



Special Council Meeting

24 January 2024

Minutes

To: The President and Councillors.

Here within are the Minutes of the Special Council Meeting of the Shire of Toodyay held at 1.00pm on the above-mentioned date in the Shire of Toodyay Council Chambers, 15 Fiennes Street, Toodyay WA 6566 that considered authorising expenditure of more than \$5,000 for provision of legal advice relating to the *Aboriginal Heritage Act 1972* in accordance with Council's Compliance and Enforcement Policy.

Suzie Haslehurst

CHIEF EXECUTIVE OFFICER



Our Vision, Purpose and Values

The Shire of Toodyay's Plan for the Future (Council Plan 2023-2033) is the Community's Strategic Plan outlining the direction that the Shire is undertaking to meet the needs and aspirations of its community.

Our Vision

A caring and visionary rural community, working together to preserve and enrich Toodyay's environment, character and lifestyle.

Our Purpose

The Shire of Toodyay exists to meet the needs of current and future generations through an integration of environmental protection, social advancement and economic prosperity.

Our Values

We conduct ourselves in line with values the local community cares deeply about:

- **Integrity** - we behave honestly to the highest ethical standard;
- **Accountability** – we are transparent in our actions and accountable to the community;
- **Inclusiveness** – we are responsive to the community and we encourage involvement by all people; and
- **Commitment** – we translate our plans into actions and demonstrate the persistence that will provide results.

Community Aspirations

There are five core performance areas in this plan: People, Planet, Place, Prosperity, and Performance. These areas are interrelated, and each must be satisfied to deliver excellent quality of life in the Shire of Toodyay.

For each area, there is an overarching aspirational statement and desired outcomes, summarised in the Council Plan which is available on the Shire's website at: <https://www.toodyay.wa.gov.au/documents/432/council-plan-plan-for-the-future-2023-2033>

Disclaimer

Any discussion regarding a planning matter or other application that any statement or intimation of approval made by any member or officer of the Shire of Toodyay during the course of any meeting is not intended to be and is not to be taken a notice of approval from Council. No action should be taken on any item discussed at a Council Meeting prior to written advice on the resolution of the Council being received. Any plans or documents contained in this document may be subject to copyright law provisions (*Copyright Act 1998*, as amended) and the express permission of the copyright owner(s) should be sought prior to reproduction.

Availability of Meeting Agenda and its Attachments

Information about Council Meetings is located on the website

<http://www.toodyay.wa.gov.au/Council/Council-Meetings>

Agendas & Minutes are located under the heading "Council Meetings" at

<http://www.toodyay.wa.gov.au/Council/Council-Meetings/Agendas-Minutes-and-Notes>

Public copies are available by contacting the Shire on (08) 9574 9300.



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Preface

When the Chief Executive Officer approves these Minutes for distribution they are in essence "Unconfirmed" until the following a Special 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 a separate attachment to these Minutes with the exception of Confidential Items.

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

Unconfirmed Minutes

These minutes were approved for distribution on 25 January 2024.



Suzie Haslehurst

CHIEF EXECUTIVE OFFICER

Confirmed Minutes

These minutes were confirmed at a meeting held on 28 February 2024.

Signed: 

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



1 DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

Cr M McKeown, Shire President, declared the meeting open at 1.05pm and read aloud an Acknowledgement of Country:

"I acknowledge the Ballardong Noongar people, the traditional custodians of the land where we meet today and the Yued and Whadjuk people, who are traditional custodians of respective lands within the wider Shire of Toodyay. I pay my respect to their Elders, past, present and emerging."

The Shire President read through other preliminaries.

2 RECORDS OF ATTENDANCE

Members

Cr M McKeown	Shire President
Cr S Dival	Deputy Shire President
Cr C Duri	Councillor
Cr R Madacsi	Councillor
Cr S McCormick	Councillor
Cr J Prater	Councillor

Staff

Ms S Haslehurst	Chief Executive Officer
Ms T Bateman	Executive Manager Corporate and Community Services
Mr C Sullivan	Executive Manager Infrastructure, Assets & Services
Mr H de Vos	Executive Manager Development and Regulation
Mr M Werder	Project Manager
Mrs W Cowley	Governance Coordinator
Mrs M Rebane	Executive Assistant

Visitors

S Hefferon

2.1 APOLOGIES

Cr D Wrench Councillor

2.2 APPROVED LEAVE OF ABSENCE

Nil

3 DISCLOSURE OF INTEREST

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

4.1 PUBLIC QUESTION TIME

Nil.

5 PUBLIC SUBMISSIONS

Nil.

6 OFFICER REPORTS

6.1 EXECUTIVE SERVICES

6.1.1 Department of Planning Lands and Heritage Notices

Date of Report:	24 January 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	LAW1
Author:	S Haslehurst – Chief Executive Officer
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
Attachments:	<ol style="list-style-type: none"> 1. Notice 1; (confidential) Section 5.23(2) <i>(d) legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting</i> <i>(f)(i) a matter that if disclosed, could be reasonably expected to impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law. (under separate cover)</i> 2. Notice 2; (confidential) Section 5.23(2) <i>(d) legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting</i> <i>(f)(i) a matter that if disclosed, could be reasonably expected to impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law. (under separate cover)</i>

	<p>3. Boyagerring Brook and Avon River correspondence; (confidential) Section 5.23(2) <i>(d) legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting</i> <i>(f)(i) a matter that if disclosed, could be reasonably expected to impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law. (under separate cover)</i></p> <p>4. LGIS correspondence; (confidential) Section 5.23(2) <i>(d) legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting</i> <i>(f)(i) a matter that if disclosed, could be reasonably expected to impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law. (under separate cover)</i></p> <p>5. McLeods correspondence; and (confidential) Section 5.23(2) <i>(d) legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting</i> <i>(f)(i) a matter that if disclosed, could be reasonably expected to impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law. (under separate cover)</i></p> <p>6. Email to Councillors from the CEO. (confidential) Section 5.23(2) <i>(d) legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting</i> <i>(f)(i) a matter that if disclosed, could be reasonably expected to impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law. (under separate cover)</i></p>
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PURPOSE OF THE REPORT

To authorise expenditure of more than \$5,000 for provision of legal advice relating to the *Aboriginal Heritage Act 1972* in accordance with Council's Compliance and Enforcement Policy.

BACKGROUND

Following receipt of a complaint and subsequent investigation, the Department of Planning, Lands and Heritage has issued two prosecution notices in relation to alleged breaches of

the *Aboriginal Heritage Act 1972*. The first hearing for these matters is at 10.00am on 26 February 2024 at Northam Courthouse. Officers have been advised to seek legal advice and possible representation to defend the matter.

COMMENTS AND DETAILS

Council's Compliance and Enforcement policy restricts the authority of the CEO to a maximum of \$5,000 for legal representation. Preliminary advice will not exceed this threshold. However, if legal representation is required to defend the Shire's position, indications are that costs could exceed \$15,000. Therefore, Council approval is required to authorise expenditure above \$5,000 should the need arise.

Officers have also contacted the Shire's insurers who are reviewing the matter with a view to a possible claim on the Shire's liability insurance to support the defence and any fines issued.

IMPLICATIONS TO CONSIDER

Consultative:

LGIS

McLeods Barristers and Solicitors

Strategic:

Shire of Toodyay Plan for the future - Council Plan 2023-2033

Outcome 9: Responsible and effective leadership and governance.

9.1. Provide strong, clear, and accountable leadership.

Policy related:

Compliance and Enforcement Policy.

Financial:

Advice received is that if the charges proceeded to a fully defended trial, that cost would be more than \$15,000. While the annual budget includes an allocation for legal fees, anticipated expenditure in excess of this allocation will need to be considered as part of the mid-year budget review.

Legal and Statutory:

Local Government Act 1995

6.8 Expenditure from municipal fund not included in annual budget

- (1) A local government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure —
 - (b) is authorised in advance by resolution*

* Absolute majority required.

Risk related:

The risks associated with this matter incur a risk rating of Extreme (20). The purpose of this report is for the request for expenditure to be approved and without it the Shire cannot expertly defend its position.

Workforce related:

This matter will consume significant officer time.

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. SCM014/01/24

MOVED Cr R Madacsi

SECONDED Cr J Prater

That Council:

1. Authorises the CEO to engage legal advice and representation up to a maximum of \$15,000 (excluding GST) in relation to prosecution of the Shire of Toodyay regarding the *Aboriginal Heritage Act 1972*, the first hearing for which is scheduled in court for 26 February 2024.
2. Notes the CEO is also liaising with the Shire's insurers regarding this matter.
3. In the event that advice is to proceed to a fully defended trial, requests the CEO to provide a further report to update Council and seek consideration for approval of further expenditure.
4. Requests the CEO to provide updates to Councillors via the weekly Shire President/CEO Briefing Notes and by email if considered urgent by the CEO.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 6/0 BY ABSOLUTE MAJORITY

7 CLOSURE OF MEETING

The Shire President declared the meeting closed at 1.08pm.