



Ordinary Council Meeting Minutes

Held on Wednesday, 27 September 2017

Commencing at 5.00pm

In the Seniors' Room, Donnybrook Community Library

Benjamin (Ben) Rose
Chief Executive Officer

2 October 2017

Disclaimer

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SHIRE OF DONNYBROOK BALINGUP

NOTICE OF ORDINARY MEETING

Held in the Seniors' Room, Donnybrook Community Library
Wednesday, 27 September 2017 commencing at 5.00pm

MEMBERS PRESENT

COUNCILLORS

Cr Logiudice
Cr Bailey
Cr Crowley
Cr King
Cr Mills
Cr Mitchell (from 5.07pm)
Cr Tan
Cr Van Der Heide

STAFF

B Rose – Chief Executive Officer
G Harris – Manager Finance and Administration
D Morgan – Manager Works and Services
B Wallin – Principal Planner
K O'Keeffe – Executive Assistant

PUBLIC GALLERY

Anne Margetts	Greg Hayward
Ethel Farley	Warren Clarson
Betsy Clarson	Simon Kapel
Jill Duncan	Leonie Darlington
Bob Lowther	Vinna Henderson
Jacque Lynch	Ruth Johnson
Gil Langley	Brian Piesse
Peter McCabe	Noelen King
Darren Ramponi	Peter Gubler
Gary Fitzgerald	Simon McInnes
Matt Ramponi	Anita Lindemann
Lui Tuia	Clare Rosman
Karen Miller	Marie Woodley
Robyn Hayward	Rayma Cole-Bucktin
Bernie Dawson	June Scott
Bill Brown	Jim Gerde
Colin Sharp	George McBrearty
Sarah O'Rourke	Mario Contarino
Nigel Tuia	

1 APOLOGIES

Cr Dilley
L Guthridge – Manager Development and Environmental Services

2 PUBLIC QUESTION TIME

Questions Taken on Notice at the August 2017 Ordinary Council Meeting

Brian Piesse

My last question related to any third party discussions relating to the future ownership and operation of Tuia Lodge. The literal translation of the word “any” as used in my question and was intended to mean any discussions, informal or formal, by Council collectively, the President and/or individual Councillors or any Senior Executive employed by Council or any external person or organisation engaged by Council or Council Management to make enquiries on their behalf. Therefore, Mr President, I ask you to confirm for the record, the answer given relating to the question as initially asked and further expanded on in my supplementary explanation this evening, is correct in every respect?

My question relates to when the administration of Tuia Lodge became a public issue of note. Has anyone had discussions with the view of selling or outsourcing the management of the asset?

Chief Executive Officer

The Shire President advised at the meeting that neither he nor the Council have engaged in conversations with any entity with the view to selling or outsourcing Tuia Lodge. Whilst I cannot (and would not wish to) speak on behalf of the Council or individual Elected Members, I can provide advice from an operational perspective of the Shire’s Administration. In this regard, I can advise that, during my term as the Chief Executive Officer, I have been approached by two separate aged care providers who have sought to engage in conversation with me as to the possibility of selling or outsourcing the management of Tuia Lodge. On both occasions, I have (politely) declined the offer to further the conversation.

June Scott

There is a noticeable increase in graffiti in the central town area, including the laneway, the bin on Wagyl Walk Trail and the State Heritage listed Goods Shed. It appears internally in the goods shed things have been smashed and graffitied. Externally, the building is being further assisted to degrade with tin lifted, damage to corrugated sheeting, etc.

There was a project removed from the Donnybrook Townscape that had the ability to engage community with artwork. Can this project be re-instated as no information was provided at the meeting of the background for the project and the supplier’s additional commitment to work with community with the artwork side of installation to engage with community groups possibly this could be the graffiti artists?

Also, the supplier would assist with the grant funding application. This option was not utilised.

Chief Executive Officer

The Townscape Committee, while reviewing the outstanding action items at the committee meeting on 9 August 2017, considered this matter and decided not to progress the item.

Townscape Committee member(s) may request the item be included again, if they believe the project has merit.

Graeme Johnson

I refer to the confidential item that has been removed from tonight's agenda. This problem has been going on for ten years. I have a solution which I have provided in writing to each Councillor tonight and I ask for a reply from Council on this matter.

Chief Executive Officer

The Shire has reviewed your deputation distributed to Councillors and administration staff at the Ordinary Council Meeting held on 23 August 2017. From what has been provided I am not able to determine your proposed resolution to the matter consistent with negotiations to date.

The Shire received confirmation on 4 July 2017 that the parties to the settlement of 24 Rosedene Lane had reached agreement, and had accepted the terms as presented by the Shire's lawyers in a letter dated 30 June 2017, and requested that a deed be drafted. You informed the Shire by email on 22 August 2017 that you no longer accepted the terms of the deed, and would not sign the document after settling your ownership of the property on 18 August 2017.

The matter of ownership of structures on land not under the management of Local Governments is a state-wide issue. The Shire administration of these matters is based on sound legal advice, and takes into consideration the risks these structures present to all ratepayers of the Shire.

Questions taken on notice prior to the September 2017 Ordinary Council Meeting

Brian Piesse

As stated at the Special Electors meeting dated the 25 September 2017, will the Shire President confirm he was not aware of any external discussions over the past 2-3 years held between Council members and/or Executive Staff with any external parties relating to the future ownership and operation options for Tuia Lodge, as per his advice at the Ordinary Council meeting dated 23 September 2017. If the Shire President was not aware of such discussions, then how could this be so, given that at some time in the recent past, Councillors voted 9:0 "to talk to other aged care providers regarding the management of Tuia Lodge?"

Please note the intent of this motion relates to transparency, not whether discussions with external parties should not have or should have taken place.

Shire President

In relation to the vote you referred to, Council discussed talking to other aged care providers but that was the extent of the matter. I was not aware that the Chief Executive Officer had undertaken discussions with external parties.

Brian Piesse

So you knew nothing about the Chief Executive Officer's discussions?

Shire President

I was not aware of any conversations the Chief Executive Officer may have had.

Brian Piesse

I don't think that satisfactorily answers my question.

Brian Piesse

Given the recent review of the Council's governance by the Australian Institute of Company Directors (AICD), which despite failed attempts by two Councillors at the Ordinary Meeting of Council dated 23 August 2017 to have the findings and recommendations released to electors before the election on October 2017, remains a secret and given Councillor Dilley's statement on the public record, "Despite the damning report, Council has failed to show any leadership or initiative to address its performance issues – therefore only ratepayers can do it. Ratepayers deserve much better performance from their Council;" and the concerns / comments relating to Council governance and accountability made by Councillor Bailey in his brochure recently circulated to electors, and comments made by other Councillors at the electors meeting on 25 September 2017; without breaking the confidentiality and identifying input from respondents, why can't the Council release the AICD "Executive Summary" and "Key Recommendations" to the electors allowing them to make their own judgment as to Council performance as they form their opinion and cast their votes to fill the 5 vacancies that exist on Council?

Shire President

The Governance Review Report is a confidential document for internal purposes, AICD have copyright restrictions over the report. I offered my fellow Councillors the opportunity to meet to resolve our issues but this was not taken up.

Questions taken without notice at the September 2017 Ordinary Council Meeting:

Lui Tuia

I have a list of questions concerning the Jack Denning bequest to Tuia Lodge:

- 1. What is the current balance of this bequest?*
- 2. Where is it held?*
- 3. Who controls the bequest and how?*
- 4. Is the bequest interest bearing? If so at what rate?*
- 5. Is an annual 30 June statement of the financial position of the bequest prepared? If no, why not? If yes who prepares the statement and to whom is it distributed?*
- 6. What are the transactions for the financial years 2013 to 2017 inclusive for this bequest?*

Manager Finance and Administration

The money from Jack Dennings bequest, a total of approximately \$300,000, was signed over to the Shire when the Tuia Lodge Board was stood down. The money was placed in a Trust Fund and invested in a Term Deposit at bank rates.

Lui Tuia

Thank you for that information, could you please provide that in writing so I can give it to the Executor for Jack Dennings' estate? In my opinion money should be returned to Tuia lodge, not frittered away by Council.

Shire President

A response will be provided in writing.

Anne Margetts

My question refers to the rates for the ten blocks in Victoria Parade purchased by two current Councillors. I know Council can't comment because the issue is under investigation by the CCC, however given that these blocks were offered to the Shire as a community asset free of charge and then purchased by these Councillors, surely Council would agree to remove the rates concession from these blocks. Applying the rates concession would provide further gain to these Councillors, and a further loss to the community who have already lost the asset. Any right minded person would agree that this does not pass the pub test. Will council please consider not granting them the concession and charge them full rates as a form of reimbursement to the community?

Shire President

Your question will be taken on notice and responded to in writing.

Tony Scaffidi

I received a package in today's mail that contained documents relating to Tuia Lodge and other matters. My question is, does Council know anything about this and do you know who sent it?

Shire President

No, I have not seen it.

Tony Scaffidi

Do any of the Councillors know anything about it?

Shire President

Well, I can't answer for all the Councillors, but as far as im aware, the answer is no.

Mario Contarino

Following on from Tony Scaffidi's question, I received a similar package in the mail and I know that other people in the Shire have received it too. The package contains confidential information and I am guessing that it was generated from the Council of Donnybrook Balingup somewhere. It's coincidental that we got selected to receive this information with the election coming up. I would like to know how this information was obtained and sent to me?

Shire President

I don't know anything about these packages and will pursue this further.

June Scott

I have been dealing with the Principal Planner with regards to Agenda Item 12.4.1 in tonight's agenda. I would like the item deferred until I can meet with staff on site to raise problems. I have fought for years to have documents displayed properly on the Shire website. My question tonight is what is the distance of the proposed shed from my boundary?

Principal Planner

It is more than the required setback. The building envelope is 14 metres from the boundary.

June Scott

The agenda states there is bushland however this is not so. I would like for Council to defer the agenda item so that I may have the opportunity to meet with the Shire on this item.

Shire President

Your request is taken on notice.

Peter Gubler

I received a package containing documents relating to Tuia Lodge as well. I asked a question some time ago relating to Tuia Lodge and wonder perhaps if that is the reason why I received it.

If the motion raised by Anthony Haygarth goes through tonight will it put a halt to the election in October and with the caretaker mode underway should the topic even be considered?

Chief Executive Officer

The Caretaker Policy, adopted by Council at its August 2017 Ordinary Meeting, precludes Council from making any major binding decisions, however, the Local Government Act, which requires all decisions made at a Special Meeting of Electors to be considered at the next Ordinary Meeting of Council, has primacy over Council policy.

Brian Piesse

Has the resolution for the vote of no confidence been presented to the Minister for local Government?

Shire President

The decisions made at the Special Meeting of Electors will go through Council today. Anthony did say that he was going to send the motion to the Minister following Monday's meeting.

Simon McInnes

With the adoption of the 2017/18 budget occurring at the end of August 2017, did Council know the rates to be charged when it passed the budget?

Shire President

Yes, we knew this information when we adopted the budget.

Brian Piesse

Given the scathing, maybe even scandalous aspersions and claims made by Councillor Bailey in his authorised election flyer distributed during the week ending 24 September 2017 relating to the financial accountability and transparency of the current Council and by default the Executive Management Team (“In my 8 years on Council, its Council that been the problem” and “We allocate money but never scrutinise to ensure you’re getting the best value. In eight years of budgets we have never, not once, looked at how we stop the waste of ratepayer’s money”);

- 1. Please provide the names of the Councillors who make up the Audit and Risk Management Committee or such an equivalent, and who is the Chair?*
- 2. Does the Shire President and/or the Chair of the Audit and Risk Management Committee agree with the advice from Councillor Bailey and would they please advise the meeting as to what they have done to deal with Councillor’s Baileys comments and concerns as circulated to electors, if in fact they represent reality in terms of the conduct of our elected representatives over the past 8 years?*
- 3. Given it’s clear that “more of the same is not an option going forward” and given the pending Council election, if Councillor Baileys aspersions are a figment of his imagination, then what will the Shire President and the current Council do to put the record straight, so electors can cast/direct their vote towards those who are committed to becoming part of the solution to what appears to be a dysfunctional Council at this time?*

Shire President

I will take this question on notice and respond in writing.

Simon McInnes

How many times has Council been referred to the Crime and Corruption Commission (CCC) over the last five years?

Shire President

None, as far as I am aware.

Simon McInnes

Well, I know of several times at least. One of the items referred to the CCC related to not following procedures and I would like to know the outcome.

Chief Executive Officer

Council will not always know about referrals made about it/them to the CCC by third parties. The Council or Shire officers would only be made aware if the CCC makes contact.

Bernie Dawson

My questions refer to the urgent Special Meeting of Council held on Thursday, 14 September 2017, specifically item 5.5. The motion from item 5.5 refers to the Dawson owned building and Lot 25; can you tell me who the owners of Lot 25 South Western Highway are?

Shire President

I assume Lot 25 is the Village Harvest property.

Bernie Dawson

I am the owner of Lot 25. The motion from item 5.5 indicates that there is staff approved infrastructure on easement C447064 and C899678. What infrastructure is on the 9 metre easement C899678?

Shire President

I assume that is where the carpark is. I will have to take your question on notice.

Bernie Dawson

The motion indicates 'the 9 metre easement on the back of the Dawson owned building remain as is' has Council got authority over this easement?

Shire President

No, Council has no authority, its between the two landowners.

Bernie Dawson

The three Councillors who called for the Special Meeting of Council must know?

Cr Bailey

The infrastruictiure is on the 5 metre easement.

Bernie Dawson

The motion indicates 'Council will provide thje owners of Lot 25 a 4 metre wide easement over Council owned land to join up with Clifford Road.' Why is Council spending money on something that I didn't request and do not want? I am quite happy with the current arrangement.

Cr Bailey

The owners of Lot 26 do not have legal access.

Bernie Dawson

That is not what I asked, you are asking me to agree to something that I didn't request and do not want.

Chief Executive Officer

The Council vote on the motion at the Special Meeting of Council you refer to was to move to the next order of business, resulting in no action to be taken on the motion.

Bernie Dawson

At the Ordinary Meeting of Council on 21 December 2016 (item 8.10.3) the decision was carried 8/0 that the Chief Executive Officer would continue to deal with the infrastructure over easement C447064 within the limits of present delegations assigned to the Chief Executive Officer. Why has this motion been brought forward again?

Shire President

The motion was presented as part of the document calling for the Special Meeting of Council.

Bernie Dawson

Considering due process and procedural fairness, why weren't the property owners/stakeholders notified of the agenda items for the Special Meeting of Council on 14 September 2017?

Chief Executive Officer

The meeting was called at approximately 4pm the day before the meeting was held (at 8.30am).

Shire President

I was obliged to hold the meeting.

Bernie Dawson

You had options, you chose not to use them. If the agenda items for the Special Meeting of Council on 14 September 2017 were considered urgent matters, why do they not form part of this evening's ordinary meeting agenda?

Chief Executive Officer

When a Special Meeting of Council is validly requested, the Shire has no option but to convene the meeting - it must go ahead. As to why the items were not brought forward to tonight's meeting; they have not been asked to be brought forward by any Elected Member.

Shire President

The items have not been brought forward because Council is in caretaker mode leading up to the election.

Bernie Dawson

How much did it cost to hold the Special Meeting of Council on 14 September 2017, including preparation time, sitting and travelling fees of officers and Councillors?

Chief Executive Officer

I would estimate that it cost several thousand dollars including staff time, resources etc.

Bernie Dawson

What did the Special Meeting of Council held on 14 September 2017 achieve?

Chief Executive Officer

Of the five items presented for consideration, I recall that three are to lay on the table and for the last two items Council resolved to move to the next order of business.

Bernie Dawson

So it cost several thousand dollars and achieved nothing. Considering the due process and procedural fairness was not extended to stakeholders, will the Councillors, or Council, who called the for the Special Meeting of Council apologise to the owners of lot 25 in writing?

Shire President

I will follow that up with the Councillors.

Bernie Dawson

I would like to thank Cr Crowley and Cr Van Der Heide for intervening at the meeting, they may have saved Council many more thousands of dollars.

Jill Duncan

Point of clarification, is Cr Bailey permitted to speak on behalf of the Council during public question time?

Shire President

I allowed Cr Bailey to speak as he had more information on the item.

Brian Piesse

Who makes up the Audit and Risk Management Committee or such an equivalent, and who is the Chair?

Shire President

The committee is comprised of the whole of Council and it is chaired by the Shire President.

Simon Kapel

What would have been the result of Tuia Lodge if Council had not taken action with the Tuia Lodge Board?

Shire President

Your question will be taken on notice and responded to in writing.

3 APPLICATION FOR LEAVE OF ABSENCE

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

4 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.

No declarations were presented to the Chief Executive Officer.

5 PETITIONS / DEPUTATIONS / PRESENTATIONS

Garry Fitzgerald, Director from Tecon Australian PTY LTD (Town Planning and Building Surveying Consultants) will be presenting to Council on Agenda Item 12.4.2 – Application for Transportable Building. The presentation commenced at 5.47pm and concluded at 6.05pm.

**5.55pm – Anne Margetts left the meeting.

6 PRESIDENT'S COMMUNICATIONS

Date	Meeting	Report
25/08/2017	WALGA South West Zone	Scheduled Meeting.
01/09/2017	Golden Valley Tree Park Committee	Opportunity to view the new Toilets in the Australian Collection, be informed of the projects that are being worked on and a discussion on the necessity to retain the Balingup water supply dam.
08/09/2017	SWDC CEO, Rebecca Ball and A/Assistant Director, Billy Wellstead	Opportunity to meet the newly appointed CEO and discuss funding for future projects.
13/09/2017	Meet with Chief Executive Officer	Communications Meeting.
21/09/2017	Bunbury Wellington Economic Alliance	Scheduled Monthly Meeting.

7 LATE ITEMS

The minutes from the following meetings will be presented as late items to the September 2017 Ordinary Council Meeting:

- Chief Executive Officer Review Committee Meeting – 22 September 2017
(The recommended resolutions from this item will be dealt with behind closed doors)
- Special Meeting of Electors – 25 September 2017

8 CONFIRMATION OF MINUTES

8.1 *Ordinary Meetings of Council*

Council Decision

Moved: Cr Bailey

Seconded: Cr Tan

That the Minutes from the Ordinary Meeting of Council held on 23 August 2017 be confirmed as a true and accurate record.

Carried 8/0

8.2 *Special Meetings of Council*

Council Decision

Moved: Cr Tan

Seconded: Cr Bailey

That the Minutes from the Special Meetings of Council held on 31 August 2017 and 14 September 2017 be confirmed as true and accurate records.

Carried 7/1

8.3 *Special Meeting of Electors*

Council Decision

Moved: Cr Tan

Seconded: Cr Bailey

That the Minutes from the Special Meeting of Electors held on 25 September 2017 be confirmed as a true and accurate record.

Given that the minutes from the Special Meeting of Electors were made publicly available this morning and people have not had opportunity to review the minutes properly, Cr Crowley requested the motion be changed to read 'received'. Cr Tan and Cr Bailey agreed to the minor amendment.

Council Decision

Moved: Cr Tan

Seconded: Cr Bailey

That the Minutes from the Special Meeting of Electors held on 25 September 2017 be received.

Carried 8/0

9 ELECTED MEMBER'S MOTIONS

Nil.

10 MINUTES OF PREVIOUS MEETINGS

10.1 Committee Minutes

Council Decision

Moved: Cr Tan

Seconded: Cr Crowley

That the following Committee Minutes be received:

- **Local Emergency Committee Meeting – 12 September 2017**
- **Donnybrook Recreation Centre Meeting – 20 September 2017**
- **Chief Executive Officer Review Committee – 22 September 2017**

Carried 8/0

11 REPORTS OF COMMITTEES

Nil.

12 REPORTS OF OFFICERS

12.1 Manager Finance and Administration

12.1.1 ACCOUNTS FOR PAYMENT

For information: The following accounts have been authorised and paid under Delegation 3.2 by the Chief Executive Officer represented by cheques CCP3252-CCP3256, EFT12303–EFT12489, 52690 – 52735, DD22253 – DD22255, Trust 3523 - 3531, EFT12375c, totalling \$1,827,238.78.

12.1.2 MONTHLY FINANCIAL REPORT

Council Decision

(Officer's Recommended Resolution)

Moved: Cr Tan

Seconded: Cr Van Der Heide

That the monthly report for the period ended 31 July 2017 be received.

12.2 Manager Works and Services

12.2.1 MAIN ROADS WA LAND ACQUISITION: LOTS 2 AND 4 SOUTH WESTERN HIGHWAY, KIRUP AND NEWLANDS

Location: Shire of Donnybrook Balingup
Applicants: Main Roads WA
Zone: Near Kirup/Newlands
File Ref: WRK 06/1
Author: Damien Morgan - Manager Work and Services
Report Date: 5 September 2017
Attachments: 12.2.1(1) - MRWA Correspondence (ICOR60184)
 12.2.1(2) - Drawings 201702-0228 and 201702-0229

Background

Main Roads WA (MRWA) has initiated action to acquire land from Lots 2 and 4 South Western Highway, Kirup and Newlands for proposed road seal widening, drainage improvement and improvements to both horizontal and vertical geometry. These planned works will improve safety for road users.

Comment

As part of MRWA’s initiation to acquire land for road purposes, they are required to obtain the Shire’s support for the future dedication of the land.

MRWA is currently in negotiations with the affected owners. Council’s support for the dedication is required to allow formalities to proceed. A copy of the Council’s resolution with direct reference to Section 56 of the Land Administration Act (1997) is required by MRWA to proceed with this process.

Consultation

MRWA are in negotiation with the impacted land owner for the acquisition of their land.

Policy/Statutory Implications

Section 56 of the *Land Administration Act (1997)*.

Financial Implications

Nil

Strategic Implications

The following outcomes from the Corporate Business Plan relate to this proposal:

Strategy	Action No.	Actions
<i>Outcome 1.1 A diverse, prosperous economy, supporting local business and population growth</i>		
Provide appropriate infrastructure to support and enhance business	1.1.2.2	Provide appropriate local transport infrastructure
	1.1.2.3	Lobby State Government to upgrade and improve key/regional transport infrastructure
<i>Outcome 1.3 An attractive visitor and tourist destination</i>		
Provide, develop and maintain visitor infrastructure	1.3.2.1	Develop visitor and tourism infrastructure in line with the local tourism and visitors development and promotion strategy, within allocated resources
	1.3.2.2	Continue to seek funding to develop tourism infrastructure
	1.3.2.3	Promote townsites through town entries and main thoroughfare treatments
<i>Outcome 2.1 An attractive and maintained built environment</i>		
Maintain, renew and improve infrastructure within allocated resources	2.1.1.2	Seek funding for development and renewal of infrastructure
	2.1.1.3	Develop and implement capital works plan
	2.1.1.4	Maintain attractive town sites within resource capacity

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

Moved: Cr Mills

Seconded: Cr Van Der Heide

In accordance with Section 56 of the *Land Administration Act (1997)*, Council endorse the future dedication of land being acquired for road purposes as shown on the attached Main Roads WA plans 201702-0228 and 201702-0229.

Carried 8/0

12.2.2	PROPOSED SPEED ZONING FOR BALINGUP-NANNUP ROAD
Location:	Shire of Donnybrook Balingup
Applicants:	Main Roads WA
Zone:	Balingup
File Ref:	RD308
Author:	Damien Morgan - Manager Work and Services
Report Date:	5 September 2017
Attachments:	12.2.2 – (ICOR59981) Email from Main Roads WA

Background

The Balingup-Nannup Road runs through the Shire of Donnybrook Balingup and the Shire of Nannup. The road is used by commuter, tourist and heavy transport traffic, with sections of the road on the RAV 3 Network. Apart from a small section in the Balingup townsite, the road is classified as unzoned in relation to the speed environment.

Comment

Upon recent completion of the centerline marking, the Shire of Donnybrook Balingup requested advice from Main Roads WA (MRWA) regarding speed zoning for the Balingup-Nannup Road. Local community have also expressed support for the installation of speed zoning along this road.

MRWA have assessed the entire length of Balingup-Nannup Road and have proposed the following speed zones:

- Reduce the existing 60km/hr zone through the Balingup town-site to 50km/hr
- Introduce a 70km/h zone for the next 10.4km through the tight curves
- Introduce a 80km/hr zone for the next 10.1km to the Shire boundary

MRWA have also forwarded a speed zoning proposal to the Shire of Nannup for the section of Balingup-Nannup Road under their jurisdiction.

Officers agree with MRWA's assessment and support the installation of speed zoning signs as proposed.

Consultation

MRWA have consulted with both Shires regarding the speed zoning request.

Policy/Statutory Implications

Nil

Financial Implications

The Shire may incur minor costs associated with the installation of advisory speed limit

signage at the identified locations. The costs can be accommodated within the existing budget.

Strategic Implications

The following outcomes from the Corporate Business Plan relate to this proposal:

Strategy	Action No.	Actions
<i>Outcome 1.1 A diverse, prosperous economy, supporting local business and population growth</i>		
Provide appropriate infrastructure to support and enhance business	1.1.2.2	Provide appropriate local transport infrastructure
	1.1.2.3	Lobby State Government to upgrade and improve key/regional transport infrastructure
<i>Outcome 1.3 An attractive visitor and tourist destination</i>		
Provide, develop and maintain visitor infrastructure	1.3.2.1	Develop visitor and tourism infrastructure in line with the local tourism and visitors development and promotion strategy, within allocated resources
	1.3.2.2	Continue to seek funding to develop tourism infrastructure
<i>Outcome 2.1 An attractive and maintained built environment</i>		
Maintain, renew and improve infrastructure within allocated resources	2.1.1.2	Seek funding for development and renewal of infrastructure
	2.1.1.3	Develop and implement capital works plan
	2.1.1.4	Maintain attractive town sites within resource capacity

Council Decision (Officer’s Recommended Resolution)

Moved: Cr Van Der Heide

Seconded: Cr Bailey

That Council:

1. Endorse the proposed speed zones recommended by Main Roads WA for the Balingup-Nannup Road; and
2. Request the speed zones identified for the section of Road under responsibility of the Shire of Donnybrook Balingup be implemented.

Carried 8/0

12.3 Manager Development and Environmental Services

Nil.

12.4 Principal Planner

12.4.1 PLANNING APPLICATION FOR HOUSE AND OVERSIZED SHED AT LOT 3325 SCAFFIDI PLACE, DONNYBROOK

Location:	Lot 3325 Scaffidi Place, Donnybrook
Applicants:	Mr Matt Ramponi
Zone:	Rural Residential
File Ref:	A4882
Author:	Bob Wallin - Principal Planner
Report Date:	29 August 2017
Attachments:	12.4.1(1) – Site Plan 12.4.1(2) – Superimposed Image of Site 12.4.1(3) – Reoriented Site Plan

Background

An application has been received to construct a dwelling and shed at Lot 3325 Scaffidi Place, Donnybrook. No planning issues are raised in relation to the dwelling and water tank.

The proposed shed will have a floor area of 235m² (dimensions of 11.8m x 19.8m) and a wall height of 4 metres. The proposal is being presented to Council for a decision regarding the floor area and height of the shed as it greater than the policy requirements of 180m² and a wall height of 3.5 metres.

The proposed shed represents a variation on the policy by 30% for the floor area and 12% for the wall height. The shed will be located on a cleared hill that sits approximately 15m above the road level. A building pad has been established. The earth works consist of a 3 metre high pad (approximate) with steep sloping sides. Attachment 12.4.1(2) provides a super imposed image of how the shed will look from the road.

Local Planning Scheme No.7 (LPS7)

In relation to design, LPS7 contains a number of provisions. It is necessary to test this proposal against these provisions to ensure that the intent of LPS7 is satisfied. The key elements of these clauses are included as follows:

Clause 3.3 outlines the purpose and objectives of the Rural Residential zone. The relevant clauses are:

“3.3.1 The purpose of the Rural Residential zone is to provide for low density residential development in a rural setting, which provides for an alternative residential lifestyle,

which is consistent and compatible with adjacent land use activity, landscape and environmental attributes of the land.”

“3.3.2 (iv) *maintain the rural character of the locality, maintain a high level of residential amenity and minimise disturbance to the landscape through appropriate construction of buildings and structures, clearing, earthworks and access roads...*

(xi) *Discourage or prohibit development not compatible with the predominantly rural nature and residential amenity of the zone. “*

“4.17 *General appearance of buildings and preservation of amenity*

*Where, in the opinion of the local government, any proposed building or the erection of structures or carrying out of site works is out of harmony with existing buildings or the landscape of the locality **by virtue of the design and appearance** of the development, the colour or type of materials to be used on exposed surfaces, the **height, bulk and massing of any building**, the local government may refuse the application for planning approval. The refusal can be made notwithstanding that the application may otherwise comply with the provisions of the Scheme. The local government may place conditions on any planning approval granted for the proposed development to ensure that it will not have an adverse impact on the character of the area or the amenity and landscape quality of the locality.*

In exercising its discretion under this clause, the local government shall have regard to the following when assessing any application for planning approval:

- (i) the external appearance of the building and any associated structures and landscaping;*
- (ii) the dimensions and proportions of the building or structure;*
- (iii) the materials used in the construction of the building taking into consideration texture, scale, shape and colour;*
- (iv) the effect of the building or works on nearby properties, and on the occupants of those buildings;*
- (v) the effect on the landscape and environment generally; and*
- (vi) any other matter which in the opinion of the local government is relevant to the amenity of the locality.”*

Clause 67 of the deemed provisions of local planning schemes outlines matters to be considered by local government. These include:

“(m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development”

Planning guidance is provided in Local Planning Policy 9.4 – Outbuilding Control.

The relevant provisions and intent of this policy is detailed as follows:

Clause 9.4(2)a) Outbuilding Area Controls defines maximum outbuilding areas of 180m² and a wall height of 3.5m for land zoned Rural Residential.

Clause 9.4(2)b) states that:

“Council may however consider an increase beyond 180m² subject to the submission of an application for planning consent which addresses the following:

- *impact on vistas;*
- *impact on existing vegetation;*
- *location and density of development;*
- *stormwater disposal; and*
- *purpose of shed size.”*

The applicant has advised that the shed size is required to accommodate equipment, a caravan and other vehicles.

Comment

Whether the proposal is considered acceptable or otherwise depends on forming views on the:

- a) design of the structures; and
- b) principles of orderly and proper planning.

In making a decision on these points, Council should be mindful of the following factors:

Building Design and Streetscape Amenity

In the immediate locality to the west, south and east consists of vacant Rural Residential lots. Land to the north is currently vegetated and has potential for future Rural Residential subdivision. The shed will front Scaffidi Place where it nears a cul-de-sac. It is noted that current planning shows that this cul-de-sac will eventually turn into a through road linking to Irishtown Road. The shed, due to its prominent location on the site will be highly visible and impact on vistas.

The additional wall height, when considered in combination with the floor area variation of 30% (55m²) and elevated position on the lot, the result will be a structure having a bulk far larger than intended for the zone.

In determining *Tempora Pty Ltd v Shire of Kalamunda (1994)*, the Tribunal referred to a three part test for assessing the impact on amenity as follows:

- an objective assessment of the existing amenity;
- the manner in which the proposed use will affect the existing amenity; and
- the degree of impact on the locality.

It is reasonable to state that the proposed new shed will be of a scale and bulk that is not reflected in the existing estate which is characterised by significantly cleared and open tracts of land. This has the potential to enable other lots within the estate to erect similar sized sheds that will detract from the established local amenity.

Departures from Policy Position

In considering departures from a policy position, it is important to weigh up the intent of the policy and the extent of any departure proposed. In this case, the policy sets a maximum floor area and wall height (180m² and 3.5m wall height). The intent is to limit the impact of sheds on the streetscape setting. The policy does provide some room for flexibility and departures. However, in this case, the departures are significant (proposal exceeds floor area by 55m² and height by 0.5m). Added to this, is the high elevation of the site that increases the prominence of the structure on the landscape. This will set an undesirable precedent for other shed developments within the Rural Residential zone.

Consistent application of policy

Policies are easier to regulate and defend if consistently applied.

Setbacks

The shed is proposed to have a setback of approximately 40m. This setback is in excess of the minimum 15m setback required. However, any potential benefit achieved by this greater setback on reducing impacts on the streetscape is diminished by the prominent location of the site.

Potential for Landscaping

There is scope for screening through the use of landscaping. However, the height of building pad will require planting of significant sized plants. The applicant has provided a landscaping plan. Trees proposed for planting will be a minimum of 5 years old to speed up the screening potential of the site.

Alternative Solution

The intent of the Local Planning Policy is to ensure that a low density residential aesthetic is maintained and that built form does not intrude on the rural landscape unnecessarily.

The impact of sheds can be reduced through landscape treatments and building orientation. In this case, there is potential to reduce the bulk of the built form from the public realm by re-orientating the shed so that the 11.8m frontage faces the street (Attachment 12.4.1(3)). This will effectively reduce the impact of the shed bulk to be more in line with other sheds in the estate. Visibility of the shed from other elevations is addressed as follows:

- The southern elevation street view will be screened by the location of the dwelling;
- The western elevation impacts will be minimal due to the higher elevations of the adjoining property. In addition, recently approved development on this adjoining lot proposes to have a water tank and shed overlooking the proposed shed site. It will not impact on outlooks or views from the neighbours proposed dwelling.

- The northern elevation impacts will be minimal due to existing vegetation and the potential for additional landscaping.

The applicant raises no objections to this alternative solution.

Consultation

The application does not require advertising.

Policy/Statutory/Voting Implications

Policy

Policy 9.4 – Outbuilding Control. This proposal requires Council to make a decision as it requires a departure from the stated standards.

Statutory

Clause 3.3 outlines the purpose of the Rural Residential zone is to provide for low density residential development in a rural setting, which provides for an alternative residential lifestyle, which is consistent and compatible with adjacent land use activity, landscape and environmental attributes of the land.

Clause 4.17 provides guidance on development standards and the need to have regard to impacts on the established streetscape in terms of building size, bulk and style.

Voting

Simple Majority

Financial Implications

N/A

Strategic Implications

The following outcomes from the Corporate Business Plan relate to this proposal:

Outcome 2.1 An attractive and maintained built environment

Strategy	Action No.	Actions
Provide effective and efficient regulatory services	2.1.2.2	Provide efficient and effective building services

Outcome 2.3 A natural environment for the benefit of current and future generations

Background

A planning application has been received for a “transportable” building to be used as a “convenience store offering pre-prepared foods, coffee, drinks and snacks at Lot 27 (8) South Western Highway, Donnybrook (Attachment 12.4.2(1)).

There are two parts to this proposal:

- a) Land use: and
- b) Building design.

The proposed use as a “convenience store” is listed as “P”. The “P” means that the use is permitted by the Scheme providing the use complies with the relevant development standards and requirements of the Scheme.

In the case of this proposal, no potential objections are raised concerning the proposed land use. The issues of contention focus around the building design.

The building is 10m long and 4.9m wide with an internal floor area of approximately 44m². The building also includes a 1.8m wide verandah along the northern elevation.

Two applications for transportable structures have been refused by Council at this site. One decision was tested at the State Administrative Tribunal (SAT). SAT dismissed the review.

This proposal is similar to the previous applications in terms of:

- a) Size;
- b) Range of materials;
- c) Low roof profile; and
- d) Design theme.

Local Planning Scheme No.7 (LPS7) and the established planning framework contain a number of provisions relevant to this proposal. It is necessary to test this proposal against these provisions to ensure that the intent of LPS7 and planning framework is satisfied. The key clauses are as follows:

“4.17 General appearance of buildings and preservation of amenity

*Where, in the opinion of the local government, any proposed building or the erection of structures or carrying out of site works is out of harmony with existing buildings or the landscape of the locality **by virtue of the design and appearance** of the development, the colour or type of materials to be used on exposed surfaces, the **height, bulk and massing of any building**, the local government may refuse the application for planning approval. The refusal can be made notwithstanding that the application may otherwise comply with the provisions of the Scheme. The local government may place conditions on any planning approval granted for the proposed development to ensure that it will not have an adverse impact on the character of the area or the amenity and landscape quality of the locality.*

In exercising its discretion under this clause, the local government shall have regard to the following when assessing any application for planning approval:

- (v) *the external appearance of the building and any associated structures and landscaping;*
- (vi) *the dimensions and proportions of the building or structure;*
- (vii) *the materials used in the construction of the building taking into consideration texture, scale, shape and colour;*
- (viii) *the effect of the building or works on nearby properties, and on the occupants of those buildings;*
- (vii) *the effect on the landscape and environment generally; and*
- (viii) *any other matter which in the opinion of the local government is relevant to the amenity of the locality.”*

Clause 4.56.4 relates to development standards in the Commercial zone. This clause outlines that the Shire shall:

- “(i) encourage a high standard of development in the Commercial zone;*
- (ii) promote areas for warehouses/showrooms, shops, offices and other commercial businesses which are safe, convenient and attractive for people and traders alike; and*
- (iii) encourage the use of building materials and architectural styles which harmonise visually with nearby buildings.”*

It is noted that these clauses are aspirational in nature as indicated by the use of the terms “promote” and “encourage”. This makes it problematic for relying on these clauses in defending a decision.

Clause 67 of the *Planning and Development (Local Planning Schemes) Regulations 2015* outlines matters that a local government can consider when making a decision. Of relevance to this proposal is:

“(m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development.”

Local Planning Policy 9.17 also provides some guidelines for Industrial and Commercial development with clause 6.1 stating:

- “ ... for development within the Commercial zone, the following requirements shall apply:
- *a minimum enclosed floor area of 40m² for the primary building on the site;*
 - *transportable or “donger” style structures will only be supported where they are ancillary to an established main building and where they are not visible or have very limited visibility from a public road or public place.”*

Local Planning Policy 9.16 provides direction on transportable structures. Table 1 of the policy states that transportable structures will not be supported in the Commercial zone where it is the only building proposed for the site.

Comment

The acceptableness or otherwise of this proposal hangs on the words “design and appearance”, “height”, “bulk”, “massing” and “transportable structure”.

In making a decision on these points, Council should be mindful of the following factors:

Streetscape in the Immediate Locality

In the immediate locality, there is a predominance of mid to late 20th century dwellings, which in some instances, have been repurposed for commercial activity. The exception to this theme is a purpose built colour bond clad building opposite the site that forms part of a wider commercial complex that is screened from the street.

While these buildings contain a wide range of qualities, they have as a rule, features and a scale or presence that will not be evident within the proposal.

The combined outcome of the design, height, bulk and massing of the building has potential to adversely impact on local amenity. In determining *Tempora Pty Ltd v Shire of Kalamunda* (1994), the Tribunal referred to a three part test for assessing the impact on amenity as follows:

- An objective assessment of the existing amenity;
- The manner in which the proposed use will affect the existing amenity; and
- The degree of impact on the locality.

It is possible to view the proposal as representing a substantially lower standard of building than the surrounding, in terms of scale, bulk and limited architectural features.

The proposal has a temporary “shack” like aesthetic that will be out of place and character with the immediate locality and if approved would signal to other landowners that this new lower standard of development is now acceptable.

Evolution of Town Planning Framework

The planning framework has been evolving and applied consistently as new development occurs. It is noted that a number of historic commercial developments are evident within the town and that these developments were not assessed under the current policy and scheme requirements. And importantly, would unlikely be supported if assessed under the current town planning framework.

Where these older developments have arrived at the end of their economic and practical life, any redevelopment of these sites will need to comply with standards that apply at the time.

Council's LPS7 represents the latest evolution in the planning framework for the shire and firmly stamps its mark on what development design standards are to apply.

Transportable structure typology and built form aesthetic

The proposed building form is strongly grounded and easily recognised as a small temporary and transportable structure by:

- a) selection of materials used;
- b) rectangular shape and dimensions;
- c) window and door treatments; and
- d) fixtures to attach to the land.

There is no hiding the building's design heritage which results in creating a built form that has limited architectural features and a diminutive scale and bulk.

Council's Local Planning Policy does not support transportable structures as the main building on a site. The reasoning behind this stance is that such buildings do not possess qualities that project a high standard of building design or presentation.

Design and Appearance

To assess the appropriateness of the design and appearance of the building, it is necessary to look at the architectural features common to existing buildings in the immediate locality. Existing buildings include elevations with vertical and horizontal stepping, variety of materials and complex roof forms (see Attachments 12.4.2(2)).

These characteristics are absent in the proposed design. The proposed building is effectively a rectangular box with an angled skillion roof profile. The elevations are decorated to a minimum standard by windows and a sliding door.

The roof form includes the simplest of design elements and consists of one angled single plane. The verandah adds a further single profile plane.

This roof form does not provide the variety of complex planes, angles, pitches, elevations and features evident in all surrounding roof forms in the immediate locality.

While it may be possible to include architectural features to address this lack of detail and architectural design, it still leaves elements regarding height, bulk and massing unresolved. Any fine level details added without addressing height, bulk and massing will create the appearance of a delicate ornamental structure, with small fine grain features. This arrangement will contrast with existing buildings that possess larger, courser features.

Height, Bulk and Massing

The proposed building is diminutive when compared to existing buildings (see Attachment 2). The proposed building is substantially smaller than anything in the immediate locality. The next smallest building is at least twice the size of the proposed and buildings immediately abutting are closer to four times the size.

The bulk and massing of the building is also hampered by the roof form which creates a building that is substantially lower than all surrounding existing buildings.

Consultation

Main Roads WA (MRWA) does not support the proposed access arrangements, however advises that it is possible to reconfigure the access arrangements to their satisfaction. This will include limiting access to one point and including car parking in the front setback area. The intent is to add further control and legibility for car movements and provide improved scope for cars to queue on site.

Summary and Conclusion

Based on the above analysis, the proposed building does not satisfy the requirements of LPS7 and the principles aspired to by Local Planning Policies 9.16 and 9.17.

The proposed building fails the criteria described in clause 4.17 and approval would create an undesirable precedent for similar developments to encroach into the town's Commercial zoned land to the detriment of local streetscape and amenity.

Policy/Statutory/Voting Implications

Policy

Local Planning Policy 9.17 Industrial and Commercial Development Control provide guidelines and standards that development is required to satisfy.

Local Planning Policy 9.16 Transportable Structures outlines that transportable structures are not acceptable in the Commercial zone where they are the only building on the site.

Statutory

LPS7 includes planning controls and standards applicable to Commercial zoned land.

Voting

Simple Majority

Financial Implications

N/A

Strategic Implications

The following outcomes from the Corporate Business Plan relate to this proposal:

Outcome 2.1 An attractive and maintained built environment

Strategy	Action No.	Actions
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Provide effective and efficient regulatory services 2.1.2.2 Provide efficient and effective building services

Outcome 2.3 A natural environment for the benefit of current and future generations

Effective land use planning and management policies 2.3.2.1 Review local planning policies

Procedural Motion

Moved: Cr Crowley

Seconded: Cr Tan

That the item lay on the table.

Carried 8/0

Officer's Recommended Resolution

Moved: Cr

Seconded: Cr

That Council:

- 1. Refuse to grant planning approval for a transportable structure at Lot 27 (No.8) South Western Highway, Donnybrook on the grounds that:**
 - a) The proposed building is out of harmony with existing buildings in the locality by virtue of the design and appearance, height, bulk and massing.**
 - b) The proposed building is contrary to the intent of Local Planning Policy No.9.17 which does not support “transportable” buildings in the Commercial zone which are visible from the public realm.**
 - c) The proposal is contrary to Local Planning Policy 16 - Transportable Structures which does not support transportable structures in the Commercial zone where it is the only building proposed for the site.**
 - d) Approval will create an undesirable precedent for similar standards of development to occur in the Donnybrook townsite to the detriment of the local character and streetscapes.**

- 2. Advise the applicant that there is a right of review under the provisions of Part 14 of the *Planning and Development Act 2005* and that a review must**

be lodged with the State Administrative Tribunal, and must be lodged within 28 days of the decision being made by the local government.

12.5 Chief Executive Officer

12.5.1 AMENDMENTS TO WASTE LOCAL LAW 2017

Location:	Shire of Donnybrook-Balingup
Applicants:	Shire of Donnybrook-Balingup
Zone:	N/A
File Ref:	CNL 25
Author:	Ben Rose - Chief Executive Officer (<i>Lucy Bourne – Governance Officer</i>)
Report Date:	4 September 2017
Attachments:	NIL

Background

On 26 April 2017, Council resolved to make the *Shire of Donnybrook-Balingup Waste Local Law*. This local law was gazetted on 14 June 2017 and was considered by the Joint Standing Committee on Delegated Legislation on 21 August 2017.

The Committee has noted that the Local Law does not include a part titled *Objections and Appeal Rights*, which provides an effective mechanism for the review of administrative decisions.

The Committee considers that Clause 2.1(1) is poorly drafted and therefore confusing.

The Committee requests that Council undertake, within six months, to

- Amend the Local Law to include an Objection and Appeal Rights clause
- Redraft clause 2.1
- Make all consequential amendments arising from the amendments;
- Provide the Committee with a copy of the minutes of the meeting at which the Council resolves to provide these undertakings; and
- Where the Local Law is made publicly available, whether in hard copy or electronic form, ensure that the law be accompanied by a copy of these undertakings.

Comment

The Waste Local Law was drafted prior to September 2016, when it was first presented to Council. It was based on the WALGA template available at the time, which did not include the Objection and Appeal Rights clause. The WALGA template was amended in November 2016.

In order to avoid the local law being disallowed, it is recommended that the local law is amended to include an Objections and Appeals as follows:

5.1 Objection and appeal rights

Division 1 of Part 9 of the LG Act applies to a decision under this local law to grant, renew, vary or cancel –

- (a) an approval under clause 2.7(b)(i);
- (b) an exemption under clause 2.8(2)(ii)
- (c) an approval under clause 3.2(1)(c)
- (d) an approval under clause 3.2.(2)
- (e) an approval under clause 3.3

Furthermore, clause 2.1 will be redrafted as follows:

- 2.1 The local government is to supply, for the use of each premises situated within the area covered by the kerbside collection service, one or more receptacles for the collection and removal, from those premises, of collectable waste.

Consultation

Council's intention to amend the Waste Local Law will be advertised for a period of not less than 6 weeks, in accordance with Section 3.12 of the Act.

Policy/Statutory/Voting Implications

Policy

Statutory

- *Shire of Donnybrook-Balingup Waste Law 2017*
- *Local Government Act 1995*

Voting

Simple Majority

Financial Implications

The cost of advertising and gazetting the proposed amendment local law. (Where possible advertising costs will be reduced by advertising a number of amendment / local laws at the same time).

Strategic Implications

The following outcome from the Corporate Business Plan relate to this proposal:

Outcome 2.1 An attractive and maintained built environment

which has a capacity of 0.04 cubic metres or more on any land without first—

- (a) removing every door and lid and every lock, catch and hinge attached to a door or lid or otherwise rendering every door and lid incapable of being fastened; and
- (b) removing any refrigerants as per requirements of the *Environmental Protection (Ozone Protection) Policy 2000*.

The Committee has also noted a typographical error in subclause 2.2(b) and has asked that this be corrected by replacing the words 'or is' with 'and is not', as follows:

2.2 Cleanliness

An owner or occupier of a premises...in or on which an animal or bird is kept shall-

- (a) Maintain the premises within which the animal is kept at all times in a clean condition, free from excrement, filth, food waste and all other matter.
- (b) Ensure the keeping of the animal or bird does not cause a nuisance ~~or is~~ **and is not** injurious, offensive or dangerous to health.

The Committee requests that Council undertake:

- Within six months, delete clause 3.10(b) and amend clause 2.2(b) to delete the words 'or is' and replace them with 'and is not'.
- Until clause 3.10(b) is deleted, post a notice on the Shire's website next to the local law alerting residents to the error and that the Commonwealth now regulates this field through a licensing system.
- Make all necessary consequential amendments.
- Not enforce the local law in a manner contrary to the above undertakings.
- Where the Local Law is made publicly available, whether in hard copy or electronic form, ensure that the law be accompanied by a copy of these undertakings.

Comment

The Committee advises that the policy referred to in (b) has been revoked, and the Commonwealth has taken over the control of ozone protection and has drafted new regulations. Subclause (b) also allows 'persons' to remove ozone depleting substances, not just those who are skilled and qualified to do so, and could therefore be environmentally dangerous.

In order to avoid the local law being disallowed, it will be recommended that the local law is amended by deleting 3.10(b) and amending (2.2(b)).

Consultation

Council's intention to amend the Animals, Environment and Nuisance Local Law will be advertised for a period of not less than 6 weeks, in accordance with Section 3.12 of the Act.

Policy/Statutory/Voting Implications

Statutory

- *Shire of Donnybrook-Balingup Animals, Environment and Nuisance Local Law 2017*
- *Local Government Act 1995*

Voting

Simple Majority

Financial Implications

The cost of advertising and gazetting the proposed amendment local law. (Where possible advertising costs will be reduced by advertising a number of amendment / local laws at the same time).

Strategic Implications

The following outcome from the Corporate Business Plan relate to this proposal:

Outcome 2.1 An attractive and maintained built environment

Strategy	Action No.	Actions
Provide effective and efficient regulatory services	2.1.2.1	Provide efficient and effective health services

Council Decision

(Officer's Recommended Resolution)

Moved: Cr Bailey

Seconded: Cr King

With reference to the *Shire of Donnybrook-Balingup Animals, Environment and Nuisance Local Law 2017*, that Council undertakes to:

- **Within six months, delete clause 3.10(b) and amend clause 2.2(b) to delete the words 'or is' and replace them with 'and is not'.**
- **Until clause 3.10(b) is deleted, post a notice on the Shire's website next to the local law alerting residents to the error and that the Commonwealth now regulates this field through a licensing system.**
- **Make all necessary consequential amendments.**
- **Not enforce the local law in a manner contrary to the above undertakings.**

- **Where the Local Law is made publicly available, whether in hard copy of electronic form, ensure that the law be accompanied by a copy of these undertakings.**

Carried 8/0

12.5.3 LATE ITEM: SPECIAL MEETING OF ELECTORS: 25 SEPTEMBER 2017

Location: Shire of Donnybrook Balingup
Applicants: Electors of the District
Zone: N/A
File Ref: CNL 16
Author: Ben Rose (Chief Executive Officer)
Report Date: 26 September 2017
Attachments: Nil

Background

On 1 September 2017, a request (in accordance with Section 5.28 of the Local Government Act (the Act)) for a Special Meeting of Electors was lodged with the Shire President, signed by Councillors Dilley, Crowley and Van Der Heide. The purpose for the meeting was prescribed as:

1. The future of Tuia Lodge;
2. The 2017/18 Adopted Council Budget;
3. Council's 10 Year Workforce Plan; and
4. Council's Long Term Financial Plan.

Comment

Under Section 5.32 of the Act, the Chief Executive Officer is to:

1. Cause minutes of the proceedings at an electors' meeting to be kept and preserved; and
2. Ensure that copies of the minutes are made available for inspection by members of the public before the council meeting at which decisions made at the electors' meeting are first considered.

In addition to this, Section 5.33 of the Act requires that:

1. All decisions made at an electors' meeting are to be considered at the next ordinary council meeting or, if that is not practicable:
 - a. at the first ordinary council meeting after that meeting; or
 - b. at a special meeting called for that purpose, whichever happens first.

2. If at a meeting of the council a local government makes a decision in response to a decision made at an electors' meeting, the reasons for the decision are to be recorded in the minutes of the council meeting.

The Minutes of the Special Meeting of Electors are included (as a late item) in the Agenda for this Ordinary Meeting of Council (27 September 2017).

Given the short turn-around time in relation to preparation of Minutes from the Special Meeting of Electors (25 September 2017) and preparation of this report (26 September 2017) to the Ordinary Meeting of Council (27 September 2017), the Administration and Chief Executive Officer are not in a position to present an informed and researched recommendation in response the decisions of the Electors Meeting.

Consultation

Section 5.29 of the Act prescribes the advertising and notice requirements in relation to Special Meetings of Electors. The Act requires that the Special Meeting of Electors be held no later than 35 days after a valid request is lodged, and that a minimum of a 14 day notice period be afforded to the electors of the district (including newspaper and various noticeboard advertising).

Policy/Statutory/Voting Implications

Statutory Implications

Sections 5.28 to 5.33 of the Act prescribe the processes for calling and convening Special Meetings of Electors.

Voting Implications

Voting implications will be dependent on the decisions considered by Council.

Financial Implications

Financial implications will be dependent on the decisions considered by Council.

Strategic Implications

Strategic implications will be dependent on the decisions considered by Council.

Decisions of the Special Meeting of Electors: 25 September 2017

Decision 1

Moved: A Haygarth

Seconded: S Russell

That the Electors present at this Special Meeting of Electors – held in relation to the financial processes for the adoption of the 2017/18 budget –

At Donnybrook on this day the 25th of September 2017, being electors of the

Shire of Donnybrook Balingup, give notice to the honourable Minister for Local Government that we have no confidence in the ability of the Council (Elected Members) of the Shire of Donnybrook Balingup to provide adequate governance or administer the affairs of the shire in a sound financial manner and without placing the Shire of Donnybrook Balingup at financial risk.

We say that the council is divided and dysfunctional with ongoing governance issues and that the October local government elections are unlikely to rectify the division without a complete spill of all councillor positions.

We request that on the grounds of financial risk and poor governance, the Minister acts with urgency to:

1. Immediately suspend all councillors of the Shire of Donnybrook Balingup under section 8.19 of the Local Government Act 1995.
2. Appoint a commissioner to administer the affairs of the Shire of Donnybrook Balingup for a period of no less than 180 days.
3. Appoint an inquiry panel under section 8.16 of the Local Government Act 1995 to investigate:
 - a. Any potential financial risk to the local authority from council's decisions and actions
 - b. The ongoing governance issues and the actions of individual councillors in their role as administrators of the shire, with the view to referring any relevant matters to other regulators for further investigation where required.

Carried

For: 134

Against: 21

Abstained or non-voter: 9

Decision 2

Moved: L Crowley

Seconded: M Contarino

We as the Electors request that Council resolve to:

1. Request that the Minister for local government ask the office of The Auditor General to perform a detailed audit of the Shire's 2017/18 Budget as adopted and the general finances as the Auditor General deems necessary.

2. Allow the electors the opportunity to review the results of this audit at a date and time to be advised by council prior to the mid-year budget review 2018.

Carried

For: 131

Against: 11

Abstained or non-voter: 13

Decision 3

Moved: J Bailey

Seconded: L Tuia

The electors/Councillors request Council to develop and adopt a Council Policy to protect the community asset that is Tuia Lodge. If any Council decides to transfer the asset that is Tuia Lodge Council will need to gain approval via a referendum of the community.

Amended Motion

Moved: J Bailey

Seconded: L Tuia

The electors/Councillors request Council to develop and adopt a Council Policy to protect the community asset that is Tuia Lodge. If any Council decides to transfer the asset, including the service provider number, that is Tuia Lodge, Council will need to gain approval via a referendum of the community.

Carried

For: 131

Against: 11

Abstained or non-voter: 13

Officer's Recommended Resolution

Moved: Cr Tan

Seconded: Cr King

That Council:

1. **Acknowledges the interest and engagement of the electors of the district in the topics nominated for the Special Meeting of Electors held on 25 September 2017.**
2. _____

3. _____

Note: Section 5.33(2) of the Local Government Act 1995 requires the reason for any decisions made by Council in response to decision/s made at a Special Meeting of Electors to be recorded in the Minutes of that Council Meeting.

Council reason: _____

** 6.30pm – Principal Planner and Manager Works and Services left the meeting.

Cr Tan proposed an Amended Motion.

Amended Motion

Moved: Cr Tan

Seconded: Cr King

That Council:

1. Acknowledge the interest and engagement of the electors of the district in the topics nominated for the Special Meeting of Electors held on 25 September 2017.
2. Forward the motions (Decisions 1 and 2) to the Minister subject to the following conditions:
 - a) The Council has only agreed to forward the motions to the Minister as requested by the Electors;
 - b) The Council (through its Shire President and/or CEO) includes a cover letter that Council has not agreed to any of the intent, content, suggestions or proposals contained within the motions;
 - c) The response and/or decision (if any) received by the Minister is deemed final and if a response is received, such response shall be made publicly available on the Shire website and there will be no further motions relating to the issues raised in the motions.
3. Decision 3 is accepted and shall be considered as and when Council is in the process of reviewing all of its policies.

Cr Mills proposed a Foreshadowed Motion

That Council:

- 1. Acknowledge the interest and engagement of the electors of the district in the topics nominated for the Special Meeting of Electors held on 25 September 2017.**
- 2. Forward the Electors motions (Decisions 1 and 2) to the Minister.**

Return to Cr Tan’s Amended Motion

Moved: Cr Tan

Seconded: Cr King

That Council:

- 1. Acknowledge the interest and engagement of the electors of the district in the topics nominated for the Special Meeting of Electors held on 25 September 2017.**
- 2. Forward the motions (Decisions 1 and 2) to the Minister subject to the following conditions:**
 - a) The Council has only agreed to forward the motions to the Minister as requested by the Electors;**
 - b) The Council (through its Shire President and/or CEO) includes a cover letter that Council has not agreed to any of the intent, content, suggestions or proposals contained within the motions;**
 - c) The response and/or decision (if any) received by the Minister is deemed final and if a response is received, such response shall be made publicly available on the Shire website and there will be no further motions relating to the issues raised in the motions.**
- 3. Decision 3 is accepted and shall be considered as and when Council is in the process of reviewing all of its policies.**

Lost 2/6

Officer’s Recommended Resolution

Moved: Cr Tan

Seconded: Cr King

That Council:

- 1. Acknowledges the interest and engagement of the electors of the district in the topics nominated for the Special Meeting of Electors held on 25 September 2017.**

Lost 0/8

Foreshadowed Motion (Cr Mills)

Moved: Cr Mills

Seconded: Cr Bailey

That Council:

- 1. Acknowledge the interest and engagement of the electors of the district in the topics nominated for the Special Meeting of Electors held on 25 September 2017.**
- 2. Forward the Electors motions (Decisions 1 and 2) to the Minister.**

Cr Bailey moved an amendment to the Foreshadowed Motion.

Amendment to Foreshadowed Motion

Moved: Cr Bailey

Seconded: Cr Tan

That Council add point 3 “Decision 3 is received and shall be considered as and when Council is in the process of reviewing all of its policies”.

Carried 8/0

The Amended Foreshadowed Motion is now put

Moved: Cr Mills

Seconded: Cr Bailey

That Council:

- 1. Acknowledge the interest and engagement of the electors of the district in the topics nominated for the Special Meeting of Electors held on 25 September 2017.**
- 2. Forward the Electors motions (Decisions 1 and 2) to the Minister.**
- 3. Decision 3 is received and shall be considered as and when Council is in the process of reviewing all of its policies.**

Carried 8/0

CEO Note: Section 5.33(2) of the Local Government Act 1995 requires the reason for any decisions made by Council in response to decision/s made at a Special Meeting of Electors to be recorded in the Minutes of that Council Meeting.

Council reason: Not recorded. The reason for this decision can be clarified when the Unconfirmed Minutes of the meeting are presented to Council for confirmation.

12.6 Recall Items

12.6.1	UNIT 4 PRESTON RETIREMENT VILLAGE
	Location: 10 Sharp Street, Donnybrook
	Applicants: Donnybrook Balingup
	Zone: Special Use Aged Person Accommodation
	File Ref: CSV 01/9, PRO 1/31 4
	Author: Ben Rose– Chief Executive Officer (<i>Kate O’Keeffe, Executive Assistant</i>)
	Report Date: 19 July 2016
	Attachments: Nil

Background

Council considered the confidential report – Unit 4 Preston Retirement Village at the Ordinary Council meeting held on 26 July 2017.

Comment

In accordance with the *Local Government Act 1995* Section 5.23 (2)(c) and Administration Regulations 4A the above report remained confidential as “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.”

Once the information in the report is no longer sensitive the item is required, under the Act, to be included in the next occurring Council Meeting Agenda.

This matter has now been finalised.

Consultation

N/A

Policy/Statutory/Voting Implications

Statutory

Section 5.23(2)(c) of the *Local Government Act 1995*.

Voting

Simple majority.

Financial Implications

Nil

Strategic Implications

Outcome 4.2 - A respected, professional and trusted organisation

Council Decision

(Officer's Recommended Resolution)

Moved: Cr Bailey

Seconded: Cr Van Der Heide

That the Council resolutions relating to the confidential report on Unit 4 Preston Retirement Village be made public.

Carried 8/0

Council decision from the Ordinary meeting held on 26 July 2017:

“That Council accept the offer of \$310,000 for Unit 4, Preston Retirement Village from Mrs Barbara Telfer.”

Officer's Recommended Resolution

Moved: Cr Tan

Seconded: Cr King

That the Meeting be closed to the public under the *Local Government Act 1995 (the Act)* for item 12.7.1 – Chief Executive Officer Performance Review and 12.7.2 Chief Executive Officer Key Performance Areas for the 2017/18 Financial Year under Section 5.23(2)(a) (*a matter affecting an employee or employees*) and Section 5.23(2)(c) (*a contract entered into, or which may be entered into, by the the local government*) of the Act.

Carried 8/0

** 6.57pm – The Chief Executive Officer, Manager Finance and Administration and the Public Gallery left the meeting.

12.7 Confidential Items

CONFIDENTIAL

12.7.1

CHIEF EXECUTIVE OFFICER PERFORMANCE REVIEW

Location:	N/A
Applicants:	Administration
Zone:	N/A
File Ref:	EMP 582
Author:	Ben Rose – Chief Executive Officer (<i>Kate O’Keeffe, Executive Assistant</i>)
Report Date:	5 September 2017
Attachment:	12.7.1 – Annual Appraisal Council Report
