



HEPBURN SHIRE COUNCIL
SPECIAL MEETING OF COUNCIL
PUBLIC MINUTES

TUESDAY 9 APRIL 2019

TRENTHAM NEIGHBOURHOOD CENTRE

HIGH STREET

TRENTHAM

6:00PM

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MINUTES

TUESDAY 9 APRIL 2019

Trentham Neighbourhood Centre

High Street, Trentham

Commencing 6:00PM

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EVAN KING
CHIEF EXECUTIVE OFFICER
9 APRIL 2019

1. ACKNOWLEDGEMENT OF TRADITIONAL OWNERS

We would like to acknowledge we are meeting on Jaara people country, of which members and elders of the Dja Dja Wurrung community and their forebears have been custodians for many centuries.

On this land, the Jaara people have performed age old ceremonies of celebration, initiation and renewal.

We acknowledge their living culture and their unique role in the life of this region.

2. SAFETY ORIENTATION

Emergency exits and convenience facilities at the venue to be highlighted to members of the public in attendance.

3. OPENING OF MEETING

PRESENT: Cr Don Henderson, Cr Kate Redwood AM, Cr John Cottrell, Cr Greg May, Cr Neil Newitt, Councillor-Elect Licia Kokocinski

IN ATTENDANCE: Mr Evan King Chief Executive Officer, Mr Bruce Lucas Director Infrastructure and Development Services, Mr Steve Millard Manager Governance Compliance and Risk, Ms Rebecca Smith Governance and Information Officer.

STATEMENT OF COMMITMENT

“WE THE COUNCILLORS OF HEPBURN SHIRE
DECLARE THAT WE WILL UNDERTAKE ON EVERY OCCASION
TO CARRY OUT OUR DUTIES IN THE BEST INTERESTS
OF THE COMMUNITY
AND THAT OUR CONDUCT SHALL MAINTAIN THE STANDARDS
OF THE CODE OF GOOD GOVERNANCE
SO THAT WE MAY FAITHFULLY REPRESENT
AND UPHOLD THE TRUST PLACED IN THIS COUNCIL BY THE

4. WELCOME BY THE MAYOR

The Special Meeting of Council has been called to conduct the following business:

- The taking of the Oath or Affirmation of Office and declaration to abide by the Councillor Code of Conduct by the Councillor-elect of Coliban Ward under Section 63 of the Act; and
- Confidential item: Daylesford Holiday Park New Section 17D Crown Land Lease – Consider Public Submissions Under Section 223 of the Act.

The Ordinary Meeting of Council for the month of April will be held on Tuesday 16 April 2019. Any normal Council business and public question time will be conducted at that time.

5. APOLOGIES

Cr Fiona Robson

6. DECLARATIONS OF CONFLICTS OF INTEREST

Nil.

7. ITEMS OF URGENT BUSINESS

Nil.

8. TAKING THE OATH OR AFFIRMATION OF OFFICE AND DECLARATION TO ABIDE BY THE CODE OF CONDUCT

LEGISLATIVE REQUIREMENTS

As per section 63(1) of the Local Government Act 1989 (The Act), before being capable of acting as a Councillor, all persons elected to be Councillors must:

- a. take the oath or affirmation of office; and
- b. read the Councillor Code of Conduct and make a declaration stating that they will abide by the Councillor Code of Conduct.

Until these requirements have been completed an elected person cannot act as a Councillor. It is an Offence under Section 66 of The Act to act as a Councillor while being incapable to do so. Further if an elected person does not complete the requirements within three (3) months of the date they were declared elected, their position will become vacant and a new election (which they cannot participate in) will be held to fill this vacancy.

OATH OR AFFIRMATION OF OFFICE

Under the Local Government Act 1989, the following oath or affirmation of office is to be taken by a Councillor in accordance with Part 2 of the Oaths and Affirmations Act 2018:

"I will undertake the duties of the office of Councillor in the best interests of the people in the municipal district of Hepburn Shire and faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 1989 or any other Act to the best of my skill and judgment."

CODE OF CONDUCT DECLARATION

"I hereby declare that I have read the Councillor Code of Conduct for Hepburn Shire Council adopted on 7 February 2017 and declare that I will abide by this Code."

The declaration to abide by a Councillor Code of Conduct must be:

- a. In writing; and
- b. dated and signed before the Chief Executive Officer;

The Councillor-Elect Licia Kokocinski took the Affirmation of Office and declared to abide by the Councillor Code of Conduct.

**ATTACHMENT 1 - SIGNED AFFIRMATION AND DECLARATION TO
ABIDE BY THE COUNCILLOR CODE OF CONDUCT – CR LICIA
KOKOCINSKI**

▶ AFFIRMATION AND DECLARATION TO
ABIDE BY THE CODE OF CONDUCT

Oath

"I swear by Almighty God that I will undertake the duties of the office of Councillor in the best interests of the people in the municipal district of Hepburn Shire and faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 1989 or any other Act to the best of my skill and judgment."

The Oath must be dated and signed before the Chief Executive Officer and recorded in the Minutes of Council.

Councillor name: **Ms Licia Kokocinski**

CEO: (as witness) **Mr Evan King**

Signature:

Signature:

Date:

Date:

OR

AFFIRMATION

"I solemnly and sincerely declare and affirm that I will undertake the duties of the office of Councillor in the best interests of the people in the municipal district of Hepburn Shire and faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 1989 or any other Act to the best of my skill and judgment."

The Affirmation must be dated and signed before the Chief Executive Officer and recorded in the Minutes of Council.

Councillor name: **Ms Licia Kokocinski**

CEO: (as witness) **Mr Evan King**

Signature:

L. Kokocinski

Signature:

Evan King

Date:

9/4/2019.

Date:

9/4/19

CODE OF CONDUCT DECLARATION

"I hereby declare that I have read the Councillor Code of Conduct for Hepburn Shire Council adopted on 7 February 2017 and declare that I will abide by this Code."

The declaration to abide by a Councillor Code of Conduct must be:

- a) In writing; and
- b) dated and signed before the Chief Executive Officer;

Councillor name: **Ms Licia Kokocinski**

CEO: (as witness) **Mr Evan King**

Signature: *L. Kokocinski*

Signature: *Evan King*

Date: *9/4/2019*

Date: *9/4/19*

9. OFFICER REPORTS

9.1. DAYLESFORD HOLIDAY PARK – SURRENDER OF EXISTING LEASE AND PROPOSED NEW LEASE – DVHP PTY LTD

DIRECTOR INFRASTRUCTURE & DEVELOPMENT SERVICES

COUNCIL IS CONSIDERING THIS REPORT IN ITS ROLE AS COMMITTEE OF MANAGEMENT FOR DAYLESFORD VICTORIA PARK RESERVE

In providing this advice to Council as the Manager Governance Compliance & Risk, I Steve Millard have no interests to disclose in this report.

PURPOSE

The purpose of this report is to approve the execution of the new section 17D Crown land lease following the advertising of the intent to enter into the lease under section 190 of the *Local Government Act 1989* and consideration of any public submissions made under section 223 of the Act

BACKGROUND

Council, at its August 2018 meeting, approved the terms of a commercial settlement of the dispute between Council, Department of Environment, Land, Water and Planning (DELWP), a number of permanent residents and DVHP Pty Ltd. One of the settlement terms included that the existing lease be surrendered and a new 21 year Crown land lease be granted to the sitting tenant, DVHP Pty Ltd.

Council, at its February 2019 meeting, approved the advertising of the intent to enter into the new lease under section 190 of the Act.

ISSUE/DISCUSSION

Council officers advertised Council's intent to enter the new lease in the Advocate newspaper on 27 February 2019 and invited public submissions under section 223 of the Act.

The last date for receipt of public submissions was 29 March 2019.

No public submissions were received as at 29 March 2019.

At the time that DVHP Pty Ltd took the assignment of the existing lease, the existing lease was used as security for a loan by way of a mortgage of the lease. The new lease is to be similarly mortgaged as a continuing security for the loan. Accordingly, new Consent to Mortgage and Right of Entry documentation will need to be provided by Council at the time of execution of the new lease. These documents provide the mortgagee with a right of entry to the property to operate the business or remove any assets owned by DVHP Pty Ltd that have been pledged to the bank as further security for the loan.

Council's solicitors have approved the new lease and the Consent to Mortgage and Right of Entry documentation are in the form as previously approved by Council's solicitors at the time of the lease assignment to DVHP Pty Ltd.

COUNCIL PLAN/LEGISLATIVE COMPLIANCE

The new lease will be granted under section 17D of the *Crown Land (Reserves) Act 1978*.

Council has given 28 days' notice of its intent to enter into the new lease under section 190 of the Act and has invited public submissions under section 223 of the Act.

Council Policy 9: Council Owned & Controlled Property requires that appropriate written occupancy arrangements be in place to support good governance objectives and principles.

FINANCIAL IMPLICATIONS

There are no proposed changes to the rental payable under the new lease and no other financial implications resulting from the grant of the new lease.

RISK IMPLICATIONS

The new lease requires DVHP Pty Ltd to indemnify the Crown and Council and have a minimum public liability insurance cover of \$20m.

ENVIRONMENTAL/SOCIAL/ECONOMIC IMPLICATIONS

None noted.

COMMUNITY AND STAKEHOLDER ENGAGEMENT

Refer to Council Plan/Legislative Compliance section.

CONCLUSION

As part of the commercial settlement approved by Council at its August 2018 meeting relating to the dispute between Council, DELWP, a number of permanent residents and DVHP Pty Ltd, a new 21 year Crown land lease is to be granted to the sitting tenant, DVHP Pty Ltd, together with a surrender of the existing lease and mortgagee consent documentation.

OFFICER'S RECOMMENDATION

That Council:

9.1.1. Authorises the Mayor and Chief Executive Officer to sign and affix the Council seal to the Deed of Surrender of the existing lease to DVHP Pty Ltd, the new Crown land lease granted to DVHP Pty Ltd, Consent to Mortgage of Lease and Right of Entry documentation; and

9.1.2. Authorises Council officers to provide all executed documentation to Department of Environment, Land Water and Planning for the consent of the Minister for Energy, Environment and Climate Change.

MOTION

That Council:

9.1.1. Authorises the Mayor and Chief Executive Officer to sign and affix the Council seal to the Deed of Surrender of the existing lease to DVHP Pty Ltd, the new Crown land lease granted to DVHP Pty Ltd, Consent to Mortgage of Lease and Right of Entry documentation; and

9.1.2. Authorises Council officers to provide all executed documentation to Department of Environment, Land Water and Planning for the consent of the Minister for Energy, Environment and Climate Change.

Moved: Cr Kate Redwood AM

Seconded: Cr John Cottrell

Carried

**ATTACHMENT 2 - CONFIDENTIAL - DEED OF SURRENDER OF LEASE
(ISSUED TO COUNCILLORS UNDER SEPARATE COVER)**

**ATTACHMENT 3 - CONFIDENTIAL - NEW CROWN LAND LEASE
(ISSUED TO COUNCILLORS UNDER SEPARATE COVER)**

10. CLOSE OF MEETING

The Meeting closed at 6:18 pm.
