



Ordinary Council Meeting

Minutes

Held on Wednesday, 10 February 2016

Commencing at 5.03pm at the Council Chambers

Cnr Bentley and Collins Street, Donnybrook

A handwritten signature in black ink, appearing to read 'John Attwood', written in a cursive style.

John Attwood
Chief Executive Officer

12th February 2016

Disclaimer

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ORDINARY COUNCIL MEETING MINUTES

10 February 2016

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SHIRE OF DONNYBROOK-BALINGUP

ORDINARY COUNCIL MEETING MINUTES

Held at the Donnybrook Council Chambers
Wednesday, 10 February 2016 at 5.03pm

MEMBERS PRESENT

COUNCILLORS

Cr Logiudice (President)
Cr Mills (Deputy)
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
Leigh Guthridge – Manager Development and Environmental Services
Bob Wallin – Principal Planner
Damien Morgan – Manager Works and Services
Kate O’Keeffe – Executive Assistant

PUBLIC GALLERY

Nina Smith	Anne Margetts	Gil Langley	I Russell
Jane Cox	D Wood	Betsy Clarson	M Baldock
Warren Clarson	Steve Russell	Kerry Russell	W Murphy
Helen Tuia	Sue Radford	Ian Kemp	C.A. Vinci
Elsie Woodley	Helen Matthews	Chris Knight	Liz Alford
Anthony Haygarth	Rod Atherton	Alicia Keall	Anne Christia
J Betti	G Atherton	G Combes	Meryl Atherton
M Hickman	M Woodley	Lui Tuia	C Woodley
Lucille Piesse			

1 APOLOGIES

Nil

2 PUBLIC QUESTION TIME

Questions Taken on notice at the Ordinary Council Meeting on 16 December 2015

Jill Duncan

Mr President and Councillors, my first question relates to your answer to my question of 25 November 2015 as recorded in tonight's agenda. The President answered "..... Cr. Mills is in the process of vacating the property."

I ask the President, is Cr. Mills now absolved from any breaches of Council policies and Code of Conduct because " he has vacated the property"? Are both Cr. Mills and Cr. Bailey now free of any accountability for their previous actions? Is this the standard of "ethical behaviour" we, as ratepayers and residents, can expect from some Councillors?

President

I confirm Cr Mills has vacated the property. All Councillors are required to comply with Council Policies, the Code of Conduct and Ethical Standards. Councillors are regularly reminded of their obligations to adhere to these guidelines to ensure an acceptable standard of professional conduct is maintained.

Jill Duncan

My final question - With regards to the letter Cr Bailey distributed to some ratepayers and residents in the Shire - under whose authority did Cr Bailey act? Was Cr Bailey speaking on behalf of Council or a Council decision when he makes this statement in that letter?

President

Cr Bailey has indicated that he was not speaking on behalf of Council nor was it a Council decision to make public the information he put in the flyer.

Questions taken without notice at the Ordinary Council Meeting on 10 February 2016

Meryl Atherton

At any time since 2013 were the Tuia Lodge Management Committee advised by Council that their "so called" delegated authority to manage the facility would be revoked if they did not address the apparent ongoing compliance issues?

President

No.

Meryl Atherton

Given the Council has always been the accredited or Approved Aged Care Provider for Tuia Lodge and has representatives on the Tuia Lodge Management Committee, what steps were taken by the Council to deal with the non-compliance issues as they arose to avoid in the Shire Presidents words, "the confusion and apprehension" that now prevails throughout the community?

President

The issues, as they arose, were dealt with at the Tuia Lodge Committee meetings.

Liz Alford

At the Special Council meeting dated 19 December 2015, Council was presented with a petition from community. This has not to my knowledge been tabled at Council- why not? We all realise that you consider the community a nuisance, but remember, unfortunately we voted you in to represent our wishes, not yours!

President

The Petition was received at the Special Council Meeting on 9 December 2015.

Liz Alford

From the press releases, it appears that Councillors can't read. What do you not understand from the petition? They didn't ask Council to run Tuia Lodge, they asked that Tuia Lodge Inc. run it. You (Council) have stated in your releases that the community wish to have Council run Tuia Lodge. It is the intent of community that a local board run Tuia Lodge. Why are you saying you will have to have Bethanie or someone else run it?

President

I haven't said that. Council has not resolved to engage another organisation such as Bethany to take over the management of the facility. Until things are back on track, Council is going to run it with a manager and we will make a decision once we see things are running correctly. .

Liz Alford

The community wishes to have the Lodge run by a group of people who are in the first instance local people with the necessary skills required to run the Lodge. There are people with nursing skills, governance skills, financial skills, grant application skills etc in this community. They may have to do some courses to produce the necessary papers for compliance, but it will not cost the \$1Million that is being bandied around.

President

The \$1m is if Tuia Lodge is sanctioned. That's what the \$1m dollars was about – and it may even be more than that. In regards to having the appropriate skill level, if a group of people that have got the right skills wanted to take over the management and operations of Tuia Lodge they would have to undertake the requirements necessary to apply for Approved Provider status which is lodged through the Department of Health.

Liz Alford

Could Council facilitate that?

President

Council has held a meeting with the Tuia Lodge Board members on 28 January 2016 and tried to arrange a follow-up meeting with representatives from the Tuia Lodge Board which was to be held yesterday. Council is willing to participate in open discussion and see the value in moving forward. We are listening. The Department of Health have strict compliance requirements for Approved Providers.

Liz Alford

You are not moving forward, you are floundering!

President

Council is progressing discussion with the Tuia Lodge Board Members.

Liz Alford

Why don't Council advertise for skilled local people to sit on the Tuia Lodge Board? Councillors do NOT have these skills- nor do they have the support of the community to run the Lodge.

President

Council is willing to discuss this with the Tuia Lodge Board if they support it.

Liz Alford

Why not make up the Tuia lodge Board with skilled people to better help Tuia Lodge Inc. transition to running the Lodge? Advertise for expressions of interest listing the skills required.

President

The Tuia lodge Board would have to agree to that. Council is willing to discuss this with the Tuia Lodge Board.

Liz Alford

In the press release you state that Council will run the lodge and look at the likes of Bethany to run it for the community. Did you not listen to the experience from Mick Murray that Collie had? I have a copy of his letter if you would like me to read it to you, to remind you of his very important information.

President

I have spoken to Mick Murray and spoke to people in Collie and they do have varying ideas and I would like to explore them.

Liz Alford

Have you spoken to other hostels?

President

We would be open to that through discussion and to explore models that they have got.

Liz Alford

Are you going to undertake to do that:

President

We will discuss this with the Committee.

Liz Alford

But the Tuia Lodge Board has been sacked.

Is it true that the new wing is not completed? If so what are you doing about it? Was the sacking of the board and subsequent resignation of the person running the hostel the reason for this?

President

The rooms in the new wing are fully furnished.

Liz Alford

Why has this taken so long? Was it because the Tuia Lodge Board was sacked?

President

Keryn McNeven has been engaged to complete the final stages of the Tuia Lodge building process. Ms McNeven has been working on this project for the past four weeks to complete whatever is required.

Liz Alford

People have been waiting to move in and can't. How many rooms are available?

President

From my understanding there are two or three vacant rooms. I wasn't aware that people wanted specifically the new wing, but there have been rooms available.

Liz Alford

Can you please advise us what the entry bond is for Tuia Lodge at present? I have heard that you are looking at changing the amount of the bond for different levels of care and/or which part of the building the residents are placed.

CEO

It is \$400,000. We are looking at getting different levels of bond for different rooms-

Rooms 1 to 16 at \$300,000;
Rooms 17 to 26 at \$350,000; and
Rooms 27 to 40 at \$400,000.

Liz Alford

Can you please advise what it is costing per fortnight to have the current person run the hostel? This is our money you are spending. Is it coming from the Hostel funds, or ratepayers' money?

CEO

From memory it's about \$7,000 per fortnight including accommodation expenses.

MFA

It's coming from the operations of Tuia Lodge.

Liz Alford

Will this cost continue until the mess is sorted out?

CEO

Until a manager is appointed. A recruitment process for the Facility Manager position has commenced. The position has been advertised and closes on 26 February 2016.

Liz Alford

Does the Acting Facility Manager work full-time?

CEO

The Acting Facility Manager works a 9-day fortnight.

Liz Alford

Is she available for family of proposed residents to talk to at times to work around their various jobs and commitments? Or is it at her determination?

CEO

The Acting Facility Manager is flexible and available to talk with families of proposed residents. She has no problem with meeting new residents or families.

Liz Alford

I understand you are not renewing the current CEO's contract?

President

This is confidential.

Liz Alford

When are you going to advertise the position and will we have someone to start as soon as the current CEO stops?

President

A process in being undertaken.

Lui Tuia

The ex-Tuia Lodge Board had a meeting with Council for three hours on 28 January 2016. There was no talk at this meeting about returning to Tuia Lodge as an Incorporated body, only returning on a volunteer basis. When you think we paid for and built and managed Tuia Lodge for over 30 years, how could you adopt such a stupid position?

President

We have been impacted by the Health Department. We have got to take their process and need to have all the processes in place, all the right qualifications – that's what the Health Department is looking at now. If any entity can come up with that then the Health Department will assess it.

Anthony Haygarth

I refer to Agenda Item 8.1.2 - Deferred Item- Business Arising from the Special Council Meeting on 9 December 2015 – Guidelines for Tuia Lodge and the recommendation for Board Members to undertake a one-day Company Director's course. You are very quick to gauge the capability of the Board, but have you considered the capability of Councillors? Are you, as a Council, going to undertake all of your Councillor training?

Will you undertake training and ask other Councillors to undertake all units of Government Councillor Training?

President

I have undertaken the Company director's course. I'm not sure you are correct in that we have embarrassed the community. If that was the case the Minister would be down here. If you don't like what you see, you can vote at the next election.

Have all Councillors completed all modules of training? I'm not sure, but Councillors have enlisted for training over the next few months.

Anthony Haygarth

My second question relates to Agenda Item 8.1.3 – Deferred Item – Electors Meeting on 10 December 2015. Is there any valid reason why Councillors would not step down and seek another mandate through a new election? The community has asked for it. It seems you are quick to listen to squeaky wheels, but when you get big turnouts at Electors' Meetings, petitions with 1300 signatures, you don't seem to act. The only way to test this is to call an election and seek a new mandate.

President

Councillors have been elected for four years. If they are not willing to stand down then they shouldn't be made to.

Anthony Haygarth

You stand in these Chambers to listen to the will of the community. You have been instructed by community on two items:

- 1) Council to step down; and*
- 2) Act on the Tuia Lodge petition.*

You are very good at words and not very good at actions.

President

Relating to the second item, we are trying to deal with it and asking the ex-board to come to us and talk to us.

Anthony Haygarth

If you believe the community still supports this Council, then call an election.

President

That would cost about \$20,000.

Ann Margetts

My question is to the CEO and former President of Tuia Lodge Board – I would like to know which of you sanctioned, at Tuia Lodge, payments to an employee that defrauded the ATO and defrauded Centrelink?

Cr Van Der Heide

Point of Order; you cannot ask a question of someone from the gallery and secondly, this matter is the subject of an ongoing investigation.

President

The CEO will make a decision as to whether he will release this information because it's confidential.

Elsie Woodley

How can the Shire Council claim ownership of Tuia lodge (Press Release Tuesday 19 Jan 2016) a facility that was built and furnished by local residents fund raising, donations of time, manpower, materials and expertise plus grants applied for over so many years? With the Lions Club supplying a generator, patient lift and furnishing a doctor's room among other things.

Without the work and drive of residents like Lui Tuia, the late Bill Jordan and Eunice Langley and their group, the Fry family and Lions Club there would not be any Tuia Lodge, Minnipup Cottages, Langley Villas, swimming pool or Apple Fun Park etc.

All the fuss and argument over building the Apple Fun Park, Lions Club donations of two barbeques for the FunPark and toilets at the cemetery which have never even had a plaque to indicate that these were donated – where is the gratitude?

HACC was disbanded by Council in favour of a Bunbury-based service. Is this better for the local elderly? Will the Shire Council sell Tuia lodge in a year or two to use the money for new Shire Offices?

The very people who worked so hard to provide these facilities are at the age where they could have need of them and could possibly be denied acceptance in favour of people from outside this district that can afford higher prices. Otherwise why take control of a facility that you have already stated is outside your field of expertise? What else is the Council going to disband or take over?

Do you as a Council still expect local volunteers to provide amenities for this district after the actions of Council taking ownership of Tuia lodge and not listening to the majority of the residents of the Shire?

I would like to make the point again, how many Councillors have ever volunteered their time, money or expertise for Tuia lodge or any other facility in this district? It is easy to denigrate people who appear to be tall poppies and the work that they have done for the district, but you run the risk of not having anyone in the future willing to put themselves in this position to the detriment of the community.

Does it make you feel so powerful and in complete control?

Shire President

I'm sorry if there was a misrepresentation in the Donnybrook-Bridgetown Mail. I have always said that the community owns Tuia Lodge. The Council oversees all facilities in town, whether that be toilets or other facilities. They all belong to the community. I have no issue with that.

Steve Russell

My question is in relation to the cost of another election, which I believe is about \$35,000. How does this compare with the additional cost of running Tuia Lodge since the dismissal of the Board? What has it cost to date, and what has Council allocated for this purpose?

President

I haven't got those figures. This question will be taken on notice and a response will be provided in writing.

Steve Russell

When do we get that answer?

President

Within 14 days.

Steve Russell

Can we have it published on the website?

CEO

It will go in the minutes which are published on the website.

3 APPLICATION FOR LEAVE OF ABSENCE

Nil

4 DECLARATION OF FINANCIAL/IMPARTIALITY INTEREST

Nil

5 PETITIONS/DEPUTATIONS/PRESENTATIONS

Mr Edgar Hawter presented to Council in relation to agenda item 12.5.3 – Vintage Home Town for Life Inc. Housing Expansion. The presentation commenced at 5.34pm and concluded at 5.39pm.

6 LATE ITEMS

Nil

7 CONFIRMATION OF MINUTES

7.1 Ordinary Council Meetings

Council Decision

Moved: Cr Mills

Seconded: Cr Bailey

That the minutes of the ordinary meeting held on 16th December 2015 be confirmed as a true and accurate record.

Carried 9/0

8 DEFERRED ITEMS

8.1.1	SUBJECT:	DEFERRED ITEM - BUSINESS ARISING FROM THE SPECIAL MEETING ON 9 DECEMBER 2015 – RESCINDING MOTION
	Location:	Donnybrook
	Applicants:	Shire of Donnybrook-Balingup
	Zone:	N/A
	File Ref:	CNL 01/16
	Author:	John Attwood– CEO
	Report Date:	28 January 2016
	Attachments:	Nil

Background

At the Ordinary Council Meeting on 16 December 2015 Council resolved to defer the motion to rescind the resolution regarding the Tuia Lodge Board Operating Guidelines made at the Ordinary Council Meeting on the 16th December 2009 to allow for further discussion to take place between Council, Tuia Lodge Board and the Department of Health.

“That the motion to rescind be deferred to the February 2016 Ordinary Council Meeting to allow for Council to meet with Tuia Lodge Board and representative from the Department for Health during January 2016.”

A meeting involving representatives from the Department of Health, Aged Care Quality Agency, Tuia Lodge Board, Community representatives and Council took place on 13 January 2016. Ursula Harbin, Assessment Manager from the Aged Care Quality Agency provided a summary of the recent accreditation audits conducted at Tuia Lodge and the requirement for the facility to address the items not met by 31 March 2016. Vivienne Burnham, Director of Aged Care from the Department of Health discussed the role and responsibilities of Council as the Approved Provider for Tuia Lodge Frail Aged Facility and discussed the Departments role in overseeing compliance under the Federal Aged Care Act.

Guidelines for Tuia Lodge Board

At the Ordinary Council Meeting on 16th December 2009 the following resolution was agreed by absolute majority:

“That in accordance with the Local Government Act 1995 Section 5.8 Council endorse the following operating guidelines for the Donnybrook-Balingup Aged Care Board:

- a) Administer all functions necessary at Tuia Lodge to ensure that the operations at Tuia Lodge are carried out in an efficient manner complying with all relevant legislation.*
- b) Prepare annual budgets for consideration and adoption by Council of Tuia Lodge, Langley Villas and Minninup Cottages. NOTE: Items of capital nature and items that are subject to tender requirements will require authorisation from Council.*
- c) Be responsible of the appointment and suspension of all staff in accordance with all relevant legislation and compliance with Human Resources Policy manual of the Shire of Donnybrook-Balingup, the Aged Care Standards and Accreditation Ageing Ltd.*
- d) Be responsible for the smooth operations of the functions of the well-aged units of both Langley Villas and Minninup Cottages, including letting rights, rent determinations and minor building maintenance.*
- e) Be responsible for assessing future needs of the aged community in the Shire particularly in housing and recommending those need to Council.”*

Policy/Statutory/Voting Requirements

As this delegation is withdrawn it is considered appropriate that the motion is rescinded.

Policy
N/A

Statutory
Regulation 10 of the *Local Government (Administration) Regulations 1996* states:

Revoking or changing decisions made at council or committee meetings - S5.25(1)(e)

- (1) If a decision has been made at a council or a committee meeting then any motion to revoke or change the decision must be supported:
 - (a) in the case where an attempt to revoke or change the decision had been made within the previous 3 months but had failed, by an absolute majority; or
 - (b) in any other case, by at least $\frac{1}{3}$ of the number of offices (whether vacant or not) of members of the council or committee, inclusive of the mover.

- (1a) Notice of a motion to revoke or change a decision referred to in subregulation (1) is to be signed by members of the council or committee numbering at least $\frac{1}{3}$ of the number of offices (whether vacant or not) of members of the council or committee, inclusive of the mover.
- (2) If a decision has been made at a council or a committee meeting then any decision to revoke or change the first-mentioned decision must be made —
 - (a) in the case where the decision to be revoked or changed was required to be made by an absolute majority or by a special majority, by that kind of majority; or
 - (b) in any other case, by an absolute majority.
- (3) This regulation does not apply to the change of a decision unless the effect of the change would be that the decision would be revoked or would become substantially different.

Voting

Absolute Majority

In order for Council to rescind motion 9.4.6 from the Ordinary Council Meeting on 16 December 2009, the support of one third of Council is required in accordance with Local Government Administration Regulation 1996, Section 10(1a).

Cr Bailey, Cr King and Cr Tan supported the consideration of a motion to rescind item 9.4.6 from the Ordinary Council Meeting on 16 December 2009 in accordance with Local Government Administration Regulation 1996, Section 10(1a):

Council Decision (Revoking Motion)

Moved: Cr Bailey

Seconded: Cr Mills

That the following resolution made at the Ordinary Council Meeting on the 16th December 2009 be rescinded:

“That in accordance with the Local Government Act 1995 Section 5.8 Council endorse the following operating guidelines for the Donnybrook-Balingup Aged Care Board:

- e) Administer all functions necessary at Tuia Lodge to ensure that the operations at Tuia Lodge are carried out in an efficient manner complying with all relevant legislation.***
- f) Prepare annual budgets for consideration and adoption by Council of Tuia Lodge, Langley Villas and Minninup Cottages. NOTE: Items of capital nature and items that are subject to tender requirements will require authorisation from Council.***
- g) Be responsible of the appointment and suspension of all staff in accordance with all relevant legislation and compliance with Human Resources Policy manual of the Shire of Donnybrook-***

Balingup, the Aged Care Standards and Accreditation Ageing Ltd.

- h) Be responsible for the smooth operations of the functions of the well-aged units of both Langley Villas and Minninup Cottages, including letting rights, rent determinations and minor building maintenance.***
- e) Be responsible for assessing future needs of the aged community in the Shire particularly in housing and recommending those need to Council.”***

**Carried 5/4
By Absolute Majority**

Cr Mitchell requested her vote against the decision be recorded.

8.1.2	SUBJECT:	DEFERRED ITEM - BUSINESS ARISING FROM THE SPECIAL MEETING ON 9 DECEMBER 2015 – GUIDELINES FOR TUIA LODGE BOARD
	Location:	Donnybrook
	Applicants:	Shire of Donnybrook-Balingup
	Zone:	N/A
	File Ref:	CNL 01/16
	Author:	John Attwood– CEO
	Report Date:	28 January 2016
	Attachments:	Nil

Background

At the Ordinary Council Meeting on 16 December 2016 Council resolved to defer the motion to provide guidelines to the Donnybrook-Balingup Aged Care Board to allow for further discussion to take place between Council, Tuia Lodge Board and the Department of Health.

“That the motion to provide guidelines to the Donnybrook-Balingup Aged Care Board be deferred to the February 2016 Ordinary Council Meeting to allow for Council to meet with Tuia Lodge Board and representatives from the Department for Health during January 2016.”

As mentioned previously, a meeting involving representatives from the Department of Health, Aged Care Quality Agency, Tuia Lodge Board, Community representatives and Council took place on 13 January 2016. Items discussed included the recent accreditation audits and the roles and responsibilities of Council as the Approved Provider for Tuia Lodge Frail Aged Facility.

Cr Bailey requested to defer the item until further discussion is undertaken with Tuia Lodge Board.

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

Moved: Cr Mitchell

Seconded: Cr Crowley

That Council provide the Donnybrook-Balingup Aged Care Board (Committee) the following operating guidelines:

- **On appointment to the Board, the newly appointed Board member shall within six (6) months of appointment have undertaken or have made arrangements to undertake the one-day Institute of Australia Company Director's Course' with any costs associated with attendance at the Course being met by the Board.**
- **Administer all governance functions of the Donnybrook-Balingup Aged Care Board (Committee);**
- **Oversee the rental processes for Langley Villas and Minninup Cottages;**
- **Prepare annual budgets for consideration and adoption by Council for Tuia Lodge and the Well Aged units;**
- **Assess future needs of the Shire's aged community and providing input to Council;**
- **Assist with transition arrangements with the view of having the facility ready for handover to the incorporated body by 30 June 2016 or as soon as practicable thereafter in consultation with Council;**
- **Be strictly prohibited from direct involvement in any staff-related matter;**
- **Be strictly prohibited from involvement in any activity that relates to the direct care of residents of Tuia Lodge where direct care refers to activities ordinarily carried out by a qualified staff member (family members excepted) with Board providing advice when sought by Facility Manager;**
- **Be strictly prohibited from direct involvement with the management of Tuia Lodge operations however may assist with finalisation of the building extensions and minor maintenance at Tuia Lodge.**

Lost 4/5

Justification: It is premature for Council to provide any guidelines/delegation until further discussion is undertaken with the Tuia Lodge Board.

Cr Mitchell requested her vote for the motion be recorded.

** 5.57pm – Members from the Public Gallery left the meeting.

8.1.3	SUBJECT:	DEFERRED ITEM - ELECTORS MEETING ON 10 DECEMBER 2015
	Location:	Donnybrook
	Applicants:	Shire of Donnybrook-Balingup
	Zone:	N/A
	File Ref:	CNL 01/16
	Author:	John Attwood– CEO
	Report Date:	28 January 2016
	Attachments:	Nil

Council elected to defer the motion raised at the Electors meeting until the minutes are presented at the February 2016 meeting. This item has been included in Item 10 - *Minutes from Previous Meetings*.

9 ELECTED MEMBERS MOTIONS

9.1.1	SUBJECT:	LOT 500, 1 SHORT STREET, DONNYBROOK
	Location:	WA
	Applicants:	Cr Bailey
	Zone:	N/A
	File Ref:	CNL 34G
	Author:	John Attwood, CEO
	Report Date:	28 January 2016
	Attachments:	9.1.1(1) - Extract from Ordinary Council Meeting Held on 24 June 2009 'Proposed Road Closure and Land Resumption' 9.1.1(2) – Correspondence from WAPC dated 11/05/2010 9.1.1(3) – Landgate Image of Lot 500 Short Street, Donnybrook 9.1.1(4) - Aerial Photo of Noneycup Creek 9.1.1(5) - Google Map of Noneycup Creek Alignment 9.1.1(6) – Photo prior to Contractor undertaking work 9.1.1(7) – Photos during and after the machinery recovery process 9.1.1(8) – Correspondence from Manager Works and Services dated 24/08/2015

Cr Bailey proposed the following notice of motion:

Cr Bailey's Notice of Motion

That Council approve

- 1. The relocation of the drain running North through the property into the 6 metre drain reserve on the East side of Lot 500;**
- 2. Relocation of the drain running through the Northern portion of the property;**
- 3. Fill the existing drain and make good the damage that was caused in the middle of winter.**
- 4. Remove any soil forming a dam along the existing drain to allow Lot 500 to drain into the drain reserve.**

Cr Bailey submitted an amended motion on Wednesday 10 February 2016. The amended motion reads:

Cr Bailey's Amended Notice of Motion

That Council approve

- 1. The relocation of the drain running North through the property into the Shires 6 metre drain reserve on the East side of Lot 500;**
- 2. Relocation of the drain running through the Northern portion of the property;**
- 3. Fill the existing drain and make good the damage that was caused in the middle of winter;**
- 4. The entire area will be levelled with a suitable fall to the Shire's drain reserve;**
- 5. The Contractor/ Shire will replace destroyed subsoil drains where needed;**
- 6. The Contractor/ Shire will plant the appropriate amount of Kikuyu to ensure full coverage by the end of November 2016;**
- 7. The Shire will maintain the grassed area and apply whatever fertiliser is needed to ensure total coverage by the end of November 2016;**
- 8. All work is to be finished before the start of winter 2016.**

Cr Bailey's Comment

Attachment 9.1.1(1)

In June 2009 Council resolved:

"... That Council supports the Crown resuming portion of lot 103 Trigwell Street Donnybrook {6 metre parcel of land on the Eastern boundary}for the purpose of a drainage reserve and Council accept a management order for the "purpose of drainage" for the same."

The Noneycup creek and drain were never moved into the drainage reserve.

Attachment 9.1.1(2)

In April 2010 Thompson surveying lodged the changes to Lot 500 Short street. The plan shows the extra land to the West and the 6 metre drainage reserve to the East.

Attachment 9.1.1(3)

This is a Landgate search showing the boundaries of lot 500, the drain reserve to the East and clearly shows the drain running the full length of the private property.

Attachment 9.1.1(4)

This shows the position of Noneycup Creek. The creek did run to the North East, however fill placed on the land to the North East appears to have blocked off Noneycup Creek.

Attachment 9.1.1(5)

This supports the thought that the fill has changed the course of Noneycup creek. In the middle of winter 2015, Staff instructed a contractor to clean out the drain (Noneycup creek). The machine became bogged, as did two other machines that were used in the recovery of the first machine.

Attachment 9.1.1(6)

Photos of what the area looked like before the contractor entered the private land.

Attachment 9.1.1(7)

Photos of the private property during and after the machinery recovery process.

Attachment 9.1.1(8)

A copy of a letter Dated the 29th of August 2015 from the New Manager of Works and Services. The Manager was under the impression the drain was located in the drain reserve. (See the second paragraph).

The Manager of Works and Services has been working with the contractor and the owners representative to have the area rehabilitated .The block is wet and the last rains did not help. The Manager of Works and Services has done all that can be expected under the circumstances to rectify the problem however with winter fast approaching time is running out and the Council will need to allocate time and money before the start of winter.

Policy/Statutory/Voting Implications

Policy

N/A

Statutory

N/A

Voting

Simple Majority

Officer's Comment

Lot 500 No.1 Short Street is within the Noneycup Creek catchment, and plans of the creek do show part of this natural watercourse passing through the property, as well as the property being located within the creeks flood plain.

It is understood from long serving staff advice that an open drain has been located within the property near the eastern boundary for a significant period pre-dating their commencement of work at the Shire.

The Shire typically undertakes maintenance on this drain bi-annually to ensure flows that enter the watercourse are not restricted. These works are usually programmed for the end of summer as the area is usually saturated for significant periods of the year, making it difficult to have a machine operate in the area.

Last year a Shire Contractor was undertaking maintenance work on the drain, with their machine unfortunately becoming stuck during the works. The Contractor's efforts to free their machines resulted in significant areas of 1 Short Street being disturbed, resulting in damage to their maintained vegetated landscaped areas.

The Shire and the Contractor have committed in writing to the landowner that the damaged areas will be addressed (refer attachment 9.1.1(8)) once the land dried.

Reinstatement works have progressed to dry the area out, however recent heavy rains have delayed the final clean-up of the site. The Contractor intends to complete the works late February early March 2016, subject to no further rain during this period.

The drainage reserve at the rear of the lot was created in 2010, as part of negotiations to adjust existing boundaries to contain dwellings fully within the lot. The drainage reserve was not placed fully over the existing drain.

Many watercourses within the Shire pass through private land, and in particular private land within the Donnybrook townsite. These watercourses may have been altered or maintained by either the Shire or landowners, however they do form part of an important network of drains and watercourses for the management of stormwater runoff.

Under the Western Australian Local Government Act 1995 Schedule 3.2, the Shire may enter any land to carry out drainage works or do earthworks or other works on land for preventing or reducing flooding.

The Motion proposed to relocate the drain to the created drainage reserve does place the drain in land managed by the Shire, however this will be a costly proposal considering that the Shire's rights to the drain and its maintenance are covered by the Western Australian Local Government Act 1995.

If Council proceeds with the motion, it **may** result in other requests for similar works to occur on private land at great expense to the Shire.

If Council does wish to facilitate the drain being located within land under our management, one option to investigate may be the purchase of the land that the drain is within, however this will take time and have a cost.

As outlined above the issue of the damage caused to the property is programmed to be addressed, with the drain continuing to function as per previous years.

Cr Bailey's Notice of Motion (1)

Moved: Cr

Seconded: Cr

That Council approve:

- 1. The relocation of the drain running North through the property into the 6 metre drain reserve on the east side of Lot 500;**
- 2. Relocation of the drain running through the northern portion of the property;**
- 3. Fill the existing drain and make good the damage that was caused in the middle of winter.**
- 4. Remove any soil forming a dam along the existing drain to allow Lot 500 to drain into the drain reserve.**

Cr Bailey's Amended Notice of Motion (2)

Moved: Cr Bailey

Seconded: Cr Mills

That Council approve

- 1. The relocation of the drain running North through the property into the Shires 6 metre drain reserve on the East side of Lot 500;**
- 2. Relocation of the drain running through the Northern portion of the property;**
- 3. Fill the existing drain and make good the damage that was caused in the middle of winter;**
- 4. The entire area will be levelled with a suitable fall to the Shire's drain reserve;**
- 5. The Contractor/ Shire will replace destroyed subsoil drains where needed;**
- 6. The Contractor/ Shire will plant the appropriate amount of Kikuyu to ensure full coverage by the end of November 2016;**
- 7. The Shire will maintain the grassed area and apply whatever fertiliser is needed to ensure total coverage by the end of November 2016;**
- 8. All work is to be finished before the start of winter 2016.**

Cr Mills foreshadowed an amendment to remove items 1, 2 and 3 from Cr Bailey's Amended motion, and for these items to be put forward to Works and Services for assessment and for 2016/17 draft budget consideration.

After further discussion The Mover, Cr Bailey, and the Seconder, Cr Mills, agreed to the removal of items 1, 2 and 3 from Cr Bailey's amended notice of motion (2) and the word 'entire' in item 4 be replaced with 'damaged':

Cr Bailey's Amended Notice of Motion (3)

Moved: Cr Bailey

Seconded: Cr Mills

That Council approve:

- 4. The damaged area will be levelled with a suitable fall to the Shire's drain reserve;**
- 5. The Contractor/ Shire will replace destroyed subsoil drains where needed;**
- 6. The Contractor/ Shire will plant the appropriate amount of Kikuyu to ensure full coverage by the end of November 2016;**
- 7. The Shire will maintain the grassed area and apply whatever fertiliser is needed to ensure total coverage by the end of November 2016;**
- 8. All work is to be finished before the start of winter 2016.**

Cr Mills Foreshadowed Motion

Moved: Cr

Seconded: Cr

That Council refer the following works for consideration in the 2016/17 budget:

- 1. The relocation of the drain running North through the property into the Shires 6 metre drain reserve on the East side of Lot 500;**
- 2. Relocation of the drain running through the Northern portion of the property;**
- 3. Fill the existing drain and make good the damage that was caused in the middle of winter;**

Procedural Motion

Moved: Cr Dilley

Seconded: Cr Van Der Heide

That Cr Bailey's motion (3) lay on the table to allow for further investigation of relocating the drain and for the reinstatement works to be undertaken as per the letter dated 24 August 2015.

Carried 6/3

Cr Mills' foreshadowed motion was not moved and not considered by Council.

10 MINUTES OF PREVIOUS MEETINGS

10.1 Committee Minutes

Council Decision

Moved: Cr Bailey

Seconded: Cr Crowley

That the following Committee minutes be received:

- **Donnybrook Cultural Planning Advisory Group Meeting – 10 December 2015**
- **Annual General Meeting of Electors – 10 December 2015**
- **CEO Review Committee Meeting – 18 January 2016**
- **Balingup Town Hall Advisory Committee Meeting – 2 February 2016**
- **Balingup Townscape Committee Meeting – 4 February 2016**
- **Donnybrook Townscape Committee Meeting – 4 February 2016**
- **Audit Committee Meeting – 10 February 2016**

Carried 9/0

11 REPORTS OF COMMITTEES

11.1 Electors Meeting

Business Arising

The following motion was carried at the Annual Meeting of Electors held on 10th December 2015.

“That if a number of Councillors do not resign to bring on a fresh Council election then this Elector’s meeting supports a vote of no confidence in the full Council”.

The motion was passed by a majority of electors present with the exception of 7 electors that voted against the motion.

The Electors present requested that Council forward the motion passed to the Minister for Local Government and Communities.