

Shire of Lake Grace

Special Council Meeting

Minutes

23 February 2021

Meeting Commencing at 4:00 pm



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SHIRE OF LAKE GRACE

Minutes of the Special Meeting of Council held at the Council Chambers, 1 Bishop Street, Lake Grace, WA 6353 on 23 February 2021.

1.0 DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS

The Shire President opened the meeting at 4:00 pm and advised that today's special meeting has been convened to consider the following matters;

- Code of Conduct for Council Members, Committee Members and Candidates
- South West Native Title Settlement – Land Base Consultation – Land List 1179
- Transfer of Funds – Lake Grace Airstrip Lighting Upgrades

2.0 DISCLAIMER READING

A recording of the disclaimer is to be played.

No responsibility whatsoever is implied or accepted by the Shire of Lake Grace for any act, omission or statement or intimation occurring during Council and Committee meetings or during formal and informal conversations with staff. The Shire of Lake Grace disclaims any liability for any loss whatsoever caused arising out of reliance by any person or legal entity on any such act, omission or statement or intimation occurring during Council and Committee meetings or discussions. Any person or legal entity who acts or fails to act in reliance upon any statement does so at that person's and or legal entity's own risk.

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Before the record of attendance / apologies / leave of absence were read, having been informed that Cr Allan Marshall and Cr Ben Hyde both requested to join the meeting via teleconference, the Shire President presented the following motion to the Councillors and was resolved:

RESOLUTION 13193

Moved Cr Chappell
Seconded Cr Carruthers

That Cr Allan Marshall and Cr Ben Hyde join the Special Council meeting via teleconference in accordance with the requirements of the Local Government (Administration) Regulation 14A).

CARRIED: 7/0

It was agreed during the conversation with Cr Marshall and Cr Hyde that they will both speak up clearly so that they can be heard by all the people attending the meeting in the Council Chambers.

After the voting, the Shire President read the list of names to confirm the following attendance:

3.0 RECORD OF ATTENDANCE/APOLOGIES/ LEAVE OF ABSENCE (PREVIOUSLY APPROVED)

3.1 PRESENT

Cr LW Armstrong	Shire President
Cr RC Chappell	Deputy Shire President
Cr SD Carruthers	
Cr DS Clarke	
Cr BJ Hyde	Via Teleconference
Cr RA Lloyd	
Cr AD Marshall	Via Teleconference

In Attendance

Mr A George	Chief Executive Officer
Mr C Paget	Deputy Chief Executive Officer
Mr C Elefsen	Manager Infrastructure Services
Mr K Wilson	Manager Corporate Services
Mrs R Rose	Executive Assistant (for the Minutes)

3.2 APOLOGIES

Cr PS Stoffberg

3.3 LEAVE OF ABSENCE PREVIOUSLY GRANTED

Nil

4.0 PUBLIC QUESTION TIME

Nil

5.0 PETITIONS/DEPUTATIONS/PRESENTATIONS

Nil

6.0 NOTATIONS OF INTEREST

Nil

**6.1 DECLARATIONS OF FINANCIAL INTEREST – LOCAL GOVERNMENT ACT 1995
SECTION 5.60A**

Nil

**6.2 DECLARATIONS OF PROXIMITY INTEREST – LOCAL GOVERNMENT ACT 1995
SECTION 5.60B**

Nil

**6.3 DECLARATIONS OF IMPARTIALITY INTEREST – ADMINISTRATION
REGULATIONS 1996 SECTION 34C**

Nil

7.0 ANNOUNCEMENTS BY THE PRESIDING MEMBER WITHOUT DISCUSSION

Nil

8.0 REPORTS OF COMMITTEES

Nil

9.0 REPORTS OF OFFICERS

Nil

10.0 CONFIDENTIAL ITEM – AS PER LOCAL GOVERNMENT ACT S5.23(2)

This item and any attachments are confidential in accordance with section 5.23(2)(a) of the Local Government Act 1995 as it contains matters of confidential nature.

Nil.

10.1 ADMINISTRATION**10.1.1 CODE OF CONDUCT FOR COUNCIL MEMBERS, COMMITTEE MEMBERS AND CANDIDATES**

Applicant:	Shire of Lake Grace
File No.:	0033
Attachments:	1. Guidelines on the Model Code of Conduct for Council Members, Committee Members and Candidates 2. Draft – Shire of Lake Grace Code of Conduct for Council Members, Committee Members and Candidates 3. Draft Template - Complaint about Alleged Breach
Author:	 Mr Alan George Chief Executive Officer
Disclosure of Interest:	Neither the Author or Senior Officer has any Impartiality, Financial or Proximity Interests that require disclosures
Date of Report:	17 February 2021
Senior Officer:	 Mr Alan George Chief Executive Officer

Summary

The government has enacted new legislation requiring all local governments to adopt a new Code of Conduct for Council Members, Committee Members and Candidates for a local government election, and to deal with ancillary matters.

Background

The following regulations took effect on 3 February 2021, implementing the remaining parts of the Local Government Legislation Amendment Act 2019:

- Local Government (Administration) Amendment Regulations 2021
- Local Government Regulations Amendment (Employee Code of Conduct) Regulations 2021
- Local Government (Model Code of Conduct) Regulations 2021.

In regard to the Local Government (Model Code of Conduct) Regulations 2021, local governments are required to adopt a Code of Conduct for Council Members, Committee Members and Candidates within three (3) months of the Regulations taking effect.

To account for any breaches occurring on and from the first day that the Regulations take effect, local governments must authorise at least one (1) person to receive complaints. This has to be done by 24 February 2021.

Comment

The Department of Local Government, Sport and Cultural Industries (DLGSC) has produced Guidelines on the Model Code of Conduct for Council Members, Committee Members and Candidates, which is an attachment to this item. It is expected that a Model Code will be developed in coming months to meet the three (3) month deadline and its adoption will be the subject of a separate consideration / approval by Council.

In the interim, the Model Code of Conduct has been recommended and appears to be satisfactory. The Chief Executive Officer has proposed replacing the word '*work*' in clause 5 of the Model, with '*working*' due to Elected Members and Committee Member not considered to be '*workers*' or at '*work*' from an employer / employee perspective.

The guidelines indicate that local governments must authorise at least one (1) person to receive complaints regarding members and candidates. The Regulations state that the Local Government must, in writing, authorise one or more persons to receive complaints and withdrawals of complaints, but they do not specify who that person(s) will be.

The Complaints Officer could be:

- President,
- Deputy President (especially for complaints about the President),
- Chief Executive Officer, or
- External Consultant

The DLGSC has also produced a template complaint form as the Regulations state that complaints are to be made in writing in a form approved by the Local Government. The DLGSC template form is another attachment to this item (Attachment 3).

There is a requirement to appoint a Complaints Officer by the 24 February 2021.

For clarity, it is noted that there is still a requirement for a local government to have a Complaints Officer (section 5.120 of the Local Government Act 1995), to process allegations of '*Rules of*

Conduct' breaches, and these alleged breaches are still to be referred to the Local Government Standards Panel (refer Division 4 of the Model Code of Conduct). The Chief Executive Officer is currently designated as that officer.

In time, with the development of templates by industry or the Western Australian Local Government Association (WALGA), Local Governments can determine the most appropriate and effective process for dealing with complaints under Division 3 of the Code of Conduct and how they are prioritised and managed. Having such processes at the moment is not required by the law and nor considered critical.

Legal Implications

Sections of the Acts, Regulations and/or Local Laws that apply to this item include:

- Local Government Act 1995
- Local Government (Administration) Amendment Regulations 2021
- Local Government Regulations Amendment (Employee Code of Conduct) Regulations 2021
- Local Government (Model Code of Conduct) Regulations 2021.

Resources and further reading for local governments include:

<https://www.dlgsc.wa.gov.au/local-government/strengthening-local-government/public-consultations/local-government-act-review/priority-reforms/model-code-of-conduct>

https://www.dlgsc.wa.gov.au/docs/default-source/local-government/local-government-act-review/model-code-of-conduct-guidelines.pdf?sfvrsn=b507b9c3_0

Policy Implications

The Council's existing Code of Conduct, listed as Policy number 1.8, must be repealed, as the Act and Regulations now stipulates there are to be at least two (2) separate Codes, one for Council Members, Committee Members and Candidates, and another for local government employees.

Consultation

External Mr Dale Stewart – Chief Executive Officer, Shire of Narrogin

Financial Implications

Nil

Strategic Implications

Shire of Lake Grace Strategic Community Plan 2017-2027

Leadership Objective - Strong governance and leadership, demonstrating fair and equitable community values

- Outcome 4.1 A strategically focused, unified Council functioning efficiently
 - 4.1.1 Provide informed leadership on behalf of the community
 - 4.1.2 Promote and advocate for the community and district
 - 4.1.3 Provide strategic leadership and governance
- 4.2 An efficient and effective organisation

RESOLUTION 13194

Moved Cr Clarke

Seconded Cr Carruthers

That Council, with respect to the new Model Code of Conduct for Council Members, Committee Members and Candidates for a local government election:

1. Repeal the existing Code of Conduct for Council Members, Committee Members and Employees listed as Policy 1.8.
2. Note that pursuant to section 5.51A of the Local Government Act 1995, the Chief Executive Officer will be preparing an interim Code of Conduct for all employees of the Shire, including the Chief Executive Officer, based on the repealed version, prior to any model being available from WALGA.
3. Pursuant to section 5.104 of the Local Government Act 1995, adopt the new Code of Conduct for Council Members, Committee Members and Candidates for local government elections for the Shire of Lake Grace, listed as Attachment 2, subject to the deletion of the word '*work*' in clause 5 and replacement of it with the word '*working*' and request the Chief Executive Officer to ensure all Elected Members and Committee Members are aware of its content;
4. Pursuant to the Local Government (Model Code of Conduct) Regulations 2021;
 - a. Clause 11 (2), adopt the form for lodging complaints, listed as Attachment 3;
 - b. Clause 11 (3), authorise the following persons to receive Division 3 complaints and withdrawals of same, relating to about Council Members, Committee Members and Candidates:
 - i. Complaints about Council Members or candidates for elections that become Council Members, excluding those made by the Shire President – the Shire President;
 - ii. Complaints made by the Shire President excluding those made by the Deputy Shire President – the Deputy Shire President;
 - iii. Complaints about the Shire President – the Deputy Shire President; and
 - iv. Complaints about the Deputy Shire President made by the Shire President – a committee comprising the remaining Council Members.
5. Pursuant to sections 5.551A (3) and 5.104 (7) of the Local Government Act 1995, request the Chief Executive Officer to ensure that both of the updated / adopted Codes of Conduct are published on the Shire's official website, as soon as practical.

CARRIED BY ABSOLUTE MAJORITY: 7/0

Voting Requirements

Absolute majority required.

10.1.2 SOUTH WEST NATIVE TITLE SETTLEMENT – LAND BASE CONSULTATION – LAND LIST 1179

Applicant:	Department of Planning, Lands and Heritage (DPLH)
File No.	0368 / 0809
Attachments:	• DPLH Map “SWNTS – LBC - Land List 1179” • 2 x LandGate / WALIS maps identifying each lot
Author:	 Mr Chris Paget Deputy Chief Executive Officer
Disclosure of Interest	Nil
Date of Report	17 February 2021
Senior Officer	 Mr Alan George Chief Executive Officer

Summary

For Council to consider a referral by the Department of Planning, Lands and Heritage (DPLH) regarding the possible future disposition of two of Unallocated Crown Land parcels within the Shire of Lake Grace to the Noongar (Ballardong) Land Estate as part of the South West Native Title Settlement.

Background

Under the *Land Administration (South West Native Title Settlement) Act 2016*, the State of Western Australia has committed to allocating up to 320,000 hectares of Crown Land to the Noongar People to create the Noongar Land Estate. The purpose of the Act is as follows:

- *to provide for the conveyance of freehold title, the creation of reserves and the making of management orders in respect of reserves, and the grant of leasehold interests, for the benefit of the Noongar people; and*
- *to provide for licences to enable the Noongar people to access, and carry out activities for Aboriginal Customary Purposes, on certain unallocated Crown land and unmanaged reserves, and for related purposes.*

The six (6) Indigenous Land Use Agreements (ILUA) comprising the South West Native Title Settlement were conclusively registered with the National Native Title Tribunal on 27 January 2021. With the ILUAs conclusively registered, Settlement Effective Date will be 25 February 2021; the indicative date for appointment of the Trustee of Noongar Boodja Trust ('Trust Effective Date') is 15 March 2021. After Trust Effective Date, the Western Australian Government will make the first financial payments into the Trust and start the process to transfer land assets for the establishment of the Noongar Land Estate.

Further information regarding the Settlement and the Noongar Land Estate can be found on the Department of the Premier and Cabinet Website via the following link:

<https://www.dpc.wa.gov.au/swnts/Pages/default.aspx>

DPLH is responsible for undertaking an identification and assessment process for land parcels within the boundaries of the Settlement. This process includes referring land to relevant agencies and Local Government Authorities for comment in accordance with section 14 of the *Land Administration Act 1997*. The Department have prepared a spreadsheet consisting of two (2) land parcels identified within the Shire of Lake Grace for possible transfer, and the Shire is being requested to provide comments on each of the land parcels in relation to the following:

1. Is the Shire supportive of the transfer of this land to the Noongar People under the Settlement?
2. Does the Shire have any interest in the land?
3. Does the Shire have existing or planned infrastructure within the land parcel that requires protection? If yes, please provide details and advise if access to this infrastructure will need to be maintained.
4. Is the land parcel subject to any mandatory connection to services?
5. Are any future proposals for the land identified? If so – provide detail of what is proposed and in what timeframe?
6. Are there any future proposals for adjoining land that may affect the land identified in the spreadsheet? If so, in what timeframe?
7. Please advise of any proposed planning scheme amendments that may affect the zoning of this land at a State or Local Government level. If a scheme amendment is to occur, what is the change proposed and when will it come into effect?
8. Please advise of any known land management issues such as site contamination, hazards, debris or rubbish dumping, unauthorised land use and environmental considerations (such as inundation or similar site constraints).
9. Please provide any additional comments on the proposed transfer of this land as part of the Settlement.

Any comments are to be submitted by 12 March 2021 (40 days from receipt of the initial correspondence). Where no response is received from the Shire within the 40-day timeframe, this will be taken as having no comment on the land parcels referred.

Comment

The two (2) land parcels identified within the Shire which may be transferred as part of the South-West Settlement are shown in the attached maps. Both areas are located between 15 to 28km west of Lake King township and adjoin the western side of Lake King Nature Reserve. Parcel 1 (ID 3094326) comprises an area of 1282.46 hectares and is bounded by Newdegate-Ravensthorpe Road to the south and Hewson Road to the west; parcel 2 (ID 3094786) covers

18044.21 hectares with Newdegate-Ravensthorpe Road at the northern boundary, Tarco Road to the west and Old Newdegate Road at the southern end.

As per DPLH question 1, Council is requested to indicate its support or otherwise to the transfer proposal for both land parcels considering the comments below provided by the Shire administration in response to questions 2 to 9:

- The Shire of Lake Grace doesn't have any direct interest in either of the land parcels identified;
- There is not any existing or planned infrastructure associated with the parcels that requires protection from a Shire perspective. Gravel pits are located within road reserves, and there are four graded firebreak/fire access tracks running through the larger of the two lots.
- Land parcels are not the subject of any mandatory connection requirements. All land would be subject to normal planning requirements in the event of development applications and or building applications (Planning, Health and Building requirements as per normal);
- The Shire of Lake Grace is not aware of any future proposals for the land;
- The Shire is not aware of any future proposal associated with adjoining land;
- There are not any local planning scheme amendments that would impact directly the identified land parcels. Council's existing local planning strategy is neutral in terms of impact on the identified land parcels;
- Aside from fire risk associated with the existing natural scrubland on both lots, the Shire is not aware of any land management issues associated with the identified land parcels.
- The Shire is interested to understand what the management of this land may look like into the future (post settlement) e.g.:
 - If future development is planned, will normal environmental clearing permissions and environmental protection measures apply?
 - Will the land be subject to Shire rates/fees and other regulatory service charges such as water and sewerage where applicable?
 - How will the land be managed in terms of natural resources / weed and animal control / fire risk mitigation, and by whom?

At this juncture, there has been no advice or discussion as to whether the land parcels will be definitely transferred in freehold or leasehold tenure. Notwithstanding the possible transfer of ownership, all current scheme and policy provisions will continue to apply to the lots and a change in ownership does not infer any additional development rights or exemptions from having to obtain land use and development approvals from the Shire and other authorities.

Statutory / Legal Implications

Land Administration Act 1997 s.14
Land Administration (South West Native Title Settlement) Act 2016
Native Title Act 1993 (Commonwealth)
Shire of Lake Grace Local Planning Scheme No.4 (15/09/2017)
Shire of Lake Grace Local Planning Strategy 2007

Policy Implications

Nil - Council does not have a direct policy position in relation to native title matters.

Consultation

Internal – Mr Alan George, Chief Executive Officer
Mr Craig Elefsen, Manager Infrastructure Services

External - Department of Planning, Lands & Heritage

Financial Implications

Nil presently - should the land be transferred to the Noongar Boodja Trust and Development occur, the subject land would likely become rateable. The Land Trust would be required to meet normal costs, including rates and services charges associated with owning freehold land. Freehold land can be exempted from rates under s. 6.26(2)(g) of the *Local Government Act 1995* where that land is used exclusively for charitable purposes. However, if the freehold land is used for a commercial purpose or leased for a commercial enterprise, it will not be exempt from rates.

Strategic Implications

Shire of Lake Grace Strategic Community Plan 2017 - 2027

Economic – A prosperous agricultural based economy, supporting diversification of industry

Outcome 1.2 A diverse and prosperous economy

Environmental – Protect and enhance our natural and built environment

Outcome 2.2 A natural environment for the benefit and enjoyment of current and future generations

Social – A valued, healthy and inclusive community and lifestyle

Outcome 3.1 An engaged, supportive and inclusive community

Leadership – Strong governance and leadership, demonstrating fair and equitable community values

Outcome 4.1 A strategically focused, unified Council functioning efficiently

4.2 An efficient and effective organisation

RESOLUTION 13195

Moved Cr Clarke

Seconded Cr Carruthers

That Council:

1. Supports the possible transfer of the two nominated land parcels and advises the Department of Planning Lands and Heritage that the Council's submission should be regarded as being a preliminary review only.
2. That Council advises the DPLH it is expected that additional consultation and the opportunity to make further comment would be provided once the matters raised in these preliminary submissions were reviewed and prior to any final decision being made as to which UCL parcels are to be transferred.

CARRIED: 7/0

Voting Requirement

Simple majority required

10.1.3 TRANSFER OF FUNDS – LAKE GRACE AIRSTRIP LIGHTING UPGRADES

Applicant:	Internal Report
File No.	0829
Attachments:	Nil
Author:	 Ms Brooke Williamson Development Services Admin Officer
Disclosure of Interest	Nil
Date of Report	17 February 2021
Senior Officer	 Mr Craig Elefsen Manager Infrastructure Services

Summary

For Council to authorise the withdrawal of \$165,000.00 from the Essential Medical Services Reserve to transfer into 1260043 *“Lake Grace Air Strip Lighting Upgrade”*.

Background

To comply with Australian Standards and provide a safe landing strip for the Royal Flying Doctors Service (RFDS), it is necessary to upgrade the lighting, which from records has not been upgraded since the early 2000's. After the Federal Government's Regional Airport Development Scheme (RADS) grant application that the Shire of Lake Grace recently submitted, approval has been granted and we have been notified that the Shire will receive funding of \$61,500.00 to assist with the lighting upgrade at the Lake Grace Airstrip.

The Shire's Infrastructure Services Department engaged a WALGA Preferred Supplier Contractor to quote on the lighting works. In late January 2021, a site visit was done by the preferred supplier and it has been determined major wiring and non-compliance issues are present and it is recommended that the best way to fix the issues is to replace the entire lighting system so it meets current standards.

Comment

As the Royal Flying Doctor Service (RFDS) is an essential emergency service, these works are high priority and require immediate action to allow the RFDS to continue landing safely at night.

The contractor has recommended a complete upgrade of the lighting system, wiring and switchboard, pilot-activated light control system, illuminated wind indicator and the installation of a new diesel backup generator.

Section 6.11 of the *Local Government Act 1995* has provisions for the usage of reserve accounts. Public notice must be given if there are any changes to the purpose of a reserve account, or if the money in the reserve account is used for purposes other than stated for that reserve account. As these upgrades are deemed to be essential medical services, we do not have to give public notice.

Legal Implications

Local Government Act 1995 section 6.11(3)[b] Reserve Accounts
Local Government (Financial Management) Regulations 1996 – Regulation 18c.

Policy Implications

Policy 3.7 – Purchasing Policy

Where the purchasing requirement is not suitable to be met through a panel of pre-qualified suppliers, or any other tender-exempt arrangement as listed under this Policy, conduct a public Request for Tender process in accordance with Part 4 of the Local Government (Functions and General) Regulations 1996, this policy and the Shire's tender procedures. The procurement decision is to be based on pre-determined evaluation criteria that assesses all value for money considerations in accordance with the definition stated within this Policy.

Note 1: The WALGA Preferred Supply Program does qualify for compliance under the Local Government (Functions and General) Regulations 1996.

Note 2: All or any quotations may be obtained from a pre-qualified supplier on the WALGA Preferred Supply Program or State Government CUA

Consultation

Internal: Mr Craig Elefsen – Manager Infrastructure Services
Mr Kevin Wilson – Manager Corporate Services

External: AMS Australia – Aerodrome Services

Financial Implications

To cover essential & emergency works, \$165,000.00 should be withdrawn from the Essential Medical Services Reserve which will decrease the amount from \$745,788.89 to \$580,788.89.

RADS grant	\$ 61,500.00
Budgeted amount	\$ 40,000.00
Transfer from Reserve	\$165,000.00
Total project	\$266,500.00

Strategic Implications

Shire of Lake Grace Strategic Community Plan 2017-2027
Leadership Objective – Strong governance and leadership, demonstrating fair and equitable community values

Outcome 4.2 An efficient and effective organisation**4.2.1 Maintain accountability and financial responsibility through effective planning**

Before the voting, the following discussions occurred:

Cr Chappell made a comment that it is imperative that the works presented to be done as soon as possible because there is enough money in the budget to cover the costs.

Cr Marshall asked how much transfer is involved? The response was \$165,000 from the Essential Medical Services Reserve.

Cr Clarke asked if a generator can be used for the Medical Centre and also which is cheaper to use compared to solar battery? The response is, the diesel generator can be utilised elsewhere by the Shire works program.

Having no further discussions made, the voting presented:

RESOLUTION 13196

Moved Cr Chappell

Seconded Cr Lloyd

That Council approve:

- The withdrawal of \$165,000.00 from the Essential Medical Services Reserve and Transfer the \$165,000.00 into 1260043 “Lake Grace Airstrip Lighting upgrade”; and
- That under the Local Government (Functions and General) Regulations 1996, award the airport lighting upgrade to WALGA preferred supplier Aerodrome Management Services Pty Ltd.

CARRIED BY ABSOLUTE MAJORITY: 7/0

Voting Requirements

Absolute majority required.

11.0 CLOSURE

There being no further business, the Shire President closed the meeting at 4:15 pm.

It was announced by the Chief Executive Officer that a budget workshop is going to be held on Tuesday 16 March 2021 at 4:00 pm. The aim of the workshop is to discuss the various projects presented and that Council to provide a clear direction on its execution.

12.0 CERTIFICATION

I, Leonard William Armstrong certify that the Minutes of Meeting held on 23 February 2021 as shown were confirmed as a true record of that meeting.


Signature

24 MARCH 2021
Date