



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

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**Purpose:**

**For Council to consider:**

**Tuia Lodge Lease Agreement**

**Donnybrook Goods Shed Lease Agreement**

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Held on

**Wednesday 19 May 2021**

Commencing at 5.00 pm

Shire of Donnybrook Balingup Council Chamber

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**Benjamin (Ben) Rose**  
**Chief Executive Officer**

**21 May 2021**

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**SHIRE OF DONNYBROOK BALINGUP  
SPECIAL COUNCIL MEETING MINUTES**

Wednesday 19 May 2021 at 5.00pm

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**1 DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS**

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**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 Present declared the meeting open at 5:00pm and welcomed the public gallery.

**Shire President - Public Notification of Recording of Meetings**

The Shire President advised that the meeting is being digitally recorded to assist with minute taking in accordance with Council Policy 1.25. The Shire President further stated the following:

*If you do not give permission for your participation to be recorded, please indicate this at the meeting. Members are reminded that no other visual or audio recording of this meeting by any other means is allowed without the permission of the Chairperson.*

**2 ATTENDANCE**

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<b>COUNCILLORS</b>	<b>STAFF</b>
Cr Brian Piesse (President)	Ben Rose – Chief Executive Officer
Cr Jackie Massey (Deputy President)	Paul Breman – Director Corporate and Community
Cr Shane Atherton	Steve Potter – Director Operations
Cr Anita Lindemann	Loren Clifford – Minute Taker
Cr Anne Mitchell	
Cr Chaz Newman	
Cr Chris Smith	
Cr Leanne Wringe	

**PUBLIC GALLERY**

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19 members of the public

## **2.1 APOLOGIES**

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Nil

## **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 Chris Smith declared a financial interest in relation to Item 7.1.2 due to a potential employment opportunity for a family member at the new facility. Cr Smith will leave the Chamber for the duration of the discussion and vote on the item.

## **5 PUBLIC QUESTION TIME**

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Question on notice – Chyree Bailey

### **Question**

“Anita Lindeman, you like to type your opinion but you fail to type when asked questions ? No one is in disagreement with the goods shed being revitalised. It’s wonderful. My personal opinion is this, why if as you claim, it can not rely solely on volunteers and therefore needs someone to lease the premises so it can be open 7 days a week, why was this not thought of when initial planning for the space started years ago as you so kindly informed us of. Why was a \$240,000 kitchen an after thought and funds taken from allocated areas like \$100,000 from the park maintenance fund? That is what has infuriated community.”

### **Response**

Shire President

“So it’s unusual for questions to be answered by councillors in these forums. So myself and the CEO and any of his staff will attempt to answer the question from Chyree Bailey.

*It is Council policy that Councillors do not respond to social media comments. As I understand the comments made by Anita Lindemann as she sits here in the council today in terms of her*

*comments on social media as Anita Lindemann as a ratepayer of the Shire of Donnybrook Balingup and not as a councillor.*

*My response to the suggestion that the \$240,000 was a last-minute consideration is that when the whole concept has been known for some time that the Council was looking for a tenant to move into the interpretive centre, they advertised that position publicly.*

*There were no respondents or responses from locals and or anyone else in Western Australia in terms of people wishing to take up that that opportunity. The reason it was not in the original estimate was that it was always thought that someone would go in there and would be prepared to put up the all the nuts and bolts and what would be regarded as standard fittings for the type of facility. At that stage it was not determined that it would be someone that is offering food. But on the basis that it would be some business operation, which would be taken on board to offset part of the costs of running the interpretive centre, which at the end of the day we are bound to some terms of confidentiality in terms of the current agreement, which we are considering and that's what tonight is all about.*

*It was suggested by the financial people in the Shire and the CEO that it was probably going to cost this council around \$140,000 - \$150,000 a year to staff that facility as an interpretive centre or museum or whatever you want to call it. The reality of that is that that would equate to 3% of rates in the Shire of Donnybrook Balingup.*

*The proposition of having a tenant in that building was always on the basis of offsetting the costs of running this facility. At the end of the day, we didn't get any responses when we went to the market until after that event. The people that have come forward and put forward their proposition as part of that in line with a similar arrangement they have in the Shire of Manjimup put forward a proposition to this Council, which included what people have talked about. A \$250,000 kitchen upgrade that's not what it's all about part of that equipment will belong to the to the Shire but part of that amount is there's too and will be repatriated to the Council over time from the tenants whether they are there for 5 years 10 years or 25 years and so it is not it is not a gift.*

*If anyone else had put forward a proposition from this town or any other town and said, we want to the Shire to take this on the basis that we will be offsetting some of the costs as I've just mentioned to the Shire is of course, they would have put forward a proposition and the council would have no doubt looked at the proposition based on its merits.*

*The suggestion in the question to Councillor Lindeman, about the \$100,000. Yes, that's correct. It came out of a reserve called the Apple Fund Park Reserve and the decision council made on that as some of the people who are sitting in the audience now would know is that when we got the money from the federal government. It was based on being able to use the state money and that was provided for the interpretive centre as collateral for the \$1.5M, which was provided by the federal government. The federal government allowed us to combine the interpretive centre and the Apple Fund Park as being part of the revitalization concept.*

*Therefore, rather than asking us to put our hand in the pocket on some sort of funding arrangement, which is normally 1/3 by the council 2/3 by the government agency, whether it be Federal or State is the actual Federal Government allowed us to use that whole precinct from what we see today as the interpretive centre right through to the fund park as being one in terms of the funding proposition. We ended up with the \$1.5 million from the federal Government on the basis of being able to use the two million from the State Government and*

*so to use some money from the reserve of the Apple Fund park, given that that was really a part of the complex or the footprint, so to speak. That was what was signed off by council at the time.”*

Cr Lindemann

*“Mr. President I would like to just add. I concur with everything that you've said, but I would like to talk about the decline in volunteering if they think that we run a centre on volunteers 7 days a week. I have experience of 5 years running with volunteers and It's like herding cats, very difficult to find people to commit every week for a specific time regularly etc. It is a hard task because you are not paying them and you're accepting the skills that are available. Volunteers are essential. But the problem is the decline in volunteering during COVID-19 has been substantial. 65.9% of volunteers estimated to have stopped volunteering between February and April 2020.*

*The researchers estimate that this reduction in volunteering is equivalent to 12.2 million hours per week. Whilst COVID is still a global pandemic this will continue to affect volunteer numbers, the establishment of a tourist friendly precinct with the renewal of the Apple Fun Park and interpretive centre. It is not central to catering for locals alone, but to attract more tourists, to our town.*

*In creating this precinct, the flow on effect is an increase in local employment opportunities, reducing the loss of income dollars flowing to Bunbury and surrounding areas and increasing the sustainability and economic resilience of our Shire.*

*Ironically, when people need to work outside of the area with the inclusion of commuting hours. It leaves less time to volunteer in their very own communities.*

*If you are looking for any community volunteer work, I'll mention Balingup Townscape committee is currently looking for volunteers. Also, the Balingup Progress Association needs volunteers and the Donnybrook Tourist Information Centre is currently looking for volunteers. Thank you.”*

Shire President

*“Thank you Councillor Lindemann and I'd just like to add to that and say that everyone in this Chamber today understands the great contribution that volunteers have made in this municipality to Tuia Lodge and also the Fun Park and I've made it public in the last week in terms of what's this, the new stage of development in the Apple Fund park and never dismissed the enormous contribution made by volunteers to that establishment and Tuia Lodge.*

*The other matter that we are dealing with tonight, but it is a known fact that in recent times, as the community expects more from government and expect government to provide facilities for basically everything is the pool of volunteers is actually drying up, so that's the point that Councillor Lindemann just made.*

*Nothing should be read into both these projects that we're discussing here tonight is that the role of volunteers in the Shire of Donnybrook Balingup have been forgotten about and we put on record as I have done on the ABC this week what a great contribution that they've made.”*

### **Question**

Shane Sercombe

*“Are you aware of the issue with Hall and Prior mentioned in the Aged Care Royal Commission report?”*

### **Response**

Paul Breman – Director Corporate and Community

*“I’m aware of the content of that report. It has a section that relates to Hall and Prior it makes comments about the structure of Hall and Prior and about the degree that that structure and the complexity of that structure, but it doesn’t necessarily from my reading, which I’ve read today doesn’t necessarily make comment about the impact of that on their potential to provide aged care services at a quality level.”*

Shire President

*I’d just like to add, the lawyer from Jackson McDonald, who is advising the Council on this contract, who has done 25 different aged care contracts with providers similar to Hall and Prior. When asked what his opinion was of the quality of Hall and Prior as someone that this Shire should be dealing with, he said he has nothing but puts them in the Top Rank of the people operating in this space.”*

### **Question**

Shane Sercombe

*“Will Council publicly address the public submissions received regarding the Goods Shed and Tuia Lodge?”*

### **Response**

Ben Rose – Chief Executive Officer

*“The submissions lodged one of which was from yourself. Several of the submissions included an extensive list of questions which will be presented to the council for formal deliberation.*

*They’ve been provided to the council already as they’ve been coming through, I can tell you there is 5 of them in relation to the good shed item. I have received zero in relation to the Tuia Lodge matter so far, which is going through its second round of consultation.*

*At the moment those who have asked questions or posed questions in their submissions rather than proffering an opinion I’ll make sure that responses go back to everybody with responses to those questions to the individual. As an individual they can then publicise the responses.”*

### **Question**

Suzanne Hernan

*“Will Tuia Lodge remain being called Tuia Lodge?”*

### **Response**

Ben Rose – Chief Executive Officer

*“It was a non-negotiable for the Shire that the name Tuia Lodge remains, whether it’s called Tuia Lodge residential aged care facility or Tuia Lodge full stop. I’m not 100% sure on yet. The branding will stay in addition to that there’s some local benefactors who have donated money on their passing and the respect for those people and those donations is being carried through as well, and certain components of the expansion of that facility will include those local names as well, so the answer is yes.”*

**Question**

Simon McGuinness

*"If Southern Roasting build a bar in the Goods Shed, does the cost of that bar reduce the cost of their lease payments? Because it would be a capital contribution? The lease is for \$30,000 a year and the lease says lease fee and capital contribution, so if they add to the capital of the building does that come off of their lease?"*

**Response**

Ben Rose – Chief Executive Officer

*"There was a council resolution previously that the Shire would put in \$240,000 towards this facility, \$120,000 of that is to be recouped from the tenant. The \$120,000 principal as well as a Treasury bond rate interest rate as well, so principal plus interest. If you look at it as a vendor finance arrangement where the Shire is putting in \$120,000 but recoups that money plus interest. It's a vendor finance arrangement, which is a similar process, the shire did for the dental clinic several years ago, so the Shire is putting in \$120,000 worth of capital expenditure for fridges, Ovens that that sort of stuff that does not come off their lease, the tenant had got to pay the Shire back plus interest if the lease is approved by Council tonight."*

**Question**

Simon McGuinness

*Is there a liquor licence?*

**Response**

Ben Rose – Chief Executive Officer

*"There's not a liquor license presently, my understanding is that the tenants or the prospective tenants are interested to obtain a liquor license. If they, do it'll be the tenant applying and making application. It won't be the Shire."*

**Question**

Shane Sercombe

*"To clarify from a previous question, of the \$120,000 for the kitchen equipment that would be paid from the capital contribution will that become the property of the Lessee?"*

**Response**

Shire President

*"As you would expect if you went in there and you had a vendor finance on a capital loan which included a raft of bits of equipment. If you paid for it, you would expect to own it at the end. So, the answer is yes, they will own it, and if they pull the contract up for any reason, the, the residual of that loan is immediately payable to the to the Council. But it's the movable equipment, none of the fixtures are involved in it."*

**Question**

Shane Sercombe

*"On the public notice it said \$29,000 lease and capital contribution together so within the \$29,000 is it the understanding that that is paying off the kitchen as well? Or is that solely the lease amount?"*

**Response**

Ben Rose – Chief Executive Officer

*“Yes, that is the case that figure that was advertised includes the rental component and the capital component over a proposed length of lease. The Shire will recoup \$120,000, plus interest on the on its vendor finance arrangement.”*

**Question**

Shane Sercombe

*“So, if that lease is for 4 years, they have paid only capital contribution and essentially receive free rent for 3 years?”*

**Response**

Ben Rose – Chief Executive Officer

*“That might be correct if the if the lease was for 4 years. That's correct, but it's not for 4 years.”*

**Question**

Peter McCabe

*“What if this tenant doesn't last the lease?”*

**Response**

Shire President

*“The equipment is the \$120,000 that's part in the contract and if they pull out of the arrangement with the Shire of Donnybrook Balingup, they will have to make any residual payment of the residual back to the council. They can still take the equipment, which was subject to that loan, because as you would expect, they own it once they pay the Council for it. The fixed assets that are put in there on the basis that another tenant would probably need such things is, they remain the property of the Shire.”*

**Question**

Simon McGuinness

*“If the people that are taking over Tuia Lodge spend \$6M on a 30-bed dementia wing, does that come off their lease?”*

**Response**

Ben Rose – Chief Executive Officer

*“The Shire secured \$1.47M in funding that was a contribution towards Building 10 extra places or rooms, which were to be dementia specific care and then there was an additional room, which was a palliative care suite. So, the addition, though those 11 extra rooms. The Shire will recoup extra revenue from that, once they're completed. In addition to the 11 units that Hall and Prior are to build. No, the shire won't recoup any extra funding through rent revenue from Hall and Prior, but we will have that asset at the end of a 21-year lease.”*

**Question**

Simon McGuinness

*“What happened to the allocation for public art, there was an allocation?”*

**Response**

Ben Rose – Chief Executive Officer

*“You are correct that there was early on in the project an allocation towards public art. In consultation with the Department of Industries and Regional Development or the Southwest Development Commission there was approval to include provision of the public artwork being*

*the 5-tonne crane as well as some other elements through the landscaping and so it was the state government permitted the Shire to shift that money into other components of the project.”*

## **6 REPORTS OF OFFICERS**

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Nil.

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

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

The following confidential report and recommendation have been distributed separately and are not for circulation:

#### **7.1.1 CONFIDENTIAL - TUIA LODGE LEASE AGREEMENT**

This report is confidential in accordance with Section 5.23(2) of the *Local Government Act 1995*, which permits the meeting to be closed to the public.

- (a) *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*

#### **7.1.2 CONFIDENTIAL – DONNYBROOK GOODS SHED LEASE AGREEMENT**

This report is confidential in accordance with Section 5.23(2) of the *Local Government Act 1995*, which permits the meeting to be closed to the public.

- (a) *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*

### **EXECUTIVE RECOMMENDATION**

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

***7.1.1 Confidential - Tuia Lodge Lease Agreement***

***7.1.2 Confidential - Donnybrook Goods Shed Lease Agreement***

**COUNCIL RESOLUTION 72/21**

**Moved Cr Mitchell                      Seconded Cr Smith**

**That the meeting be closed in accordance with section 5.23(2)(a) of the *Local Government Act 1995* to discuss item 7.1.1 ‘Confidential –Tuia Lodge Outsourcing Arrangement’.**

**CARRIED 8/0**

**The meeting was closed to the public at 5:36pm.**

**COUNCIL RESOLUTION 75/21**

**Moved Cr Wringe    Seconded Cr Mitchell**

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

**CARRIED 7/0**

**The meeting was re-opened to the public at 6:32pm.**

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

*RESOLUTION 73/21*

*That Council endorses the recommendations outlined in the Confidential Report.*

*RESOLUTION 74/21*

*That Council endorses the recommendations outlined in the Confidential Report.*

**6      CLOSURE**

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The Shire President advised that the next Ordinary Council Meeting will be held on Wednesday 26 May 2021 commencing at 5.00pm.

The Shire President closed the meeting at 6:33pm.

These Minutes were confirmed by the Council as a true and accurate record at the Ordinary Council Meeting held 23 June 2021.



Cr Brian Piesse  
**SHIRE PRESIDENT**