

Special Meeting of Council

Minutes

Section 5.22 of the Local Government Act 1995

11 August 2020

Unconfirmed Minutes

These minutes were approved for distribution on 13 August 2020.



Suzie Haslehurst
CHIEF EXECUTIVE OFFICER

When the Chief Executive Officer approves these Minutes for distribution they are in essence "Unconfirmed" until the following Ordinary Meeting of Council, where the Minutes will be confirmed subject to any amendments made by the Council.

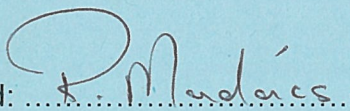
The "Confirmed" Minutes are then signed off by the Presiding Person.

Attachments that formed part of the Agenda, in addition to those tabled at the Council Meeting are put together as attachments to these Minutes with the exception of Confidential Items.

Confidential Items or attachments that are confidential are compiled as separate Confidential Minuted Agenda Items.

Confirmed Minutes

These minutes were confirmed at a meeting held on 25 August 2020.

Signed: 

Note: The Presiding Member at the meeting at which the minutes were confirmed is the person who signs above.

Shire of Toodyay

SPECIAL MEETING – 11 AUGUST 2020

CONTENTS

1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS	1
2. RECORDS OF ATTENDANCE	1
3. DISCLOSURE OF INTERESTS	1
4. PUBLIC QUESTIONS (relating to the purpose of the meeting)	1
5. PUBLIC SUBMISSIONS (relating to the purpose of the meeting)	1
6. PURPOSE OF MEETING	1
6.1 Tender for Management of Toodyay Recreation and Aquatic Precinct.....	2
6.2 Response to Confidential Draft Report of the Inquiry into the Shire of Toodyay	8
7. CLOSURE OF MEETING	11

There are NO public attachments

Shire of Toodyay

MINUTES

SPECIAL MEETING – 11 AUGUST 2020

1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

The Shire President declared the meeting open at 4.00pm.

2. RECORDS OF ATTENDANCE

Members

Cr R Madacsi	Shire President
Cr B Ruthven	Deputy Shire President (<i>arrived at 4.01pm</i>)

Cr T Chitty
Cr P Greenway
Cr P Hart
Cr S Pearce
Cr B Rayner

Staff

Ms S Haslehurst	Chief Executive Officer
Mr S Patterson	Manager Works and Services
Mrs M Lamb	Communication and Compliance Officer
Mrs M Rebane	Executive Assistant

Visitors

Nil

2.1 APOLOGIES

Mrs C Luangala	Manager Corporate & Community Services
Mr H de Vos	Acting Manager Planning & Development
Cr B Bell	

3. DISCLOSURE OF INTERESTS

The Chief Executive Officer advised that no disclosures of interest in the form of a written notice had been received prior to the commencement of the meeting.

4. PUBLIC QUESTIONS (relating to the purpose of the meeting)

Nil

5. PUBLIC SUBMISSIONS (relating to the purpose of the meeting)

Nil

6. PURPOSE OF MEETING

The Special Meeting of Council is for the purpose of considering all matters related to the following:

- 1. Tender Report for the management of the Sport and Recreation Precinct; and*
- 2. Authorised Inquiry Response.*

MINUTES OF SPECIAL MEETING OF COUNCIL
HELD IN SHIRE OF TOODYAY COUNCIL CHAMBERS ON 11 AUGUST 2020

The Presiding Member requested a motion be moved in accordance with Standing Orders 5.2 (2) that the meeting be closed to the public.

MOTION/COUNCIL RESOLUTION NO. 238/08/20

MOVED Cr Greenway

SECONDED Cr Rayner

That, in accordance with Standing Orders Clause 5.2 (2), Council close the meeting to members of the public at 4.03pm to allow the part of the meeting that deals with confidential business to continue behind closed doors in accordance with Section 5.23 (2) of the *Local Government Act 1995* as matters being considered deal with the following —

- (c) a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting; and
- (e) a matter that if disclosed, would reveal —
 - (i) a trade secret; or
 - (ii) information that has a commercial value to a person; or
 - (iii) information about the business, professional, commercial or financial affairs of a person,where the trade secret or information is held by, or is about, a person other than the local government; and
- (f) a matter that if disclosed, could be reasonably expected to —
 - (i) impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law;

That in accordance with Standing Orders Clause 5.2 (5) while the resolution under sub-clause 5.2 (2) remains in force, the operation of Standing Orders Clause 7.9 is to be suspended until the Council or the committee, by resolution, decides otherwise.

MOTION CARRIED 8/0

6.1 Tender for Management of Toodyay Recreation and Aquatic Precinct

Date of Report:	24 July 2020
File Reference:	TEN80 – Tender 02/2020
Author:	C Luangala – Manager Corporate & Community Services
Responsible Officer:	S Haslehurst – Chief Executive Officer
Previously Before Council:	N/A
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Confidential Attachment:	1. Evaluation Report.

The attachment to the Officer Report is confidential in accordance with section 5.23 (2) (c) and (e) of the *Local Government Act 1995*:

- (c) *a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting; and*
- (e) *a matter that if disclosed, would reveal —*
 - (i) *a trade secret; or*
 - (ii) *information that has a commercial value to a person; or*
 - (iii) *information about the business, professional, commercial or financial affairs of a person,*
where the trade secret or information is held by, or is about, a person other than the local government;

PURPOSE OF THE REPORT

To request that Council selects the recommended tenderer for the management of the Toodyay Recreation Centre in accordance with the attached Confidential Evaluation Report and authorises the CEO to enter into and finalise contract negotiations with the recommended tenderer.

BACKGROUND

The Toodyay Recreation Precinct, including an aquatic facility, playing fields, tennis courts, netball/basketball courts and a sports pavilion, has been under construction since December 2018. Practical completion is anticipated in August/September 2020.

Given the specialist knowledge required to manage an aquatic facility and the current capacity of the Shire administration, it was determined that the most appropriate method of ensuring the successful management of the facility was to invite tenders from the open market.

On 20 May 2020, the Shire issued an Invitation To Tender (ITT) for a suitably qualified organisation to manage operations of the Toodyay Recreation Precinct in its entirety or in part, in order to provide a range of recreation opportunities that derive the greatest benefit to both Council and the wider community.

The scope of the ITT included the following:

- Manage the Precinct in its entirety or in part.
- Provide all necessary staff with appropriate qualifications.
- Attract new users, programs and activities to the Precinct including national and / or international events.
- Facilitate the integration of community recreation opportunities for all.
- Promote the Precinct and its events and activities.
- Maximise use of the Precinct by coordinating and making all bookings.
- Liaise with Council with regards fee structures.
- Manage all maintenance of the Precinct in accordance with the executed contract, all relevant standards and all legislative requirements.
- Provide facility use to the Toodyay District School.

Proposals were requested for a management structure and allocation of management and financial responsibility for the Precinct. In addition, proposals were to include reporting frequency and content to Council, proposed activities, and an entry plan to indicate how the contractor would take over the Precinct.

The ITT was open for a period of 7 weeks and closed on 8 July 2020.

Two conforming submissions were received.

Evaluation of the submissions commenced on 13 July 2020. The Evaluation Panel consisted of the following officers with full voting rights:

- Manager Works & Services
- Manager Corporate & Community Services
- Compliance & Communications Officer

The Evaluation panel met on 16 July 2020 and held meetings with the respondents on 21 July 2020 for further clarification on submissions.

An Evaluation Report has been prepared and a Value for Money recommendation has been made to Council contained in the confidential attachment to this report.

Reference checks have been done and no adverse information has been received regarding the two respondents.

COMMENTS AND DETAILS

The recommended tenderer presented a superior value for money proposal based on the following:

- a. Increased opportunity for community engagement;
- b. Higher degree of confidence in anticipated financial forecast based on the extensive detail provided;
- c. More extensive scope inclusions;
- d. Higher capacity and resources to deliver a broad range of activities and programs;
- e. Increased opportunity for activation of the entire recreation precinct; and
- f. Proven experience successfully managing local government facilities in consultation with the local government.

On a value for money basis, it is the Officer's Recommendation that Council awards the contract for the operational management of the Toodyay Recreation Centre to the recommended tenderer as per the attached confidential evaluation report.

Officers are also recommending that Council authorises the Chief Executive Officer to negotiate and finalise the management contract. Given practical completion of the precinct is imminent, it is important to engage the operators as soon as is practicable to enable the facility to be properly managed and maintained and to be fully operational in time for the summer season.

Officers recommend that if Council wishes to discuss the contents of the Evaluation Report, a motion is put to move behind closed doors given the confidential nature of the documents as outlined above.

IMPLICATIONS TO CONSIDER

Consultative:

Consultation has occurred with Senior Officers and Council at various Budget and Long-Term Financial Planning workshops.

Strategic:

Key points from the Strategic Community Plan that apply to this decision are:

- Social: our community wellbeing and connection
 - O3: Support the development of places and spaces for recreation, learning, art and culture
- Economic: business and jobs in the community
 - O2: Encourage and support investment into new and existing businesses in Toodyay
 - O3: Encourage economic diversification
- Built Environment: Our buildings, roads and transport
 - O2: Ensure our built environment meets community needs

Policy related:

F.03 Purchasing

Financial:

Both Submissions would require an amendment to the Shire's FY20/21 Annual Budget. While the preferred tender indicates a minimal budget impact, final costs will be determined by the agreed upon scope at contract negotiation. Budget amendments will be brought to Council for approval.

Legal and Statutory:

Local Government Act 1995

3.57 Tenders for providing goods or services

- (1) *A local government is required to invite tenders before it enters into a contract of a prescribed kind under which another person is to supply goods or services.*
- (2) *Regulations may make provision about tenders.*

Local Government (Functions and General) Regulations 1996

Division 2 - Tenders for providing goods or services (s. 3.57)

11 When tenders have to be publicly invited

- (1) *Tenders are to be publicly invited according to the requirements of this Division before a local government enters into a contract for another person to supply goods or services if the consideration under the contract is, or is expected to be, more, or worth more, than \$250 000 unless subregulation (2) states otherwise.*

Risk related:

A Risk Management plan is included in the Confidential Evaluation Report as attached to this report.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION

That Council:

1. Selects the successful tenderer for the operational management of the Toodyay Recreation Centre in accordance with the recommendation contained in the Confidential Evaluation Report attached.
2. Authorises the Chief Executive Officer to:
 - (a) enter into contract negotiations with the successful tenderer in accordance with the provisions of the submitted tender.
 - (b) prepare and execute the necessary contract documents once negotiations have been finalised.
3. Notes that a report will be brought back to Council to approve any resulting budget amendments.

Cr Ruthven moved the Officer's Recommendation as follows:

That Council:

1. **Selects the successful tenderer for the operational management of the Toodyay Recreation Centre in accordance with the recommendation contained in the Confidential Evaluation Report attached.**
2. **Authorises the Chief Executive Officer to:**
 - (a) enter into contract negotiations with the successful tenderer in accordance with the provisions of the submitted tender.**
 - (b) prepare and execute the necessary contract documents once negotiations have been finalised.**
3. **Notes that a report will be brought back to Council to approve any resulting budget amendments.**

Cr Pearce seconded the motion.

Clarification was sought.

Cr Pearce moved an amendment to the motion as follows:

That at Point 2(b) the words "and execute" be removed; and

That Point 3 be reworded to read as follows:

- (3) The CEO to bring this report back to Council outlining proposed contract conditions and any resulting budget amendments for approval.**

Cr Rayner seconded the amendments.

Further clarification was sought.

There being no objections, the amendments were passed.

AMENDMENT/COUNCIL RESOLUTION NO. 239/08/20

MOVED Cr Pearce

SECONDED Cr Rayner

That at Point 2(b) the words “and execute” be removed; and

That Point 3 be reworded to read as follows:

(3) The CEO to bring this report back to Council outlining proposed contract conditions and any resulting budget amendments for approval.

AMENDMENT CARRIED 8/0

Clarification was sought.

The substantive motion was put.

OFFICER’S RECOMMENDATION/COUNCIL RESOLUTION NO. 240/08/20

MOVED Cr Ruthven

SECONDED Cr Pearce

That Council:

1. Selects the successful tenderer for the operational management of the Toodyay Recreation Centre in accordance with the recommendation contained in the Confidential Evaluation Report attached.
2. Authorises the Chief Executive Officer to:
 - (a) enter into contract negotiations with the successful tenderer in accordance with the provisions of the submitted tender.
 - (b) prepare the necessary contract documents once negotiations have been finalised.
3. The CEO to bring this report back to Council outlining proposed contract conditions and any resulting budget amendments for approval.

MOTION CARRIED BY ABSOLUTE MAJORITY 8/0

The reason why Council chose to amend the Officer’s Recommendation was due to Council not being comfortable with not seeing the conditions of the contract and the possible impact upon the Annual Budget for the Shire of Toodyay.

6.2 Response to Confidential Draft Report of the Inquiry into the Shire of Toodyay

Date of Report:	6 August 2020
Applicant or Proponent:	Shire of Toodyay
File Reference:	MAN13
Author:	Suzie Haslehurst – Chief Executive Officer
Responsible Officer:	Suzie Haslehurst – Chief Executive Officer
Previously Before Council:	Nil
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Confidential Attachment:	1. DRAFT Authorised Persons Inquiry into the Shire of Toodyay

The attachment to the Officer Report is confidential in accordance with Section 5.23(f)(i) of the *Local Government Act 1995*:

- (f) *A matter that if disclosed, could be reasonably expected to –*
- (i) *Impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law.*

PURPOSE OF THE REPORT

To seek Council's endorsement of the proposed response to the Department of Local Government regarding the draft Authorised Persons Report regarding Inquiry into the Shire of Toodyay (the Report) as attached as Confidential Attachment 1 to this report.

BACKGROUND

Section 8.3 of the *Local Government Act 1995* (the Act) gives the Director-General of the Department of Local Government, Sport and Cultural Industries (the Department) authority to inquire into all local governments and their operations and affairs.

On 6 December 2018, an inquiry was authorised in accordance with 8.3(2) of the Act. The nature and scope of the inquiry was as follows:

- The adequacy of and adherence to Council's policies and procedures by both Elected Members and staff;
- Enforcement action undertaken by the Shire;
- The function of the Audit Committee;
- Declarations of interests by Elected Members;
- The culture within the Shire; and
- Any other matter that comes to the persons attention during the inquiry under section 8.4(2) of the Act.

In order to undertake this investigation, several directions notices were issued to the Shire under section 8.5 of the Act to provide documents and information. Voluntary interviews were also conducted during the investigation.

COMMENTS AND DETAILS

The Department issued the Report to current Shire Councillors and the Chief Executive Officer on 21 July 2020. The accompanying correspondence requested written comments on the draft report to be provided within 21 days of the date of the letter (20 July 2020).

Officers sought an extension to the deadline for submission of a response to enable Council to hold a workshop followed by a Special Council Meeting to endorse the response for submission to the Department. Officers received confirmation of approval of the extension on 6 August 2020.

A workshop with Councillors and senior officers was held on 4 August 2020 to consider the report and Council's response to the findings contained in the report. Based on this workshop, a response has been drafted for Council's consideration and endorsement for submission to the Department as attached as a Confidential Attachment to this report.

Officers recommend that if Council wishes to discuss the contents of the Response, a motion is put to move behind closed doors given the confidential nature of the documents as outlined above.

IMPLICATIONS TO CONSIDER

Consultative:

- Department of Local Government, Sport and Cultural Industries

Strategic:

This report relates to the following objective of the Shire's *Strategic Community Plan 2028*:

Objective 3: Ensure rigorous organisational systems

S 3.2 Operate to best practice management in all areas.

Policy related:

The following policies have been considered as part of the report;

- CS5 Legal Representation and Costs Indemnification
- CS6 Issue of Writ, Summons or Other Process
- F.03 Purchasing
- F.12 Disposal of Property
- F.02 Volunteering Policy

Financial:

Officers have consulted with the Department regarding the potential for costs relating to the Inquiry to be charged to the Shire. This decision is at the discretion of the Director-General of the Department and will not be made until the conclusion of the Inquiry.

Legal and Statutory:

The Review will be undertaken with regard for the following:

- *Local Government Act 1995*
- *Local Government (Financial Management) Regulations 1996*
- *Local Government (Audit) Regulations 1996*
- *Local Government (Administration) Regulations 1996*
- *Local Government (Functions & General) Regulations 1996*

Risk related:

There is a risk that the outcomes of the Inquiry will not meet the expectations of some parts of the community. However, the outcomes are expected to improve the Shire's compliance, policies and procedures and provide training to mitigate the risks associated with procurement.

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. 241/08/20

MOVED Cr Ruthven

SECONDED Cr Rayner

That Council:

1. Authorises the Shire President to endorse Council's response to the Draft Inquiry into the Shire of Toodyay (the Report) attached as a confidential attachment to this report, for submission to the Department of Local Government, Sport and Cultural Industries (the Department).
2. Notes that:
 - (a) the Department will consider Council's (and other affected parties') responses prior to finalising the Report and making recommendations to the Minister for Local Government who will then table the Report and recommendations in State Parliament.
 - (b) the Report and recommendations will be publicly available once tabled in Parliament by the Minister for Local Government.
 - (c) the Department may seek to recover part or all the costs relating to the Inquiry from the Shire at the conclusion of the Inquiry.
3. Once the final Report and recommendations have been made public, requests the Chief Executive to present a report to Council as soon as is practicable, that outlines a proposed plan to respond to the relevant recommendations made by the Department.

MOTION CARRIED BY ABSOLUTE MAJORITY 8/0

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. 242/08/20

MOVED Cr Chitty

SECONDED Cr Pearce

That Council come from behind closed doors and Standing Orders be resumed at 4.56pm.

MOTION CARRIED 8/0

Having come from behind closed doors, the live stream was resumed at 4.56pm. The Shire President read aloud the result of Resolutions No. 240/08/20 and 241/08/20 for the benefit of the public.

7. CLOSURE OF MEETING

The Shire President declared the meeting closed at 5.00pm.