



## MINUTES FROM THE ORDINARY MEETING OF COUNCIL

---

Held on

**29 March 2018**

Commencing at 5.00pm

Donnybrook Balingup Council Chamber  
Collins Street, Donnybrook.

---

A handwritten signature in black ink, appearing to read 'Ben Rose'.

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

**5 April 2018**

### **Disclaimer**

The advice and information contained herein is given by and to the Council without liability or responsibility for its accuracy. Before placing any reliance on this advice or information, a written inquiry should be made to the Council giving entire reasons for seeking the advice or information and how it is proposed to be used.

---



## MINUTES FROM THE ORDINARY MEETING OF COUNCIL

29 March 2018

### TABLE OF CONTENTS

1	DECLARATION OF OPENING / ACKNOWLEDGEMENT OF COUNTRY / ANNOUNCEMENT OF VISITORS .....	5
2	ATTENDANCE .....	5
2.1	APOLOGIES .....	6
2.2	APPROVED LEAVE OF ABSENCE.....	6
3	ANNOUNCEMENTS FROM THE PRESIDING MEMBER.....	6
4	DECLARATION OF FINANCIAL / IMPARTIALITY INTEREST .....	6
5	PUBLIC QUESTION TIME .....	6
5.1	RESPONSES TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE.....	6
5.2	PUBLIC QUESTION TIME.....	6
6	PRESENTATIONS .....	8
6.1	PETITIONS.....	8
6.2	PRESENTATIONS.....	9
6.3	DEPUTATIONS.....	9
6.4	DELEGATES REPORTS .....	9
7	LATE ITEMS .....	10
8	CONFIRMATION OF MINUTES.....	10
8.1	ORDINARY MEETING OF COUNCIL.....	10
8.2	COMMITTEE MINUTES.....	10
9	REPORTS OF COMMITTEES .....	10
9.1.1	2017 LOCAL GOVERNMENT COMPLIANCE AUDIT RETURN .....	11
9.1.2	ORGANISATIONAL RISK MANAGEMENT - ACTION PLAN.....	13
10	REPORTS OF OFFICERS .....	15

10.1	MANAGER FINANCE AND ADMINISTRATION .....	15
10.1.1	ACCOUNTS FOR PAYMENT .....	15
10.1.2	MONTHLY FINANCIAL REPORT .....	16
10.2	MANAGER WORKS AND SERVICES.....	16
10.2.1	JOHNSTON STREET YABBERUP PETITION – REQUEST TO SEAL ROAD	16
10.2.2	TOWNSCAPE PROJECTS.....	18
10.2.3	BRIDGE 5121 ROSEDENE LANE.....	24
10.3	MANAGER DEVELOPMENT AND ENVIRONMENTAL SERVICES.....	29
10.4	PRINCIPAL PLANNER .....	29
10.4.1	REQUEST TO CLOSE PORTION OF UNCONSTRUCTED ROAD RESERVE NORTH OF LOT 9504 NEAR KELLY ROAD, DONNYBROOK.....	29
10.4.2	RETROSPECTIVE APPLICATION FOR A DAM WITH A BOUNDARY SETBACK OF LESS THAN 20 METRES .....	31
10.5	CHIEF EXECUTIVE OFFICER .....	41
10.5.1	UNDERTAKING AND MEETING PROCEDURES PROPOSED AMENDMENT LOCAL LAW 2017 .....	41
10.5.2	ESTABLISHMENT OF AN AGED CARE SERVICES COMMUNITY REFERENCE GROUP.....	44
11	ELECTED MEMBER MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN .	47
12	NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING .....	47
13	MEETING CLOSED TO PUBLIC .....	48
13.1	MATTERS FOR WHICH THE MEETING MAY BE CLOSED.....	48
13.1.1	CONFIDENTIAL REPORT – DRAINAGE INFRASTRUCTURE .....	49
13.1.2	CONFIDENTIAL REQUEST FOR TENDER 02/2018 – COLLINS STREET UPGRADE.....	49
13.1.3	CONFIDENTIAL REQUEUST FOR TENDER 01/2018 – ROAD SWEEPING AND DRAINAGE CLEANING.....	49
13.1.4	CONFIDENTIAL – EXTENSION OF THE KERBSIDE BIN COLLECTION AND MAINTENANCE AND PROVISION OF KERBSIDE BINS CONTRACTS.....	49
13.1.5	CONFIDENTIAL REPORT – LEASE OF PROPERTY.....	50
13.2	PUBLIC READING OF RESOLUTIONS THAT MAY BE MADE PUBLIC .....	51
13.1.2	REQUEST FOR TENDER 02/2018 – COLLINS STREET UPGRADE .....	51

13.1.3	<i>REQUEST FOR TENDER 01/2018 – ROAD SWEEPING AND DRAINAGE CLEANING</i> .....	53
14	CLOSURE .....	56

# SHIRE OF DONNYBROOK BALINGUP

## ORDINARY MEETING OF COUNCIL - MINUTES

---

Held at the Shire of Donnybrook Balingup Council Chamber  
Collins Street, Donnybrook  
Thursday, 29 March 2018 at 5.00pm

---

### 1 DECLARATION OF OPENING / ACKNOWLEDGEMENT OF COUNTRY / ANNOUNCEMENT OF VISITORS

---

#### Shire President – Acknowledgement of Country

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

The Shire Present declared the meeting open at 5:01pm, welcomed the public gallery to the Council Chamber, which was officially opened on 28 March 2018.

---

### 2 ATTENDANCE

---

#### MEMBERS PRESENT

---

##### COUNCILLORS

Cr Piesse (Shire President)  
Cr Wringe (Deputy Shire President)  
Cr Atherton  
Cr King  
Cr Lindemann  
Cr Mills  
Cr Mitchell  
Cr Tan  
Cr Van Der Heide

##### STAFF

Ben Rose – Chief Executive Officer  
Greg Harris – Manager Finance and Administration  
Damien Morgan – Manager Works and Services  
Leigh Guthridge – Manager Development and Environmental Services  
Bob Wallin – Principal Planner  
Kate O’Keeffe – Executive Assistance  
Trish McCourt – Corporate Planning and Governance Officer

---

#### PUBLIC GALLERY

---

Philippa Ahrens  
Sue Wilkins  
Peter Hicks  
Lucille Piesse  
Richard Wait  
Roz Benson  
June Scott  
Steve Dilley

Alan Walker  
Trevor Wilkins  
Rowland Morton  
Simon McInnes  
Pauline Wait  
Romaine Johnson  
Jim Gerde

Katissse Davis  
Rod Atherton  
Geoff McMullen  
Hon. Paul Omodei  
Shellie Gillespie  
Graham Johnson  
Deb Vanallen

---

## **2.1 APOLOGIES**

---

Nil

---

## **2.2 APPROVED LEAVE OF ABSENCE**

---

Cr Van Der Heide requested a Leave of Absence from the Ordinary Council Meeting scheduled for 24 April 2018.

### **COUNCIL DECISION**

**Moved: Cr Tan**

**Seconded: Cr Wringe**

**That Cr Van Der Heide be granted a leave of absence from the Council meeting scheduled for 24 April 2018.**

**Carried 9/0**

---

## **3 ANNOUNCEMENTS FROM THE PRESIDING MEMBER**

---

The Shire President introduced Hon. Paul Omodei and advised that he would be observing tonight's meeting as a part of a WA Local Government Association training program.

---

## **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.

Cr Tan declared an interest affecting impartiality with regard to agenda item *10.4.2 – Retrospective Application for a Dam with a Boundary Setback of less than 20m*. The applicant for this item was a former client of Ms Tan's approximately three years ago.

---

## **5 PUBLIC QUESTION TIME**

---

---

### **5.1 RESPONSES TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

---

Nil

---

### **5.2 PUBLIC QUESTION TIME**

---

*Alan Walker*

*Firstly, I would like to say thank-you for the bridge repairs. I would like to see the mowing and gardening around Kirup maintained to the same standard that is being delivered in Donnybrook. The weeds on the railway corridor through town are very high. We take pride in our town and want the place to look attractive. Can we please have the work completed fully?*

Chief Executive Officer

Thanks for your feedback. I will take this as a Works and Services Request and it will be actioned by the team after the Easter break.

*Simon McInnes*

*At the last meeting, I requested the Shire do a review of its procedures surrounding the answering and replying to questions asked by the rate payers, whether they be by letter or phone, taking into account the Shire's Customer Service Charter I was under the impression questions must be answered within 10 working days. It has been five weeks and I have not received a reply so I was wondering if this has been carried out or likely to be carried out?*

Chief Executive Officer

The Customer Service Charter will be under review as part of the Shire's Policy Review process.

*Romaine Johnson*

*Does the Council think it is fair to cap the repair work for bridge 5121 at \$65,000 given that the last assessment was in 2015?*

Chief Executive Officer

I cannot answer on behalf of the Council, however, advise that your question refers to a matter that is part of tonight's agenda for Council's deliberation. A decision is expected to be made tonight by the Council.

*Romaine Johnson*

*If required, where will the additional funding to fix the bridge come from?*

Chief Executive Officer

The advice provided to Council in tonight's agenda indicates that the Shire of Donnybrook Balingup would contribute a maximum of \$25,000 and Main Roads WA would contribute a maximum of \$40,000. Further costs associated with the emergency repairs would need to be met by a third party – this is expected to be the land owner.

*Romaine Johnson*

*Why would the landowner need to pay when the dispute is between the State and Local Governments?*

Chief Executive Officer

The Shire is not accountable for the bridge as it is located on Unallocated Crown Land.

*Romaine Johnson*

*Given the issue of ownership has existed for so long how will ownership be established if the bridge is not repaired?*

Chief Executive Officer

Tonight's agenda recommends a deed (contract) be entered into. If the situation is not resolved through the deed arrangement the Shire will need to obtain further legal advice on the matter.

*Romaine Johnson*

*Why is bridge 5121 being treated differently to bridge 4928A?*

Manager Works and Services

I will take this question on notice and provide an answer in writing.

*Romaine Johnson*

*I acknowledge the Manager for Works and Services has agreed that the Shire is responsible for bridge 5121. If this is the case, shouldn't the Shire have maintained the asset to a safe and functional standard?*

Chief Executive Officer

Legal advice on the matter states that the Shire is not responsible for maintaining the bridge.

*Graham Johnson*

*The dispute over the bridge has been going on for quite a while, why has it taken so long? Why has there not been a resolution for over two years?*

Chief Executive Officer

Conflicting advice from state government and third party legal advice has impacted on the matter.

*Graham Johnson*

*The advice I've received from the State Solicitors office is that any legal representation for the Shire should be taken with extreme caution. Why is this so?*

Chief Executive Officer

Our legal advice, including from the State Solicitors Office, WA Local Government Association and the Shire's legal advisors all indicates that the bridge is not a Shire asset.

*Graham Johnson*

*Will this advice be available to the public?*

Chief Executive Officer

I will take this question on notice and provide an answer in writing.

---

## **6 PRESENTATIONS**

---

### **6.1 PETITIONS**

---

A petition has been received from Sandra White and others relating to a request to seal Johnston Street, Yabberup.

*"We the residents of Yabberup, on Johnston Street & Fowler Road request that the continuation of Fowler Road into Johnston Street be bituminized. The extreme dust problem is causing water contamination in our rain water tanks our only supply of drinking water. It is covering our houses, washing and vehicles. The rubbish and recycle trucks cause excessive dust on pick up days and with it also being a loop road we have a lot of vehicles including Main Roads using the loop to turn around and we as ratepayers feel we should have a sealed road to our properties."*

A report on the matter has been provided in Agenda Item 10.2.1.



---

## **6.2 PRESENTATIONS**

---

Nil

---

## **6.3 DEPUTATIONS**

---

Peta Townsing made a deputation to Council regarding agenda item 10.4.2 – Retrospective Application for a Dam with a Boundary Setback of less than 20 metres. The deputation commenced at 5:16pm and concluded at 5:25pm.

Trevor Wilkins made a deputation to Council regarding agenda item 10.4.2 – Retrospective Application for a Dam with a Boundary Setback of less than 20 metres. The deputation commenced at 5:26pm and concluded at 5:30pm.

Steve Milton from the Balingup Progress Association made a deputation to Council regarding the Balingup Paths, Tracks and Trails document. The deputation commenced at 5:35pm and concluded at 5:46pm

\*\* 5.46pm – Manager Development and Environmental Services left the meeting and returned.

Graeme Johnson made a deputation to Council regarding agenda item 10.2.3 - Bridge 5121 Rosedene Lane. The deputation commenced at 5:48pm and concluded at 5:59pm.

\*\* 5.49pm – Steve Milton, and Richard and Pauline Wait left the meeting.

\*\*5.59pm – Deb Vanallen, Shellie Gillespie and Roz Benson left the meeting.

---

## **6.4 DELEGATES REPORTS**

---

### **6.4.1 SHIRE PRESIDENT COMMUNICATIONS**

<b>Date</b>	<b>Meeting</b>
02/02/2018	Shire of Capel (CEO & Pres) re South West Transport Study
09/02/2018	Alliance Housing in Collie
09/02/2018	Hon Mick Murray in Collie
23/02/2018	Chamber of Commerce Sundowner – Vintage Steel
27/02/2018	Bunbury Geographe Tourism Partnership Launch - Bunbury
01/03/2018	Hannah Fitzhardinge Strategic Consultant – Donnybrook (via telephone)
01/03/2018	Apple Fun Park Interview – Channel 7
09/03/2018	Donnybrook CRC/Preston Press Sundowner
09/03/2018	Hemp Industry Forum – Donnybrook
12/03/2018	President Donnybrook Art & Crafts
16/03/2018	Donnybrook/Balingup Chamber of Commerce – Golf Day – Country Club.
18/03/2013	Women In Touch – Donnybrook (Guest Speaker)
23/03/2018	CRC Sundowner - Donnybrook (Guest Speaker)

**Council Decision – En Bloc Resolution 1**

**Moved: Cr Tan**

**Seconded: Cr King**

**That the resolutions from the following items be moved:**

- 8.1 - Ordinary Meeting of Council – 14 February 2018**
- 9.1.1 - 2017 Local Government Compliance Audit Return**
- 9.1.2 - Organisational Risk Management – Action Plan**
- 10.1.1 - Accounts for payment**
- 10.2.1 – Johnson Street Yabberup Petition**
- 10.2.2 – Townscape Projects**
- 10.2.3 – Bridge 5121 Rosedene Lane**
- 10.4.1 – Request to Close Portion of Unconstructed Road Reserve**
- 10.5.1 – Amendment Local law**

**Carried 9/0**

---

**7 LATE ITEMS**

---

Nil

---

**8 CONFIRMATION OF MINUTES**

---

---

**8.1 ORDINARY MEETING OF COUNCIL**

---

**COUNCIL DECISION**  
**(Executive Recommendation)**

**That the Minutes from the Ordinary Meeting of Council held on 14 February 2018 be confirmed as a true and accurate record.**

**Carried by En Bloc Resolution No. 1**

---

**8.2 COMMITTEE MINUTES**

---

Nil

---

**9 REPORTS OF COMMITTEES**

---

## 9.1 AUDIT COMMITTEE MEETING

### 9.1.1 2017 LOCAL GOVERNMENT COMPLIANCE AUDIT RETURN

<b>Location</b>	Balingup
<b>Applicant</b>	Shire of Donnybrook Balingup
<b>File Reference</b>	Dep 20/01
<b>Author</b>	Ben Rose – Chief Executive Officer (Trish McCourt – Corporate Planning and Governance Officer)
<b>Attachments</b>	9.1.1(1) - 2017 Local Government Compliance Audit return (CAR).
	Absolute Majority
<b>Executive Summary</b>	<ul style="list-style-type: none"> <li>• A Local Government Compliance Audit Return (CAR) for the period 1 January to 31 December 2017 is required by Department of Local Government, Sport and Cultural Industries (DLGSCI).</li> <li>• The Audit has been conducted by staff. It is considered that it represents a true and accurate record.</li> </ul>

## STRATEGIC ALIGNMENT

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

Outcome	Strategy	Action No.	Actions
4.2 A strategically focussed, open and accountable local government	Effective and efficient operations and service provision	4.2.1.1	Maintain effective and efficient policies, planning, operating procedures and practices.

## BACKGROUND

Council is required to carry out a compliance audit for the period of 1 January to 31 December 2017 (Attachment 9.1.1(1)).

Amendments to Regulation 14 of the *Local Government (Audit) Regulations 1996* require that the local government's Audit Committee review the CAR and report the results of that review to Council prior to adoption by Council.

## DETAILS

The CAR is one of the tools that allow Council to monitor how the organisation is functioning. The return places emphasis on the need to bring to Council's attention cases of non-compliance or cases where full compliance was not achieved. In addition to explaining or qualifying cases of non-compliance, the return requires Council to endorse any remedial action taken or proposed to be taken in regard to instances of non-compliance. This is intended to assist local government to enhance or develop their internal control processes to ensure they include the statutory requirements of the legislation.

## CONSULTATION

Nil

## **FINANCIAL IMPLICATIONS**

Nil

## **POLICY COMPLIANCE**

Nil

## **STATUTORY COMPLIANCE**

Under Regulation 14 of the *Local Government (Audit) Regulations 1996*, the 2017 CAR is to be reviewed by Council's Audit Committee and report the results of that review to Council for adoption.

A printed copy (Attachment 9.1.1(1)) of the CAR is to be presented to Council at the Ordinary Council Meeting and adopted by an Absolute Majority.

Once the CAR is presented to Council a certified copy, along with an extract of the minutes of the meeting at which the CAR is adopted by Council, and any additional information explaining or qualifying the compliance audit, is to be submitted on-line to DLGSCI by 31 March 2018, providing a permanent record of the submission on the Department's website.

Due to the March 2018 Council meeting being held on 29 March, 2018, and leading into the Easter break, DLGSCI have allowed a late submission being during the 1<sup>st</sup> week of April 2018.

## **CONCLUSION**

Council has met all areas of compliance in the 2017 CAR. Approval of the 2017 Local Government Compliance Audit Report is recommended.

## **COUNCIL DECISION**

**(Executive Recommendation)**

**That the 2017 Local Government Compliance Audit Return for the Shire of Donnybrook-Balingup, as completed and presented to Council, be endorsed.**

**Carried by En Bloc Resolution No. 1**

### 9.1.2 ORGANISATIONAL RISK MANAGEMENT - ACTION PLAN

<b>Location</b>	Shire of Donnybrook Balingup
<b>Applicant</b>	Administration
<b>File Reference</b>	ADM 24
<b>Author</b>	Ben Rose, Chief Executive Officer (Jeff Somes, Principal Environmental Health Officer and Greg Harris, Manager Finance and Administration)
<b>Attachments</b>	9.1.2(1) - Organisational Risk Management Action Plan
<b>Voting Requirements</b>	Simple Majority
<b>Executive Summary</b>	Its recommended Council receive the updated Organisational Risk Management Action Plan

#### STRATEGIC ALIGNMENT

The proposal aligns with the following objective within the Corporate Business Plan:

Outcome	Strategy	Action No.	Actions
4.2 A respected, professional and trusted organisation	Effective and efficient operations and service provision	4.2.1.1	Maintain effective and efficient policies, planning, operating procedures and practices.
		4.2.1.2	Seek a high level of legislative compliance and effective internal controls
		4.2.1.3	Monitor and measure organisational performance
		4.2.1.4	Demonstrate sound financial planning and management, including revenue/ expenditure review and revenue diversification strategies and long term financial planning

#### BACKGROUND

At an Audit Committee meeting held on 15 February 2017, the Audit Committee received a report on the appropriateness and effectiveness of the Shire of Donnybrook Balingup's systems and procedures in relation to risk management, internal controls and legislative compliance. This report was based upon a review undertaken by AMD Chartered Accountants at the direction of the CEO. At this meeting, the Committee resolved as follows:

1. *That Council receive the report on the appropriateness and effectiveness of the Shire of Donnybrook Balingup's systems and procedures in relation to risk management, internal controls and legislative compliance.*
2. *That Council endorse the proposed actions to be undertaken by the Chief Executive Officer as outlined in the "Management comment" section of the report.*

Following on from this meeting Shire staff developed an updated Risk Management Action Plan for the period July 2016 to December 2018 (Attachment 9.1.2(1)).

The Plan outlines the following information:

- Recommendations from the November 2016 review, plus outstanding items from the previous review, categorised into three different focus areas; risk management, internal controls and legislative compliance.
- The task required to address each recommendation from the report.
- A proposed timeline.
- Responsible Officer/s.
- Details of Action to date.

One of the recommendations was to include a standing agenda item to the Audit Committee, for risk reports to be tabled.

To assist with monitoring progress towards the implementation of the various recommendations provided by AMD Chartered Accountants, an Action Plan was developed by Council staff.

The purpose of this Action Plan is to detail the specific tasks and timelines for the recommendations to be addressed, whether in part or in full as considered by the Shire, based on the level of risk and available resources. The Action Plan forms part of the Shire's Risk Management Framework and as a result will enable the Shire to continue its progression in this key area and provide a point of reference for the next required review.

#### **DETAILS**

Audit Committee members are asked to review and note the updated Risk Management Action Plan

At the time of preparing the last report, it was proposed that future Audit Committee Meetings, include other Action Plans that have risk implications for the Shire. For example, there are a number of recommendations arising from the most recent Financial Management Systems Review conducted in May / June 2016, together with other recommendations identified in interim and annual audits of the financial records of the Shire.

Aggregation of all of these Actions Plans will allow the Audit Committee and Management to better focus and monitor improvements in each area. It will also assist in identifying the resources required, whether internal or external, to address or rectify the various matters identified. Work on amalgamating these plans are currently underway and expected to be finalised prior to the next Audit Committee Meeting.

Within the Risk Management Action Plan, there are two recommendations that require the consideration of the Audit Committee. They are:

**Recommendation 1** – Department of Local Government guidelines recommend an internal audit function be established incorporating an internal audit program which is re-assessed annually.

On this point, the Shire has three external audits each year and a further external audit as per the Local Government Audit Regulations.

**Recommendation 2** – Local Government Operational Guideline Number 09 – Audit in Local Government outlines it is best practice for the Audit Committee to meet on a quarterly basis at the very least.

**CONSULTATION**

Shire staff undertook internal consultation.

**FINANCIAL IMPLICATIONS**

N/A

**POLICY COMPLIANCE**

N/A

**STATUTORY COMPLIANCE**

Regulation 17 of the *Local Government (Audit) Regulations 1996* states the following:

“17. *CEO to review certain systems and procedures*

- (1) *The CEO is to review the appropriateness and effectiveness of a local government’s systems and procedures in relation to —*
- (a) *risk management; and*
  - (b) *internal control; and*
  - (c) *legislative compliance.”*

**COUNCIL DECISION**

**(Executive Recommendation)**

That Council receive and note the updated *Local Government (Audit) Regulations 1996*, Regulation 17 Action Plan for the period from July 2016 to December 2017.

Carried by En Bloc Resolution No. 1

---

**10 REPORTS OF OFFICERS**

---

***10.1 MANAGER FINANCE AND ADMINISTRATION***

---

***10.1.1 ACCOUNTS FOR PAYMENT***

---

Presented for Council information:

The following accounts have been authorised and paid under Delegation (No 3.2) covering cheques numbered CCP3273-CCP3278, CCP35867-CCP3591 EFT13241e-EFT13540, 52872–52913, DD22804. 1-DD2284.8, DD22822. 1-DD22822.8, Trust 3583–3594, EFT 13241e & EFT13439c totalling \$1,791,830.24 is herewith presented to Council.

**10.1.2 MONTHLY FINANCIAL REPORT**

**COUNCIL DECISION  
(Executive Recommendation)**

That the monthly financial report for the period ended 31 January 2018 be received.

Carried by En Bloc Resolution No. 1

**10.2 MANAGER WORKS AND SERVICES**

**10.2.1 JOHNSTON STREET YABBERUP PETITION – REQUEST TO SEAL ROAD**

<b>Location</b>	Yabberup
<b>Applicant</b>	Sandra White and others
<b>File Reference</b>	RD 0240
<b>Author</b>	Damien Morgan, Manager Works and Services
<b>Attachments</b>	10.2.1(1) - Locality Map 10.2.1(2) - Engineering Policy 4.4 10.2.1(3) - Petition
<b>Voting Requirements</b>	Simple Majority
<b>Executive Summary</b>	<ul style="list-style-type: none"> <li>• That the petition be received.</li> <li>• Advice applications of Engineering Policy 4.4</li> <li>• To be considered against other priorities in future budget considerations.</li> </ul>

**STRATEGIC ALIGNMENT**

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

<b>Outcome</b>	<b>Strategy</b>	<b>Action No.</b>	<b>Actions</b>
2.1 An attractive and maintained built environment	Maintain, renew and improve infrastructure within allocated resources	N/A	N/A

**BACKGROUND**

The following correspondence as a petition 10.2.1(3) has been received from Sandra White and others relating to a request to seal Johnston Street, Yabberup.

*“We the residents of Yabberup, on Johnston Street & Fowler Road request that the continuation of Fowler Road into Johnston Street be bituminized. The extreme dust problem is causing water contamination in our rain water tanks our only supply of drinking water. It is covering our houses, washing and vehicles. The rubbish and recycle trucks cause excessive dust on pick up days and with it also being a loop road we have a lot of vehicles including Main Roads using the loop to turn around and we as ratepayers feel we should have a sealed road to our properties.”*



The letter is signed by D. & S. White, W. & J. Tinsley, N. & J. Blencowe, C. Amey, J. Quan, N. Crowther, R. Crowther, S. & F. Migliori, L. & L. Sunderland, G. & C. Forward, B.E. & M.A. Barker, B. Rae and N. Fiori.

#### **DETAILS**

Shire staff have responded to the petition advising that the request will be placed before Council at the March 2018 Ordinary Council Meeting.

Current Shire staff are not aware of the reasons why Johnston Road was not sealed when the lots were created, estimated to be around 1992 (Attachment 10.2.1(1)).

The petition does outline that dust is a significant factor in making the request, however Council does need to consider that this is a common issue for many houses located close to gravel roads within the Shire.

There would be a small benefit to the Shire in reduction of maintenance grading of the gravel road, however this would be common with all gravel roads throughout the Shire.

Traffic counts on this road were conducted during February 2018, with an average count of 16 vehicles per day. This low volume of traffic typically would not warrant the project receiving a higher priority for upgrade when assessed against other asset needs within the Shire.

In cases like these, where projects do not meet the higher priority for upgrades, Engineering Policy 4.4 – “Bituminising Roads on a Joint Basis with Adjoining Land Owners” (Attachment 10.2.1(2)), may be an option for the landowners, and outlines how officers are to administer such requests.

The policy also outlines if landowners are not prepared to contribute 50% of the cost, the requested work will then only be considered along with other priorities in Council’s Annual Work Program.

#### **CONSULTATION**

N/A

#### **FINANCIAL IMPLICATIONS**

To be determined and presented to Council if a request is made consistent with Shire Engineering Policy 4.4 “Bituminising Roads on a Joint Basis with Adjoining Land Owners”

#### **POLICY COMPLIANCE**

Engineering Policy 4.4 – “Bituminising Roads on a Joint Basis with Adjoining Land Owners”

#### **STATUTORY COMPLIANCE**

Nil

#### **CONCLUSION**

That Council receive the petition.

#### **COUNCIL DECISION**

**(Executive Recommendation)**

**That Council:**

1. Receive the petition for the sealing of Johnston Street and Fowler Road, Yabberup;
2. Instruct the Chief Executive Officer to advise the applicants:
  - a) To submit an application to seal Johnston Street and Fowler Road, Yabberup consistent with Shire Engineering Policy 4.4 “Bituminising Roads on a Joint Basis with Adjoining Land Owners”;
  - b) If no application is received in accordance with Shire Engineering Policy 4.4, the requested works will be considered along with other priorities in Council’s Annual Works Program.

Carried by En Bloc Resolution No. 1

### 10.2.2 TOWNSCAPE PROJECTS

<b>Location</b>	Donnybrook, Kirup and Balingup Town Sites
<b>Applicant</b>	Shire of Donnybrook-Balingup
<b>File Reference</b>	TP07 - 1
<b>Author</b>	Damien Morgan, Manager Works and Services
<b>Attachments</b>	Nil
<b>Voting Requirements</b>	Simple Majority
<b>Executive Summary</b>	Recommend Council endorse the implementation of the outlined projects from the existing 2017/18 Townscape Budgets.

### STRATEGIC ALIGNMENT

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

Outcome	Strategy	Action No.	Actions
Outcome 2.1 – An attractive and maintained built environment	Maintain, renew and improve infrastructure within allocated resources	2.1.1.4	Maintain attractive town site within resource capacity

### BACKGROUND

With the Council Committee’s structure currently under review, items that would usually go through a committee for recommendation have now been brought before Council for consideration. A number of eligible projects have been identified for implementation, utilising existing 2017/18 Townscape budgets.

### DETAILS

The Shire of Donnybrook Balingup currently has the following 2017/18 budget allocations for the implementation of townscape projects:

<b>Townsite</b>	<b>2017/18 Budget</b>
Donnybrook	\$62,220
Balingup	\$30,000
Kirup	\$10,000

Council are requested to consider the delivery of eligible projects for these areas. The identified projects for each Townscape area are:

<b>Donnybrook Projects</b>	<b>Proposed by</b>	<b>Status</b>
Northern Entrance Streetscape Enhancement  (purchase of mature trees only for planting in the winter of 2019)	ex Donnybrook Townscape Committee  (DTC) and endorsed by Council Budget 31 August 2017	The Shire Administration is undertaking consultation with MRWA and adjoining landowners regarding the scope of the works. Estimated cost of tree purchase \$25,000.
Replacement of existing concrete bench seats along Donnybrook main street	Shire Admin	Estimated cost \$5,000. To be delivered this financial year if endorsed by Council
Upgrade retic and establish new plants in existing garden at the intersection of South Western Hwy and Victory Lane, and extend to verge area adjacent to Home Hardware business.	Shire Admin	Estimated cost \$12,000. To be delivered this Financial year if endorsed by Council
Upgrade wording on both the southern and northern entry statements to Donnybrook, incorporating new Shire logos	Shire Admin	Estimated cost \$8,000. To be delivered this Financial year if endorsed by Council
New Banners for existing main street banner poles.	Shire Admin	Estimated cost \$3,500. To be delivered this financial year if endorsed by Council

<b>Kirup Projects</b>	<b>Proposed by</b>	<b>Status</b>
Replacement of park furniture, post and rail fencing at Kirup Memorial Park.	Shire Admin	Estimated cost \$5,500. To be delivered this financial year if endorsed by Council
As per 8 Feb 2016 OCM allocate for the relocation of existing donnybrook skatepark ramps to Kirup	Kirup Progress Association (KPA)	Estimated cost approx. \$1500, to be delivered this Financial year if endorsed by Council. If delivery service is donated, the funds are to be allocated to another portion of this project.
Contribute towards the Earthworks of the Skatepark by contractors	Requested by the KPA	Estimated cost approx. \$2000, To be delivered this Financial year if endorsed by Council

<b>Balingup Projects</b>	<b>Proposed by</b>	<b>Status</b>
Heritage signage in Balingup	ex Balingup Townscape Committee (BTC)	Shire cost allocated to the project set at \$5000 (carry-over project).
Supply of Roundup for Weed Spraying by BTC Volunteers	ex BTC	Estimated cost \$500 (plus notification of safe work practices required).
Purchase of Solar lights for installation by BTC Volunteers at various locations	ex BTC	Estimated cost \$3,000. To be installed by BTC Volunteers
Engage contractor to clean out Balingup Brook Drain near weir	ex BTC	Estimated cost \$3,000. This will be subject to environmental officer assessment to determine if any other departmental approval are required before works commence.
Purchase of timber oil (Feast & Watson) and paint brushes for installation by BTC Volunteers at various locations	ex BTC	Estimated cost \$250.
Purchase of decorative panels and posts for installation by	ex BTC	Estimated cost \$3,000. To be installed by BTC Volunteers

<b>Balingup Projects</b>	<b>Proposed by</b>	<b>Status</b>
BTC Volunteers to screen area at the back of the Balingup hall		
Purchase of street trees for planting by BTC Volunteers along the verge in Bailey Heights and opposite the school.	ex BTC	Estimated cost \$1,500. To be installed by BTC Volunteers

The members of the 2015-2017 Balingup Townscape Committee have advised they remain actively committed to the delivery of the previously endorsed Balingup Townscape projects, and they propose to use volunteers to minimise the cost of the majority of the above projects.

The above outlined projects clearly contribute to the enhancement of the Shire town sites. Its recommended Council support these projects being progressed.

### **CONSULTATION**

Members of the 2015-2017 Balingup Townscape Committee were consulted in relation to projects in Balingup, with their recommendations incorporated into this report.

The majority of representatives from the last Donnybrook Townscape committee were Councillors, and will have an opportunity to consider the outlined projects when this item is before Council.

### **FINANCIAL IMPLICATIONS**

As outlined above there are existing 2017/18 Budget allocations for projects to be undertaken by the various Townscape Committee's.

All estimated costs for the outlined projects can be accommodated within the 2017/18 budget allocations.

### **POLICY COMPLIANCE**

Nil

### **STATUTORY COMPLIANCE**

Nil

### **CONCLUSION**

That Council endorse the outlined projects to proceed with the adopted budget allocations.

### **COUNCIL DECISION (Executive Recommendation)**

**That Council authorise the Chief Executive Officer to proceed with the implementation of the following projects from the applicable 2017/18 Townscape Budgets:**

**Donnybrook:**

<b>Project</b>	<b>Proposed by</b>	<b>Status</b>
<b>Northern Entrance Streetscape Enhancement (purchase of trees only for planting in the winter of 2019)</b>	<b>2015-17 Donnybrook Townscape Committee and endorsed by Council Budget 31 August 2017</b>	<b>The Shire Administration is undertaking consultation with MRWA and adjoining landowners regarding the scope of the works. Estimated cost of tree purchase \$25,000</b>
<b>Replacement of existing concrete bench seats along Donnybrook main street</b>	<b>Shire Admin</b>	<b>Estimated cost \$5,000. To be delivered this financial year if endorsed by Council</b>
<b>Upgrade reticulation and establish new plants in existing garden at the intersection of South Western Hwy and Victory Lane, and extend to verge area adjacent to Home Hardware business.</b>	<b>Shire Admin</b>	<b>Estimated cost \$12,000. To be delivered this Financial year if endorsed by Council</b>
<b>Upgrade wording on both the southern and northern entry statements to Donnybrook, incorporating new Shire logos</b>	<b>Shire Admin</b>	<b>Estimated cost \$8,000. To be delivered this Financial year if endorsed by Council</b>
<b>New Banners for existing main street banner poles.</b>	<b>Shire Admin</b>	<b>Estimated cost \$3,500. To be delivered this financial year if endorsed by Council</b>

**Kirup:**

<b>Project</b>	<b>Proposed by</b>	<b>Status</b>
<b>Replacement of park furniture, post and rail fencing at Kirup Memorial Park.</b>	<b>Shire Admin</b>	<b>Estimated cost \$5,500. To be delivered this financial year if endorsed by Council</b>
<b>As per 8 Feb 2016 OCM allocate for the relocation of existing donnybrook skatepark ramps to Kirup</b>	<b>Kirup Progress Association (KPA)</b>	<b>Estimated cost approx. \$1500, to be delivered this Financial year if endorsed by Council. If delivery service is donated, the funds are to be allocated to another portion of this project.</b>

<b>Contribute towards the Earthworks of the Skatepark by contractors</b>	<b>Requested by the KPA</b>	<b>Estimated cost approx. \$2000, To be delivered this Financial year if endorsed by Council</b>
--	-----------------------------	--

**Balingup:**

<b>Project</b>	<b>Proposed by</b>	<b>Status</b>
<b>Heritage signage in Balingup</b>	<b>2015-17 Balingup Townscape Committee</b>	<b>Shire cost allocated to the project set at \$5000 (carry-over project).</b>
<b>Supply of Roundup for Weed Spraying by Balingup Townscape Committee (BTC) Volunteers</b>	<b>2015-17 Balingup Townscape Committee</b>	<b>Estimated cost \$500 (plus notification of safe work practices required).</b>
<b>Purchase of Solar lights for installation by BTC Volunteers at various locations</b>	<b>2015-17 Balingup Townscape Committee</b>	<b>Estimated cost \$3,000. To be installed by BTC Volunteers</b>
<b>Engage contractor to clean out Balingup Brook Drain near weir</b>	<b>2015-17 Balingup Townscape Committee</b>	<b>Estimated cost \$3,000. This will be subject to environmental officer assessment to determine if any other departmental approval are required before works commence.</b>
<b>Purchase of timber oil (Feast &amp; Watson) and paint brushes for installation by BTC Volunteers at various locations</b>	<b>2015-17 Balingup Townscape Committee</b>	<b>Estimated cost \$250.</b>
<b>Purchase of decorative panels and posts for installation by BTC Volunteers to screen area at the back of the Balingup hall</b>	<b>2015-17 Balingup Townscape Committee</b>	<b>Estimated cost \$3,000. To be installed by BTC Volunteers</b>
<b>Purchase of street trees for planting by BTC Volunteers along the verge in Bailey</b>	<b>2015-17 Balingup Townscape Committee</b>	<b>Estimated cost \$1,500. To be installed by BTC Volunteers</b>

<b>Heights and opposite the school.</b>		
---	--	--

**Carried by En Bloc Resolution No. 1**

**10.2.3 BRIDGE 5121 ROSEDENE LANE**

<b>Location</b>	Rosedene Lane, Queenwood
<b>Applicant</b>	Graeme Johnson
<b>File Reference</b>	BR 5121
<b>Author</b>	Damien Morgan
<b>Attachments</b>	10.2.3(1) - Attachments from 26 October 2016 OCM 10.2.3(2) - Mr. Johnson Letter dated 20 <sup>th</sup> January 2018 10.2.3(3) - Main Roads Western Australia (MRWA) & Shire letters
<b>Voting Requirements</b>	Simple Majority
<b>Executive Summary</b>	<ul style="list-style-type: none"> <li>• Advise the owners that Council does not support their request.</li> <li>• Re-Present the offer originally supported by all parties.</li> </ul>

**STRATEGIC ALIGNMENT**

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

<b>Outcome</b>	<b>Strategy</b>	<b>Action No.</b>	<b>Actions</b>
2.1 An attractive and maintained built environment	Maintain, renew and improve infrastructure within resource allocation	2.1.1.2	Seek funding for development and renewal of infrastructure.
4.1. A strategically focussed, open and accountable Local Government.	Continue to enhance communication and transparency	4.1.2.1	Ongoing meaningful communication and engagement with residents ratepayers and stakeholders.

**BACKGROUND**

The bridge located after the end of the Rosedene Lane road reserve (Bridge 5121), has an extensive history in relation to its ownership. Bridge 5121 directly services a single property being Lot 315, Number 24, Rosedene Lane (Lot 315).



The ownership of Bridge 5121 has been a matter for debate for a significant period, as detailed in an agenda and its attachments that went to the Ordinary Meeting of Council on 26 October 2016 (Attachment 10.2.3(1)). At this meeting, Council decided to let the item lay on the table for the Chief Executive Officer and Manager Works and Services to clarify the owner's position, and to follow up with Main Roads WA (MRWA) on Bridge 5121 being eligible to receive "Emergency Funding".

Since October 2016, Shire staff have been in protracted negotiations with representatives of the seller of Lot 315 and the proposed buyer of Lot 315 to legally resolve the ownership of Bridge 5121.

### **DETAILS**

The negotiations to resolve the ownership of Bridge 5121 was between three (3) main parties, being the Shire, the owner of the property at the time the matter went to Council in October 2016, and Mr Johnson, the proposed purchaser of Lot 315, and now current owner of the property

During the negotiations, MRWA had confirmed that the emergency funding would be made available to repair the bridge back to achieve a 13 tonne load rating, providing a clear strategy was presented resolving ownership of the bridge.

Taking into account the above, along with:

- our legal advice,
- Advice from various State Government Departments and the Western Australian Local Government Association,
- the past history,
- the estimated cost of a new bridge, and
- the quoted emergency works for Bridge 5121,

the Shire administration considered that, on a without prejudice basis, a fair and reasonable approach to resolving this protracted matter was to offer for the Shire to fund 1/3 of the cost of emergency repair works (capped at a maximum of \$25,000), not covered by the MRWA funding.

This was to be on the proviso that the owner and purchaser entered a Deed of Settlement, Release and Indemnity (The deed), accepting bridge ownership. Conditions on the proposal were accepted by both the buying and selling parties on 4 July 2017.

The Deed is a legally binding document, prepared by our Shire lawyers, and defines the future ownership of Bridge 5121, and outlines the current and future responsibilities of each party being the buyer, seller, and Shire of Donnybrook Balingup.

In summary, the Deed commits each party to:

#### **Buyer**

- All future maintenance and repair of the bridge from settlement and completion of the defined emergency works.

- Allow a 70A notification on the Certificate of Title that informs any person who might obtain any estate or interest in lot 315 that access to the property by the bridge is not subject to any obligation on the part of the Shire, and the owner of lot 315 is responsible to maintain and repair the bridge.
- Requires a carry forward of the terms of the deed to future purchases of the property.
- Obtain and hold public liability insurance for the bridge.
- Release and indemnify the Shire from all claims they may have now or which might arise in future.
- Be responsible for the costs of drafting future deeds by the Shire's lawyers for execution between the new parties.

### **Seller**

- Release and indemnify the Shire from all claims they may have now or which might arise in future.

### **Shire of Donnybrook Balingup**

- Undertake the MRWA defined emergency repair works to Bridge 5121 to a maximum cost of \$20,360 (ex GST) to the Shire and a maximum cost of \$40,720 (ex GST) to MRWA.
- Has no warranty to the buyer or seller that the works will achieve any particular result.
- Will be responsible for costs for placing the 70A Notification on the title.
- Enters into the deed without admission of any liability in relation to the dispute.

The buyer's lawyers informed the Shire that the buyers had agreed to settle with the owners on 18 August 2017 and that there was no need for a tri-partite agreement. They further informed that they would provide further information in due course.

Mr Johnson then emailed the Shire on the 22<sup>nd</sup> of August 2017, informing the Shire that he would not be signing the "Deed", at which point, the Shire advised Mr Johnson that the offer as presented, was now withdrawn.

From a subsequent meeting held between the Shire and current owners, Mr Johnson sent a letter on 20 January 2018 (Attachment 10.2.3(2)), outlining a proposal on which they may consider ownership of the bridge subject to a number of terms.

In summary, the proposal presented was that for the current owners to take ownership of Bridge 5121 they would require:

- The Shire restores/rebuilds the structure to the safety standards necessary to support the requirements of the landowner for private/business usage.
- A structural guarantee of no less than 12 years is to be provided in writing.
- The Load Rating for the Bridge is to remain the same, if not greater than the 13 tonnes originally listed.

Comment was sought from MRWA following the meeting (Attachment 10.2.3(3)) and officers have clarified that emergency funding from MRWA may still be available subject to;

- Ownership of Bridge 5121 being resolved to MRWA satisfaction,
- A review of the works required to achieve a 13 tonne load rating, and
- The quote for the works being reviewed by the contractor.

## **CONSULTATION**

Complex detailed consultation has progressed throughout the negotiations involving the parties and legal representatives.

## **FINANCIAL IMPLICATIONS**

If the Council were to agree to Mr Johnson's request, with costs unknown, and due to the 12-year structural guarantee, there would be a lengthy ongoing high financial risk to Council.

Throughout the negotiation there has been various estimates on what a new replacement bridge structure would cost, ranging from \$300,000 to \$700,000. There have also been various opinions that a new structure could be built for a lesser amount. However, it is important for Council to recognise that if the Shire and/or MRWA is involved with the project in any form, it must comply with all obligations to achieve a suitable replacement structure.

If Council is prepared to fund the required 1/3 contribution towards the emergency works, the cost of this was previously quoted as \$20,360. This quote, along with the extent of works, will need to be re-confirmed.

Funding for these "emergency works" was previously provided for in 2017/18 Shire of Donnybrook-Balingup Budget, under bridge maintenance.

## **POLICY COMPLIANCE**

Nil.

## **STATUTORY COMPLIANCE**

Section 3.53 of *the Local Government Act 1995*:

*Control of certain unvested facilities*

*(1) In this section —*

*former section 300 means section 300 of the Local Government Act 1960 as in force before the commencement of this Act;*

*otherwise unvested facility means a thoroughfare, bridge, jetty, drain, or watercourse belonging to the Crown, the responsibility for controlling or managing which is not vested in any person other than under this section.*

*(2) A local government is responsible for controlling and managing every otherwise unvested facility within its district unless subsection (5) states that this section does not apply.*

*(3) If the facility is partially within each of 2 or more districts, it is to be controlled and managed as the local governments for the districts concerned agree or, if they do not agree,*

*as the Minister directs.*

*(4) An agreement or direction under subsection (3) has effect according to its terms.*

*(5) This section does not apply if any person was, immediately before the commencement of this Act, responsible for controlling or managing then facility unless:*

*(a) the responsibility arose under the former section 300; or*

*(b) the Governor, by order, declares that the facility is to be controlled and managed under this section.*

*Footnote: Council should be aware that as part of the current review of the Local Government Act 1995, WALGA has outlined in its submission that:*

*(c) Control of Certain Unvested Facilities: Section 3.53*

*That Section 3.53 be repealed and that responsibility for facilities located on Crown Land return to the State as the appropriate land manager.*

## **CONCLUSION**

As evident from the history of Bridge 5121, the non-resolution of the legal ownership of Bridge 5121 has left the matter open to a variance of opinion, and costly reoccurrence of debate. As the debate continues, the structure continues to deteriorate below acceptable levels of service as defined by Main Roads WA (MRWA).

## **COUNCIL DECISION**

**(Executive Recommendation)**

**That Council instruct the Chief Executive Officer to:**

- 1. Advise the owner of Lot 315, Number 24, Rosedene Lane that Council does not support the proposal as presented in Mr Johnson's (the owner) letter dated 20 January 2018.**
- 2. Re-present to the owners of Lot 315, Number 24, Rosedene Lane, an offer to undertake the previously identified emergency repairs consistent with the terms agreed to on 14 July 2017, subject to:**
  - a) The previously prepared "Deed of Settlement, Release and Indemnity" being modified to reflect that the "Deed of Settlement, Release and Indemnity" is between the Shire of Donnybrook Balingup and the current owner of Lot 315, Number 24, Rosedene Lane.**
  - b) A review of the extent of emergency works and the previously obtained quote, the Shire of Donnybrook Balingup will contribute a maximum of \$25,000 or 1/3 of the quote, whichever is the lesser.**

- c) The modified “Deed of Settlement, Release and Indemnity”, will remain valid for acceptance by the owner of Lot 315, Number 24, Rosedene Lane for a period of 3 months from the date of this decision.
- d) If the offer is not accepted by the owner of Lot 315, Number 24, Rosedene Lane, the Shire is to cease all negotiations in relation to Bridge 5121 and advise the owner that unless legally demonstrated by the owner, the Shire of Donnybrook Balingup is of the understanding that it has no responsibility to care and maintain Bridge 5121, as defined under Section 3.53 of the *Local Government Act 1995*.

Carried by En Bloc Resolution No. 1

---

**10.3 MANAGER DEVELOPMENT AND ENVIRONMENTAL SERVICES**

---

Nil

---

**10.4 PRINCIPAL PLANNER**

---

**10.4.1 REQUEST TO CLOSE PORTION OF UNCONSTRUCTED ROAD RESERVE NORTH OF LOT 9504 NEAR KELLY ROAD, DONNYBROOK**

<b>Location</b>	Road Reserve (abutting Lot 9504)
<b>Applicant</b>	Allerding Associates
<b>File Reference</b>	A3887
<b>Author</b>	Bob Wallin, Principal Planner
<b>Attachments</b>	10.4.1(1) Location Plan 10.4.1(2) Approved Structure Plan
<b>Voting Requirements</b>	Simple Majority
<b>Executive Summary</b>	<ul style="list-style-type: none"> <li>• The proposal is to enable the future development of Lot 9504 for a Lifestyle Village.</li> <li>• The proposed road closure aligns with the intent of the approved structure plan.</li> <li>• Approval to advertise is recommended.</li> </ul>

**STRATEGIC ALIGNMENT**

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

<b>Outcome</b>	<b>Strategy</b>	<b>Action No.</b>	<b>Actions</b>
1.1 A diverse, prosperous economy, supporting local business and population growth	Promote, maintain and diversify investment in the district	1.1.14	Actively partner in regional Growth Planning partnerships and projects

## **BACKGROUND**

A request has been received to close an unconstructed road. Details of the road closure area and location are provided in Attachment 10.4.1(1).

The proposal aligns with an approved structure for the site (Attachment 10.4.1(2)). The proposed section of road has a length of 324m and an area of 7763m<sup>2</sup>. The road reserve is unconstructed and not required for access. All existing lots in the locality have existing road frontages to constructed roads.

A Council resolution is required to start the road closure process.

## **DETAILS**

Road closure requests fall under the *Land Administration Act 1997*. Section 58 of this Act describes the process relating to road closures. It requires the local government to advertise the proposal for a period of at least 35 days before requesting the Minister to grant the request.

The road reserve is zoned “Residential” under *Local Planning Scheme 7 (LPS7)* and forms part of a Structure Plan Area (SCA8SPA16). It will not be necessary to amend LPS7 following the conclusion of any road closure process

## **CONSULTATION**

It will be necessary to advertise the proposal. This will include a notice in the local paper, a mail drop to adjoining landowners and referral to relevant Government agencies and service providers.

## **FINANCIAL IMPLICATIONS**

Nil. All costs associated with the closure of the road reserve are the responsibility of the applicant. A \$750 application fee is required to be paid prior to the advertising process starting.

## **POLICY COMPLIANCE**

Planning Policy 9.10 provides guidance on road closures. The proposal is generally consistent with the intent of the policy as its closure will not impact on access or future connectivity potential.

## **STATUTORY COMPLIANCE**

The *Land Administration Act 1997* sets out requirements for road closure requests. This proposal will be processed following the requirements of the Act.

## **CONCLUSION**

The proposal is to close an unconstructed road reserve. The reserve is not required for access and has been identified in an approved structure plan as being suitable for closure.

The start of the road closure process requires Council approval to commence advertising. Approval is recommended.

## **COUNCIL DECISION**

**(Executive Recommendation)**

**That Council:**

1. **Initiate road closure proceedings to close a section of unconstructed road reserve as identified in Attachment 10.4.1(1) in accordance with Section 58 of the *Land Administration Act 1997* subject to:**
  - a) **The applicant submitting the \$750 Road Closure Application Fee;**
  - b) **The applicant confirming in writing their responsibility for all costs associated with the closure, amalgamation and potential purchase.**
  
2. **Authorise the Chief Executive Officer to undertake tasks necessary to implement Point 1 above.**

**Carried by En Bloc Resolution No. 1**

**10.4.2 RETROSPECTIVE APPLICATION FOR A DAM WITH A BOUNDARY SETBACK OF LESS THAN 20 METRES**

<b>Location</b>	Lot 1 (No 155) Grimwade Road, Balingup
<b>Applicant</b>	Mr Trevor Wilkins
<b>File Reference</b>	A4735
<b>Author</b>	Bob Wallin (Principal Planner)
<b>Attachments</b>	10.4.2(1) – Proposed plan (revised proposal) 10.4.2(2) – Aerial map of locality 10.4.2(3) - Schedule of Submissions
<b>Voting Requirements</b>	Simple Majority
<b>Executive Summary</b>	<ul style="list-style-type: none"> <li>• The proposal is for retrospective approval for two dams constructed with boundary setbacks less than 20m.</li> <li>• The application is presented to Council as a number of submissions objecting to the proposal have been received.</li> <li>• The key issues relate to concerns about public safety, local amenity and public health. <ul style="list-style-type: none"> <li>• The proposal has been amended following a first round of public consultation in an effort to address concerns.</li> <li>• Approval recommended.</li> </ul> </li> </ul>

**STRATEGIC ALIGNMENT**

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

Outcome	Strategy	Action No.	Actions
4.2 A respected, professional and trusted organisation	Effective and efficient operations and service provision	4.2.1.2	Seek a high level of legislative compliance and effective internal controls

## BACKGROUND

Two dams were constructed at Lot 155 Grimwade Road, Balingup (see Attachment 1). These dams were constructed with setbacks less than 20m.

Local Planning Scheme No.7 (LPS7) requires planning approval for dams constructed with setbacks less than 20m from a boundary.

The proposal requires a Council decision as a number of objections have been received during the advertising process. No officer level delegation exists in these circumstances.

The proposal has been advertised twice. As a result of comments and concerns raised during the first round of advertising, a revised proposal has been prepared.

The amended proposal seeks to include additional improvements/works that modify the functioning and safety of the water environment through the property (Attachment 10.4.2(1)).

The dam as currently constructed funnels a water course entering the northern portion of the property into the northern dam, then the secondary dam (middle) and then out through the property towards the south western edge via the small “figure 8” configured dam (bottom dam). This arrangement is shown in Attachment 10.4.2(2).

The impact of this arrangement is that the total flow of the water course from the north is dictated by the needs and aspirations of the owner of Lot 155 Grimwade Road at the expense of landowners downstream.

Neighbour concerns regarding this arrangement brought the issue to the Shire’s attention. Concerns raised include:

- Public safety (concerns for damage downstream if the dam wall breaks);
- Design flaws (no overflow and free board – the distance between the top of the dam bank and the water level);
- Construction methods (potential to collapse);
- Impacts on water quality;
- Clearing of remnant vegetation; and
- Impacts on water flow to downstream owners who have relied on the water course for irrigation/amenity etc.

Advice received from Government agencies confirms:

- a) that the clearing of vegetation was a technical breach. However, the breach was not significant enough to trigger enforcement action. Advice has been provided to the applicant on this matter by the relevant agency.



- b) the dam management arrangement breaks no State laws. However, the current arrangement is not desirable.

The revised proposal (Attachment 10.4.2(1)) seeks to address a number of points as follows:

- Diverts the water course flows around to the east of the dams (dams internally spring fed). This is to allow the natural flow of the water course as historically occurred;
- Construct a new spill way for the middle and lower dams; and
- Raising the embankment 300mm between the top and middle dams to improve freeboard.

## **DETAILS**

In assessing a planning application, Council is bound by a number of matters which it is required to consider. These matters are described in section 67 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

In this specific case, the relevant matters to consider are summarised as:

- (a) aims and provisions of LPS7;
- (h) any structure plan
- (m) the compatibility of the development with its setting, including the relationship with development on adjoining land;
- (n) the amenity of the locality including:
  - i) environmental impacts;
  - ii) character of locality;
  - iii) social impacts.
- (o) likely effect on the natural environment or water resources
- (p) adequate provision of landscaping
- (q) suitability of the land taking into account possible risk of flooding, tidal inundation, subsidence, landslip, soil erosion, land degradation;
- (r) suitability of the land taking account of possible risk to human health or safety;
- (x) the impact of the development on the community as a whole;
- (y) any submission received.

## **Validity of conditions**

The tests for what makes a reasonable condition is set out in the case *Newbury District Council v Secretary of State for the environment* [1981] AC 578. In this case, it was concluded that:

*“A condition attached to a grant of planning permission will not be valid therefore unless:*

- (1) The condition is for a planning purpose and not for any ulterior purpose. A planning purpose is one that implements a planning policy whose scope is ascertained by reference to the legislation that confers planning functions on the authority, not by reference to some preconceived general notion of what constitutes planning.*
- (2) The condition reasonable and fairly relates to the development permitted.*
- (3) The condition is not so unreasonable that no reasonable planning authority could have imposed it.”*

In this instance, a condition cannot be placed on the approval because it serves a greater public good (such as protecting downstream water flows), it needs to serve a planning purpose directly generated and by the proposal itself. Further, conditions need to be reasonable so that they do not impact the viability of the proposal itself.

This is relevant to this case in relation to considering suggested comments to impose conditions relating to engineering and hydrological assessments.

In this instance, the Council is assessing the reasonableness of a setback for a dam. However, given the nature of dams, it is not possible to strictly focus attention of this element. The whole dam body plays a role in how it will impact on adjoining properties in terms of access to boundaries for maintenance and limiting potential safety issues.

## **CONSULTATION**

The proposal has been advertised twice. Attachment 5.4.2(3) provides a summary of submissions received during the two advertising periods and makes suggestions on how the comments made could be addressed.

In summary, the key issues of concern are discussed below in more detail. This is provided in order to assist Council in understanding context and other factors to take into account when making a decision.

### ***Setback distances***

In instances where a dam is located at least 20m from a boundary, no planning approval is required. In these instances, there is no need to obtain engineering certification or engage professional dam construction experts.

The rationale for requiring planning approval when a dam is proposed closer than 20m to a boundary is that it increases the chance of adversely impacting on the neighbouring property. For instance, it has potential to pond water over boundaries or erode boundary infrastructure. In short, the closer the dam to the boundary, the increased chance of impacts for neighbouring properties.

On this basis, a reduced boundary setback is not fatal to an application - it is just a trigger for requiring planning consideration.

In this instance, there are two key determining factors to consider. These are:

- a) impacts on streetscape character; and
- b) Impacts on safety and the environment.

### ***Impacts on Streetscape and Character***

Attachment 10.4.2(2) shows that there are existing dams abutting (or encroaching) onto the subject land to the north and west of the site. The dams on Lot 1 site are larger in surface area, however, the precedent for small setbacks has been established. On this basis, it is difficult to reasonably argue that a reduced setback is problematic in the context of streetscape presentation. It is not possible to use the setback reduction as a reason for refusal in itself.

### ***Impacts on safety and the environment***

The other determining factor to consider is the potential impact on abutting properties in terms of safety and environmental impacts. In this regard, it is necessary for Council to ensure that the works are safe and functionally sound and that it is possible to maintain the integrity of the dam.

It is clear from the submissions that there are concerns about downstream impacts. These concerns are not directly the result of the setback reduction proposed. The setbacks do not cause the concerns, rather, these are the result of wider design issues.

In this instance, the design of the dam and its functioning is still a relevant planning consideration. The revised proposal seeks to address a number of concerns about the construction standards and its functioning. These changes represent an attempt by the landowner to address concerns raised. It is reasonable for Council to require a suitably qualified expert to inspect the dam and ensure that the design has not structural flaws that will create a future safety risk.

### **Public safety**

Concerns have been raised about the safety of the dams. In particular, the methods used to construct the walls, the lack of freeboard (distance between the top of the dam and the dam water level) and lack of spillways.

The underlying concern is about the impacts of the dam wall failing and the potential downstream impacts. The potential for dam failure needs to be considered when assessing the proposal. Other secondary considerations are:

- a) The proposed separation of the dams from the water course flows. The revised proposal diverts the water course. This significantly reduces potential for failure during storm events;
- b) The depth of the dams. The dams are predominantly ornamental in character with depths being around 1m. A deeper trench exists near the walls. This limited depth significantly reduces the volume of water stored and the pressures on the walls;
- c) the revised plan includes the construction of spill ways that reduce pressure and allow water to overflow in a controlled manner taking pressure off the main dam walls.

### **Design flaws (no overflow and free board)**

These flaws are proposed to be addressed in the revised plan through the construction of spillways and increasing the freeboard. It is reasonable to impose a condition requiring an engineering assessment of the dams to provide a technical assessment of the risks and effectiveness of the proposed design changes.

### **Construction methods/materials used**

Concerns are raised about the construction design and materials used in the erection of the dam walls. A site inspection shows that the walls include clay. However, the degree and amount of clay required to ensure the dam walls are safe cannot be confirmed. It is reasonable for Council to require the applicant to engage a suitably qualified dam builder to inspect and provide a professional opinion to confirm that the walls are stable, suitably sized and of appropriate material. This will reduce the potential risk of future civil action. It will reduce the degree of liability of the landowner in the event of damage downstream occurring as a result of a dam failure.

### **Impacts on water quality**

Water quality varies from time to time depending on flows and activities up stream. The water quality will include more sediment after any initial construction works or high flow events due to the disturbance to the banks and surfaces more generally.

A sample of water taken from the northern end of the property and the southern end of the property 20 February 2018 and 14 March do not show any material difference in sediment or colour between the northern entry to the southern exist of the property.

Further, a sample of water taken from the north and south of the property on the 5 February 2018 shows that the water to be considered “good quality drinking water in terms of the Australian Drinking Water Guidelines in terms of dissolved salts and PH.

Once the dam construction works have settled, there is limited potential for impacts on water quality. Further, the dams do not create a public health risk in water quality by themselves. In any event of water contamination, it will likely be created by agricultural activities further upstream.

It is noted that the applicant may at some point in the future establish a marron farm. This will need to be assessed in the future and conditioned appropriately. It is not a factor that can be considered as part of this application.

### **Clearing of remnant vegetation**

This is secondary element to the proposal. It has been addressed to the satisfaction of the relevant Government Agency. It cannot be used as a reason for objecting to the dam works itself.

### **Impacts on water flow to downstream owners who have relied on the water course for irrigation/amenity**

Advice received from Government Agencies outline that there is no legal requirement to ensure down stream flows of this water course. This is because it is not a proclaimed water course. However, there are generally accepted norms that activities should not adversely impact downstream users.

The applicant has acknowledged this point and the revised plan seeks to minimise any impacts on downstream users’ access to water flow.

It is reasonable for the applicant to demonstrate that works proposed and already undertaken are structurally sound.

### **Non-compliance with process**

A number of submissions object on the basis of a disregard for the process and rules in place. This is not a reason to object to a proposal in itself. There is a legal mechanism in place to address issues of non-compliance. In this instance, the legal mechanism is by applying for a retrospective approval as provided under the *Planning and Development Act 2005*. This process provides an avenue to ensure that development can remain subject to complying with relevant standards.

Concerns or comments on perceived “ethical” or “moral” motivations cannot be taken into account when making a planning decision. The decision in this case needs to be made on the

basis of what is on the ground and what is proposed to address the matter. All other questions on motivations, speculations, past history, etc cannot be considered.

### **FINANCIAL IMPLICATIONS**

Nil.

### **POLICY COMPLIANCE**

Nil

### **STATUTORY COMPLIANCE**

Section 164 of the Planning and Development Act 2005. This provides power to retrospectively assess and approve development that has already commenced.

Regulations clause 67 and Local Planning Scheme 7.

These documents set out the rules and considerations that can be taken into account when making a planning decision.

Clause 67 details matters that are required to be considered. This includes impacts on the environment, public safety, public health and amenity.

### **CONCLUSION**

The proposal is for a retrospective approval for two dams with setbacks below 20m.

The proposal has been advertised and a significant number of objections have been received. The applicant prepared a revised plan with an aim to address concerns raised during the original advertising period.

It is necessary to ensure that conditions imposed are reasonable, valid and sustainable if tested by review at the State Administrative Tribunal.

Approval is recommended subject to conditions.

### **COUNCIL DECISION**

**(Executive Recommendation)**

**Moved: Cr**

**Seconded: Cr**

**That Council resolve to grant retrospective planning approval for two dams with a reduced boundary setback and watercourse diversion at Lot 1 Grimwade Road, Balingup, subject to:**

- 1. The development hereby permitted must be substantially commenced within three months from the date of the decision letter. In the event that the works cannot be substantially completed within this timeframe, suitable measures shall be undertaken to drain the dam structures and ensure that water flow does not cause a risk to downstream property and infrastructure.**
- 2. Prior to commencing any works, the applicant is to engage a suitably qualified and experienced civil works engineer to:**

- a. **Inspect the structural integrity of the existing dam structures and identify and provide specific direction on any remediation / design / construction modifications that may be required to ensure the ongoing safe functioning of the dam; and**
  - b. **Review the proposed watercourse diversion and provide direction on construction and material selection to ensure it will function effectively, efficiently and safely and not impact on the structural integrity of the adjoining dam walls.**
3. **The civil works engineer report, required in Resolutions 2a and 2b, above, is to be prepared and submitted to the satisfaction of the Shire of Donnybrook Balingup Chief Executive Officer.**
  4. **The applicant to undertake works in accordance with the standards and specifications contained within the approved civil works engineering report prepared to satisfy Resolutions 2a, 2b and 3, above.**
  5. **Suitable access being provided along the dam walls abutting the western and northern boundaries of the property to allow ongoing maintenance to the satisfaction of the Shire of Donnybrook Balingup.**
  6. **The northern dam being managed to ensure that water does not encroach or reasonably inconvenience the landowner to the north.**

**Advice to Applicant:**

1. **The applicant is advised that the northern most portion of the diversion of the water course should be aligned to reduce the tight bend with the aim to reduce potential for washout during large storm events.**
2. **The applicant is advised to consider the diameter of the proposed piped section of the diversion water course to ensure that it is suitably sized to accommodate normal summer water flow.**
3. **The applicant is advised that planting of sedges or similar vegetation is recommended along the water course to assist in slowing water flows, reducing erosion and improving water quality.**

**ALTERNATE MOTION**

**Moved: Cr King**

**Seconded: Cr Tan**

**That Council resolve to grant retrospective planning approval for two dams with a reduced boundary setback and watercourse diversion at Lot 1 Grimwade Road, Balingup, subject to:**

- 1. The development hereby permitted must be substantially commenced within three months from the date of the decision letter. In the event that the works cannot be substantially completed within this timeframe, suitable measures shall be undertaken to drain the dam structures and ensure that water flow does not cause a risk to downstream property and infrastructure.**
- 2. Prior to commencing any works, the applicant is to engage a suitably qualified and experienced civil works engineer to:**
  - a) Review the design and construction of the existing components of the 155 Grimwade Road Dam project and report (with discussion and quantitative justification) on the structural integrity of the previously constructed dam walls, spillways and dump valves, indicating Engineering Certification of the design and construction is of a standard that will ensure no future dam failure risk.**

**This may involve inspection (and perhaps coring) of the existing dam walls, and calculation of spillway and dump valve capacities to ensure ongoing safety functioning of the dams in a 1 in 50 AEP rainfall event.**

**If necessary provide design and construction advice, and specific direction on any remedial or modification works required to achieve accepted Engineering Certification for these components.**
  - b) Design (with appropriate calculations submitted) and provide advice on materials and construction of the proposed flow diversion channel/watercourse to withstand flow from a 1 in 50 AEP rainfall event within the Grimwade Road catchment, to ensure it will function effectively, efficiently and safely, and not impact on the structural integrity of the adjoining dam walls.**
- 3. The civil works engineer report, required in Resolutions 2a and 2b, above, is to be prepared and submitted to the satisfaction of the Shire of Donnybrook Balingup Chief Executive Officer. Remedial work is not to commence until the CEO's written approval is received.**
- 4. The applicant to undertake works in accordance with the standards and specifications contained within the approved civil works engineering report prepared to satisfy Resolutions 2a, 2b and 3, above.**
- 5. Suitable access being provided along the dam walls abutting the western and northern boundaries of the property to allow ongoing maintenance to the satisfaction of the Shire of Donnybrook Balingup.**
- 6. The northern dam being managed to ensure that water does not encroach or reasonably inconvenience the landowner to the north.**

## **Lost 1/8**

The substantive motion was put.

## **SUBSTANTIVE MOTION**

**Moved: Cr Tan**

**Seconded: Cr Atherton**

**That Council resolve to grant retrospective planning approval for two dams with a reduced boundary setback and watercourse diversion at Lot 1 Grimwade Road, Balingup, subject to:**

- 1. The development hereby permitted must be substantially commenced within three months from the date of the decision letter. In the event that the works cannot be substantially completed within this timeframe, suitable measures shall be undertaken to drain the dam structures and ensure that water flow does not cause a risk to downstream property and infrastructure.**
- 2. Prior to commencing any works, the applicant is to engage a suitably qualified and experienced civil works engineer to:**
  - c. Inspect the structural integrity of the existing dam structures and identify and provide specific direction on any remediation / design / construction modifications that may be required to ensure the ongoing safe functioning of the dam; and**
  - d. Review the proposed watercourse diversion and provide direction on construction and material selection to ensure it will function effectively, efficiently and safely and not impact on the structural integrity of the adjoining dam walls.**
- 3. The civil works engineer report, required in Resolutions 2a and 2b, above, is to be prepared and submitted to the satisfaction of the Shire of Donnybrook Balingup Chief Executive Officer.**
- 4. The applicant to undertake works in accordance with the standards and specifications contained within the approved civil works engineering report prepared to satisfy Resolutions 2a, 2b and 3, above.**
- 5. Suitable access being provided along the dam walls abutting the western and northern boundaries of the property to allow ongoing maintenance to the satisfaction of the Shire of Donnybrook Balingup.**
- 6. The northern dam being managed to ensure that water does not encroach or reasonably inconvenience the landowner to the north.**

### **Advice to Applicant:**

- 1. The applicant is advised that the northern most portion of the diversion of the water course should be aligned to reduce the tight bend with the aim to reduce potential for washout during large storm events.**





## STRATEGIC ALIGNMENT

The proposal aligns with the following objective within the Corporate Business Plan:

Outcome	Strategy	Actions
4.2 A respected, professional and trusted organisation	Effective and efficient operations and service provision	Action 4.2.1.2 Seek a high level of legislative compliance and effective internal controls

## BACKGROUND

On 23 August 2017, Council resolved to adopt the *Shire of Donnybrook-Balingup Meeting Procedures Local Law*, to repeal and replace the *Shire of Donnybrook-Balingup Standing Orders Local Law 1999*. The local law was gazetted on 29 September 2017 and was considered by the Joint Standing Committee on Delegated Legislation (JSCDL) on 27 November 2017.

By letter attached to an email received on 19 February 2018, the JSCDL has requested that the Shire provide an undertaking, within six months, to make consequential amendments to the Meeting Procedures.

In summary, the following amendments have been requested:

- a) Correct the offence provision to properly provide for offences under the local law clause 19.1;
- b) Delete clause 8.6;
- c) Correct the lack of reference to 'Questions from Members' in clause 5.2; and
- d) Make all necessary consequential amendments.

Introducing these amendments will require an amendment local law to be made in accordance with the requirements of Section 3.12 of the Act.

## DETAIL

The amendments requested have been considered and changes are proposed as follows:

- a) Request: Correct the offence provision to properly provide for offences under the local law clause 19.1.
  - *Proposed amendment - Delete this clause and rely upon Regulation 4 Local Government (Rules of Conduct) Regulations 2007*
- b) Request: Delete clause 8.6
  - *Proposed amendment - Delete this clause as it is covered in clause 8.2*
- c) Request: Correct the lack of reference to 'Questions from Members' in clause 5.2
  - *Proposed amendment – Add 'Questions from Members' to Council agenda by inserting between '10. Elected Member Motions of which previous notice has*

been given' and '11. New Business of an urgent nature introduced by decision of the meeting'.

d) 4. *Make all consequential amendments*

The proposed amendments above to the Meeting Procedures Amendment Local Law 2017 (Attachment 10.5.1(1)) is provided with red track changes where applicable.

### **Purpose and Effect**

The purpose of this local law is to amend certain provisions within the *Shire of Donnybrook-Balingup Meeting Procedures Local Law 2017*.

The effect of this local law is to bring order and dignity to meetings and underpin the decision-making processes.

### **CONSULTATION**

The proposed amendment will be advertised for a period of six weeks and any submissions reported to Council, in accordance with Section 3.12 of the *Local Government Act 1995*.

### **FINANCIAL IMPLICATIONS**

An amendment local law will incur costs through the requisite process of statewide advertising and publishing in the Government Gazette.

### **POLICY COMPLIANCE**

N/A

### **STATUTORY COMPLIANCE**

- *Shire of Donnybrook-Balingup Meeting Procedures Local Law 2017*
- *Local Government Act 1995* - Section 3.12

### **COUNCIL DECISION**

(Executive Recommendation)

1. That Council advises the Joint Standing Committee on Delegated Legislation that it undertakes to proceed with the following within six months.
  - a) Correct the offence provision to properly provide for offences under the local law clause 19.1:
    - **Amendment** - *Delete this clause and rely upon Regulation 4 Local Government (Rules of Conduct) Regulations 2007*
  - b) Delete clause 8.6:
    - **Amendment** - *Delete this clause as it is covered in clause 8.2*
  - c) Correct the lack of reference to 'Questions from Members' in clause 5.2
    - **Amendment** – Add 'Questions from Members' to Council agenda by inserting between '10. Elected Member Motions of which previous notice has been given' and '11. New Business of an urgent nature introduced by decision of the meeting'.

**d) Make all consequential amendments**

2. That Council give state-wide public notice for a period of not less than 6 weeks that it proposes to undertake amendments to the *Shire of Donnybrook-Balingup Meeting Procedures Local Law 2017*.

**10.5.2 ESTABLISHMENT OF AN AGED CARE SERVICES COMMUNITY REFERENCE GROUP**

<b>Location</b>	Shire of Donnybrook Balingup
<b>Applicant</b>	N/A
<b>File Reference</b>	CSV 01/2A
<b>Author</b>	Ben Rose – Chief Executive Officer (Bob Lowther – Acting Manager Aged Care Services)
<b>Attachments</b>	Nil
<b>Voting Requirements</b>	Simple majority
<b>Executive Summary</b>	That Council support the formation of a Community Reference Group to guide a due diligence review of the Shire’s Aged Care Services.

**STRATEGIC ALIGNMENT**

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

<b>Outcome</b>	<b>Strategy</b>	<b>Action No.</b>	<b>Actions</b>
3.3 -A safe and healthy community environment for all ages	Promoting ‘aging in place’	3.3.1.2	Review aged care services administered by the Shire.

**BACKGROUND**

At its February 2018 Ordinary Meeting, Council resolved to receive and endorse a motion from the 18 December 2017 Annual General Meeting of Electors in relation to the future direction of aged care (specifically Tuia Lodge) within the Shire. In the same decision, the Council acknowledged that the Chief Executive Officer is to commence a due diligence review of the Shire’s Aged Care Services portfolio during the 2017/18 financial year.

Council further instructed the Chief Executive Officer to include an investigation into transferring management of the Shire’s Aged Care Services to a suitably qualified Aged Care Provider within the terms of reference for the due diligence review of the Shire’s Aged Care Services portfolio.

**DETAILS**

As part of the process of undertaking a due diligence review of the Shire’s Aged Care Services, it is proposed to establish a Community Reference Group of suitably qualified or experienced individuals. It is recommended that the role of this Community Reference Group be as follows:

1. Oversee the development of the terms of reference for the due diligence review.
2. Guide the selection of a suitable consultant to undertake the due diligence review.
3. Review the draft/final due diligence review report.
4. Recommend a course of action to Council, via the Chief Executive Officer, in relation to the recommendations of the due diligence review.

It is recommended that the Community Reference Group be constituted as follows:

- Shire President
- Deputy Shire President
- 1 x nominated Elected Member
- 4 suitably qualified/experienced community members (from the Shire of Donnybrook Balingup and/or surrounds)
- Chief Executive Officer (non-voting)
- Acting Manager Aged Care Services (non-voting)
- Corporate Planning and Governance Officer (non-voting)

In calling for expressions of interests from suitably qualified or experienced community members, the following key selection criteria will be applicable:

- Their ability and knowledge to represent the community on matters relating to ageing, aged care service provision and community health.
- Their diversity of knowledge and/or experience in finance, business, community leadership or governance.
- Their willingness to provide constructive input into the review process.

Individuals will be excluded from nomination where they:

- Have a conflict of interest or perceived conflict of interest that could bring into question their ability to make decisions on the matter.

The establishment of this Community Reference Group will cease once the report and recommendations have been submitted to Council.

### **CONSULTATION**

Expressions of interest for the Community Reference Group positions will be publicly advertised (website, noticeboards, local press etc.).

### **FINANCIAL IMPLICATIONS**

There is an allocation of \$20,000 in the 2017/18 Budget for the due diligence review of the Shire's Aged Care Services portfolio.

### **POLICY COMPLIANCE**

There are no Shire policies which relate to this matter.

### **STATUTORY COMPLIANCE**

As the Community Reference Group is not recommended to be delegated any decision making power (i.e. as a Committee may be), there are no statutory compliance issues with its establishment.

### **CONCLUSION**

In addition to the Council-endorsed motion from the December 2017 Annual General Meeting of Electors, a due diligence review of the Shire's Aged Care Services portfolio is recommended in the 2017-21 Corporate Business Plan and budget provided for within the 2017/18 Shire Budget. The establishment of a Community Reference Group, comprised of suitably skilled and/or experienced community members to guide the due diligence review, will enable robust and diverse oversight of the process. It is recommended that the Council support the formation of a Community Reference Group as outlined above.

### **Procedural Motion**

**Moved: Cr Tan                      Seconded: Cr Wringe**

**That the Meeting Procedures be suspended.**

**Carried 9/0**

Meeting procedures were suspended to call for Councillor nominations to the Aged Care Services Community Reference Group.

Cr Wringe nominated Cr Tan. Cr Tan accepted the nomination.

Cr King nominated Cr Mitchell. Cr Mitchell declined the nomination.

With no further nominations received, Cr Tan was appointed to the Aged Care Services Reference Group along with the Shire President and Shire Deputy President.

### **Procedural Motion**

**Moved: Cr King                      Seconded: Cr Mills**

**That the Meeting Procedures be resumed.**

**Carried 9/0**

### **COUNCIL DECISION (Executive Recommendation)**

**Moved: Cr King                      Seconded: Cr Mitchell**

**That Council:**

- 1. Instruct the Chief Executive Officer to establish an Aged Care Services Community Reference Group to assist the due diligence review of the provision of Aged Care Services delivered by the Shire, as follows:**

**1.1 The Objectives of the Aged Care Services Community Reference Group are to:**

- a. **Oversee the development of the terms of reference for the due diligence review.**
- b. **Guide the selection of a suitable consultant to undertake the due diligence review.**
- c. **Review the draft/final due diligence review report.**
- d. **Recommend a course of action to Council, via the Chief Executive Officer, in relation to the recommendations of the due diligence review.**

**1.2 The composition of the Aged Care Services Community Reference Group is:**

- a. **Shire President (Chair).**
- b. **Deputy Shire President (Deputy Chair).**
- c. **Councillor Tan.**
- d. **Four (4) Community Members (to be appointed by the Chief Executive Officer, in consultation with the Shire President, Deputy Shire President and Councillor representative).**
- e. **Chief Executive Officer.**
- f. **Acting Manager Aged Care Services.**
- g. **Corporate Planning and Governance Officer.**

**1.3 The key selection criteria for Community Membership to the Aged Care Services Community Reference Group is:**

- a. **Knowledge and/or experience to represent the community on matters relating to ageing, aged care service provision and community health.**
- b. **Knowledge and/or experience in finance, business, community leadership or governance.**
- c. **Capability and capacity to provide constructive input into the review process.**
- d. **Lack of conflict of interest, or perceived conflict of interest, that could bring into question the ability to impartially perform the objectives of the Aged Care Services Community Reference Group.**

**Carried 9/0**

---

**11 ELECTED MEMBER MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

---

Nil.

---

**12 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING**

---

Nil.

---

### **13 MEETING CLOSED TO PUBLIC**

---

**\*\*6.46pm** – The Public Gallery left the meeting.

The meeting was adjourned at 6.46pm while the Hon Paul Omodei discussed the Governance Training Program and provided feedback to Councillors on their meeting procedures.

**\*\*7.28pm** – the meeting resumed.

#### **COUNCIL DECISION**

**Moved: Cr Tan**

**Seconded: Cr Atherton**

**That the Meeting be closed to the public under the *Local Government Act 1995* under S5.23 (2) (c) a contract entered into, by the Local Government and which relates to a matter to be discussed at the meeting for the following items:**

- 13.1.1 Confidential Report – Drainage Infrastructure;**
- 13.1.2 Confidential Report – Request for Tender – Collins Street Upgrade;**
- 13.1.3 Confidential Report – Request for Tender – Road Sweeping and Drainage Cleaning;**
- 13.1.4 Confidential Report – Extension of the Kerbside Bin Collection and Maintenance and Provision of Kerbside Bin Contract; and**
- 13.1.5 Confidential Report – Lease of Property.**

**Carried 9/0**

#### **Council Decision – En Bloc Resolution No. 2**

**Moved: Cr Lindemann**

**Seconded: Cr Tan**

**That the resolutions from the following items be moved:**

- 13.1.2 – Confidential Report – Request for Tender - Collins Street Upgrade**
- 13.1.3 – Confidential Report – Request for Tender - Road Sweeping and Drainage Cleaning**
- 13.1.4 – Confidential Report - Kerbside Bin Contracts**

**Carried 9/0**

---

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

---



**13.1.1 CONFIDENTIAL REPORT – DRAINAGE INFRASTRUCTURE**

<b>Location</b>	1 Short Street, Donnybrook
<b>Applicant</b>	N/A
<b>File Reference</b>	
<b>Author</b>	Ben Rose – Chief Executive Officer
<b>Attachments</b>	13.1.1(1) - Site Plan 13.1.1(2) - Correspondence
<b>Voting Requirements</b>	Simple Majority
<b>Executive Summary</b>	

**13.1.2 CONFIDENTIAL REQUEST FOR TENDER 02/2018 – COLLINS STREET UPGRADE**

<b>Location</b>	Collins Street, Donnybrook
<b>Applicant</b>	Shire of Donnybrook-Balingup
<b>File Reference</b>	PWF 17L
<b>Author</b>	Damien Morgan
<b>Attachments</b>	Confidential attachment 13.1.2(1) - Assessment Matrix
<b>Voting Requirements</b>	Simple Majority
<b>Executive Summary</b>	Works to be awarded to the evaluation panel recommended contractor.

**13.1.3 CONFIDENTIAL REQUEST FOR TENDER 01/2018 – ROAD SWEEPING AND DRAINAGE CLEANING**

<b>Location</b>	Shire of Donnybrook-Balingup
<b>Applicant</b>	Shire of Donnybrook - Balingup
<b>File Reference</b>	TEN 05/15
<b>Author</b>	Damien Morgan
<b>Attachments</b>	13.1.3(1) - Assessment Documentation (Confidential)
<b>Voting Requirements</b>	Simple Majority
<b>Executive Summary</b>	Works to be awarded to the evaluation panel recommended Contractor.

**13.1.4 CONFIDENTIAL – EXTENSION OF THE KERBSIDE BIN COLLECTION AND MAINTENANCE AND PROVISION OF KERBSIDE BINS CONTRACTS**

<b>Location</b>	Shire of Donnybrook-Balingup
<b>Applicant</b>	Shire of Donnybrook-Balingup
<b>File Reference</b>	HLT07/3 and HLT08/7



**Carried 9/0**

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

In compliance with the Council resolutions made at the Ordinary Council Meeting on 29 March 2018, the Agenda Item and Council Resolution for 13.1.2 – *Request for Tender 02/2018 – Collins Street Upgrade* and 13.1.3 – *Request for Tender 01/2018 – Road Sweeping and Drainage Cleaning* have been made public.

#### **13.1.2 REQUEST FOR TENDER 02/2018 – COLLINS STREET UPGRADE**

<b>Location</b>	Collins Street, Donnybrook
<b>Applicant</b>	Shire of Donnybrook-Balingup
<b>File Reference</b>	PWF 17L
<b>Author</b>	Damien Morgan
<b>Attachments</b>	Confidential Attachment 13.1.2 - Assessment Matrix
<b>Voting Requirements</b>	Simple Majority
<b>Executive Summary</b>	Works be awarded to the evaluation panel recommended contractor.

#### **STRATEGIC ALIGNMENT**

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

<b>Outcome</b>	<b>Strategy</b>	<b>Action No.</b>	<b>Actions</b>
1.1 A diverse, prosperous economy, supporting local business and population growth.	Provide appropriate infrastructure to support and enhance business	1.1.2.2	Provide appropriate local transport infrastructure
2.1 An attractive and maintained built environment	Maintain, renew and improve infrastructure within allocated resources	2.1.1.3	Develop and implement capital works program
2.1 An attractive and maintained built environment	Maintain, renew and improve infrastructure within allocated resources	2.1.1.4	Maintain attractive town sites within resource capacity

#### **BACKGROUND**

The Shire of Donnybrook - Balingup secured Blackspot Funding of \$300,000, which includes a required \$100,000 Shire contribution to the project, to undertake upgrades between the intersections of Reserve Street and Victory Lane, Collins Street, Donnybrook.

Shire staff advertised for quotes through the eQuotes system, however no submissions were received and as a result, the project was advertised via public tender.

#### **DETAILS**

In accordance with the Shire’s Administration Policy 2.48 “Purchasing, Tendering and Buy Local Policy”, staff called for suitably skilled contractors to provide an offer to undertake works as defined within the tender specifications.

Within the tender document, all tenderers were advised that their offers would be assessed against the following compliance and qualitative criteria’s.

Description of Compliance Criteria	Yes/No
a) Tenderers are to provide acknowledgment that your organisation has submitted in accordance with the Conditions of Tender including completion of the Offer Form and provision of your pricing submitted in the format required by the Principal.	Yes/No
b) Compliance with the Specifications contained in the Request	Yes/No
c) Compliance with the Delivery Date	Yes/No
d) Risk Assessment	Yes/No

Qualitative Criteria	Weighting
a) Price in accordance with Policy 2.21	40%
b) Relevant Experience	20%
c) Tenders Resources	20%
d) Demonstrated Understanding	20%
<i>Total Qualitative Weighting</i>	<i>100%</i>

Council received submissions from four tenderers, all of which were compliant. One submission was eligible for a Regional Price Preference reduction of \$10,000 as per Policy 2.21. The Regional Price Preference did not impact on the rankings of the submissions in relation to price.

Submissions ranged from \$237,040.46 (excl GST) to \$440,020.14 (excl GST), with a price difference of only \$20,470.36 between the two lowest submissions.

It should be noted, through the evaluation process, that the two lowest tenders were contacted to clarify an issue in relation to rates provided for the construction of concrete paths. Both contractors advised they had made errors in relation to the units of measurements. This resulted in an increase of their respective offers. Tender submissions were then assessed against the defined compliance and qualitative criteria by the evaluation panel.

The final rankings of the tender assessment are outlined in Confidential Attachment 13.1.2. As per the “Tender Assessment Matrix”, the assessment panel determined that Busselton Civil Contractors (BCP) tender submissions provide the best value for money when considered against the compliance and qualitative criteria, along with the relevant Council Policies and references.

## **CONSULTATION**

The tender was advertised from Wednesday 3 February and closed on Thursday 22 February 2018. Advertisements were placed in the West Australian and South West Times newspapers, as well with the Shire’s website and notice boards.

## **FINANCIAL IMPLICATIONS**

Council has secured funding of \$200,000 for the project from the Blackspot Funding program. To receive this funding, the Shire is required to contribute \$100,000 of its own funding to the project.

There is \$300,000 allocated for completion of this project within the 2017/18 Shire budget. The project remains on track to be completed consistent with the budget allocation.

## **POLICY COMPLIANCE**

The tender process including assessment was undertaken in accordance with the Shire’s Administration Policy 2.48 “Purchasing, Tendering and Buy Local Policy”, and policy 2.21 “Regional Price Preference Policy”

## **STATUTORY COMPLIANCE**

The *Local Government Act 1995* and *Local Government (Functions and General) Regulations 1996* detail the requirements for Local Government Tendering.

## **CONCLUSION**

Council received submissions from four tenderers, all of which were compliant and after due consideration, Busselton Civil Contractors (BCP) tender submissions provide the best value for money

## **COUNCIL DECISION (Executive Recommendation)**

**That Council:**

- 1. Instruct the Chief Executive Officer to award Tender 02/2018 ‘Collins Street Donnybrook Upgrade’ to Busselton Civil Contractors (BCP) at the tendered price of \$237,040.46 (GST exclusive) and as per the tender documentation.**
- 2. Instruct the Chief Executive Officer to make this Agenda Item and Council Resolution public in the Minutes of the 29 March 2018 Ordinary Meeting of Council.**

**Carried by En Bloc Resolution No. 2**

---

### **13.1.3 REQUEST FOR TENDER 01/2018 – ROAD SWEEPING AND DRAINAGE CLEANING**

<b>Location</b>	Shire of Donnybrook-Balingup
-----------------	------------------------------

<b>Applicant</b>	Shire of Donnybrook - Balingup
<b>File Reference</b>	TEN 05/15
<b>Author</b>	Damien Morgan
<b>Attachments</b>	13.1.3 (1) - Assessment Documentation (Confidential)
<b>Voting Requirements</b>	Simple Majority
<b>Executive Summary</b>	Works to be awarded to the evaluation panel recommended Contractor.

## STRATEGIC ALIGNMENT

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

<b>Outcome</b>	<b>Strategy</b>	<b>Action No.</b>	<b>Actions</b>
Outcome 2.1 – An attractive and maintained built environment	Maintain, renew and improve infrastructure within allocated resources	2.1.1.4	Maintain attractive town sites within resource capacity

## BACKGROUND

Street sweeping is an integral part of the Council’s operations and as such the Shire utilises the services of appropriately accredited and experienced contractors to prepare road sweeping and drainage cleaning on a routine basis.

The current Street Sweeping and Gully Eduction Services contract expired in December 2017. A request for tender was advertised to establish a new sole tenderer.

## DETAILS

In accordance with the Shire’s Administration Policy 2.48 “Purchasing, Tendering and Buy Local Policy”, staff called for suitably skilled contractors to provide an offer to undertake the works as defined within the tender specifications.

The tender outlined that a contract for the provision of the defined service would be awarded for three years.

Within the tender document, all tenderers were advised that their offers would be assessed against the following compliance and qualitative criteria.

<b>Description of Compliance Criteria</b>	<b>Yes/No</b>
a) Tenderers are to provide acknowledgment that your organisation has submitted in accordance with the Conditions of Tender including completion of the Offer Form and provision of your pricing submitted in the format required by the Principal.	Yes/No
b) Compliance with the Specifications contained in the Request	Yes/No
c) Compliance with the Delivery Date	Yes/No
d) Risk Assessment	Yes/No

<b>Description of Qualitative Criteria</b>	<b>Weighting</b>
Relevant Experience/Key Personnel	30%
Tenderer's Resources	20%
Price & Price Structure in accordance with Policy 2.21 (see below)	50%
Total Qualitative Weighting	100%

Council received submissions from 4 tenderers, all of which were compliant. All tenders were received electronically via the Shire's Tenderlink portal.

Tender submissions were then assessed against the defined compliance and qualitative criteria by the tender evaluation panel.

The final rankings of the tender assessment are outlined in Confidential Attachment 13.1.3(1) that includes a listing of the rates offered for various services.

Tenders were very competitive in terms of rates offered. All tenderers demonstrated a high level of relevant experience, key personnel, resources and OH&S procedures. All tenderers demonstrated they can meet the expectations of the Shire.

As per the "Tender Assessment Matrix", the assessment panel has determined that Veolia Environmental Services (Australia) Pty Ltd tender submissions provide the best value for money when considered against the compliance and qualitative criteria of the tender, along with the relevant Council Policies and references.

## **CONSULTATION**

The request for tenders was advertised from Wednesday 21 February and closed on Wednesday 7 March 2018. Adverts were placed in the West Australian and South West Times newspapers, as well as with the Shire's website and notice boards.

## **FINANCIAL IMPLICATIONS**

Street sweeping is a regular maintenance activity that is undertaken by the Shire to not only present well maintained town sites, but to also play an important role in the ongoing functioning of the Shires drainage infrastructure.

The current 2017/18 budget allocation for street sweeping is \$85,000, and this commitment will need to be ongoing into the future to at least maintain existing levels of service.

As this will be a three year contract, Council will need to consider its commitment and approve an annual budget for street sweeping, in line with previous years.

## **POLICY COMPLIANCE**

The tender process including assessment was undertaken in accordance with the Shire's Administration Policy 2.48 "Purchasing, Tendering and Buy Local Policy".

**STATUTORY COMPLIANCE**

The Local Government Act 1995 and Local Government (Functions and General) Regulations 1996 detail the requirements for Local Government Tendering.

**CONCLUSION**

Works to be awarded to the evaluation panel recommended Contractor.

**COUNCIL DECISION**

**(Executive RECOMMENDATION)**

That Council:

1. Instruct the Chief Executive Officer to award the Tender RFT 01/2018 – Road Sweeping and Pipe/Pit Cleaning to Veolia Environmental Services (Australia) Pty Ltd, for the tendered rates, and for a period of three (3) years in accordance with the tender documentation.
2. Instruct the Chief Executive Officer to make this Agenda Item and Council Resolution public in the Minutes of the 29 March 2018 Ordinary Meeting of Council.

Carried by En Bloc Resolution No. 2

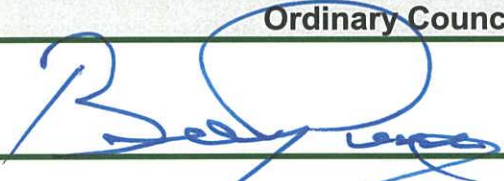
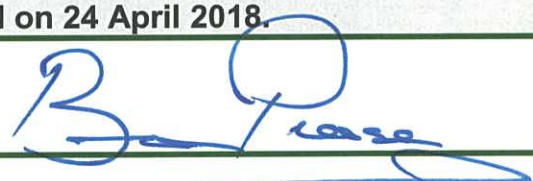
---

**14 CLOSURE**

---

The Shire President advised that the next Ordinary Council Meeting will be held on 24 April 2018, commencing at 5.00pm at Brookhampton Hall, Brookhampton.

The Shire President declared the meeting closed at 8.46pm.

<b>These Minutes were confirmed by the Council as a true and accurate record at the Ordinary Council Meeting held on 24 April 2018.</b>	
	
<b>Shire President</b>	<b>Presiding Member</b>