



## **MINUTES OF SPECIAL MEETING OF COUNCIL**

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**For Council to:**

**Consider contract documentation for the VC Mitchell Park Project.**

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Held on

**Wednesday 16 November 2022**

Commencing at 5.00 pm

Shire of Donnybrook Balingup Council Chamber

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**Ben Rose**  
**Chief Executive Officer**

**23 November 2022**

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## SHIRE OF DONNYBROOK BALINGUP

### SPECIAL COUNCIL MEETING

Held at the Council Chamber  
Wednesday 16 November 2022 at 5.00pm

## 1 DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

### Shire President – Acknowledgment of Country

The Shire President acknowledged the traditional custodians of the land, the Wardandi People of the Noongar Nation, paying respects to Elders, past, present and emerging.

The Shire President declared the meeting open at 5:00 pm and welcomed the public gallery.

The Shire President advised that the meeting is being live streamed and recorded in accordance with Council Policy EM/CP-2. The Shire President further stated the following:

*“This meeting is being livestreamed and digitally recorded in accordance with Council Policy.”*

*“Members of the public are reminded that no other visual or audio recording of this meeting by any other means is allowed without the permission of the chairperson.”*

*“Whilst every endeavour has been made to only record those who are actively participating in the meeting, loud comments or noises from the gallery may be picked up on the recording.”*

## 2 ATTENDANCE

### MEMBERS PRESENT

COUNCILLORS	STAFF
Cr Leanne Wringe (President)	Ben Rose – Chief Executive Officer
Cr Shane Atherton	Steve Potter – Director Operations
Cr Peter Gubler	Archana Arun – Admin. Officer Executive Services
Cr Phil Jones	Shawn Lombard – Principal Project Manager
Cr Jackie Massey	
Cr Fred Mills	
Cr Chaz Newman	
Cr Chris Smith	

### PUBLIC GALLERY

Eighteen members of the public were in attendance.

### 2.1 APOLOGIES

Cr Glover and Mr Kim Dolzadelli, Director Corporate and Community

## **2.2 APPROVED LEAVE OF ABSENCE**

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Nil.

## **2.3 APPLICATION FOR A LEAVE OF ABSENCE**

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Nil.

## **3 ANNOUNCEMENTS FROM PRESIDING MEMBER**

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Nil.

## **4 DECLARATION OF INTEREST**

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

*Cr Atherton has declared an Impartiality Interest in item 7.1.1 Confidential – VC Mitchell Park Project Procurement as he is a life member of the Donnybrook Football Club.*

*Cr Glover has declared a Proximity Interest in item 7.1.1 Confidential – VC Mitchell Park Project Procurement as she is a part owner of a property adjoining the VC Mitchell Park site (Emerald Street).*

*Cr Glover has declared a Financial interest in item 7.1.1 Confidential – VC Mitchell Park Project Procurement as the above mentioned property is an investment property.*

*Cr Glover has declared an Indirect Financial interest in item 7.1.1 Confidential – VC Mitchell Park Project Procurement as her partner is a joint owner of the above-mentioned property.*

*Cr Glover has declared an Impartiality interest in item 7.1.1 Confidential – VC Mitchell Park Project Procurement as she is a Member of the Tennis Club.*

*Cr Glover has declared an Impartiality interest in item 7.1.1 Confidential – VC Mitchell Park Project Procurement as family members are members of the Donnybrook Tennis Club.*

*Cr Glover has declared an Impartiality interest in item 7.1.1 Confidential – VC Mitchell Park Project Procurement as she is a Member of the Ladies Hockey Club.*

*Cr Glover has declared an Impartiality interest in item 7.1.1 Confidential – VC Mitchell Park Project Procurement as a family member is a member of the Preston Thunder Football Club.*

*Cr Glover has declared an Impartiality interest in item 7.1.1 Confidential – VC Mitchell Park Project Procurement as she is a Volunteer (processing Kidsport Applications) for Donnybrook Football Club.*

*Cr Glover has declared an Impartiality interest in item 7.1.1 Confidential – VC Mitchell Park Project Procurement as a family member is a member of the Donnybrook Netball Association.*

*Cr Glover has declared an Impartiality interest in item 7.1.1 Confidential – VC Mitchell Park Project Procurement as a family member is a member of the Donnybrook Basketball Association.*

## **5 PUBLIC QUESTION TIME**

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In accordance with the Clause 7(3) of the Local Government (Administration) Regulations, public questions must relate to the stated purpose of the Special Meeting of Council.

### Question: Simon McInnes

I'm here as a spokesperson for the Donnybrook and Balingup Ratepayers and Residents association and will it be recorded in the Minutes as such?

### Shire President: Response

We've had this conversation before. It'll be recorded as your name.

### Question: Simon McInnes

Will you reconsider your decision?

### Shire President: Response

I am going to be consistent with my previous response. If you're not comfortable with those questions you can pass them on to someone else. Or, you can ask them.

### Question: Simon McInnes

Will any of the Councillors do a procedural motion to disagree with your decision?

### Shire President: Response

It's the CEO's role to prepare the Minutes and present those to the Council.

### Question: Simon McInnes

Are you denying the right to ask a question as a spokesperson on behalf of the Ratepayers Association?

### Shire President: Response

That's correct.

### Question: Simon McInnes

How many times in the last four years has the Donnybrook Shire applied for the co-contribution loan for the VC Mitchell Park project?

Chief Executive Officer: Response

The Shire has applied once previously.

Question: Simon McInnes

Why was that application rejected?

Shire President: Response

The application was not rejected.

Question: John Hearman

Would you be able to explain what is meant by an intergenerational loan?

Shire President: Response

An intergenerational loan is a way of shifting the cost to future ratepayers. With this project we have three funding sources; grant funding, loan funding and money in the bank (in Reserve and is in term deposit). The Reserve money has been saved from past ratepayers. Loan funding is ratepayers in the future paying for that facility. So, it's a way of spreading the cost.

Question: Shane Sercombe

Could you please give a brief description of the nature of this item and why the special meeting was called?

Shire President: Response

The Special Meeting was called for this particular item because it was substantial enough to have a meeting for the one matter.

Question: Shane Sercombe

Are you able to give a brief description of the item? Is this us committing to a \$9 million project?

Chief Executive Officer: Response

Contract documentation is now at a position that it can be presented to the Council for formal consideration for execution. The Council is being asked to consider entering into a contract, along with other related decisions.

Question: Brian Piesse

Can you advise the present State Treasury lending rate, and what it was four years ago?

Shire President: Response

In the long term financial plan, we've actually budgeted for 5% but I don't know what the rate was previously.

Question: Brian Piesse

Could you advise me if this facility going to be open to the community and the public throughout the year?

CEO Response

The Council's preferred management model is termed a 'blended management model', which was recommended by Anna Dixon Consulting. As the project progresses, we can more closely look at how this preferred management model will see the place activated throughout the year.

Question: Shane Sercombe

Has any external funding been secured as yet? If not, why hasn't a financial assistance agreement with the State Government been entered into?

Shire President: Response

We haven't put another application in for the loan as yet - this is part of the Council decision making for this meeting. The financial assistance agreement is a matter for Council decision making tonight also.

Question: Shane Sercombe

So, no external funding has been secured as yet?

Shire President: Response

Not at this stage, although we actually have a part of the State grant already.

Question: Shane Sercombe

The financial assistance agreement can't be entered into prior to being granted the loan, is that correct?

Chief Executive Officer: Response

There's a sequencing challenge with the release of the funds from the State Government (the residual of \$5.75 million) which involves approval of the Shire loan and approval of the contract documentation. The decisions that Council will be asked to consider tonight, if approved, will establish a chain of actions to unlock project funding. The Shire has previously been approved for the loan, so we don't foresee any challenges in relation to the financial assistance agreement. It's a process that needs to be followed.

Question: Shane Sercombe

So, there's going to be no contractual commitment until those external funding sources are secured?

Chief Executive Officer: Response

All I can advise, without breaching confidentiality, is that the topic of your question is a consideration for the Council this evening and they will be considering the funding sequencing challenge.

Question: Shane Sercombe

Can you please give a breakdown of deliverables achieved with the project funding to date? Does Perkins have unfettered access to that information?

Shire President: Response

I don't have that information on hand, I could take that on notice.

Chief Executive Officer: Response

To answer the first question, all of the deliverables to date have led to this meeting of Council tonight, with Council to consider the contract documentation. There is a huge volume of work that has been managed through the Shire and its consultants to enable a contract to be considered by the Council tonight.

To answer the second question, no, Perkins nor anybody else has unfettered access to the Shire's documentation.

Question: Shane Sercombe

To clarify my question – does Perkins have access to relevant Shire project information (e.g. design works) in order to avoid duplication?

CEO Response

Yes, relevant information is certainly available to Perkins for this purpose.

Question: Justin Knox

Is there a time period that we have use funding before it gets taken away?

Chief Executive Officer: Response

Funding from the State Government came from the State COVID Recovery Plan, which was a State Government initiative to drive economic stimulus, particularly in the building and construction industry, post COVID. There is no hard and fast timeline as to when or if the State Government might withdraw its funding. However, the Shire is not keen to push that rather flexible boundary too far.

Question: Shane Sercombe

How does Council determine if this is a value for money contract?



Shire President: Response

That's something that the Council is going to be considering tonight.

Question: Shane Sercombe

How will Council determine whether it's value for money given the contracted works haven't gone through a competitive tender process?

Shire President: Response

We have gone through a competitive tender process.

Question: Shane Sercombe

How many tenders were received?

Shire President: Response

There were no tenders received.

Question: Shane Sercombe

Will the resolution of today's meeting contain a brief description and the value of the contract for the public? I know it's up to Council, but will the recommendation have a description of the contract and the price of the contract?

Chief Executive Officer: Response

The Council decision will be the resolution (which can't be pre-empted). My recommendation to the Council would be not to release those contract details just yet.

Question: Shane Sercombe

Would the Council consider giving the community an update of the VC Mitchell project following today's meeting?

Shire President: Response

There will be a motion to consider this tonight.

Question: Shane Sercombe

Will the Council consider giving the community an update on the project after tonight?

Shire President Response

Yes, I can't see why not.

Question: Shane Sercombe

Does the Council have the final vote on whether the meeting is closed to the public tonight?

Shire President Response

Under the Act, when you're dealing with contracts, the meeting is closed.

Question: Shane Sercombe

Does the Council have the final vote on whether the meeting is closed to the public tonight?

Shire President: Response

Yes, we do vote to go behind closed doors.

Question: Simon McInnes

As both Perkins and Smith Constructions lodged Expressions of Interest, wouldn't it be prudent to have both companies vying for this project, to get value for money?

Shire President: Response

The Expression of Interest process determined their capabilities and capacity to actually deliver what we want, and it was assessed that there was only one that was suitable.

Question: Simon McInnes

Who made that decision?

Shire President: Response

The executive staff, the project management team and the Council.

Question: Shane Sercombe

Has a MOU been entered into with the football club as yet?

Shire President: Response

No.

Question: Shane Sercombe

Before the contract is committed to, what arrangements are in place with the football club to date?

Shire President: Response

That's something that the Council are going to be discussing tonight.

Question: Simon McInnes

How long will it be before we have a new building where the football club currently exists?

Chief Executive Officer: Response

If awarded the contract, Perkins will undertake detailed scheduling. The construction industry is fluid at the moment with a very variable labour market and materials supply challenges.

Question: Simon McInnes

So, do we know one year or two years?

Chief Executive Officer: Response

I can't advise at the moment, however, I would expect perhaps somewhere around 18 months.

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## **6 REPORTS OF OFFICERS**

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### **6.1 DIRECTOR OPERATIONS**

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Nil.

### **6.2 DIRECTOR CORPORATE AND COMMUNITY**

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Nil.

### **6.3 CHIEF EXECUTIVE OFFICER**

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Refer item 7.1.1.

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## **7 MEETING CLOSED TO THE PUBLIC**

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### **7.1 MATTERS FOR WHICH THE MEETING MAY BE CLOSED**

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#### **7.1.1 CONFIDENTIAL – VC MITCHELL PARK PROJECT PROCUREMENT**

This report is confidential in accordance with Section 5.23(2)(c) of the Local Government Act 1995:

- (c) *a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting;*

## **RECOMMENDATION**

**That the meeting be closed in accordance with section 5.23(2) of the Local Government Act 1995 to discuss the following confidential item:**

### **7.1.1 CONFIDENTIAL – VC MITCHELL PARK PROJECT PROCUREMENT**

#### **COUNCIL RESOLUTION 144/22**

**Moved: Cr Smith**

**Seconded: Newman**

**That the meeting be closed in accordance with section 5.23(2) of the Local Government Act 1995 to discuss the following confidential item:**

### **7.1.1 CONFIDENTIAL – VC MITCHELL PARK PROJECT PROCUREMENT**

**CARRIED 7/1**

**For:** Cr Wringe, Cr Atherton, Cr Gubler, Cr Jones, Cr Massey, Cr Newman and Cr Smith

**Against:** Cr Mills

**The meeting was closed to the public at 5:34 pm**

#### **COUNCIL RESOLUTION 146/22**

**Moved: Cr Massey**

**Seconded: Cr Jones**

**That the meeting be re-opened to the public.**

**CARRIED 8/0**

**For:** Cr Wringe, Cr Atherton, Cr Gubler, Cr Jones, Cr Massey, Cr Mills, Cr Newman and Cr Smith

**Against:** Nil

**The meeting was re-opened to the public at 6:53 pm.**

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## **7.2 PUBLIC READING OF RESOLUTIONS THAT MAY BE MADE PUBLIC**

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#### **COUNCIL RESOLUTION 145/22**

**That Council:**

**1. Authorise the Chief Executive Officer to:**

- 1.1 Execute the attached (Confidential) Contract documentation, including minor contract modifications required to reflect Building and Construction (Securities of Payment) Act 2021;**

**1.2 Apply to the WA Treasury Corporation for a loan of up to \$2.9m for the VC Mitchell Park Project; and**

**1.3 Execute the Project Financial Assistance Agreement with the State Government for \$5,750,000.**

- 2. Request the Chief Executive Officer to secure project funding from the Donnybrook Football Club to the value of \$250,000.**
  - 3. Request the Chief Executive Officer to secure project funding from the WA Football Commission / Australian Football League to the value of \$120,000.**
  - 4. Request the Chief Executive Officer to secure the ongoing project management services of Shape Management for the duration of the design and construction phases acting in the capacity of Superintendent under the Contract.**
  - 5. Request the Chief Executive Officer to provide a project update to relevant stakeholders, including sporting clubs.**
  - 6. Re-affirm its support for the 'Blended Management Model' as recommended in the Anna Dixon Consulting report.**
  - 7. Thank Shire staff and engaged contractors/consultants for their diligent, robust and professional approach to the Project.**
  - 8. Release this resolution in the meeting Minutes.**
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## **8 CLOSURE**

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The Shire President advised that the next Ordinary Council Meeting will be held on Wednesday, 23 November 2022 commencing at 5.00pm at the Balingup Hall.

The Shire President declared the meeting closed at 6:56 pm.

These Minutes were confirmed by the Council as a true and accurate record at the Special Council Meeting held 25 January 2023.



Gail McGowan

**COMMISSIONER – SHIRE OF DONNYBROOK BALINGUP**