **must** be applied when determining liability under Section 4 of the Summary Offences Act. Evidence of bystanders or observers is relevant and admissible, but not strictly essential. The test is that of a **reasonable person**.

Now putting aside the three male naturists, who were exposing their genitals, consider in the instance of the male naturist booked for offensive conduct whilst laying face down on a towel. Do you believe police had applied the objective test of a reasonable person before the CIN was issued in this case, or indeed the other three cases as well?

Moving onto Obscene Exposure – Section 5 of the NSW Summary Offences Act, 1988.

PROOFS:

1. Defendant/accused
2. In or within view from a public place or school
3. Wilfully and obscenely exposed his/her person

DEFINITIONS:

Wilfully – Means the act complained of was done deliberately and intentionally; not an accident.

Obscene – Something can amount to an obscenity if it violates “those contemporary standards of decency which in the opinion of the Court prevailed at the time of the charge.” *Cullen v Mecklenburg (1977)*.

Public Place – Under the definition, Little Congwong Beach and the surrounding water is a public place.

School – Again not relevant to Little Congwong Beach.

KEY POINTS:

It is unnecessary and inappropriate for the Court to decide the full extent of the meaning of the word ‘person’ in Section 5 of the Summary Offences Act. It is sufficient to say the definition of ‘person’ includes male and female genitals.

Where Local Councils have authorized certain portions of a public beach for nude bathing, Section 5 – Wilful and Obscene Exposure is not appropriate. Should there be any activity that becomes offensive, Section 4 – Offensive Conduct should be considered.

Wilful and Obscene Exposure **cannot** be dealt with by a CIN being issued. The only options police have when prosecuting this offence are:

1. Issue a Field Court Attendance Notice to appear at a Local Court
2. Serve a Future Court Attendance Notice (summons) to appear at a Local Court
3. Arrest and issue a Court Attendance Notice to appear at a Local Court

Ponder why police proceeded with Section 4 of the Summary Offences Act (Offensive Conduct), particularly in the case of the three naturists exposing their ‘person’ and not with Section 5 (Wilful and Obscene Exposure). Could it be due to any or all of the following:

1. CINs are easy to issue with not much paperwork involved
2. The benefit of no criminal conviction being recorded if the CIN is paid with 28 days is mentioned to the person issued, therefore less likelihood of a defended CIN
3. The only options to prosecute under Section 5 would make mass enforcements or arrests on the beach on warm sunny days a logistical nightmare and tie up police resources from attending to more important matters as the main charter police have is for the protection of life and property.

The group discussion on the CINs issued by police was very good with the sentiment being that police appear to have taken the easiest option by handing out a few tickets on a weekday for the incorrect offence. The group doesn’t want to see anyone arrested or summoned to

appear at Court for merely sunning, swimming and socializing naked on Little Congwong Beach. The opinion was divided on whether any future CINs for Offensive Conduct should be defended at Court given the provision of no criminal conviction being recorded if the fine is paid within 28 days, but the decision to defend these CINs should seriously be considered given the apparent absence of an 'objective test by a reasonable person' which must be applied by police in every case.

EDIT: On 19/11/08 Pete attempted to have a conference with the Chamber Magistrate at Waverley Courthouse to discuss jurisdiction over the beach and the appropriateness or otherwise of the CINs issued for Offensive Conduct. The clerk on the inquiry counter rejected the conference, so an appointment has been made with Kingsford Legal Centre (University of NSW) at 2.00pm on Monday 1/12/08

Item 8: Awareness of any inappropriate behaviour or trespassing beyond NPWS fence lines?

Linda stated there has been an apparent increase in males encroaching into the dunes and hills around the beach with many of the 1200mm high NPWS fences being damaged or pushed over. Linda also made the valid point that with the closure of Foreshore Beach for the Port Botany expansion works, possibly a lot of gay males are heading to the scrub behind Little Congwong Beach for encounters. The group agreed that this is where authorities should be targeting any enforcement and if we gain legal clothing optional status, we'd be the first to call '000'.

Katina also made the point that more sexual activity is being seen on Congwong Beach when she and Juan walk to and from Little Congwong Beach.

Kevin expressed his preparedness to approach any persons engaging in inappropriate behaviour to give vocal opposition.

Vince made the good point to be careful of confronting gawkers and perverts who may leave the beach and promptly call police to report any unofficial nudity on the beach.

On this point Pete wanted to remind everyone of the power of mobile phones in the hands of young males, particularly youths of Middle Eastern appearance who sometimes don't take kindly to being told to behave themselves and have been known to ring for reinforcements even when spoken to by police.

During this discussion Pete made a number of suggestions on how to deal with inappropriate behaviour including recording images on cameras or even holding up a basic mobile phone with no camera function, the deviant won't know the phone doesn't have a camera. Also consider small hand held mirrors to reflect sunlight into the eyes of pests.

Cameras on Free Beaches:

Many of the group were surprised to learn that currently in NSW it is not an offence to photograph any image in a public place unless the image was recorded for the self-gratification of any individual. The takers of any image for self-gratification are liable to prosecution under Section 21G of the NSW Summary Offences Act, 1988. Section 21G is designed to stop photographs being taken in the following circumstances:

- 1) photos being taken in public change rooms
- 2) hidden cameras designed to shoot up girls' skirts
- 3) nipper's surf lifesaving carnivals etc
- 4) images of people engaging in lawful behaviour where clothing may be at a minimum or absent such as on legal free beaches or topless beaches. This was the case when a man was prosecuted and fined \$500 for using his mobile phone camera to record images of topless women on Coogee Beach in 2005.

Of course on any nude beach common sense and etiquette have to prevail and anyone taking photos need to be sure anyone else in those shots approve, or your camera may get very wet in a hurry. Having said this, there's nothing to stop police bringing cameras to Little Congwong Beach as any images captured would become evidence and not for self-gratification.

Item 9: National Nude Week 15/11 to 23/11.

Yes this annual event has now been moved to the beginning of summer rather than the end to allow new naturists to sample some events at clubs & resorts and be recruited.

A group of our members are heading down to River Island Nature Retreat 21/11 to 23/11 with more petitions so standby for a full report next meeting.

Item 10: Any other business

Vince advised the group he will write a letter to the new NSW Police Minister Tony KELLY

The consensus of the meeting seemed to be that the Trivia competition being conducted over the P.A. system at St George Rowers was too loud for everyone to hear what speakers were saying. A new venue is desired, so any ideas?

Our next meeting is scheduled at a time date and venue to be spread by word of mouth only with no notification to be posted on the NSW Free Beach Action Group site.

The meeting formally closed at 8.37pm.

Cheers,
Pete