

MINUTES

FOR THE
GREATER SHEPPARTON CITY COUNCIL

SPECIAL COUNCIL MEETING

HELD ON
TUESDAY 15 JULY 2008
AT 1.00PM

IN THE COUNCIL BOARD ROOM
90 WELSFORD STREET

COUNCILLORS:

Cr Eric Bott (Mayor)
Cr Kevin Ryan (Deputy Mayor)
Cr Chris Hazelman
Cr Jenny Houlihan
Cr Sondrae Johnson
Cr Dallas Terlich
Cr Bruce Wilson

VISION

GREATER SHEPPARTON
AS THE FOOD BOWL OF AUSTRALIA,
A SUSTAINABLE, INNOVATIVE
AND DIVERSE COMMUNITY
GREATER FUTURE

M I N U T E S
FOR THE
SPECIAL COUNCIL MEETING
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CHAIR
CR ERIC BOTT

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PRESENT: Councillors Eric Bott, Kevin Ryan, Chris Hazelman, Jenny Houlihan, Sondrae Johnson and Bruce Wilson

1. ACKNOWLEDGEMENT

“We the Greater Shepparton City Council, begin today’s meeting by acknowledging the traditional owners of the land which now comprises Greater Shepparton. We pay respect to their tribal elders, we celebrate their continuing culture, and we acknowledge the memory of their ancestors”.

2. APOLOGIES

Moved by Cr Johnson

That the apology of Councillor Dallas Terlich be received and a leave of absence be granted.

CARRIED

3. DECLARATION OF PECUNIARY INTERESTS, CONFLICT OF INTERESTS AND INTERESTS

Nil.

4. DEPUTATIONS AND PETITIONS

4.1 Deputation in Relation to Item 5.2 – Request to Grant a Rebate and Concession on all Outstanding Debts Currently Owed to the Council by Shepparton Hotel Pty Ltd

Moved by Cr Hazelman

That the Standing Orders be suspended to allow Mr Milvan Muto to address the Councillors on behalf of Shepparton Hotel Pty Ltd.

CARRIED

Mr Milvan Muto, representing Shepparton Hotel Pty Ltd addressed the Council on Item 5.2 of this agenda, in order to provide the Council with further information in support of the request by Shepparton Hotel Pty Ltd for the grant of a rate rebate and concession on outstanding debts owed.

Moved by Cr Hazelman

That Standing Orders be resumed

CARRIED

5. MANAGEMENT REPORTS

FROM THE BUSINESS AND FINANCE DIRECTORATE

5.1 Adoption of the Budget 2008-2009

Summary

At the Special Meeting of the Council held on Tuesday 17 June 2008, it was resolved that:

1. *The Budget annexed to this resolution and initialled by the Chairman of the Council for identification, be the Budget prepared by the Council for the purpose of section 127 of the Local Government Act 1989.*
2. *The Chief Executive Officer be authorised to give public notice of the preparation of the Budget in accordance with section 129 and section 223 of the Local Government Act 1989.*
3. *The Council consider any written submissions on any proposal contained in the Budget, made in accordance with section 223 of the Local Government Act 1989 at the Special Meeting of the Council to be held on Tuesday 15 July 2008.*

Submissions

At the conclusion of the public notice period, four submissions regarding the Budget were received. Copies of the written submissions have been circulated to Councillors and are attached.

The following submissions were received:

- Mr Russell Cooper
- Mr Ian Dann
- Mr Terry Court on behalf of the Tatura Revitalisation Committee
- Mr John P C Gray

Moved by Cr Wilson

That having publicly advertised the preparation of the Budget 2008-2009 and having considered the written submission from:

- (a) Mr Russell Cooper, determines that the submission be received and noted;
- (b) Mr Ian Dann, determines that the submission be received and noted;
- (c) Mr Terry Court on behalf of the Tatura Revitalisation Committee, determines that the submission be received and discussions be held with the Tatura Community, with a view to further consideration of this submission at the Council's mid-year budget review;
- (d) Mr John P C Gray, determines that the submission be received and noted,

the Council adopt the Budget as prepared and incorporated in the Minutes of the Special Meeting of the Council held on 15 July 2008 and that the Chief Executive Officer be authorised to give public notice of the adoption of the Budget in accordance with section 130 of the *Local Government Act 1989*.

CARRIED

5. MANAGEMENT REPORTS

5.2 Request to Grant a Rebate and Concession on all Outstanding Debts Currently Owed to the Council by Shepparton Hotel Pty Ltd

Summary

The Council has received a request to grant a rebate and concession to all outstanding debts currently owed to the Council by Shepparton Hotel Pty Ltd.

Moved by Cr Wilson

That the Council not:

1. Grant a rebate or concession under section 169 of the *Local Government Act 1989* in respect of the property known as the Shepparton Hotel situated at 342-352 Wyndham Street Shepparton for the 2006/2007 or 2007/2008 rating periods.
2. Grant a rebate or concession under section 169 of the *Local Government Act 1989* in respect of the property known as the Shepparton Hotel situated at 342-352 Wyndham Street Shepparton for the 2008/2009 rating period.
3. Make a contribution to the Shepparton Hotel towards the restoration and preservation of the building situated at 342-352 Wyndham Street Shepparton.

CARRIED

Background

Mr Milvan Muto, Secretary for Shepparton Hotel Pty Ltd, has submitted a written request for a rebate or concession to be granted under the provisions set out in section 169 of the *Local Government Act 1989*, on all outstanding debts currently owed to the Council in respect of the Shepparton Hotel site “to enhance the prospect of restoring the Shepparton Hotel to its former glory and therefore preserve the building which is of significant historical interest to our community.”

Under section 169 of the *Local Government Act 1989*, the Council may grant a rebate or concession in relation to any rate or charge to:

- (a) Assist the proper development of the municipal district; or
- (b) Preserve buildings or places in the municipal district which are of historical or environmental interest; or
- (c) Restore or maintain buildings or places of historical, environmental, architectural or scientific importance in the municipal district; or
- (d) Assist the proper development of part of the municipal district.

Risk Management

Where a rebate or concession is granted, (particularly where it affects multiple properties) the outcome could have an unfavourable impact on others, either through increased rates or decreased services. This would adversely affect the Council's financial planning and its compliance with the financial planning objectives in the *Local Government Act 1989*.

A Council resolution granting a rebate must specify the benefit to the community as a whole resulting from the rebate.

5. MANAGEMENT REPORTS

5.2 Request to Grant a Rebate and Concession on all Outstanding Debts Currently Owed to the Council by Shepparton Hotel Pty Ltd (continued)

A Council may only grant a rebate to owners of specified rateable properties not exceeding one third of the rateable properties in the municipal district; or to owners of rateable properties who undertake to satisfy terms that directly relate to the community as are specified by the Council.

Generally, conditions or undertakings are required and if not met, may require the rebate or concession to be repaid in part or full as the case may be.

If the Council resolved to grant a rate rebate or concession, there would need to be appropriate processes in place to ensure consistency with sections 169 and 223 of the *Local Government Act 1989*.

Options

1. Resolve to grant a rebate or concession under section 169 of the *Local Government Act 1989*.
2. Resolve not to grant a rebate or concession under section 169 of the *Local Government Act 1989*.
3. Approve a contribution towards the restoration and preservation of the building situated at 342-352 Wyndham Street Shepparton.
4. Refuse a contribution towards the restoration and preservation of the building situated at 342-352 Wyndham Street Shepparton.

Policy Implications

Council policies have been considered.

Best Value Implications

The proposal is consistent with the Best Value principles.

Financial Implications

As at 2 July 2008, the following debts were owed to the Council in respect of the property known as the Shepparton Hotel, situated at 342-352 Wyndham Street Shepparton and owned by Shepparton Hotel Pty Ltd:

Rates and Charges Arrears, including penalty interest [outstanding to 30 June 2008]	\$ 24,261.95
Costs relating to Emergency Order safety works	\$ 26,790.45
Total Amount Outstanding	\$ 51,052.40

However, it should be noted that on 6 July 2007, the Council initiated legal proceedings in the Magistrates Court at Shepparton for unpaid rates and charges relating to the 2006/2007 rating year. This matter is still before the Magistrates Court and the Council continues to seek payment of all outstanding rates and charges relating to the property and has advised Mr Muto that, pending the outcome, the Council will seek to pursue payment of all legal expenses incurred. To date, legal expenses relating to this matter amount to \$5,515.20. Legal expenses have not been included in the amount shown above.

5. MANAGEMENT REPORTS

5.2 Request to Grant a Rebate and Concession on all Outstanding Debts Currently Owed to the Council by Shepparton Hotel Pty Ltd (continued)

The property was extensively damaged by fire on 2 December 2007. An Emergency Order was placed on the property to ensure public safety. The Council was required to arrange for loose roofing iron to be removed from the property, due to predicted high winds, and to secure the premises with temporary fencing. The Council is trying to recover the costs (\$26,790.45 to date) for these safety works from the owner. Charges relating to the security fencing are currently ongoing and amounts to 2 July 2008 have been included in the costs shown above.

The Council's Heritage Study identified around 240 heritage places which may, arguably, also be eligible for a rate rebate or concession to assist the restoration, preservation and maintenance of buildings or places of historical or heritage importance to the municipality, depending on the "benefit to the community as a whole" which may be determined by the Council.

A benefit may be generated by a rebate to only one property if there was something unique about that property. Possibly this could arise if:

- The property has unique characteristics (for example, the type of building, its use or its location);
- Only the owner of that property undertakes to satisfy terms specified by the Council under subsection (1B) (b) of section 169 of the *Local Government Act 1989*.

A rebate must be targeted at the achievement of community benefit.

The Council raises rates and charges on all properties in order to provide services and infrastructure to the community. Any rebate offered by the Council which has not been budgeted for will result in a reallocation of resources and reduction of other services to fund such a rebate scheme. Any such reduction would need to be offset by a rate rise for all ratepayers.

Legal/Statutory Implications

Under section 169, of the *Local Government Act 1989*, the Council may resolve to grant rebates or concessions to assist the proper development of the municipal district, to preserve, maintain and restore historical, environmental, architectural or scientific buildings or places of interest important within and to the municipality or to generally assist the proper development of all or part of the municipal district.

Generally conditions or undertakings are required and if not met require the rebate or concession to be repaid in part or full as the case may be.

If the option of a rate rebate or concession was adopted by the Council there would need to be appropriate processes in place to ensure consistency with sections 169 and 223 of the *Local Government Act 1989*.

Even where a proposal will achieve a specific community benefit, the Council can decide not to grant a rebate or concession if it considers that the benefit is not sufficient to justify the disbenefit to others resulting from decreased rate revenue from the affected properties.

5. MANAGEMENT REPORTS

5.2 Request to Grant a Rebate and Concession on all Outstanding Debts Currently Owed to the Council by Shepparton Hotel Pty Ltd (continued)

Consultation

Legal opinion in relation to the granting of rebates and concessions under section 169 of the *Local Government Act 1989* was received in preparation of this report.

Strategic Links

a) Greater Shepparton 2030 Strategy

The proposal is consistent with Greater Shepparton 2030 Strategy.

b) Council Plan

The proposal is consistent with the Council Plan, including the Strategic Resource Plan, to “implement best practice systems of governance, administration and finance that support the delivery of Council programs and services to the community of Greater Shepparton” and to “provide reasonable stability in the level of rate burden”.

c) Rating Strategy

The proposal is consistent with the Council’s Rating Strategy which “provides equity in the distribution of the rate burden across residents”.

Attachments

1. Request for rebate or concession from the Shepparton Hotel
2. Excerpt of section 169 from the *Local Government Act 1989*.

5. MANAGEMENT REPORTS

FROM THE DEVELOPMENT AND INFRASTRUCTURE DIRECTORATE

5.3 Community Facility at Drive in Site

Summary

Amendment C78 to the Greater Shepparton Planning Scheme and Planning Permit 2006-42 proposes the rezoning of the land at 8025 – 8031 Goulburn Valley Highway, Shepparton (former Drive-in site) from the Business 4 Zone (BZ4) to Business 1 Zone (B1Z) and the redevelopment of the land for a neighbourhood centre.

At its meeting on 6 May 2008, Council resolved to:

“accept the recommendation of the Panel to adopt Amendment C78 to the Greater Shepparton Planning Scheme subject to the conditions outlined in the Panel recommendations and with the changes recommended to the Planning Permit by the Panel as shown in Appendix C of the Panel Report”.

and to:

“submit Amendment C78 and Planning Permit 2006-42 to the Minister for Planning for approval, following the preparation and signing of a Section 173 Agreement which outlines the lease arrangements between the Council and the land owner for the 290m² of community space within the proposed development.

While the independent Planning Panel recommended that the community facility should be located in the south east corner of the tenancy shown as Tenancy 6 on the Valentine’s Day Plan (attached), during negotiations with the landowner and developer, a request has been made to reconsider the Council resolution and to relocate the community facility to the developer’s preferred location; this being within the northern part of the tenancy shown as Tenancy 7 on the Valentine’s Day Plan.

If this change was accepted by the Council, it would require justification to the Minister for Planning, as it would be against the recommendation of the independent Panel appointed by the Minister. The developer’s preferred location does not integrate with the core retail element of the proposed development, which may compromise the development’s role as a neighbourhood centre and thus, be counter to relevant Council and State policies.

Moved by Cr Hazelman

That having considered the request of the landowner and developer to relocate the community facility to the northern part of Tenancy 7 on the Valentine’s Day Plan, the Council affirms its decision of 6 May 2008 to adopt the recommendations of the independent Planning Panel in relation to Amendment C78, including the recommendation that the community facility be located in the south east corner of Tenancy 6 of the aforementioned Plan.

CARRIED

5. MANAGEMENT REPORTS

5.3 Community Facility at Drive in Site (Continued)

Moved by Cr Johnson

That the Standing Orders be suspended to allow Mr Peter Copoulos to address the Council.

CARRIED

Mr Peter Copoulos, representing Citywest Corp Pty Ltd addressed the Council on this item.

Moved by Cr Wilson

That the Standing Orders be resumed.

CARRIED

Background

The amendment and permit application apply to 8025 – 8031 Goulburn Valley Highway, Shepparton (being Lot 2 on LP 219151), which is the site of the former Drive-in on the corner of Riverview Drive and Goulburn Valley Highway, Shepparton. The application was made by Coomes Consulting on behalf of the developers and landowners 'Citywest Corp'.

Applicant/Property Details

The former Drive-in site is identified in the Greater Shepparton 2030 Strategy Plan and the Greater Shepparton Planning Scheme as a neighbourhood centre as part of the business framework plan. Initial discussions about the rezoning and subsequent development of the site between the Department of Planning and Community Development (DPCD), Council officers and the proponent (Citywest Corp Pty Ltd) established the need for community space on the site to meet these strategic objectives.

A social planning report (December 2006) was prepared by Dr Kate Kerkin on behalf of the proponents and recommended that 290m² of the total floor space within the neighbourhood activity centre aspect of the development be set aside for community facilities. The report recommended on page 4 (amongst other recommendations) that: *'The redevelopment of the Shepparton Drive In site should include provision for a neighbourhood centre and other community facilities (including outdoor play equipment, cycle and pedestrian pathways and seating).'*

The report also commented on page 21 that: *'the proposed redevelopment of the Shepparton Drive In site has the potential to reflect State Government and Greater Shepparton City Council policies about neighbourhood centre provision. The Shepparton Drive In site is premium land providing the opportunity to develop a community facility.'*

The addendum Social Planning Report (January 2008), also prepared by Dr Kerkin, identified on page 3: *'within the proposed development of the former Drive In site the Neighbourhood Activity Centre comprises four large tenancies and shared public open space on the southern boundary of the site, fronting Riverview Drive'*.

The community facility as identified was proposed for the mall area located between tenancies 1 to 4 on the southern side of the exhibited plans as part of the Amendment and attached to this report.

5. MANAGEMENT REPORTS

5.3 Community Facility at Drive in Site (Continued)

The Independent Planning Panel hearing held on 13-15 February 2008 included discussions on the location of the community facility and security. The Panel commented on page 32; *'it was proposed... that the most appropriate location for the community facility... would be in the south-east corner of Tenancy 6, with direct access from the car park.... The proponent stated that this location would also address its concerns about security.'*

The Panel Report recommended that: *'the community facility is located in the south-east corner of Tenancy 6, with access from the car park'*. The report also recommended that an agreement under section 173 of the *Planning and Environment Act 1987* be prepared as described on page 32.

At its Ordinary Meeting on 6 May 2008 the Council resolved to adopt the amendment and planning permit and forward it on the Minister for Planning subject to the preparation and signing of a Section 173 Agreement which outlines the lease arrangements between the Council and the land owner for the 290m² of community space within the proposed development.

During negotiations over the lease arrangements within the Section 173 Agreement, the proponent wished to relocate the community space to the north east corner of the development adjoining the proposed restricted retail.

A request has now been made to review the Council resolution of 6 May 2008 and relocate the community facility to the north east corner of the development. Justification for the new location include the costs to the developer of having a prime retail site occupied by a non commercial use and potential parking benefits of locating the community facility away from the supermarket. This request however does not give the appropriate weight to the previous discussions between all parties prior to exhibition of the amendment, the recommendations of the Social Planner, the research done by Council officers, discussions at the hearing itself as outlined above in this report and the expert review and consideration that the Independent Planning Panel has already given to this matter. The new location does not integrate with the core retail part of the site which in turn may compromise the development's role as a neighbourhood centre and thus be counter to relevant Council and State policies. The table below provides a detailed response to the proponents' submission.

As such the recommendations of the Panel, which was appointed by the Minister of Planning to independently review the amendment, should be supported, i.e. that the community facility be located within the south east corner of Tenancy 6.

Policy Implications

This recommendation does not conflict with existing Council policy.

Financial Implications

There are no financial costs associated with this proposal other than the longer term rental considerations in relation to the community facility.

Legal/Statutory Implications

The proposal is consistent with all relevant legislation.

5. MANAGEMENT REPORTS

5.3 Community Facility at Drive in Site (Continued)

Options

1. Adopt the current recommendation reaffirming the previous resolution of 6 May 2008 and, in addition, amend condition 1 of Planning Permit 2006-42 to reflect the Panel's recommendation.
2. Accept the proponents' request to revise the location of the community facility; provide justification for not accepting the recommendation of the Planning Panel as required by the Minister; and further to adopt Amendment C78 and Planning Permit 2006-42 and forward to the Minister for Planning subject to amending condition 1 of the planning permit to 'locate the community space to the northern part of the site, following the preparation and signing of a Section 173 Agreement which outlines the lease arrangements between the Council and the land owner for the 290m² of community space within the proposed development.'

Response to Issues raised by Citywest Corp

Issues raised by Citywest Corp Letter dated 1 July 2008	Response
The community facility should be located in the north east corner of the development – contrary to the recommendation of the Panel. This will result in more accessible parking away from retail and supermarket. (Paragraph 5, "Summary")	<ul style="list-style-type: none"> • The Council already agreed to the relocation of the community facility from the mall area (as exhibited) to the south east corner of Tenancy 6, which was then also supported by the proponent, the proponent's Social Planner and the Panel. • The Panel did not make recommendations to influence negotiations on the terms of the lease, however was clear on specifying the location of the community facility within the centre. • The proposed location is not well integrated with the other activities in the centre that clients are likely to patronise.
The developer accepts through the Panel process and Council negotiation that a community facility of 290m ² is to be provided on the site. (Paragraph 1, "Background") (Paragraph 2, "Submission")	<ul style="list-style-type: none"> • The DPCD has also made it clear that support for the proposal was conditional on this being provided. • This was also the recommendation of the Social Planning Report that was provided by the developer to support the application.
The developer has experienced costs and delays associated with Amendment C69. (Paragraphs 2 & 3, "Background")	<ul style="list-style-type: none"> • The proposal would have had little strategic justification without the approval of Amendment C69. • Amendment C69 introduced new local policies as a result of the Greater Shepparton 2030 Strategy Plan. • The identification of the Drive-in as a neighbourhood centre was part of the overall Business Framework Plan and it was ultimately the Council's role to defend this policy in response to one of the submissions. • The representation by the developer at this Panel Hearing was their own choice.

5. MANAGEMENT REPORTS

5.3 Community Facility at Drive in Site (Continued)

<p>The Council changed its position on the rental agreement from the exhibited draft Planning Permit prior to the Panel hearing. (Paragraphs 4 & 5, "Background")</p>	<ul style="list-style-type: none"> • The actual terms of the Agreement had not been discussed in great detail leading up to the exhibition period. • At the time of exhibition of Amendment C78, Council officers decided to carry out research on whether such a facility could be successful at full market rent, and the Councillors were also briefed on this. • Our research showed that full market rent would place severe restrictions on the success of the facility and it would therefore be unlikely that the strategic intent of the development as a neighbourhood centre would be met.
<p>The location recommended by the Panel is not ideal for the developer. (Paragraph 6, "Background")</p>	<ul style="list-style-type: none"> • The community facility is required in order for the centre to meet its strategic role as a <i>neighbourhood centre</i>. • The community facility should not be viewed purely as an impost on the developer. • A successful facility has potential to draw more people to the centre and support other commercial operations on the site including the supermarket.

Attachments

1. Exhibited Development plans for Amendment C78.
2. Valentines Day Plan for Planning Permit 2006-42 and Amendment C78.
3. Shepparton Drive In Site: Social Planning Report Final Report prepared by Dr Kate Kerkin and Emma Shepherdson December 2006.
4. Shepparton Drive In Site: Addendum Report - Social Planning Prepared by Dr Kate Kerkin, January 2008.
5. Excerpts from Greater Shepparton Planning Scheme Amendment C78 and Planning Permit no 2006-42: Panel Report, April 2008.
6. Letter of request from Citywest Corp Pty Ltd, 1 July 2008.

6. URGENT AND OTHER BUSINESS NOT INCLUDED ON THE AGENDA

Nil.

Cr Bruce Wilson gave a personal explanation regarding the WIN Television news report aired on Thursday 10 July 2008.

Cr Sondrae Johnson gave a personal explanation regarding Cr Wilson's personal explanation.

MEETING CLOSED 14.05PM

CONFIRMED

CHAIR