



Shire of Donnybrook Balingup

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Commissioner's Update (#7)

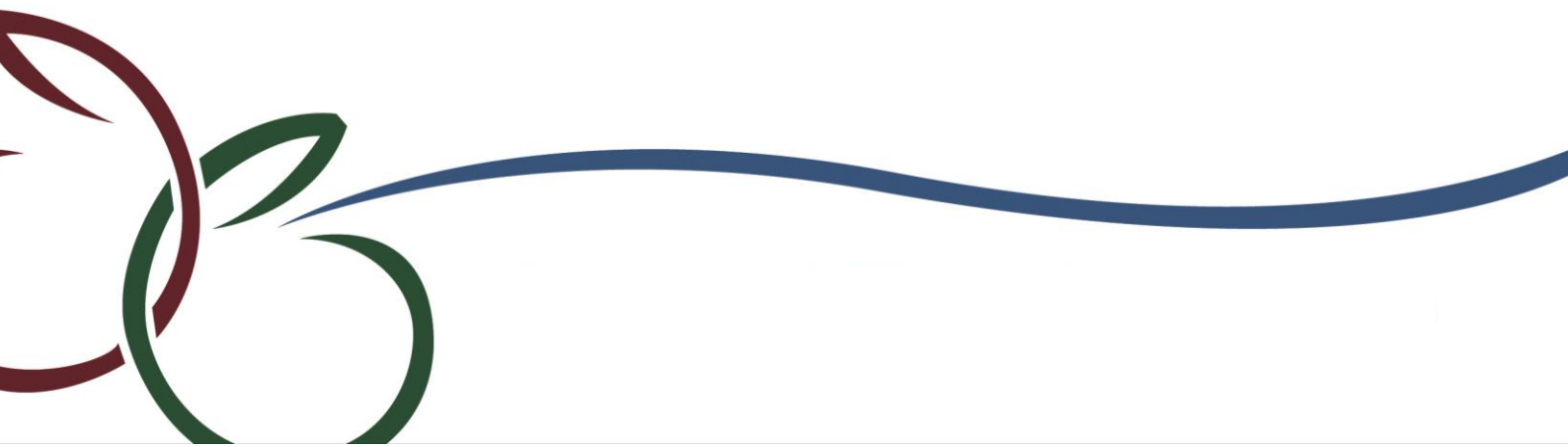
1 March 2023

Firstly, congratulations and thanks to those who organised and supported the Donnybrook Dunny Do Over event on Saturday evening.

It is fabulous to see the Town Team Movement concept being embraced in this community. For those who may not know about the Town Team Movement, they describe themselves as 'positive doers' - they are small groups who want to help make their community better through positive action and change. Jimmy Murphy is one of the key drivers of the movement who came down from the event, and currently holds the title of WA's Local Hero, having represented WA in the Australian of the Year celebrations in January. The underpinning concept is fantastic and turns activism into a movement to make things better.

I thought the evening was a great success and congratulate the Town Team Committee. The artwork is vibrant and reflects a real community effort, and those who participated should take a bow. Everyone seemed to have fun and there were some sensational entries in the Dunny Derby. The RAC helicopter also seemed to attract lots of attention.

Last week saw the first Ordinary Council Meeting held under my guidance as Commissioner. As many would be aware, I renewed the contract of the CEO for fifteen months until October 2024. I provided a comprehensive statement detailing how I came to that decision. I have included a copy of that statement and the statement I made as Presiding Member at the end of this update, as this provides an overview of some of the things I have been doing since taking on the role. A reminder also that the video recording of the livestream of past meetings is available via a link on the Council website, in the Council Meetings section.





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I have noticed reference on social media to concerns that I divulged information from confidential considerations at the November meeting of Council. While it is against the law to divulge how individual councillors voted on a confidential item, other information may be made public, albeit that is not often done. I determined that it was in the public interest to provide context to my decision and that could not be done without disclosing some of the background to the actual vote. It was also done in the spirit of openness and transparency that people have been calling for.

Importantly, while I provided the CEO with a very early draft of what I was proposing to say, he was not provided with a copy of the statement until moments before I re-opened the meeting to the public to detail my decision, having afforded him the courtesy of telling him of my decision before making it public. The decision was mine alone, made after seeking appropriate external advice.

Last week I attended a briefing with Perkins Builders and Cameron Chisholm Nicholls, who are the architects for the VC Mitchell park project. Good work is being done, though there will be some challenges. As I have said before I anticipate releasing a package of information prior to the Annual Electors Meeting that deals with many of the questions that have been raised. I have also asked the CEO to work to engage a suitably qualified person to review the documentation, and to assist in finalising the design to deliver a facility that meets the multi-purpose community facility brief as closely as possible.

I also indicated at the Council meeting that I believe there are some real opportunities to look at some rationalisation around land and buildings along with vacant land to provide facilities and amenities more strategically. There have been a couple of recurring themes I have heard. Firstly, the concern about impact of the proposed \$2.9m loan on both rates and the level of debt. Secondly, a more general concern about the over-emphasis on provision of sporting facilities over and above other community facilities. The third is the issue of land and housing supply for people who wish to live and/or work in the area. The Federal and State governments have recently announced some funding sources for both infrastructure and social and affordable housing provision, and I am keen to see if there are ways we can leverage those sources.



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A second meeting of the Audit and Risk Management Committee will be held on the 7 March. That is currently scheduled for 10am in the Council Chamber.

I will be in town again on Thursday before returning from the following Monday evening until the afternoon of 8 March. On Friday 10 March I will be attending a Regions Rising event in Bunbury.

Lastly, this week marks the departure of the Director of Operations Steve Potter who will be taking on a new role in the resources sector. Steve has been an asset to the Shire and has worked through some challenging times. We wish him well and thank him for both his great contribution.

Gail McGowan

Commissioner of the Shire of Donnybrook Balingup





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Presiding Member Statement.

Firstly, can I acknowledge former Shire President Brian Piesse who passed away recently after a short battle with cancer. Brian was Shire President at Donnybrook Balingup between 2017-2021, and previously served four years on the Council of the Shire of Capel.

Among many roles, Brian served on the Board of South West Development Commission (where he was the longest ever serving member), Edith Cowan University, South West Catchment Council and the Kings Park Board. While I didn't get the chance to meet Brian, I extend my deepest sympathy to his wife and family. As those of you who have taken on public roles know only too well, it is a task made much easier when you have that family support, so thank you to Lucille and Brian's two daughters Juanita and Miranda and the extended family for enabling Brian to dedicate so much of his time to public service.

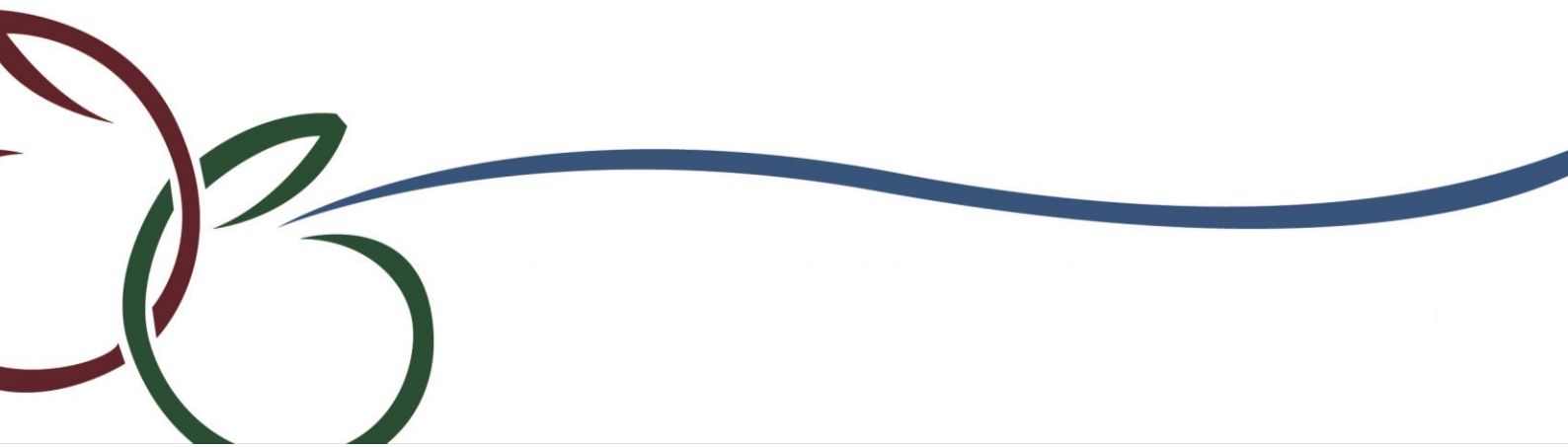
Tonight, marks the first Ordinary Council Meeting since I was appointed on 19 December. I thought it appropriate to give a brief overview of some of the things I have done since that appointment.

First though, I will reiterate the function of the Commissioner under Section 2.38 of the Local Government Act 1995.

This requires me to:

- 1. Exercise the powers and discharge the duties of the council of the local government and its mayor or president; and*
- 2. Be regarded as being the council.*

While I have been appointed by the Governor on the recommendation of the Minister, I do not work for the State, hence I am not compelled to follow instruction from the Minister or the Department. Neither am I here to do the bidding of the CEO or the Staff. I will be guided at all times as to what I determine is in the public interest, rather than pursuing the agendas of individuals or interest groups. I don't underestimate the challenge and the responsibility, but I commit to doing my best.





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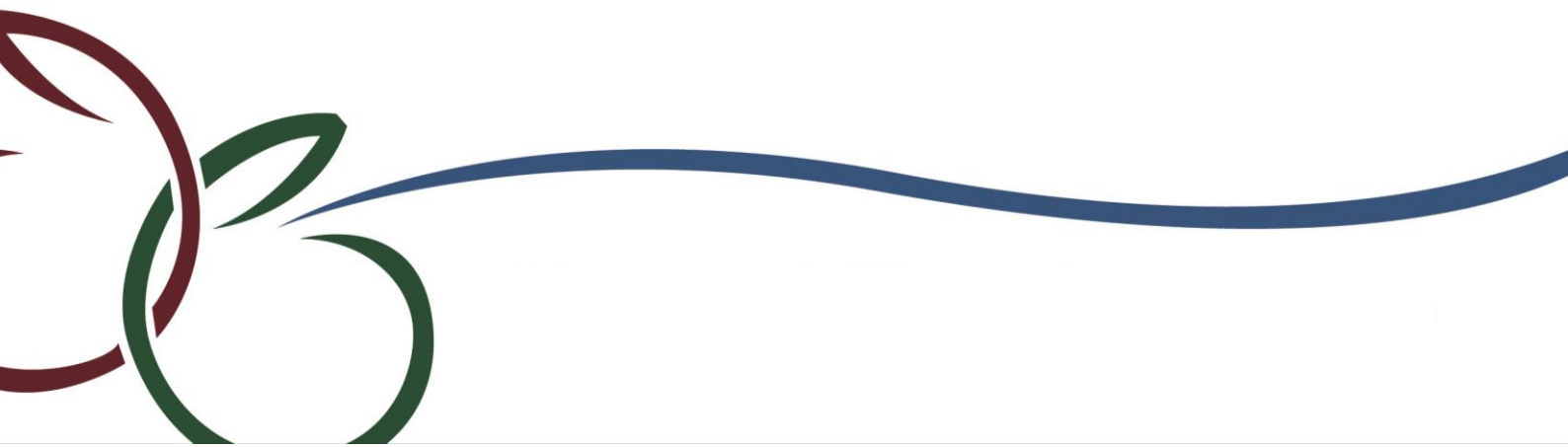
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I reiterate again that I have not been commissioned to conduct an inquiry into past decisions or activities. While it is important to consider past actions to chart a way forward, this is not a formal inquiry.

I have previously commented on what I consider the three big issues that have caused some division. To some degree they are interrelated. In terms of these three issues, I have indicated that I am planning to make a more substantive statement on the VC Mitchell project and release a package of information over the next couple of weeks that deals with what I think are many of the key issues. My intention is to have this available before the Annual Electors Meeting. I believe there is validity to arguments around lack of information which have fuelled the perception that the project favours the Football Club to the possible exclusion or detriment of others. Whether the reality matches the perception is something I have not yet determined.

The second issue is the Museum Project. I want to publicly acknowledge the generosity of Neville and Diane Fry to the community of Donnybrook over many years. Their enduring legacy is obvious in terms of things like the Apple Fun Park, but I am told there are also numerous less obvious contributions. One of the items on the agenda this evening is the development of a hierarchy in terms of managing assets. I am hoping this provides a more strategic opportunity to look at how philanthropic donations or commitments might be better managed in the future. The generosity of citizens, whether it be by monetary donations or donations of time or effort is something that is the hallmark of so many regional communities, so it is really important to develop a framework on how to 'marry' such offers with the broader public interest. In the meantime, I accept that the initial offer has now been withdrawn.

The third issue is the CEO contract and that will be dealt within confidential business tonight. I will then make a statement in terms of the decision I have reached.





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While those matters have occupied a lot of my time, the catastrophic bushfires during January brought into sharp focus the worst and best of living in the regions. I remain in awe of the way the community came together and today I managed to catch up with some of the fabulous Blaze Aid volunteers. I've previously mentioned the amazing sense of community and camaraderie that was on display both during the fires and in the aftermath. It has been uplifting to witness.

Another issue that has been front of mind is the issue of bullying, particularly for young people who are just out having fun. The effectiveness of the cameras at the Apple Fun Park along with the lack of cameras at the Pump Track has been raised. Thanks to the community members that raised it with me and thanks also to the Council staff and Donnybrook Police. We met yesterday and quotes for cameras and better surveillance are being progressed as a priority. I thank Kim Dolzadelli and Susie Delaporte in particular for their proactive work in this regard.

Bullying and intimidation in any form cannot be tolerated and I am grateful to those who have talked about practical solutions. We need to be mindful of the examples we set in terms of behaviours.

I also had the pleasure of officiating at the Citizenship ceremony on 26 January and announcing our Citizen of the Year awards. I admit to having mixed views about Australia Day and err on the 'change the date' side but that cannot diminish the incredible efforts of those who put their hand up to serve their communities.

Visits to the Donnybrook Men's Shed, having a few days in Balingup and spending time with the various representatives of the Arts and Crafts and Artisans groups have also been really useful in understanding the importance of belonging. I have been in contact with senior staff at the Department of Planning, Lands and Heritage to begin discussions on some of the management orders and lease arrangements that might be stopping making best use of buildings or accessing funds to make improvements. That work is at an early stage.



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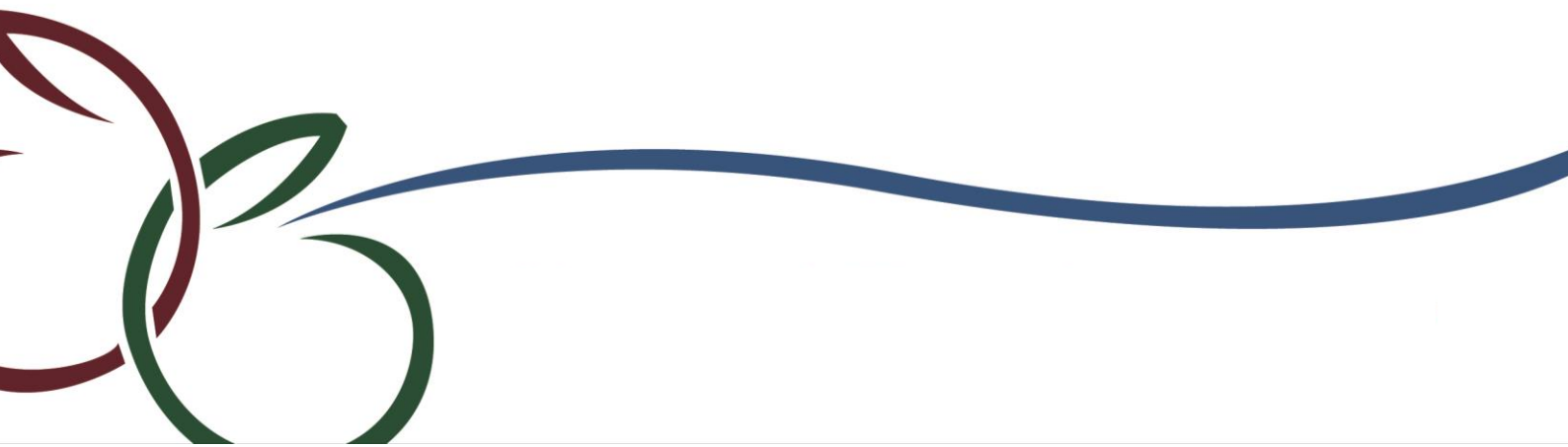
I've also been progressing discussions about the use of the Trust Fund monies for Tuia Lodge and yesterday had the chance to visit the Donnybrook Museum and meet with Historical Society members. Today, I also got the chance to see the Golden Valley Tree Park. I also met with staff of the Shire today.

Last week, in my role as a Director of Foundation Housing, I attended a lunch organised by the Urban Development Institute of WA. There was interesting discussion on federal funding opportunities for development of social or affordable housing. The extent to which such funds might be accessed to improve the stock of housing for vulnerable people or essential workers in the district is worthy of further consideration.

I am back down again on the weekend for the Donnybrook Dunny Do Over event which looks like being a fun event.

Finally, I have signalled a change to the way public question time is organised. The first trial of that will be tonight. While we may have to modify things as we go along my intention is to allow a longer period of question time and be more flexible in approach.

I remind those seeking to ask questions to focus on issues and not individuals and be respectful in approach. I will remind those in attendance that I am not able to respond to questions that relate to matters considered confidential under section 5.23 of the Act nor questions that I determine as not being in good faith.





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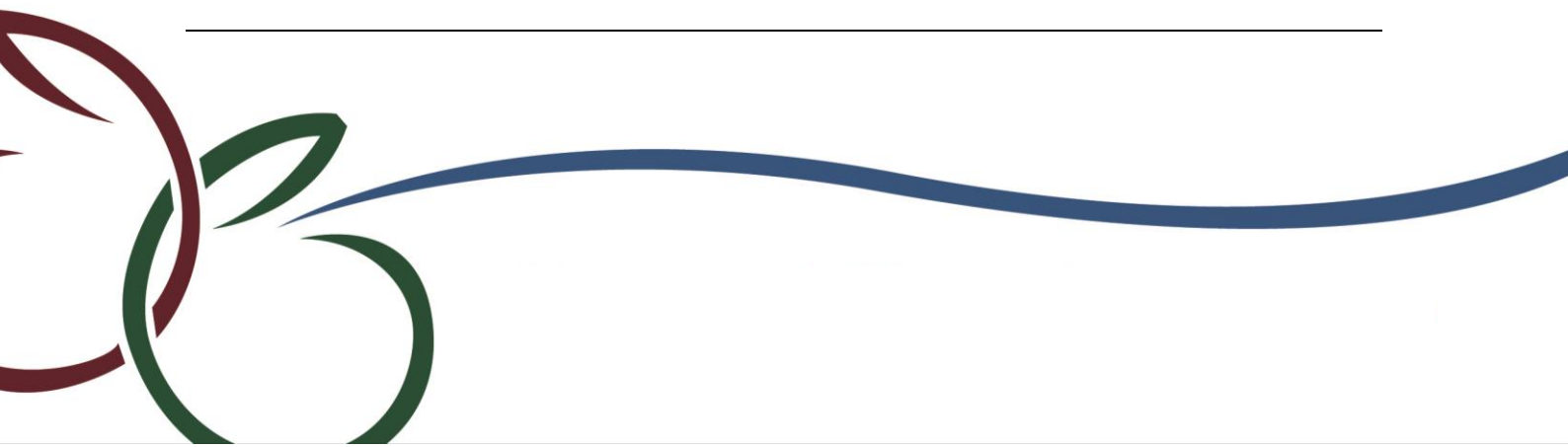
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I am disappointed that I have to make this point. I may be somewhat old-fashioned, but I lament the loss of civility and respect in our general society. My impression of Donnybrook-Balingup over the past couple of months has been incredibly positive. People have been welcoming and overwhelmingly focussed on what is in the interests of the broader community. That said there are elements or pockets where acceptable standards are found wanting. Discussion and debate should be robust and passionate and diversity of views tolerated. But people will not come together while they feel as though they are disrespected, not listened to or their motives questioned. Similarly when information is taken out of context or used to foster division and dissent it does little to progress rational debate and I will not dignify it with a response.

In listening to recordings/live streaming of past meetings and being provided with information including email exchanges between elected members or elected members and community members, it is clear that the art of respect or civility has been sacrificed in favour of overt or covert criticism and abuse or general undermining. In my meetings with people and groups, email exchanges or perusal of social media, some of the commentary has included accusations, threats, impugning of reputations and other behaviours that don't present people in the best light and would arguably be in breach of codes of conduct and acceptable behaviours. I have yet to see evidence to back up any of the more serious claims of misconduct or fraud. That said there are a number of examples where provision of better or clearer information could have addressed some of the main concerns.

I believe that civility, reason, fairness and justice go hand in hand. Almost without exception all those who I have met with or spoken to are passionate advocates who are focussed on getting the best outcomes for the residents and ratepayers of Donnybrook-Balingup even if they differ in their views on what that looks like. Whatever might have happened in the past which has led to the current tensions cannot be remedied without a more respectful approach from all parties and a willingness to move forward. I hope Council meetings can embrace that spirit. My willingness to be flexible in approach will diminish if I determine that is not the case.





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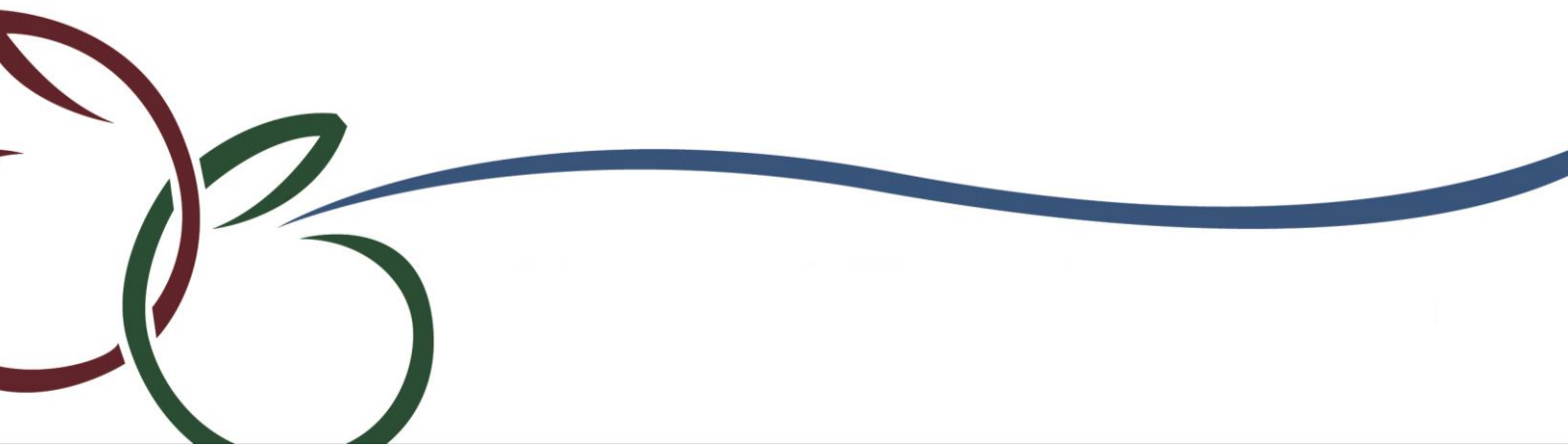
CEO Contract Statement.

I have this evening determined the following:

That the Council (the Commissioner):

1. *Rescind Council Decision 160/22 from the 23 November 2022 Ordinary Meeting in accordance with Local Government (Administration) Regulation 10. That decision read:
"That Council:
 1. Resolves not to renew the employment contract for Mr Benjamin Rose as the Chief Executive Officer of the Shire of Donnybrook Balingup;
 2. Advertises the position for the Chief Executive Officer for the Shire of Donnybrook Balingup;
 3. Encourages Mr Rose to apply for the position."*
2. *Acknowledge the satisfactory performance of Mr Benjamin Rose CEO as identified in the CEO Performance Appraisal process concluded on 24 August 2022.*
3. *Offer a renewal of contract to Mr Benjamin Rose for a period of fifteen (15) months commencing from 4 July 2023 and concluding on 3 October 2024.*
4. *Inform the CEO in writing of the Council (Commissioner) decision and issue a new contract.*
5. *Authorise and instruct the Council (Commissioner) to execute the attached employment contract.*

The following statement provides an overview of the process and the rationale for my decision as I believe it is important that factual information is in the public arena.





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A. COUNCIL MEETING OF NOVEMBER 2022

The November 2022 meeting of Council considered the CEO contract. The paper presented to Council recommended:

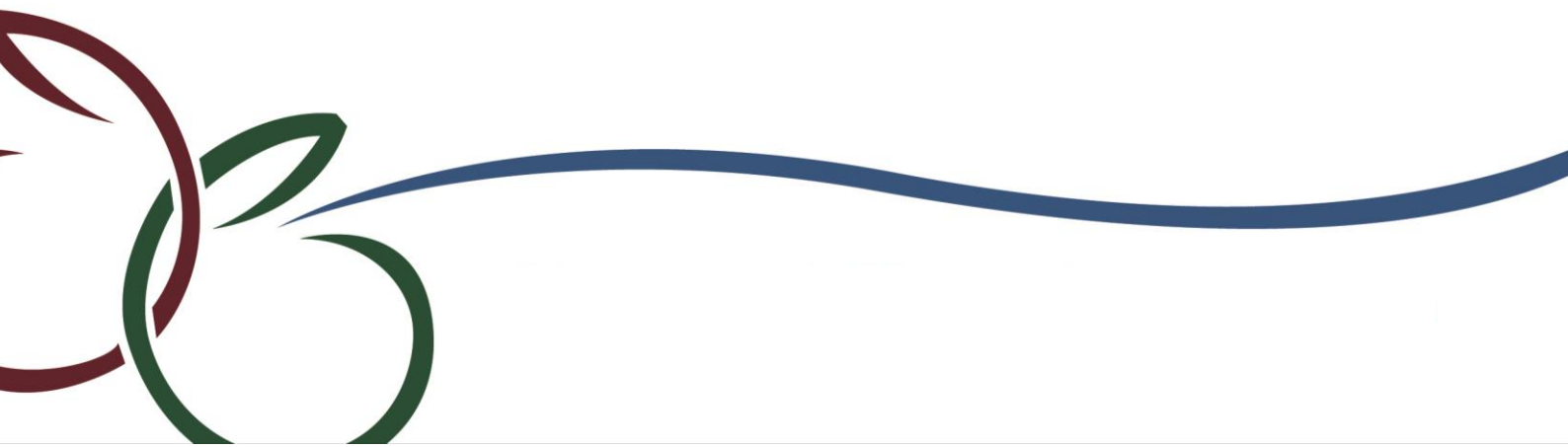
That Council:

- 1. Approve the renewal of the employment contract for Mr Benjamin Rose as the Shire of Donnybrook Balingup Chief Executive Officer from 4 July 2023 to 3 July 2028, as per the attached employment contract.*
- 2. Authorise and instruct the Shire President to execute the attached employment contract.*

Background provided to enable Council consideration of this matter included:

- Advice that Mills Recruitment (Peter Casey) had been engaged to facilitate discussion and negotiation in relation to contract renewal in line with a July Ordinary Council Resolution;*
- The reviewer conducted a review of contract documentation, standards, WALGA templates in the period from 8 August 2022 to 8 September 2022;*
- The CEO Performance Appraisal process was held during this period;*
- At the Ordinary Council Meeting of 24 August 2022 Council voted 9/0 to the note that the performance review had been undertaken in accordance with statutory and contractual requirements and endorsed an overall performance rating of "Meets Performance Requirements".*
Further liaison occurred with all Councillors on this matter in October and November 2022.
- The proposed contract presented for Council consideration reflected contemporary contract format.*

The motion was moved by Cr Atherton and seconded by Councillor Newman.





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Before this Substantive Motion was considered, an amendment was moved by Cr Gubler and seconded by Cr Mills as follows:

That Council:

- 1. Approve the renewal of the employment contract for Mr Benjamin Rose as the Shire of Donnybrook Balingup Chief Executive Officer from 4 July 2023 to 3 July 2025, as per the attached employment contract.*
- 2. Authorise and instruct the Shire President to execute the attached employment contract.*

This amendment was lost 3/6.

At this point Cr Glover foreshadowed an alternative motion, which was seconded by Cr Gubler.

The substantive motion (that is the one initially recommended) was then considered.

This motion was lost 4/5.

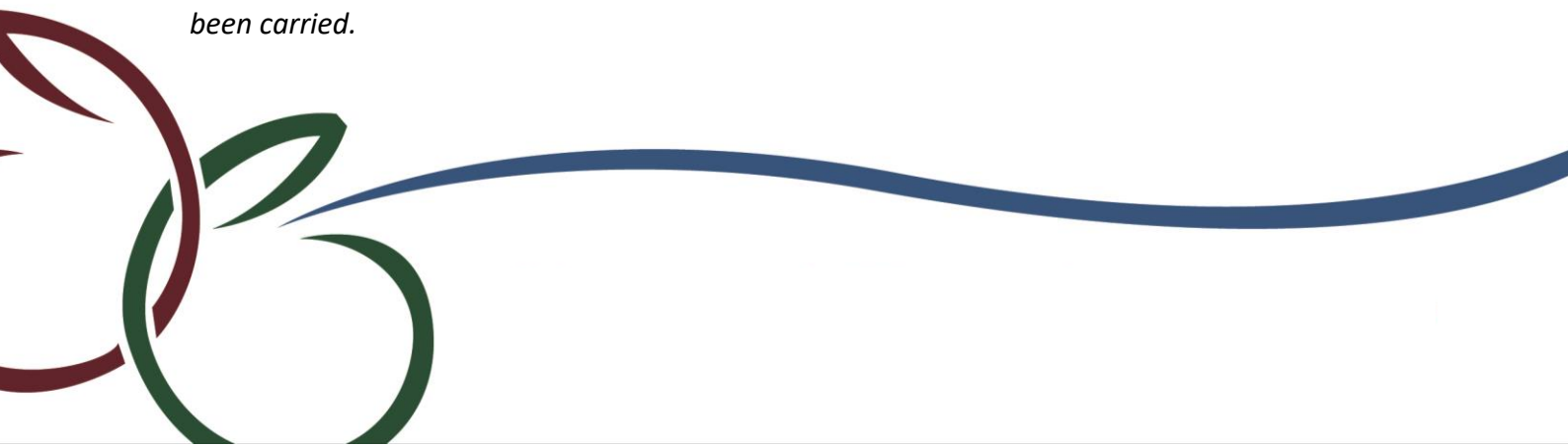
Cr Glover's foreshadowed motion then came up for Council's consideration :

That Council:

- 1. Resolves not to renew the employment contract for Mr Benjamin Rose as the Chief Executive Officer of the Shire of Donnybrook Balingup;*
- 2. Advertises the position for the Chief Executive Officer for the Shire of Donnybrook Balingup;*
- 3. Encourages Mr Rose to apply for the position*

This alternative motion was carried 5/4.

A further foreshadowed alternative motion by Cr Atherton to reappoint Mr Benjamin Rose from 4 July 2023 to 3 July 2026 lapsed as the foreshadowed alternative motion had already been carried.





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B. CEO PERFORMANCE APPRAISAL REPORT AUGUST 2022

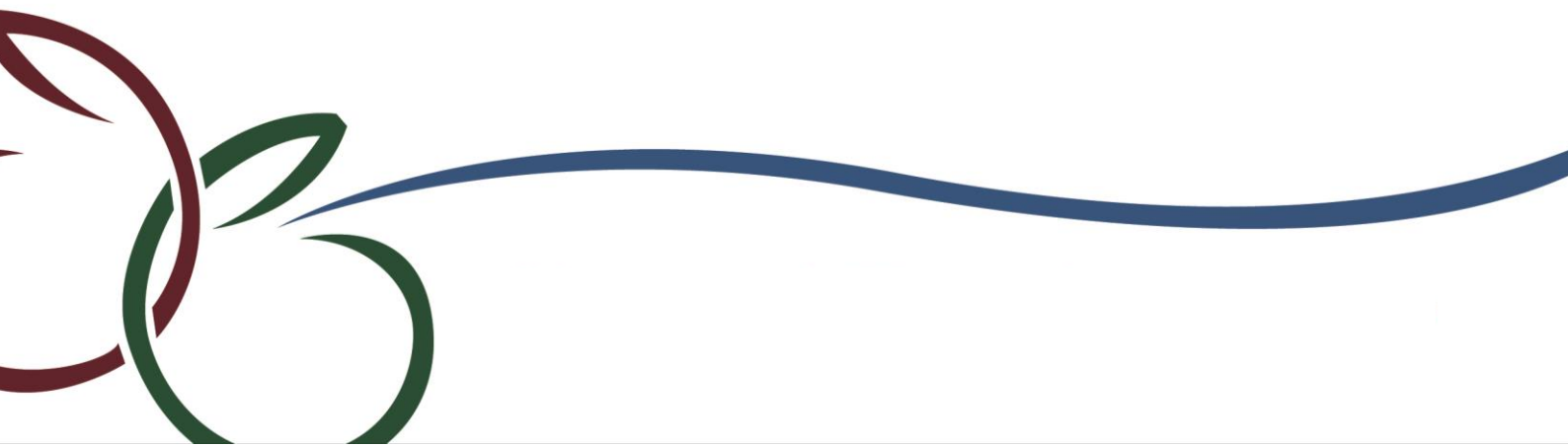
An important part of the process is the annual performance appraisal process. The 2021/22 Performance Appraisal was facilitated by Mr Peter Casey from Mills Recruitment in accordance with performance criteria established under Sections 5.38, 5.39, 5.39A of the Act and the Regulations addressing model standards for the performance review of Local Government CEOs. This process included consideration by a Performance Appraisal Working Group established by the Council and meetings between that group and all elected members.

One important part of this process and an aspect I have had particular regard for in my consideration are the principles of procedural fairness and natural justice and having performance measurement expectations that are clearly articulated and based on documented and negotiated performance indicators or outcome measures.

This process concluded that the CEO had met expectations in the 6 major Key Result areas.

At the Ordinary Council Meeting of 24 August 2022 Council voted 9/0 to the note that the performance review had been undertaken in accordance with statutory and contractual requirements and endorsed an overall performance rating of "Meets Performance Requirements".

This culminated in a report to Council recommending renewal of the CEO contract for a period of five years.





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C. STAKEHOLDER CONSULTATION

Since being appointed in December 2022, I have met individually with all previous Councillors and attempted to ascertain their views. All have been generous with their time and open with their responses and I thank them for that.

I have also met with a large number of individuals and groups to gain a better sense of the range of community views and thoughts on the operation of the Council.

One area of concern has been a number of allegations and suggestions of dishonest behaviour, fraud and corruption mostly levelled at the current CEO but also more broadly. While I have been given examples where I or others might have approached a situation differently, I have not been provided any evidence that I believe would meet the threshold of misconduct, fraud or corruption. That said I have encouraged anyone with evidence of same to raise their concerns with the integrity bodies who are the experts in this area. To my knowledge nothing has been presented.

I have also taken the opportunity to discuss contemporary practice and the expectations of the role of a CEO with Mr Casey from Mills Recruitment and other persons who have previously carried out reviews in the Shire or have some background knowledge.

D. GOOD GOVERNANCE AND CONTINUITY

In forming a view I am conscious of the role I have in acting in the shoes of the Shire President and all 8 Councillors until October 2023.

I have taken particular note of the previous deliberations of Council. Particular regard has been had for the initial amended motion put to the November 2022 meeting of Council to re-appoint the current CEO for a 2 rather than a 5 year term. It was put to me by a former Councillor, that had that amendment been carried we may not be in the position we are in now. I am inclined to agree with that view.



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I have also considered that the vote to advertise the CEO position was carried at a legally constituted meeting of Council and should be honoured. That is also a persuasive argument. However, I also note that part of that amendment included a recommendation that the current CEO be encouraged to reapply.

On balance I have considered the options available and concluded that there is merit in offering the CEO a contract renewal of 15 months. This will take the contract to the beginning of October 2024.

This affords the incumbent the right to natural justice given the independently facilitated performance process found he had met performance requirements. It will also minimise cost and disruption caused by starting an advertising process that is unlikely to result in an appointment (assuming someone other than the incumbent is successful) until later in 2023. In my view this would be unsatisfactory in that an incoming Council would in effect play no part in choosing the CEO with whom they will be required to work for a period of up to 5 years.

The proposed extension affords a newly elected Council the opportunity to consider the performance of the incumbent CEO for a period of some 6 to 8 months before having to determine (in line with legislative requirements) whether they intend to move to contract renewal beyond October 2024.

