



Minutes from the Special Meeting of Council

Purpose To discuss:

1. A forensic accounting investigation into the finances of Tuia lodge for a period of five years leading up to 30 January 2016.
2. An abridged version of the issues that led to Council rescinding the delegated authority given to the Tuia Lodge Committee for immediate release on the Shire web site.
3. A public release of all Tuia Lodge information relating to the activities that led to Council rescinding the delegated authority given to the Tuia lodge committee.
4. Short Street drainage issue.
5. Infrastructure on easement C447064 and C899678 near the Dawson owned building on the South Western Highway Donnybrook.

Held on

Thursday, 14 September 2017

Commencing at 8.37am

in the Function Room, Donnybrook Recreation Centre
Steere Street, Donnybrook

Benjamin Rose
Chief Executive Officer

15 September 2017

Disclaimer

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MINUTE FOR THE SPECIAL MEETING OF COUNCIL

14 SEPTEMBER 2017

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SHIRE OF DONNYBROOK BALINGUP SPECIAL COUNCIL MEETING – AGENDA

**Held in the Function Room, Donnybrook Recreation Centre
on Thursday, 14 September 2017 commencing at 8.37am**

Under Section 5.4(a)(ii) of the *Local Government Act 1995*, Councillors Bailey, Mills and Tan have called a Special Meeting of Council.

MEMBERS PRESENT

COUNCILLORS

Cr Logiudice (President)
Cr Mills (Deputy)
Cr Bailey
Cr Crowley (from 8.47am)
Cr King
Cr Mitchell
Cr Tan
Cr Van Der Heide

STAFF

Ben Rose – Chief Executive Officer
Greg Harris – Manager Finance and Administration
Damien Morgan – Manager Works and Services
Kate O’Keeffe– Executive Assistant

PUBLIC GALLERY

Shane Atherton
Steve Russell
Nigel Tuia
Leith Crowley (until 8.47am)

APOLOGIES

Cr Dilley (approved leave)
Leigh Guthridge – Manager Development and Environmental Services
Cr Mitchell

1 PUBLIC QUESTION TIME

Public Questions taken Without Notice at the Special Council Meeting on 14 September 2017:

Steve Russell

Please outline for each and every individual agenda item to be discussed today, the urgency that requires council to forgo "due process and procedural fairness" by way of calling a meeting without appropriate notice to the community or stakeholders and without an agenda being available to the community in a timely manner prior to the meeting.

Shire President

I was made aware of the meeting at 5.30pm yesterday. The meeting has been called in a manner which complies with the requirements set out in the Local Government Act 1995 and I am bound to see that it goes ahead.

Steve Russell

Does council believe that in calling and conducting this meeting in this manner they are providing good governance and acting in an acceptable and transparent manner?

Shire President

The process for setting this meeting is in compliance with the *Local Government Act 1995* and I am required to proceed with it.

Steve Russell

Has this meeting been called to deal with urgent council matters that have only arisen since the most recent Ordinary Council meeting and that cannot be deferred to be dealt with at the next Ordinary Council meeting and within the parameters of providing due process and procedural fairness?

Shire President

The calling of this meeting complies with the requirements under S5.4 and S5.5 of the *Local Government Act 1995*. Council's Caretaker Policy, which precludes any decision-making that would bind an incoming Council, takes effect from Close of Business today.

Steve Russell

In regards to item 1, a forensic accounting investigation into the finances of Tuia Lodge for a period of five years leading up to the 30 of June 2016 also include the period up to the 31 August 2017, include all transactions on all Tuia Lodge reserve funds as well as show opening balances prior to Tuia lodge board dismissal and closing balances as at 31 August.

Shire President

I did not form part of the group that called for this Special Council Meeting and am not able to change the discussion points to accommodate your request.

Steve Russell

May I ask for the people who did call the meeting to consider including my request?

Shire President

Yes, they may be considered.

Steve Russell

Has council had further legal advice regarding a public release of all Tuia lodge information, given this has been up before Council over two years ago and dealt with at that time.

Shire President

There has been no further legal advice obtained.

Steve Russell

Can you confirm that the last time legal advice was obtained by the previous Chief Executive Officer?

Shire President
Yes, that is correct.

Leith Crowley

I seek a response in writing to the following questions:

- 1. Please explain the urgency for this special council meeting?*
- 2. On legal advice received I ask the following: Could the Council alert the Crime and Corruption Commission on their failure to follow (procedural fairness) in relation to:*
 - Owners of, and I quote 'owners of Dawson owned building' not given notice of councils actions here today.*
 - Former board members and board chair not given notice of Council's actions here today.*
 - Adjoining landowners to and I quote 'Short Street drainage issue' not given notice of Council's actions here today.*
- 3. Was legal comment sought before the release of parts of the Inspire Report mentioned in Cr Bailey's comment?*

Shire President
Your questions are taken on notice and a response will be provided in writing.

Public Question Time closed at 8.47pm.

**8.47am – Cr Crowley arrived at the meeting.

2 APPLICATION FOR LEAVE OF ABSENCE

Cr Dilley was granted a Leave of Absence at the Ordinary Council meeting on 23 August 2017.

3 DECLARATION OF FINANCIAL / IMPARTIALITY INTEREST

Division 6: Sub-Division 1 of the *Local Government Act 1995*. Care should be taken by all Councillors to ensure that a financial/impartiality interest is declared and that they refrain from voting on any matter, which is considered to come within the ambit of the Act.

Cr Tan declared an interest affecting impartiality with regards to item 5.5 as she acted as a Settlement Agent for the owners of the subject property.

Procedural Motion

Moved: Cr Logiudice

Seconded: Cr King

That the meeting be closed to the public under section 5.23(d) of the Local Government Act 1995 for items 1,2,3,4 and 5 (Legal advice obtained, or which may be obtained).

Motion withdrawn by the Mover and Seconder.

4 PETITIONS / DEPUTATIONS / PRESENTATIONS

Nil.

5 GENERAL BUSINESS

Under Section 5.4(a)(ii) of the *Local Government Act 1995*, Councillors Bailey, Mills and Tan have called a Special Meeting of Council to discuss the following matters:

5.1 A forensic accounting investigation into the finances of Tuia lodge for a period of five years leading up to 30 January 2016.

**(Council Decision)
Procedural Motion**

Moved: Cr Van Der Heide

Seconded: Cr Cowley

That the meeting be adjourned.

Lost 2/5

Cr Van Der Heide requested the vote be recorded:

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

Motion

Moved: Cr Bailey

Seconded: Cr Mills

That Council instruct the CEO to engage specialist accountants to carry out a forensic investigation into the management of Tuia Lodge Finance. The investigation will include the five years prior to Council withdrawing delegated authority and will capture all accounts associated with Tuia Lodge. On a daily basis the CEO will report to Council the progress made to secure specialists to perform such an investigation.

An accounting specialist will be approved by Council at a Special Council meeting, time and date to be confirmed. The investigation will commence no later than 10 Days after the passing of this motion and a full report will be made available to Council at a special meeting of the Council on or before 14 days from the date the Council select the specialist. Council will fund the investigation up to \$12,000.00.

**(Council Decision)
Procedural Motion**

Moved: Cr King

Seconded: Cr Tan

That the meeting be closed under the *Local Government Act 1995* for item 5.1 - 5.1 'A forensic accounting investigation into the finances of Tuia lodge for a period of five years leading up to 30 January 2016' under Section 5.23(1)(b) of the *Local Government Act 1995* (the personal affairs of any person).

Carried 5/2

Cr Van Der Heide requested the vote be recorded:

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

** 9.09am - Shane Atherton, Steve Russell and Nigel Tuia left the meeting.

**(Council Decision)
Procedural Motion**

Moved: Cr Crowley

Seconded: Cr Van Der Heide

That the item lay on the table.

Carried 4/3

**(Council Decision)
Procedural Motion**

Moved: Cr Van Der Heide

Seconded: Cr King

That the meeting be re-opened to the public.

Carried 5/2

** 9.20am - Steve Russell and Nigel Tuia returned.

5.2 An abridged version of the issues that led to Council rescinding the delegated authority given to the Tuia Lodge Committee for immediate release on the Shire website.

Motion

Moved: Cr Bailey

Seconded: Cr Mills

That an abridged version of the issues that led to Council rescinding the delegated authority given to the Tuia Lodge Committee be immediately released on the Shire website.

Foreshadowed Motion

Moved: Cr Van Der Heide

Seconded: Cr

Due to their being no urgency in relation to this matter, there being no opportunity for the Chief Executive Officer to provide any background information, financial, or statutory implications regarding this matter, along with the legal implications of disclosing confidential information and possible libellous comment, that this matter be referred to the October 2017 Ordinary Council Meeting for these to be addressed (discussed).

Cr Van Der Heide made a request for an explanation in relation to the foreshadowed motion.

Cr Bailey made an amendment to the substantive motion.

Amendment

Moved: Cr Bailey

Seconded:

That the motion be amended to read as follows:

‘That prior to the document being released, it will be reviewed by the Chief Executive Officer and the Shire’s legal advisors for accuracy and legal standing and be brought back to Council for a decision on whether to release an abridged version of the issues that led to Council rescinding the delegated authority given to the Tuia Lodge Committee.’

(Council Decision)

Procedural Motion

Moved: Cr Crowley

Seconded: Cr Van Der Heide

That the item lay on the table.

Carried 4/3

- 5.3 A public release of all Tuia Lodge information relating to the activities that led to Council rescinding the delegated authority given to the Tuia lodge committee.

Motion

Moved: Cr Bailey

Seconded: Cr Tan

Everything relating to the issues at Tuia Lodge and the information Council relied upon to rescind the delegated authority given to the Tuia Lodge Committee. The payout made to a former employee will be kept confidential.

**(Council Decision)
Procedural Motion**

Moved: Cr Bailey

Seconded: Cr Tan

That the item lay on the table

Carried 7/0

5.4 Short Street drainage issue.

Motion

Moved: Cr Bailey

Seconded: Cr Mills

Council instruct the Chief Executive Officer to immediately start the process of closing a section of Short Street with the view of exchanging land (per m 2 for per m 2) for the affected area of Lot 500 Short Street, Donnybrook. Council organise approvals associated with transfer of land to Lot 500 Short Street, Donnybrook. The area exchanged will be determined by negotiation between the Chief Executive Officer and the owners of Lot 500 Short Street, Donnybrook. If the area to be exchanged cannot be negotiated within two weeks the issue will be placed before Council for a decision.

**(Council Decision)
Procedural Motion**

Moved: Cr Crowley

Seconded: Cr Van Der Heide

That Council proceed to the next order of business.

Carried 4/3

5.5 Infrastructure on easement C447064 and C899678 near the Dawson owned building on the South Western Highway Donnybrook.

Motion

Moved: Cr Bailey

Seconded: Cr Mills

The CEO will offer the owners of Lot 25 a direction forward to solve the issue of staff approved infrastructure on easements C447064 and C899678.

- 1. The 9 metre easement on the back of the Dawson owned building will remain as is;**
- 2. Council will provide the owners of Lot 25 a 4 Metre wide easement over Council owned land to join up with Clifford Road;**
- 3. The Council will remove the names of the owners of Lot 25 from the 5 Metre easement CC447064.**

**(Council Decision)
Procedural Motion**

Moved: Cr Van Der Heide

Seconded: Cr Crowley

That Council proceed to the next order of business.

Carried 4/3

**10.14am – The Public Gallery left the meeting.

6 CLOSURE OF MEETING

The Shire President advised that the date of the next Ordinary Council Meeting will be held on Wednesday 27 September, 2017, commencing at 5.00pm at a venue to be confirmed.

The Shire President declared the meeting closed at 10.14am.

These Minutes were confirmed by the Council as a true and accurate record at the Ordinary Council Meeting held on 27 September 2017.		
Shire President		Presiding Member