



Special Council Meeting Minutes

**Purpose: Tuia Lodge Transition and ongoing
Management of Tuia Lodge**

Held on

Thursday 19 November, 2015

Commencing at 6.00pm

In Council Chambers

Cnr Bentley and Collins Streets, Donnybrook WA 6239

A handwritten signature in blue ink, appearing to read "JR Attwood".

JR Attwood
Chief Executive Officer

20 November 2015

Disclaimer

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MINUTES

SPECIAL COUNCIL MEETING – TUIA LODGE INCORPORATED

19 November 2015

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SHIRE OF DONNYBROOK/BALINGUP SPECIAL COUNCIL MEETING – TUIA LODGE INC. MINUTES

Held in Council Chambers on Thursday, 19 November 2015

Meeting commenced at 6.00pm.

MEMBERS PRESENT

COUNCILLORS

Cr Logiudice (President)
Cr Mills (Deputy President)
Cr Bailey
Cr Crowley
Cr Dilley
Cr King
Cr Mitchell
Cr Tan
Cr Van Der Heide

STAFF

John Attwood – Chief Executive Officer
Greg Harris – Manager Finance and Administration

PUBLIC GALLERY

APOLOGIES

Nil

1 PUBLIC QUESTION TIME

Nil

2 APPLICATION FOR LEAVE OF ABSENCE

Nil

3 DECLARATION OF FINANCIAL/IMPARTIALITY INTEREST

Cr Logiudice declared an interest affecting impartiality regarding Agenda item 5.1.1 – *Transition of Tuia Lodge Operations to New Body- Tuia Lodge Incorporated* as he is a board member on the Donnybrook Balingup Aged Care Board.

CEO John Attwood declared interest affecting impartiality regarding Agenda item 5.1.1 – *Transition of Tuia Lodge Operations to New Body- Tuia Lodge Incorporated* as he is a Council-appointed member of the Donnybrook Balingup Aged Care Board.

4 PETITIONS/DEPUTATIONS/PRESENTATIONS

** 6.07pm - The President welcomed Mrs Sue Harris to the meeting and introduced her to the Elected members.

The President invited Mrs Harris to deliver her presentation on her observations regarding the operations of Tuia lodge during the period she relieved as Acting Manager of the facility.

Point of Order

Cr Van Der Heide raised a point of order referring to Council Policy 1.19 which states that presentations will not be heard on any matter that is to be considered in a closed agenda.

Motion

Moved: Cr Bailey

Seconded: Cr King

That Council proceed to hear the presentation from Mrs Sue Harris.

CARRIED 5/4

Cr Vane Der Heide requested the vote be recorded:

FOR:	AGAINST:
Cr Logiudice	Cr Crowley
Cr Mills	Cr Dilley
Cr Bailey	Cr Mitchell
Cr King	Cr Van Der Heide
Cr Tan	

Point of Order

Cr Van Der Heide raised a point of order referred to the Rules of Conduct Regulations Section 9(1) and 9(2) as he believed Council were breaching these regulations by contributing to the administration of the Council.

Mrs Harris indicated that she was not prepared to deliver her presentation unless all Councillors were in agreement to hear the presentation.

**6.47pm – Mrs Sue Harris left the meeting.

5 REPORTS OF OFFICERS

5.1 Chief Executive Officer

Motion

Moved: Cr Bailey

Seconded: Cr Dilley

That the Meeting be closed to the public under the *Local Government Act 1995* for:

Item 5.1.1 Confidential – Transition of Tuia Lodge Operations to New Body – Tuia Lodge Incorporated, and 5.12 Confidential – Tuia Lodge Review – Media Release under S5.23 (2) (a) *a matter affecting an employee or employees; (c) a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting; and (d) legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting.*

CARRIED 9/0

CONFIDENTIAL

5.1.1	SUBJECT:	TRANSITION OF TUIA LODGE OPERATIONS TO NEW BODY - TUIA LODGE INCORPORATED
	Location:	Tuia Lodge, Allnutt Street, Donnybrook
	Applicants:	Tuia Lodge Incorporated
	Zone:	N/A
	File Ref:	CSV 01/2
	Author:	John Attwood, Chief Executive Officer
	Report Date:	16 November 2015
	Attachments:	Nil

Background:

At the Special Council Meeting held on 9 June the CEO presented a range of options regarding the Tuia Lodge transition to independent operations for Council consideration. These included:

OPTION 1

- 1 ***Lease the premises including land to the service provider (Tuia Lodge Inc.)***
 - Land, buildings, fittings, furniture would all be leased to Tuia Lodge Inc.
 - Current accumulated revenue would be negotiated.
 - Decision to be made on how staff are to be transferred.
 - Tuia Lodge would have full autonomy – their own bank accounts etc.
 - Tuia would be able to gain PBI status (FBT exemption) and pass on this benefit to their staff.

- Donations to Tuia would be tax deductible.
- It may or may not be possible for Council to include the requirement for some form of performance standard in the terms of the lease** (Accreditation, financial capacity, reputation).
- Who owns assets (e.g. furniture and equipment) purchased after start of agreement?
- Agreement could stipulate that Lessee maintain buildings, insurance and grounds.
- Shire would continue to honour any existing workers compensation claims

Advantages	Disadvantages
	Council has no control over standards of care, employment of staff etc. (**depending on this point)
Shire no longer required to manage staff payroll, insurance, workers comp. etc	Community asset no longer in local government or community ownership.
Tuia staff benefit from Tuia’s PBI status	
Community perception – no obvious change	
	Complexity over who owns assets / extensions acquired or constructed after start of lease.
Donations could be tax deductible.	Tuia Lodge could not be Service Provider.

OPTION 2

2 ***Enter into a Management Agreement with the service provider (Tuia Lodge Inc.)***

- The lodge would operate independently of Council.
- All Federal Government income would come into a Shire account before being distributed to Tuia Lodge Incorporated.
- Shire would retain bonds.
- Shire would remain the approved aged care provider.
- Tuia would be responsible for recruiting, employing and dismissing employees as necessary.
- Tuia would assume all leave liabilities, injury management, workers compensation from an agreed novation date.
- Tuia would be obliged to maintain accreditation with the Department of Health & Ageing, Aged Care Standards and Accreditation, and comply with any other relevant regulations – and meet performance indicators set by the Aged Care Governance Committee.

- Shire would remain owner of the buildings.
- Shire would continue to honour any existing workers compensation claims.
- Any surplus from operations would be reserved by Tuia Lodge Inc.
- Own autonomy
- PBI Status
- Tax deductible donations

Advantages	Disadvantages
Council maintains some control in future of aged care in Shire.	
Community perception – no obvious change	
Shire no longer required to manage staff payroll, insurance, workers comp. etc.	Ongoing workload in accounting
Council able to raise loans to expand facility.	

OPTION 3

- 3 *Sell the entire operation on the open market to a residential aged care provider (e.g. company such as Bethanie Nursing Homes, but could be Tuia Lodge Inc.)***
- Building (including all fixtures, fittings, furniture etc.) would be sold, but not the land, which would remain the Shire's under Management Order from Department of Health.
 - 'Business' or 'goodwill' would be sold
 - Accumulated bonds would be retained by the Shire.
 - All staff contracts would cease and staff would have to re-apply to new owners.
 - All residential agreements would cease and be re-negotiated.
 - Shire would continue to honour any existing workers compensation claims.

Advantages	Disadvantages
Frees up capital	
Reduced workload for Councillors and Shire staff	
Council no longer has any involvement in provision of aged care facility	Council no longer has any involvement in provision of aged care facility
Aged care is not 'core business' of local government	

Ongoing provision of frail aged care for local community by large company which specialises in the field.	
	Community opposition – perception that profits/benefits not returning to local community (though presumably local people would continue to be employed).
	Community opposition – perception of ‘selling the family farm’.
	Costs may rise for residents.

OPTION 4

4 ***Council to change the management order currently in favour of the Donnybrook-Balingup Shire to the Tuia Lodge Inc.***

Advantages	Disadvantages
Total control by new body	Community asset no longer in local government ownership
Capacity to borrow against Management Order	
	Land and building could be passed on / sold to another external provider without reference to anyone.

At the Special Council Meeting held on 9 June 2015, Council resolved as follows:

2. *That Council advise the Board of Tuia Lodge that it continues to support their proposal to move towards independent management of Tuia Lodge.*
3. *That Council defers the proposal for the independent management by the newly incorporated body (Tuia Lodge Inc.) until:*
 - a) *The building contract with the Federal Government is finalised;*
 - b) *Outstanding management and staffing issues are satisfactorily addressed;*
 - c) *Current workers compensation claims are settled or addressed to the satisfaction of both Council and Tuia Lodge Inc.;*
 - d) *An independent review of the current and proposed Governance and Operational Structure is undertaken;*
 - e) *Transitional arrangements are fully assessed and agreed upon.*

4. *That Council's preferred transfer of Tuia Lodge Management is Option 2.*
5. *Upon completion of the items in Point 2 above, Council consider these matters and then determine whether to publicly advertise the proposals.*
6. *That Council will review the decision two years after the initial arrangement date is finalised.*

Option 2 is a model whereby the Shire would remain as the ultimately responsible body, albeit with less direct control over the operations, as in the past. In effect Tuia Lodge incorporated would act like a service company to provide the services the Shire needs to fulfil its legal obligations.

Subsequently, at the Ordinary Council Meeting of 23 September 2015, it was resolved:

That council shares the outcomes of this Review on a strictly confidential basis with the Board of Tuia Lodge seeking their input and feedback, and that the Aged Care Board be advised:

1. *That Council does not support the transfer of the land and buildings as the Tuia Lodge facility should continue to be owned by Council on behalf of all ratepayers.*
2. *To design, develop and implement a 'Governance transition Plan' that enables the transfer of all affairs related to the management of Tuia Lodge to Tuia Lodge Inc. within a period of two years;*
3. *That recommendations 2, 3, 4 and 5 from the Tuia Lodge Review Report are supported;*
4. *Council will consider the transfer of management of Tuia Lodge to Tuia Lodge Inc. (implementation of Governance Transition Plan) once the resolution made at the June 2015 OCM has been dealt with and recommendations 2, 3, 4 and 5 from the Tuia Lodge Review Report have been implemented.*

Comment

The independent review of the current and proposed Governance and Operational Structure has been undertaken by Inspire Consulting and a report has been provided.

The Tuia Lodge Board has reviewed the report and is generally in support of the recommendations contained therein, however would prefer the date for the transfer of operations to the Tuia Lodge Incorporated body to be 30 June 2016 instead of 30 June 2017.

The Board remains keen on acquiring the land and building in the name of Tuia Lodge Inc., however were open to discussion with Council, noting that the transfer of land may be something that happens in the future.

Further to Council's resolution of 23/09/2015 the Tuia Lodge Board have provided membership of the transition group and agreement has been reached for an ex-staff member to lead the administration section of transition arrangements.

Management Arrangements

Current arrangements: Committee appointed by Council and provided with delegated authority to manage the reaffirmed at the council meeting on 21 October 2015.

In considering Council's position in relation to the transitional arrangements to an independent body (Tuia Lodge Inc.) some council members have expressed a desire to reconsider the current arrangements in relation to the transition process and roles and responsibilities of the current committee members.

Options that could be considered include:

1. The current situation remains: Council-appointed Committee and no change to roles and responsibilities.
2. The roles and responsibilities of the Committee be reviewed: Delegation be increased/decreased.
3. The Committee composition and structure be reviewed.
4. The Committee be dissolved – effectively withdrawing the current authority to manager Tuia Lodge. This would mean that the current direct day-to-day management would be undertaken with most recommendations accepted by Council and the Tuia Lodge Board.

Points for Council to consider are:

1. Slee Anderson and Pidgeon conducted an investigation into concerns expressed by Shire employees. Recommendations arising from this investigation have been implemented.
2. An independent review of the management of Tuia lodge has been undertaken with most recommendations accepted by Council and the Tuia Lodge Board.
3. A transition committee is being established with membership from Tuia Lodge Board and Council staff. Council may wish to include a Councillor on this group.
4. Accreditation conducted an unannounced audit at Tuia lodge on 18 August 2015. The formal report indicated that all areas audited complied with industry-standard requirements.
5. WorkWise have been appointed to manage Human Resources at Tuia Lodge and undertake extensive training.
6. Local Government Insurance Services (LGIS) have provided initial training for staff at Tuia Lodge and all Council staff.
7. LGIS have conducted a risk audit at Tuia Lodge which achieved a rating of 86% and are in the process of organising an evacuation drill.

Consultation

Council's resolution of 27th June 2012 (point 6) stated the following position in regard to consultation:

“Once agreement is reached on transferring the asset the proposed transfer should be advertised and public comment invited and a community meeting considered.”

Council's resolution at the Special Council Meeting of 9 June stated the following:

“Upon completion of the items in Point 2 above, Council consider these matters and then determine whether to publicly advertise the proposals.”

Policy/Statutory/Voting Implications

Policy

N/A

Statutory

N/A

Voting

Simple Majority.

Financial Implications

Option 2 will require some ongoing administrative and accounting support which will represent a cost to Council and the community (bonds, reserve funds and transfer of monthly income).

Strategic Implications

Outcome 3.1 - Improve and increase the range of aged care and disability services, facilities and housing.

Officer's Recommended Resolution

Moved:

Seconded:

That Councils position remain unchanged in respect to the transition of Tuia Lodge operations to independent operations in accordance with the resolutions made at the Special Council Meeting of 9th June 2015 and the Ordinary Council Meeting of 23rd September 2015.

Cr Bailey foreshadowed the following motion:

That Council withdraw all delegated authority from the Tuia Lodge committee (Board) effective immediately. This action will allow Council to fully review the management, operations and future direction of Tuia Lodge.

Council is to appoint an administrator to oversee the day to day operations of Tuia Lodge and conduct an immediate inquiry into allegations of:

- 1. Forgery of Occupational Health and Safety Incident Reports*
- 2. The supply of prescribed medication to residents by unqualified personnel*
- 3. Breaches of OH&S Policies and Procedures*
- 4. Managements handling of concerns from residents and staff*
- 5. Resident care*
- 6. Issues affecting the care and conditions of the residents and staff*
- 7. Potential breaches of the Aged Care Act 1997*

and any other issues affecting the smooth running of Tuia lodge.

Cr's Tan, Mills and Bailey supported the consideration of a motion to rescind item 5.1.1 from the Special Council Meeting held on 9 June 2015 in accordance with Local Government Administration Regulation 1996, Section 10(1a) :

Motion

Moved: Cr Bailey

Seconded: Cr Mills

That item 5.1.1 - Possible Transfer of Tuia Lodge Operations to New Body - Tuia Lodge Incorporated from the Special Council Meeting held on 9 June 2015 be rescinded:

- “1. That Council advise the Board of Tuia Lodge that it continues to support their proposal to move towards independent management of Tuia Lodge.***
- 2. That Council defers the proposal for the independent management by the newly incorporated body (Tuia Lodge Inc.) until:***
 - f) The building contract with the Federal Government is finalised;***
 - g) Outstanding management and staffing issues are satisfactorily addressed;***
 - h) Current workers compensation claims are settled or addressed to the satisfaction of both Council and Tuia Lodge Inc.;***
 - i) An independent review of the current and proposed Governance and Operational Structure is undertaken;***
 - j) Transitional arrangements are fully assessed and agreed upon.***
- 3. That Council's preferred transfer of Tuia Lodge Management is Option 2.***
- 4. Upon completion of the items in Point 2 above, Council consider these matters and then determine whether to publicly advertise the proposals.***
- 5. That Council will review the decision two years after the initial arrangement date is finalised.”***

CARRIED 5/4

Cr Van Der Heide requested the vote be recorded:

FOR:	AGAINST:
Cr Logiudice	Cr Crowley
Cr Mills	Cr Dilley
Cr Bailey	Cr Mitchell
Cr King	Cr Van Der Heide
Cr Tan	

Cr's Tan, Mills and Bailey supported the consideration of a motion to rescind item 11.5.3 from the Ordinary Council Meeting held on 23 September 2015 in accordance with Local Government Administration Regulation 1996, Section 10(1a) :

Motion

Moved: Cr Bailey

Seconded: Cr Mills

That item 11.5.3 – Governance and Operational Review of Tuia Lodge from the Ordinary Council Meeting held on 23 September 2015 be rescinded:

“That council shares the outcomes of this Review on a strictly confidential basis with the Board of Tuia Lodge seeking their input and feedback, and that the Aged Care Board be advised:

- 1. That Council does not support the transfer of the land and buildings as the Tuia Lodge facility should continue to be owned by Council on behalf of all ratepayers.***
- 2. To design, develop and implement a ‘Governance transition Plan’ that enables the transfer of all affairs related to the management of Tuia Lodge to Tuia Lodge Inc. within a period of two years;***
- 3. That recommendations 2, 3, 4 and 5 from the Tuia Lodge Review Report are supported;***
- 4. Council will consider the transfer of management of Tuia Lodge to Tuia Lodge Inc. (implementation of Governance Transition Plan) once the resolution made at the June 2015 OCM has been dealt with and recommendations 2, 3, 4 and 5 from the Tuia Lodge Review Report have been implemented.”***

CARRIED 5/4

Cr Van Der Heide requested the vote be recorded:

FOR:	AGAINST:
Cr Logiudice	Cr Crowley
Cr Mills	Cr Dilley
Cr Bailey	Cr Mitchell
Cr King	Cr Van Der Heide
Cr Tan	

Cr Bailey's Motion

Moved: Cr Bailey

Seconded: Cr Mills

That Council withdraw all delegated authority from the Tuia Lodge committee (Board) effective immediately. This action will allow Council to fully review the management, operations and future direction of Tuia Lodge.

Council is to appoint an administrator to oversee the day to day operations of Tuia Lodge and conduct an immediate inquiry into allegations of:

- 1. Forgery of Occupational Health and Safety. Incident Reports**
- 2. The supply of prescribed medication to residents by unqualified personnel**
- 3. Breaches of OH&S Policies and Procedures**
- 4. Managements handling of concerns from residents and staff**
- 5. Resident care**
- 6. Issues affecting the care and conditions of the residents and staff**
- 7. Potential breaches of the Aged Care Act 1997**

and any other issues affecting the smooth running of Tuia lodge.

**CARRIED 5/4
By Absolute Majority**

Cr Van Der Heide requested the vote be recorded:

FOR:	AGAINST:
Cr Logiudice	Cr Crowley
Cr Mills	Cr Dilley
Cr Bailey	Cr Mitchell
Cr King	Cr Van Der Heide
Cr Tan	

5.1.2	SUBJECT:	TUIA LODGE REVIEW –MEDIA RELEASE
	Location:	Tuia Lodge, Allnutt Street, Donnybrook
	Applicants:	Administration
	Zone:	N/A
	File Ref:	CSV 01/2
	Author:	John Attwood, Chief Executive Officer
	Report Date:	16 November 2015
	Attachments:	5.1.2 – Draft Media Statement (to be tabled at the meeting)

Background

Council resolved to release the inspire report confidentially to Tuia Lodge board at the September 2015 Ordinary Council Meeting:

'That council shares the outcomes of this Review on a strictly confidential basis with the Board of Tuia Lodge seeking their input and feedback...'

Comment

The Tuia Lodge Board has considered the report and, in support of transparency and accountability, is keen for a release of information to the general public in the form of a media statement on behalf of the Shire Council and Tuia Lodge Incorporated.

A copy of the draft media statement (Attachment 5.1.2) for Council review will be tabled at the meeting.

Consultation

N/A

Policy/Statutory/Voting Implications

Policy

N/A

Statutory

N/A

Voting

Simple Majority.

Financial Implications

N/A

Strategic Implications

Outcome 4.3 – An open and accountable Local Government that is respected, professional and trusted.

Officer's Recommended Resolution

Moved: Cr

Seconded: Cr

That Council endorse the release of a media statement in relation to the Inspire Consulting Group's review of the operations of Tuia Lodge.

Council Decision

(Officer's Recommended Resolution)

Moved: Cr Mills

Seconded: Cr Bailey

That the unconfirmed minutes from the Special Council meeting held 19 November 2015 be released to the public.

CARRIED 9/0

**Council Decision
(Officer’s Recommended Resolution)**

Moved: Cr King

Seconded: Cr Mitchell

That the meeting be reopened to the public.

CARRIED 9/0

6 CLOSURE OF MEETING

The Shire President advised that the next Ordinary Council Meeting will be held on Wednesday 25 November 2015, commencing at 5.00pm at the Shire of Donnybrook-Balingup Council Chambers.

The Shire President declared the meeting closed at 8.41pm.

These Minutes were confirmed by the Council as a true and accurate record at the Ordinary Council Meeting held on 25 November 2015.		
Shire President		Presiding Member