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AGENDA

**ORDINARY MEETING OF COUNCIL
FOR
WEDNESDAY 25 MARCH 2020
TO BE HELD AT COBRAM CIVIC CENTRE, PUNT ROAD COBRAM
COMMENCING AT 6:00 PM**

RECORDING

Consistent with section 72 of our Meeting Procedures Local Law, Council officers have been authorised to record the public session of this meeting using an audio recording device.

1. CALLING TO ORDER – CEO

2. PRAYER

Almighty God we humbly ask you to guide our deliberations for the welfare and benefit of the Moira Shire and its people whom we serve.

Amen

3. ACKNOWLEDGEMENT OF COUNTRY

We, the Moira Shire Council, would like to acknowledge the traditional owners of the land upon which we meet and pay our respects to their Elders both past and present.

4. APOLOGIES & REQUESTS FOR LEAVE OF ABSENCE

5. DECLARATION UNDER ACTS, REGULATIONS, CODES OR LOCAL LAWS

6. DECLARATION OF ANY INTEREST OR CONFLICT OF INTEREST

Councillor Mustica has given notice that there are projects being considered in the upcoming budget in which he has a conflict of interest. The projects are Catona Crescent Cobram drainage and Cobram East Drainage and the conflict arises because of a direct interest. Having received notice of these conflicts the Council is required to consider a motion as to whether it will consider the projects for inclusion in the upcoming budget. If the Council agrees to this it will enable Cr Mustica to participate in the budget process and fulfil his obligations as a Councillor.

RECOMMENDATION

That the Catona Crescent Cobram drainage and Cobram East Drainage projects be considered for inclusion in the 2020/21 Council budget.

Councillor Lawless has given notice that there are projects being considered in the upcoming budget in which he has a conflict of interest. The projects are Muckatah anabranch drainage, a direct interest and the Tungamah Recreation Reserve an indirect interest. Having received notice of these conflicts the Council is required to consider a motion as to whether it will consider the projects for inclusion in the upcoming budget. If the Council agrees to this it will enable Cr Lawless to participate in the budget process and fulfil his obligations as a Councillor.

RECOMMENDATION

That the Muckatah anabranch drainage and the Tungamah Recreation Reserve projects be considered for inclusion in the 2020/21 Council budget.

7. CONFIRMATION OF MINUTES OF PREVIOUS MEETING

Recommendation: “That the minutes of the Ordinary Council Meeting held on Wednesday, 26 February 2020, as prepared, be confirmed.”

8. COUNCILLOR REPORTS

NIL

9. OFFICER REPORTS FOR DETERMINATION

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NIL

11. NOTICES OF MOTION

NIL

12. PETITIONS AND JOINT LETTERS

NIL

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NIL

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FILE NO: F/2020
4. A WELL RUN COUNCIL

ITEM NO: 9.1.1

EXPANDED CHIEF EXECUTIVE OFFICER'S DELEGATION DURING THE CURRENT PANDEMIC DECLARATION.

RECOMMENDATION

That

1. During the declared State Of Emergency arising from the global pandemic COVID-19 and in circumstances where a Council quorum cannot be formed the Council hereby resolves that the existing CEO's delegation is expanded to include all matters that would normally be determined by the Council excluding such matters that are specifically prohibited by the Local Government Act or any other relevant Act.
2. The CEO report to the next available meeting of the Council on decisions made under the expanded delegation.

1. Executive Summary

The spread of COVID-19 has led Victorian councils to consider life without Council meetings. There is, for example, the possibility of the majority of Councillors being unable or unwilling to attend a Council meeting because of COVID-19.

Physical attendance at Council meetings is essential, unlike Boards of Regional Library Corporations, Councillors cannot participate in Council meetings by electronic or telephonic means.

The inability to form a quorum and conduct the normal business of the council would cause severe disruption to service delivery and so increasing the delegation to the CEO would enable the normal decision making of Council to continue in these unusual circumstances. The recommendation limits the extent and circumstances of when the increased delegation can be exercised.

2. Background and Options

Victorian councils delegate extensive decision making powers to their Chief Executive Officers. Delegation 'by exception' ensures that just about every decision that Council can make by resolution the Chief Executive Officer can make as a delegate. The Chief Executive Officer (and organisation) can, therefore, generally carry on the business of a council if the council is unable to meet due to lack of quorum.

There are exceptions to the power of delegation set out in s 98(1) of the *Local Government Act 1989* which exclude adoption of Budgets, returns of valuations, 223 submissions and other substantive matters.

Council should consider how best to ensure business continuity now that COVID-19 means that a Council meeting might not be able to be held.

3. Financial Implications

Financial decisions are made in accordance with Council's budget.

4. Risk Management

Risk is mitigated by having sound contingencies in place during the pandemic declaration and by limiting an expanded delegation to extenuating circumstances. .

5. Internal and External Consultation

This is a Council decision.

FILE NO: F/2020
4. A WELL RUN COUNCIL

ITEM NO: 9.1.1

EXPANDED CHIEF EXECUTIVE OFFICER'S DELEGATION DURING THE CURRENT PANDEMIC DECLARATION. (cont'd)

6. Regional Context

A state of Emergency has been declared in Victoria and the World Health Organisation has declared a global pandemic.

7. Council Plan Strategy

A well run Council.

8. Legislative / Policy Implications

This report is in accordance with section 98 of the Local Government Act 1989.

9. Environmental Impact

There are no environmental impact considerations associated with this report.

10. Conflict of Interest Considerations

There are no conflict of interest considerations associated with this report.

11. Conclusion

The report recommendation seeks council's approval to expand the CEO's delegations during the declared State of Emergency in circumstances where a Council quorum cannot be formed.

Attachments

Nil

FILE NO: F18/551
4. SMARTER DELIVERY OF SERVICES AND
PROGRAMS

ITEM NO: 9.1.1

MOIRA SHIRE COUNCIL DRAFT BUDGET 2020/21 AND 2020-2024 STRATEGIC RESOURCE PLAN

RECOMMENDATION

That Council:

1. Accept the draft 2020/21 Budget.
2. Accept the draft Strategic Resource Plan 2020-2024.
3. Authorise commencement of the statutory (S223) community consultation process for the draft budget and strategic resource plan as described in the Local Government Act 1989 and in doing so
 - o Receive written submissions until 5pm Friday 1 May 2020.
 - o If required, convene a Committee of Council comprising all available councillors to meet at 5pm Wednesday 6 May 2020 to hear any person wishing to be heard in support of their submission.
 - o Schedule a Special Council Meeting at 5.30pm Wednesday 10 June 2020 to consider adoption of the 2020/21 Budget with or without amendment.

1. Executive Summary

This report requests council's approval to seek community feedback on the draft 2020/21 Budget and the draft Strategic Resource plan 2020-2024 through the community consultation process required under the Local Government Act 1989 (Section 223).

If approved,

- The draft 2020/21 budget will be available for public inspection at Council service centres and on council's website from **Wednesday 1 April 2020**.
- Members of the community will be invited to view and make written submissions on the draft Budget by **5pm Friday 1 May 2020**.
- If required, a committee of council meeting will meet on **Wednesday 6 May 2020** to hear any person who has indicated in their written submission that they would like to speak in support of their submission on the draft 2020/21 Budget, and
- Council will consider the submissions before considering a recommendation to adopt the draft 2020/21 budget with or without amendments at the Special Council Meeting to be held at **Wednesday 10 June 2020**.

The timelines should ensure council fulfils its obligation to adopt the annual budget by 30 June 2020.

The draft Budget 2020/21 and Strategic Resource Plan 2020-2024 will be provided to council under separate cover prior to the meeting and tabled at the meeting.

FILE NO: F18/551
4. SMARTER DELIVERY OF SERVICES AND
PROGRAMS

ITEM NO: 9.2.1

**MOIRA SHIRE COUNCIL DRAFT BUDGET 2020/21 AND 2020-2024 STRATEGIC
RESOURCE PLAN**
(cont'd)

2. Discussion

The Local Government Act requires councils to

- Prepare, seek community feedback on and then adopt an annual budget by 30 June each year and submit the adopted budget to the Minister within 28 days of adoption by Council.
- Review the four year strategic resource plan each year to ensure it continues to support the delivery of the Council Plan and seek community feedback prior to adopting the revised plan if there is material change to the SRP.

The draft Budget and Strategic Resource Plan have been prepared through a series of council and management workshops and briefings.

3. Financial Implications

The Draft Budget 2020/21 enables the Council to fund its approved operational activities and capital projects for the year ending 30 June 2021.

The draft Strategic Resource Plan outlines the priority areas for council in coming years. The priorities are reviewed each year.

4. Risk Management

The budget and SRP seek to balance the competing needs and interests expressed by the community with council's legal obligations that are defined in many acts and regulations

5. Legislative / Policy Implications

The proposed budget has been prepared in accordance with the Local Government Act and Regulations and the Model Financial Report.

6. Conflict of Interest Considerations

There are no officer conflict of interest issues to consider within this report.

7. Conclusion

The draft budget seeks to service the many and often competing needs of the Moira community in a financial sustainable manner that is equitable across a large geographic Shire.

This report seeks Council's endorsement of the proposed budget and authorisation to commence community consultation through a statutory S223 process to further test and understand community acceptance of the proposed Budget.

Attachments

- 1 Moira Shire Draft Budget 2020/21 to be tabled at the meeting - *printed in separate document*

FILE NO: F13/503
4. A WELL RUN COUNCIL

ITEM NO: 9.2.2

ASSEMBLIES OF COUNCIL

RECOMMENDATION

That Council receive and note the Record of Assemblies of Councillors.

1. Executive Summary

This report details the Assembly of Councillors for February 2020. This report is prepared in accordance with the requirements of the section 80A of the Local Government Act 1989.

2. Background and Options

This report fulfills Council's legislative obligation to report the matters considered and whether a conflict of interest disclosure was made by a Councillor at:

- A meeting of an advisory committee where at least one Councillor is present; or
- A meeting, briefing or other activity where at least half of the Council and a member of Council staff is present; and
- Where the matters considered may be subject to a decision of Council or exercise of a function, duty or power of the Council that has been delegated to a person or committee.

Meeting	Present at meeting	Matters discussed	Declaration of Interest(s)
Council Briefing 12 February 2020	<p>Councillors: Libro Mustica Peter Lawless John Beitzel Wendy Buck Gary Cleveland Ed Cox Peter Mansfield Marie Martin</p> <p>Staff: Chief Executive Officer, Mark Henderson General Manager Community, Sally Rice General Manager Corporate, Simon Rennie Manager Infrastructure, Andrew Close</p>	<ul style="list-style-type: none"> • Budget workshop • 2019 Benchmarking Annual Report Data • Capital works review • 'Twinning' (Sister City) Molochio • Draft agenda review 	Nil

FILE NO: F13/503
4. A WELL RUN COUNCIL

ITEM NO: 9.2.2

ASSEMBLIES OF COUNCIL (cont'd)

Meeting	Present at meeting	Matters discussed	Declaration of Interest(s)
Environment Sustainability Advisory Committee 18 February 2020	<p>Councillor: Marie Martin</p> <p>Staff: Team Leader Environment, Kate Bell Environmental Sustainability Officer, Jane White and James Steinfort Environmental Services Technical Officer, Bethan McKay Administration Support Officer, Lauren Chatfield</p>	<ul style="list-style-type: none"> • Pest and Weed Management progress 	Nil
Council Briefing 19 February 2020	<p>Councillors: Libro Mustica Peter Lawless John Beitzel Kevin Bourke Wendy Buck Gary Cleveland Peter Mansfield Marie Martin</p> <p>Staff: Chief Executive Officer, Mark Henderson General Manager Community, Sally Rice General Manager Corporate, Simon Rennie Manager Infrastructure, Andrew Close Manager Assets and Infrastructure, Graham Henderson Team Leader Assets, David Bishop</p>	<ul style="list-style-type: none"> • Yarrawonga West Drainage • Pool Maintenance • Cobram East Drainage • Budget workshop 	<p>Yes Cr Mustica Budget discussion Cobram East drainage Catona Crescent</p> <p>Cr Lawless Budget discussion Tungamah Recreation Reserve Muckatah anabranch</p>

FILE NO: F13/503
4. A WELL RUN COUNCIL

ITEM NO: 9.2.2

ASSEMBLIES OF COUNCIL (cont'd)

Meeting	Present at meeting	Matters discussed	Declaration of Interest(s)
Council Briefing 26 February 2020	<p>Councillors: Libro Mustica Peter Lawless John Beitzel Kevin Bourke Wendy Buck Gary Cleveland Ed Cox Peter Mansfield Marie Martin</p> <p>Staff: Chief Executive Officer, Mark Henderson General Manager Community, Sally Rice General Manager Corporate, Simon Rennie Manager Infrastructure, Andrew Close</p>	<ul style="list-style-type: none"> Agenda review 	Nil

3. Conflict of Interest Considerations

There are no known officer conflict of interest issues to consider within this report.

4. Conclusion

The Assembly of Councillors records incorporated into this report are a true and accurate record of all assemblies of Councillors reported during February 2020.

Attachments

Nil

FILE NO: F20/72
4. A WELL RUN COUNCIL

ITEM NO: 9.2.3

LAND LEASE TO VICTORIA STATE EMERGENCY SERVICE AUTHORITY (NUMURKAH SES)

RECOMMENDATION

1. That Council enter into a lease of 36 Nelson St Numurkah with the Victoria State Emergency Service Authority.
2. Authorise the Chief Executive Officer to sign and seal the final lease document.

1. Executive Summary

In December 2017, Council became a signatory to a Memorandum of Understanding (MOU) for the Support of Victorian State Emergency Service units. The purpose of the MOU between the Victorian State Government, the Municipal Association of Victoria (MAV) and the Victorian State Emergency Service Authority (VICSES) is to establish new arrangements for the funding of, and provision of facilities to, VIC SES Units.

The new arrangements include a standard lease template to enable SES units to occupy municipal land and buildings under consistent terms across Victoria.

The Numurkah SES has occupied Council land at 36 Nelson St Numurkah for many years and is the only SES Unit within the Moira Shire, which is located on Council owned land.

This report recommends that Council enter into the standard lease attached to this report to enable the Numurkah SES to continue its long-standing occupancy of the site.

2. Background and Options

Victorian Councils have historically provided support for local SES units under an arrangement provided in a letter to the MAV from the Minister for Police and Emergency Services dated 14 December 1989. Under this arrangement, Municipal Councils were required to fund 50% of the operational costs of the SES Units located within their municipality.

While most Municipal Councils provide SES units with land or accommodation or both, with the passing of time, the specific funding and support provided by individual Councils to SES Units has changed.

Since 1 July 2017, Municipal Councils have not been required to contribute to the operational costs of VICSES Units and the MOU provides for Municipal Councils to enter into land and premises leases with VICSES on consistent terms.

The parcel of Council land occupied by the Numurkah SES is located at 36 Nelson St Numurkah and is identified on freehold Title as Lot 8 LP205376 Volume: 9769 Folio: 548

The main terms of the draft lease are as follows:

Term	40 years
Rental	Peppercorn (\$1.00 on demand)
Lease Type:	Land Lease
Premises Responsibility:	Tenant

FILE NO: F20/72
4. A WELL RUN COUNCIL

ITEM NO: 9.2.3

LAND LEASE TO VICTORIA STATE EMERGENCY SERVICE AUTHORITY (NUMURKAH SES) (cont'd)

3. Financial Implications

In accordance with the long-standing occupancy arrangement, and the new MOU, the tenure of the Numurkah SES does not provide a rental return to Council.

However, with Council no obligation to contribute to operating costs and with no building responsibilities, the financial impact of the proposed lease is minimal.

4. Risk Management

As Council is not involved in the services provided by VICSES and the land lease proposal clearly places responsibility for the premises on the tenant, the risks to Council are limited to low operational risks associated with managing a land lease.

5. Internal and External Consultation

Substantial negotiations occurred between the State Government, the MAV and VICSES to establish the MOU. Council has liaised with the nominated VICSES member about the draft lease.

Under normal circumstances, a lease with a proposed term of 40 years would require public consultation in accordance with section 190 of the Local Government Act (1989), however, leases to public bodies, such as VICSES, are exempt from these requirements.

6. Regional Context

The proposed lease itself is of no regional significance, however, the MOU and the terms of the proposed lease provide a level of consistency to the relationship between Municipal Councils and VICSES Units.

7. Council Plan Strategy

The proposed lease contributes to Council's objective to provide quality services and a well run Council.

8. Legislative / Policy Implications

The proposed lease is exempt from the public consultation requirements of section 190 of the Local Government Act (1989).

A resolution of Council is required to place the Council Seal on the lease document.

9. Environmental Impact

There is no change to the environmental impact presented by the current occupancy of the Numurkah SES.

10. Conflict of Interest Considerations

There are no known conflict of interest considerations to declare.

11. Conclusion

It is recommended that Council enter into a long-term land lease with VICSES to enable the Numurkah SES to remain on their current site at 36 Nelson St Numurkah.

Attachments

- 1 VICSES - Draft Land Lease

FILE NO: F20/72
4. A WELL RUN COUNCIL

ITEM NO: 9.2.3

**LAND LEASE TO VICTORIA STATE EMERGENCY SERVICE AUTHORITY
(NUMURKAH SES) (cont'd)**

ATTACHMENT No [1] - VICSES - Draft Land Lease

Date / /

Lease

Land: [Insert Address]

[Insert Name] Council
and

Victoria State Emergency Service Authority
ABN 61 279 597 238

FILE NO: F20/72
4. A WELL RUN COUNCIL

ITEM NO: 9.2.3

**LAND LEASE TO VICTORIA STATE EMERGENCY SERVICE AUTHORITY
(NUMURKAH SES) (cont'd)**

ATTACHMENT No [1] - VICSES - Draft Land Lease

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**LAND LEASE TO VICTORIA STATE EMERGENCY SERVICE AUTHORITY
(NUMURKAH SES) (cont'd)**

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**LAND LEASE TO VICTORIA STATE EMERGENCY SERVICE AUTHORITY
(NUMURKAH SES) (cont'd)**

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4. A WELL RUN COUNCIL

ITEM NO: 9.2.3

**LAND LEASE TO VICTORIA STATE EMERGENCY SERVICE AUTHORITY
(NUMURKAH SES) (cont'd)**

ATTACHMENT No [1] - VICSES - Draft Land Lease

Schedule

Item 1.	Council: (Clause 1)	[Insert Name] Council of [Insert Address]
Item 2.	Tenant: (Clause 1)	Victoria State Emergency Service Authority ABN 61 279 597 238 (a body corporate established under s 4 of the <i>Victoria State Emergency Service Act 2005</i>) of 168 Sturt Street, Southbank VIC 2006
Item 3.	Land: (Clause 1)	[Whole/Part] of the land contained in certificate of title volume [insert] folio [insert] being the land identified on the plan attached to this Lease in Annexure B and known as [insert] and including the Council's Improvements on the Land (if any)
Item 4.	Commencement Date: (Clause 1)	[Insert Date]
Item 5.	Expiry Date: (Clause 1)	[Insert Date]
Item 6.	Term: (Clauses 1 & 4)	40 years (Note: negotiable)
Item 7.	Further Term(s):	Nil
Item 8.	Rent: (Clauses 1 & 5)	\$1.00 per annum plus GST, payable on demand.
Item 9.	Permitted Use: (Clauses 1 & 13.1)	[Insert as appropriate - Administrative offices / Training Facility / Storage of emergency services vehicles and associated use of car parks / access routes/ storage areas / common areas]
Item 10.	Special Conditions: (Clauses 1 & 22.5)	The conditions (if any) specified in Annexure A

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4. A WELL RUN COUNCIL

ITEM NO: 9.2.3

**LAND LEASE TO VICTORIA STATE EMERGENCY SERVICE AUTHORITY
(NUMURKAH SES) (cont'd)**

ATTACHMENT No [1] - VICSES - Draft Land Lease

Lease

Council leases the Land to the Tenant subject to the terms contained in this Lease.

This Lease is executed as a deed on the _____ day of _____

[Insert 'Council' signing clause]

The Common Seal of [Insert Name] Council was affixed on _____ with the authority of the Council:

.....

Chief Executive Officer

or

Signed by and on behalf, and with the authority, of the [Insert Name] Council by [insert name & position of Director], in the exercise of a power conferred by an Instrument of Delegation dated [insert date], in the presence of:)
)
)
)
)
)

.....
Witness

Signed for and on behalf of **Victoria State Emergency Service Authority** by its authorised representatives:

Signature of authorised representative

Signature of authorised representative

Name of authorised representative (print)

Name of authorised representative (print)

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4. A WELL RUN COUNCIL

ITEM NO: 9.2.3

**LAND LEASE TO VICTORIA STATE EMERGENCY SERVICE AUTHORITY
(NUMURKAH SES) (cont'd)**

ATTACHMENT No [1] - VICSES - Draft Land Lease

1. Definitions

In this Lease unless expressed or implied to the contrary:

Act means the *Retail Leases Act 2003* (Vic).

Building Act means the *Building Act 1993* (Vic).

Building Regulations means the *Building Regulations 2006* (Vic).

Commencement Date means, subject to clause 2, the date specified in Item 4.

Contamination includes any solid, liquid, gas, radiation, pollutant or substance which makes or may make the condition of the Land or groundwater beneath or part of the surrounding environment:

- (a) unsafe, unfit, poisonous, harmful or potentially harmful to the health, welfare, safety or property of human beings; or
- (b) unsafe, unfit, poisonous, harmful or potentially harmful to animals, birds or wildlife; or
- (c) unsafe, unfit, poisonous, harmful or potentially harmful to plants or other vegetation or
- (d) detrimental to any beneficial use made of the Land; or
- (e) unfit for any use permitted under any applicable planning scheme as amended from time to time,

or which is assessable as being a condition that contravenes any Environmental Protection Legislation.

Council means the council specified in Item 1 and includes Council's successors and assigns and where it is consistent with the context includes Council's employees and agents.

Council's Improvements means all buildings, structures, paving, earthworks, fences, fittings, fixtures and chattels contained on the Land at the Commencement Date or installed by Council during the Term.

Environmental Protection Legislation means any statute, regulation, code, proclamation, ministerial directive, ordinance, by law, planning policy or subordinate legislation, past, present or future, relating to pollutants and contaminants, use of land, human health and safety or protection of the environment.

Essential Safety Measure has the meaning given to that term in the Building Regulations.

Expiry Date means the date specified in Item 5.

Hazardous Materials includes all hazardous substances and any pollutant or contaminant defined as such in (or for the purposes of) any Environmental Protection Legislation.

Insolvency Event means:

- (a) in the case of a natural person, if that person:

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FILE NO: F20/72
4. A WELL RUN COUNCIL

ITEM NO: 9.2.3

**LAND LEASE TO VICTORIA STATE EMERGENCY SERVICE AUTHORITY
(NUMURKAH SES) (cont'd)**

ATTACHMENT No [1] - VICSES - Draft Land Lease

- (i) becomes bankrupt;
 - (ii) assigns the person's estate; or
 - (iii) enters into a deed of arrangement or composition for the benefit of creditors.
- (b) in the case of a corporation, if that corporation:
- (i) goes into liquidation (including provisional liquidation) other than a voluntary liquidation for the purposes of reconstruction or reorganisation;
 - (ii) is wound up or dissolved or has an application made for its winding up or dissolution;
 - (iii) enters into a scheme or arrangement with or makes an assignment for the benefit of its creditors or any class or classes of them;
 - (iv) is placed under official management;
 - (v) has an agent in possession or a receiver and/or manager or an administrator appointed to the whole or any substantial part of its assets; or
 - (vi) has an inspector or investigator appointed under the *Corporations Act 2001* (Cth).

Item means an item in the Lease Particulars.

Land means the land specified in Item 3.

Lease means this lease and includes all annexures and schedules.

Lease Particulars means the schedule of Items specified on the page at the front of this Lease.

Lease Year means each year of this Lease beginning on the Commencement Date, in consecutive 12 month increments.

Lettable Area(s) means the lettable area of a parcel of land as determined by a surveyor engaged by Council.

Local Government Act means the *Local Government Act 1989* (Vic).

OHS Act means the *Occupational Health and Safety Act 2004* (Vic).

OHS Law means the OHS Act, the OHS Regulations, and any other occupational health and safety law, regulation or by-law that applies to work being carried out on the Land.

OHS Regulations means the *Occupational Health and Safety Regulations 2007* (Vic).

Permitted Use means the use specified in Item 9.

Principal Contractor means the position of principal contractor referred to in Chapter 5 of the OHS Regulations.

Rates and Taxes means the rates, taxes, charges and levies specified in clause 6.1.

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Rent means the amount specified in Item 8 as reviewed, adjusted or increased under this Lease.

Small Business Commissioner means the Small Business Commissioner referred to in the Act.

Special Conditions means the conditions (if any) referred to in Item 10.

Tenant means the Tenant specified in Item 2 and includes the Tenant's successors and assigns and where it is consistent with the context includes the Tenant's employees, volunteers, contractors, agents, invitees and persons the Tenant allows on the Land.

Tenant's Improvements means all property on the Land including all fixtures, buildings, fittings, furniture, furnishings (including window coverings, blinds and light fittings), plant, machinery, installations and equipment installed on the Land, owned or leased by the Tenant, but excluding Council's Improvements (if any).

Term means the term specified in Item 6 and includes any period of overholding.

VICSES means Victorian State Emergency Service Authority ABN 61 279 597 238 (a body corporate established under s 4 of the *Victoria State Emergency Service Act 2005*) of 168 Sturt Street, Southbank VIC 2006.

2. Local Government Act 1989

This Lease is entered into pursuant to section 190 of the Local Government Act.

3. Negotiation and disclosure requirements

3.1 Negotiation for Lease

If the Act applies to this Lease, the Tenant acknowledges receiving from Council:

- 3.1.1 a copy of the proposed Lease; and
- 3.1.2 a copy of the information brochure about retail leases published by the Small Business Commissioner,

as soon as the Tenant entered into negotiations with Council, or its agent in respect of this Lease.

3.2 Disclosure statement

If the Act applies to this Lease, the Tenant acknowledges having received from Council:

- 3.2.1 a disclosure statement (in the form prescribed by the Act); and
- 3.2.2 a copy of the proposed lease,

at least 7 days prior to the Tenant entering into this Lease.

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4. Duration of the Lease

4.1 Term

This Lease is for the Term starting on the Commencement Date.

4.2 Holding over

If the Tenant continues to occupy the Land after the Expiry Date with Council's consent, except under a lease arising from the valid exercise of an option to renew, the following provisions will apply:

- 4.2.1 the Tenant will occupy the Land as an annual tenant at a total rental payable monthly in advance being an amount equal to one-twelfth of the aggregate of the Rent and any other money payable by the Tenant to Council under this Lease as at the Expiry Date, the first of the monthly payments to be made on the day following the Expiry Date;
- 4.2.2 as far as applicable, the annual tenancy will otherwise continue on the terms and conditions of this Lease; and
- 4.2.3 either party may terminate the annual tenancy by giving to the other 12 months' notice to the other party expiring on any date.

5. Payment of Rent

The Tenant must:

- (a) pay the Rent to Council in the manner described in Item 8 commencing on the Commencement Date; and
- (b) pay the Rent in the manner specified by Council from time to time.

6. Outgoings

6.1 Rates and Taxes

The Tenant must pay to Council, or the relevant authority:

- 6.1.1 local government rates and charges;
- 6.1.2 water rates and charges, including water usage charges;
- 6.1.3 sewerage and drainage rates and charges;
- 6.1.4 land tax (assessed on a single holding basis) except this cost is excluded where the Act applies to this Lease; and
- 6.1.5 all other rates, taxes, charges and levies assessed in connection with the Land.

6.2 Proportion of Rates and Taxes

If any Rates and Taxes are not separately assessed in connection with the Land, the Tenant must pay to Council within 14 days of demand the proportion of the Rates and Taxes that the

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Lettable Area of the Land bears to the total Lettable Area assessed or such other proportion of the Rates and Taxes as agreed by the parties.

6.3 Receipt for payment

The Tenant must provide to Council:

- 6.3.1 copies of all notices, assessments or invoices for any Rates and Taxes received by the Tenant directly from the relevant authority within 14 days of receipt; and
- 6.3.2 receipts for any Rates and Taxes paid by the Tenant within 14 days of request by Council.

7. Other expenses

7.1 Services

The Tenant must, within 14 days of a request by Council:

- 7.1.1 pay for all services in connection with the Land, including electricity, gas, water and telephone services; and
- 7.1.2 where the Land is not separately metered, pay for the cost of installing separate meters to assess the charges for the services,

unless otherwise agreed.

7.2 Other charges

The Tenant must pay or reimburse the Council, within 14 days of demand, for the following expenses incurred or payable by Council in respect of the Land (except to the extent that the Act applies and prohibits recovery):

- 7.2.1 charges for cleaning, waste removal and pest control;
- 7.2.2 costs of fire protection and security;
- 7.2.3 insurance premiums and other charges reasonably incurred in connection with insurance policies for damage and destruction to the Council's Improvements;
- 7.2.4 costs of repairing, maintaining and operating the Council's Improvements;
- 7.2.5 costs of improving, renewing or replacing Council Improvements (after being discussed and agreed with the Council); and
- 7.2.6 any other charges necessarily and reasonably incurred by the Council in the operation and management of the Land,

unless otherwise agreed.

7.3 Costs and duty

The Tenant must pay to Council within 14 days of demand:

- 7.3.1 the stamp duty payable on this Lease (including penalties and fees);

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- 7.3.2 Council's reasonable costs in considering the granting of any consent or approval under this Lease (regardless of whether Council actually gives such consent or approval);
- 7.3.3 the cost of complying with the provisions of the Building Act and the Building Regulations in relation to any Essential Safety Measure;
- 7.3.4 the cost of obtaining Council's mortgagee's consent to this Lease (if required) except this amount is not recoverable where the Act applies to this Lease; and
- 7.3.5 Council's costs (including charges on a solicitor-own client basis) incurred directly as a result of a breach of this Lease by the Tenant,
- unless otherwise agreed.

8. GST

8.1 Definitions

In this clause:

- 8.1.1 words and expressions that are not defined in this Lease but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and
- 8.1.2 **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

8.2 GST exclusive

Except as otherwise provided by this clause, all consideration payable under this Lease in relation to any supply is exclusive of GST.

8.3 Increase in consideration

If GST is payable in respect of any supply made by a supplier under this Lease (**GST Amount**), the recipient will pay to the supplier an amount equal to the GST payable on the supply.

8.4 Payment of GST

Subject to clause 8.5 the recipient will pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Lease.

8.5 Tax invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 8.4.

8.6 Reimbursements

If this Lease requires a party to reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- 8.6.1 the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
- 8.6.2 if the payment or reimbursement is subject to GST, an amount equal to that GST.

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8.7 Adjustment events

If an adjustment event occurs in relation to a taxable supply under this Lease:

- 8.7.1 the supplier must provide an adjustment note to the recipient within 7 days of becoming aware of the adjustment; and
- 8.7.2 any payment necessary to give effect to the adjustment must be made within 7 days after the date of receipt of the adjustment note.

9. Payment requirements

9.1 No deduction or right of set-off

The Tenant must pay all amounts due under this Lease to Council (including the Rent and Rates and Taxes).

9.2 Interest on late payments

The Tenant must pay to Council on demand interest at the rate per annum equal to the current rate fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic) per annum on any money payable by the Tenant under this Lease and remaining unpaid after the due date. Interest will be computed from the date on which such payment became due.

9.3 Payment after termination

The Tenant must:

- 9.3.1 make all payments due under this Lease; and
- 9.3.2 provide all information to Council under this Lease to calculate any such payments, even if this Lease has ended.

9.4 Method of payment

The Tenant must make all payments under this Lease in such manner as Council reasonably requires, which may include by direct debit.

10. Repairs, refurbishment and alterations

10.1 Repairs and maintenance

The Tenant must:

- 10.1.1 keep the Land, the Council's Improvements and the Tenant's Improvements clean and free from rubbish, store all rubbish in proper containers and have it regularly removed;
- 10.1.2 keep the Land and the Council's Improvements in the same condition as they were in at the date the Tenant first entered occupation of the Land (fair wear and tear excepted);
- 10.1.3 maintain in working order all plumbing, drains, pipes and sewers exclusively servicing the Land;

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- 10.1.4 pay the costs (if any) for the removal of waste and sewerage from the Land;
- 10.1.5 maintain any gardens on the Land in good condition and free of weeds;
- 10.1.6 make good any damage caused to any adjacent property by the Tenant; and
- 10.1.7 give Council prompt written notice of any material damage to the Land or anything likely to be a risk to the Land or any person on the Land.

10.2 Alterations to Land

The Tenant must ensure any alterations or works to the Land, any services to the Land or the Tenant's Improvements (**Works**) are carried out:

- 10.2.1 in accordance with plans and specifications approved by Council (acting reasonably);
- 10.2.2 by qualified tradespersons approved by Council (acting reasonably); and
- 10.2.3 in accordance with all rules and requirements of any authorities having jurisdiction over the Land.

The Tenant is not required to seek Council's consent prior to making any alterations of a non-structural nature to the Land or the Tenant's Improvements.

10.3 Occupational health and safety

For the purposes of the OHS Law, the Tenant agrees that:

- 10.3.1 the Tenant has sole management and control of the Land and has sole responsibility for ensuring that the Land and the means of entering and leaving them are safe and without risks to health;
- 10.3.2 Council appoints the Tenant as Principal Contractor in respect of all Works to which an OHS Law applies;
- 10.3.3 the Tenant must carry out such Works in accordance with the requirements of the OHS Law; and
- 10.3.4 Council authorises the Tenant to exercise whatever authority is necessary for the Tenant to discharge the responsibilities of the appointment under clause 10.3.2.

10.4 Not interfere with services

The Tenant must not interfere, misuse or overload any services to the Land, including electricity, gas and water.

10.5 Failure to repair and maintain

If the Tenant does not carry out any repairs, maintenance or other works required under this Lease within 30 days of receiving written notice from Council, Council may enter the Land to carry out such repairs, maintenance and works at any reasonable time after giving the Tenant reasonable notice. The cost of all such repairs, maintenance and works must be paid by the Tenant to Council on demand.

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10.6 Repairs to Council's Improvements and compliance with legislation

The Tenant must reimburse the Council within 21 days of demand for the costs incurred by the Council in relation to:

- 10.6.1 any repairs or maintenance to the Council's Improvements (but excluding costs for structural works or repairs and maintenance of a capital nature which are the responsibility of Council); and
- 10.6.2 compliance with any legislation (including legislation relating to Essential Safety Measures),

except to the extent that such costs are not recoverable under the Act, where the Act applies to this Lease.

11. Insurance

11.1 Public liability insurance

The Tenant must maintain insurance noting Council's interest as landlord, but not as joint insured, with Victorian Managed Insurance Authority or another insurer approved by Council (acting reasonably) for public liability for the amount of \$20 million concerning 1 single event (or such greater sum as reasonably required by Council).

11.2 Tenant's Improvements

The Tenant must insure the Tenant's Improvements for loss and damage from risks including fire and water damage for their full replacement value.

11.3 Workers compensation insurance

The Tenant must hold current workers compensation insurance at all relevant times.

11.4 Payment and production of policies

The Tenant must pay all insurance premiums on or before the due date for payment and produce to Council copies of the certificate of currency on or before each anniversary of the Commencement Date.

11.5 Not invalidate policies

The Tenant must:

- 11.5.1 not do anything which may make any insurance effected by Council or the Tenant invalid, capable of being cancelled or rendered ineffective, or which may increase any insurance premium payable by Council; and
- 11.5.2 pay any increase in the insurance premium caused by the Tenant's act, default or use of the Land.

11.6 Requirements by Insurer

The Tenant must comply with all reasonable requirements of Council's insurer in connection with the Land.

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12. Release, indemnity and compensation

12.1 Release

The Tenant uses and occupies the Land at its own risk and releases Council from all claims resulting from any damage, loss, death or injury occurring on the Land or as a result of the use and occupation of the Land, except to the extent that such claims arise out of any negligent or unlawful act or omission or default of Council or its officers, servants or contractors.

12.2 Indemnity

The Tenant must indemnify and hold harmless Council against all claims resulting from:

- 12.2.1 any default by the Tenant under this Lease;
- 12.2.2 any negligent use or misuse by the Tenant of the water, gas or electricity on the Land;
- 12.2.3 any overflow or leakage of water (including rain water) from the Land caused or contributed to by the Tenant's default, breach or negligence; and
- 12.2.4 loss, damage or injury to property or persons caused or contributed to by a negligent or unlawful act or omission of the Tenant or its servants or agents,

except to the extent that such claims arise out of any negligent or unlawful act or omission or default of Council or its officers, servants or contractors.

12.3 No compensation

Council is not liable to the Tenant for any loss or damage incurred by the Tenant due to:

- 12.3.1 any damage to the Land;
- 12.3.2 the failure of Council's Improvements or any plant and equipment (including air conditioning and escalators) to operate properly;
- 12.3.3 the interruption or damage to any services (including electricity, gas or water) to the Land; or
- 12.3.4 the overflow or leakage of water on the Land,

except to the extent to which Council is liable where the Act applies and/or by virtue of the negligent or unlawful act or omission or default of Council or its officers, servants or contractors.

12.4 No liability

The Tenant acknowledges and agrees that:

- 12.4.1 nothing in this Lease in any way limits, fetters or restricts the power or discretion of Council in the exercise of its statutory rights, duties or powers under the *Planning and Environment Act 1987* (Vic) or the Local Government Act or the exercise of any other statutory right, power or duty that Council may lawfully exercise; and
- 12.4.2 Council will not be liable to the Tenant under this Lease (including but not limited to a breach of the covenant of quiet enjoyment or a derogation of the grant of this Lease) for any acts or omissions of Council undertaken in any capacity including (but not limited to) in exercising any powers referred to in clause 12.4.1,

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except nothing in this clause releases Council from any obligations it owes to the Tenant under this Lease in its capacity as the owner of the Land.

13. Use of Land

13.1 Permitted Use

The Tenant must use the Land for the Permitted Use and not use the Land for any other purpose unless the Tenant obtains the prior written consent of Council to a change of use (which must not be unreasonably withheld).

13.2 No warranty

The Tenant:

13.2.1 acknowledges that Council does not warrant or represent that the Land is suitable for the Permitted Use; and

13.2.2 must make its own enquiries as to the suitability of the Land for the Permitted Use.

13.3 Illegal purpose

The Tenant must not use the Land for any illegal purpose or carry on a noxious or offensive activity on the Land.

14. Other obligations concerning the Land

14.1 Compliance with laws

The Tenant must comply with all laws and any requirements of any authority in connection with the Land and the Tenant's use and occupation of the Land, except the Tenant will not be required to carry out any structural works unless the need for such works arises from:

14.1.1 the negligent act or omission of the Tenant;

14.1.2 the failure by the Tenant to comply with its obligations under this Lease; or

14.1.3 the Tenant's particular use of the Land.

14.2 Licences and permits

The Tenant must maintain all licences and permits required for the Tenant's use of the Land and obtain the prior written consent of Council before varying any licence or permit or applying for any new licence or permit.

14.3 Nuisance

The Tenant must not do anything in connection with the Land which may:

14.3.1 cause a nuisance or interfere with any other person; or

14.3.2 be dangerous or offensive in Council's reasonable opinion.

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14.4 Signs

The Tenant must seek the prior written consent of Council before displaying or affixing any signs, advertisements or notices to any part of the Land where such signs, advertisements or notices are visible from outside the Land.

14.5 Endanger Land

The Tenant must not do or permit anything to be done in connection with the Land which in the opinion of Council may endanger the Land or be a risk to any person or property.

14.6 Tenant's employees

The Tenant must use all reasonable endeavours to ensure that the Tenant's employees (including its volunteers), agents, contractors and invitees observe and comply with the Tenant's obligations under this Lease, where appropriate.

14.7 Environmental management

At the request of Council, the Tenant must provide Council with any information held by the Tenant relating to the environmental management of the Land including electricity, gas and water use, recycling and disposal of paper and waste, and the materials used in any works carried out on the Land. Such requests by Council must not be made more than once in a Lease Year.

15. Tenant's environmental obligations

15.1 Comply with Environmental Protection Legislation

The Tenant must, in its use of the Land, comply with all Environmental Protection Legislation and any permit, approval, authority or licence issued pursuant to any Environmental Protection Legislation.

15.2 Not permit Contamination

The Tenant must not spill or deposit, or carry out any activities on the Land which may cause any Contamination, or permit any Contamination to escape in any other way into or on the Land, drainage or surrounding environment.

15.3 Notify of and clean up Contamination

If any Contamination is found in or near the Land, the Tenant must at its own cost:

- 15.3.1 immediately notify Council, the Environment Protection Authority and any other appropriate Authority;
- 15.3.2 clean up the Contamination unless the Contamination pre-dated the Tenant's occupancy of the Land and do everything necessary to minimise harm; and
- 15.3.3 promptly comply with any notice, order, direction or requirement of Council and of any authority in relation to any such Contamination, or allow Council reasonable access to the Land for the purposes of compliance where the Contamination pre-dated the Tenant's occupancy of the Land.

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15.4 Indemnify Council

In addition to any other indemnity in this Lease, the Tenant indemnifies Council against all claims for damages, loss, injury or death directly arising out of any Contamination being spilled, deposited or otherwise escaping into or on the Land during the Term, or a breach of this clause by the Tenant (including but not limited to the cost of all fines, penalties and costs of complying with any order or notice associated with such claims) except to the extent that such claims arise out of any negligent or unlawful act or omission or default of Council or its officers, servants or contractors.

16. Dealing with interest in the Land

16.1 No parting with possession

The Tenant must not give up possession of the Land including assigning this Lease, sub-lease the Land or granting to any person a licence or concession in respect of the Land, without Council's written consent.

16.2 No assignment if Act to apply

Despite anything to the contrary in this Lease, if the Act does not apply to this Lease and an assignment of this Lease, would result in the Act applying to this Lease, Council may withhold its consent to an assignment of this Lease.

16.3 Transfer of functions

Council acknowledges that:

16.3.1 VICSES may be reconstituted, renamed or replaced and that some or all of the powers, functions or responsibilities of VICSES may be transferred to or vested in another governmental agency; and

16.3.2 if VICSES is reconstituted, renamed or replaced or if some or all of VICSES's powers, functions or responsibilities are transferred to or vested in another governmental agency, references in this Lease to VICSES must be deemed to refer, as applicable, to that reconstituted, renamed or new entity to the extent that it has assumed or has had transferred to it or vested in it those powers, functions or responsibilities.

16.4 Mortgage of Lease

The Tenant must not create any security over this Lease, the Council's Improvements or the Tenant's Improvements.

17. Tenant's obligations at the end of this Lease

17.1 Tenant's obligations

At the end of this Lease, the Tenant must:

17.1.1 vacate the Land and give it back to Council in a condition consistent with the Tenant having complied with its obligations under this Lease;

17.1.2 give to Council all keys and other security devices for the purposes of obtaining access to the Land; and

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- 17.1.3 unless Council serves a notice under clause 17.3, remove the Tenant's Improvements and reinstate the Land to the condition the Land was in prior to the installation of the Tenant's Improvements including making good any damage caused by the removal of the Tenant's Improvements

17.2 Removal of Improvements

In removing the Tenant's Improvements from the Land, the Tenant must:

- 17.2.1 ensure that the surface of the Land is restored to Council's reasonable satisfaction;
- 17.2.2 follow all reasonable directions given by Council for the removal of the Tenant's Improvements, including (but not limited to) ensuring that all services to the Tenant's Improvements are disconnected; and
- 17.2.3 otherwise comply with the provisions of clause 10.2.

17.3 Tenant's notice

The Tenant may give written notice to Council that it elects not to remove all or part of the Tenant's Improvements from the Land. If the Tenant serves a notice under this clause 17.3 and Council consents:

- 17.3.1 ownership of that part of the Tenants Improvements which the Tenant elects not to remove will vest in Council;
- 17.3.2 the Tenant must give the Tenant's Improvements to Council in a condition consistent with the Tenant having complied with its obligations under this Lease; and
- 17.3.3 the Tenant must do all acts and sign all documents as may be required by Council to effect the transfer and vesting of the ownership in the Tenant's Improvements to Council.

17.4 Abandonment of Tenant's Improvements

If the Tenant does not serve a notice under clause 17.3 and the Tenant fails to comply with its obligations under clause 17.1, Council may remove the Tenant's Improvements from the Land and comply with the Tenant's obligations under clause 17.1 at the Tenant's expense and may:

- 17.4.1 store the Tenant's Improvements at the Tenant's risk and expense; or
- 17.4.2 treat the Tenant's Improvements as if the Tenant had abandoned its interest in it and it has become the property of Council's and deal with the Tenant's Improvements as it thinks fit without being liable to account to the Tenant.

17.5 Australian Consumer Law and Fair Trading Act 2012

The parties agree that this clause 17 is an agreement about the disposal of uncollected goods for the purposes of section 56(4) of the *Australian Consumer Law and Fair Trading Act 2012* (Vic).

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18. Council's rights and obligations

18.1 Quiet enjoyment

Council must not interfere with the Tenant's use and occupation of the Land except as provided by this Lease.

18.2 Outgoings and insurance

Council must pay all rates and taxes not payable by the Tenant.

18.3 Dealing with the Land

Council may:

- 18.3.1 subdivide the Land or grant easements or other rights over the Land except where it will unreasonably interfere with the Tenant's use and occupation of the Land; and
- 18.3.2 install, repair and replace pipes, cables and conduits on or under the Land except where it will unreasonably interfere with the Tenant's use and occupation of the Land.

18.4 Entry by Council

Council may enter the Land at any reasonable time after giving the Tenant reasonable notice, to:

- 18.4.1 inspect the condition of the Land;
- 18.4.2 undertake an environmental inspection or accreditation or monitor the environmental management of the Land, including energy and water use; and
- 18.4.3 carry out any inspection, repairs, maintenance, works or alterations on the Land which Council decides to or is required to carry out by any law or authority.

Council must use all reasonable endeavours to cause as little disruption as possible to the Tenant's use of the Land in exercising Council's rights under this clause.

18.5 Emergency entry

Council may enter the Land at any time without giving notice to the Tenant in an emergency.

18.6 Change in landlord

If a person other than Council becomes entitled to receive the rents reserved by this Lease whether by operation of law or otherwise (**New Landlord**) then:

- 18.6.1 Council is released from all further obligations under this Lease arising after the New Landlord becomes landlord; and
- 18.6.2 the Tenant must at the cost of Council enter into a deed reasonably required by Council under which the Tenant covenants that the New Landlord shall have the benefit of all of the Tenant's obligations under this Lease.

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**LAND LEASE TO VICTORIA STATE EMERGENCY SERVICE AUTHORITY
(NUMURKAH SES) (cont'd)**

ATTACHMENT No [1] - VICSES - Draft Land Lease

19. Termination of Lease

19.1 Re-entry

Council may re-enter the Land and terminate this Lease if:

- 19.1.1 an Insolvency Event occurs in relation to the Tenant or ~~any Guarantor~~; or.
- 19.1.2 the Tenant breaches this Lease and does not remedy the breach (or pay reasonable compensation to Council where the breach is otherwise incapable of remedy) within 30 days of receipt of written notice from Council.

19.2 Damages following determination

If this Lease is terminated by Council, the Tenant agrees to compensate Council for any loss or damage Council suffers arising in connection with the Tenant's breach of this Lease

19.3 Essential terms

The essential terms of this Lease are clauses 5, 6.1, 7.1, 7.3, 8, 10.1, 10.2, 11, 13.1, 13.3, 14, 15, 16 and 17. The breach of an essential term is a repudiation of this Lease.

19.4 No deemed termination

If the Tenant vacates the Land, Council will not be deemed to have terminated this Lease merely by the acceptance of keys from the Tenant, entry into the Land for any purpose, or the showing of the Land to prospective tenants or purchasers. This Lease will be deemed to continue until such time as Council gives notice to the Tenant terminating this Lease, or otherwise agrees with the Tenant that this Lease is terminated.

20. Destruction or damage of Land

20.1 Reduction in Rent and Outgoings

If the Land, or any part of the Land is destroyed or damaged to the extent that the Tenant cannot use or have access to the Land (except if the Tenant causes or contributes to the destruction or damage, or the Council's insurer is not legally required to reinstate the Land because the Tenant caused or contributed to the destruction or damage) then the Council will reduce the Rent and the outgoings by a reasonable amount depending upon the nature and extent of destruction or damage until the Tenant can use or have access to the whole of the Land again.

20.2 Reinstatement of Land

If the Land or any part of the Land are destroyed or damaged, the Council may, within 6 months from the date of such damage or destruction, give notice to the Tenant:

- 20.2.1 terminating this Lease, where the Council considers that the damage or destruction is such that repairing it is impracticable or undesirable; or
- 20.2.2 that the Council will commence reinstatement of the Land to a condition where the Tenant can use or have access to the Land.

FILE NO: F20/72
4. A WELL RUN COUNCIL

ITEM NO: 9.2.3

**LAND LEASE TO VICTORIA STATE EMERGENCY SERVICE AUTHORITY
(NUMURKAH SES) (cont'd)**

ATTACHMENT No [1] - VICSES - Draft Land Lease

The Council does not have to reinstate the Land.

20.3 Tenant's right of termination

Where the Tenant has not caused or contributed to the damage or destruction of the Land and the payment of the insurance for the Land is not refused due to the act or default of the Tenant, provided the Tenant has not previously requested reinstatement of the Land by Council in writing, the Tenant may give written notice to the Council terminating this Lease where the Council does not:

20.3.1 give notice to the Tenant pursuant to clause 20.2; or

20.3.2 commence reinstatement within 18 months of the date of damage or destruction.

Upon termination of this Lease, each party is released from all further obligations under this Lease, except nothing in this clause releases either party from any breach of this Lease arising prior to the date of termination.

20.4 Dispute resolution

If a dispute arises under this clause about the amount of the Rent or outgoings payable by the Tenant, either party may ask the President of the Australian Property Institute (Victorian Division) to nominate a valuer to determine the dispute as an expert. The parties will be bound by the determination of the valuer and will share the fees of the valuer equally.

21. Personal Property Securities Act 2009

21.1 Definitions

In this clause 21:

21.1.1 **Council PPS Items** means any item of Personal Property which:

- (a) is owned or leased by the Council; and
- (b) is situated on the Land at any time during the term of this Lease;

21.1.2 **PPS Act** means the *Personal Property Securities Act 2009* (Cth);

21.1.3 **Tenant PPS Items** means any item of Personal Property which:

- (a) is owned or leased by the Tenant;
- (b) is situated on the Land at any time during the term of this Lease; and
- (c) the Council has the right to require the Tenant to transfer ownership of that item to the Council, or the Tenant has the obligation to transfer ownership of that item to the Council, whether before or after the end of the term of this Lease,

but does not include any Council PPS Items; and

21.1.4 words and expressions that are not defined in this Lease but which have a defined meaning in the PPS Act have the same meaning as in the PPS Act.

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**LAND LEASE TO VICTORIA STATE EMERGENCY SERVICE AUTHORITY
(NUMURKAH SES) (cont'd)**

ATTACHMENT No [1] - VICSES - Draft Land Lease

21.2 Tenant's obligations

The Tenant:

- 21.2.1 acknowledges that the grant of this Lease also constitutes the grant of a Security Interest in the Council PPS Items in favour of the Council, which interest the Council is entitled to register under the PPS Act; and
- 21.2.2 must do all things required by the Council from time to time (including, without limitation, signing any documents required by the Council) to enable the Council to register its above Security Interests under the PPS Act, and to otherwise perfect its Security Interest in the Tenant PPS Items and the Council PPS Items so that the Council's Security Interests have priority over any other Security Interests under the PPS Act in relation to the Tenant PPS Items and the Council PPS Items.

21.3 Security Interests

The Tenant:

- 21.3.1 warrants that it has not created a Security Interest in respect of any Council PPS Items on or prior to execution of this Lease; and
- 21.3.2 must not create a Security Interest in respect of any Council PPS Items or Tenant PPS Items in favour of any person other than the Council without the Council's prior written consent, which consent may be granted or withheld in the Council's absolute discretion.

21.4 Indemnity for breach of this clause

The Tenant must indemnify and hold harmless the Council against all claims, damages or loss incurred by the Council as a direct consequence of any breach by the Tenant of this clause except to the extent that such claims, damages or loss arise out of any negligent or unlawful act or omission or default of Council or its officers, servants or agents.

21.5 Further obligations

The Tenant acknowledges and agrees that:

- 21.5.1 it has no right under the PPSA to receive a copy of any 'verification statement' or 'financing charge statement' (as those terms are defined in the PPSA); and
- 21.5.2 on the expiration or earlier termination of this Lease, the Tenant must sign (and procure any holder of a registered Security Interest to sign) any document that the Council considers necessary or desirable under or as a result of the PPS Act to discharge any registered Security Interests under the PPS Act in relation to the Tenant PPS Items and the Council PPS Items.

21.6 Clause prevails

In the event of any inconsistency between this clause and any other provision of this Lease, the provisions of this clause will prevail and that other provision will be read down and interpreted accordingly.

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**LAND LEASE TO VICTORIA STATE EMERGENCY SERVICE AUTHORITY
(NUMURKAH SES) (cont'd)**

ATTACHMENT No [1] - VICSES - Draft Land Lease

22. General

22.1 Notices

Any notice required to be served under this Lease must be in writing and must be served by post, facsimile transmission or hand delivered to:

- 22.1.1 the Tenant at its address set out in this Lease, or any other address notified in writing to Council by the Tenant; and
- 22.1.2 Council at its address set out in this Lease or any other address notified in writing to the Tenant by Council.

22.2 Time of service

A notice or other communication is deemed served:

- 22.2.1 if served personally or left at the person's address, upon service;
- 22.2.2 if posted, three business days after posted;
- 22.2.3 if served by facsimile transmission, subject to the next sub-clause, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile machine; and
- 22.2.4 if received after 5.00 pm in the place of receipt or on a day which is not a business day, at 9.00 am on the next business day.

22.3 Entire understanding

This Lease and the disclosure statement (if any) contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Lease and have no effect.

22.4 Waiver

If Council accepts the Rent or any other monies under this Lease (before or after the end of this Lease) or does not exercise or delays exercising any of Council's rights under this Lease, it will not be a waiver of the breach of this Lease by the Tenant or of Council's rights under this Lease.

22.5 Special Conditions

This Lease is subject to the Special Conditions. The Special Conditions override any inconsistent provisions in this Lease.

23. Interpretation

23.1 Governing law and jurisdiction

This Lease is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

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**LAND LEASE TO VICTORIA STATE EMERGENCY SERVICE AUTHORITY
(NUMURKAH SES) (cont'd)**

ATTACHMENT No [1] - VICSES - Draft Land Lease

23.2 Persons

In this Lease, a reference to a person includes a firm, partnership, association, corporation or other corporate body.

23.3 Joint and several

If a party consists of more than 1 person, this Lease binds them jointly and each of them severally.

23.4 Legislation

In this Lease, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

23.5 Clauses and headings

In this Lease:

23.5.1 a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure in or to this Lease; and

23.5.2 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Lease.

23.6 Severance

In this Lease:

23.6.1 if a provision is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable; and

23.6.2 if it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Lease.

23.7 Number and gender

In this Lease, a reference to:

23.7.1 the singular includes the plural and vice versa; and

23.7.2 a gender includes the other genders.

23.8 No Relationship

No party to this Lease has the power to obligate or bind any other party. Nothing in this Lease will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between Council and the Tenant. Nothing in this Lease will be deemed to authorise or empower the Tenant to act as agent for or with Council.

23.9 Exclusion of statutory provisions

The following statutory provision is excluded from this Lease:

Division 7 of the *Transfer of Land Act 1958* (Vic).

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**LAND LEASE TO VICTORIA STATE EMERGENCY SERVICE AUTHORITY
(NUMURKAH SES) (cont'd)**

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Annexure A Special Conditions

[Delete / modify / insert further special conditions as appropriate.]

1. Restriction on use

The Tenant must not use the Land wholly or predominantly for the sale or hire of goods by retail or the retail provision of services within the meaning of the Act. This Special Condition is an essential term of this Lease.

2. Cost of services to the Land

Notwithstanding that pursuant to clause 7.1, the Tenant must pay for all services in connection with the Land, the Tenant is not liable for the ordinary consumption charges for the following services/utilities:

[List specific services which the Tenant need not pay for.]

3. Car Parking

The Tenant is granted the right to use the *[specify car parks or include a reference to the car parks marked on the plan]* (**Car Parks**) on *[specify days and hours]* during the Term on a non-exclusive basis for the purpose of parking motor vehicles. The Tenant must:

- (a) observe all parking laws and regulations;
- (b) not in any way litter the land upon which the Car Parks are located;
- (c) have regard to the rights and interests of other users of the land upon which the Car Parks are located;
- (d) not in any way obstruct the entrances, exits and driveways to the Land or the land upon which the Car Parks are located; and
- (e) not park delivery vehicles during loading or unloading in any places other than those which the Council may allot for those purposes.

The Council will not be liable to the Tenant for any damage or loss sustained by the Tenant as a result of this grant of licence for use of the Car Parks.

4. Access Routes

- (a) Council grants the Tenant the right during the Term to use the access routes as shown coloured *[insert]* on the plan annexed to this lease together with the Council and any other persons permitted by the Council.
- (b) Council must not obstruct, and must ensure that other persons do not obstruct, the access routes at any time.

5. Storage Areas

The Tenant is granted the right to use the *[specify storage areas or include a reference to the storage areas marked on the plan]* (**Storage Areas**) on a non-exclusive basis for the purpose of storage of goods and materials associated with the Permitted Use during the Term. The Tenant must:

- (a) observe all laws and regulations as they pertain to the Storage Areas;

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**LAND LEASE TO VICTORIA STATE EMERGENCY SERVICE AUTHORITY
(NUMURKAH SES) (cont'd)**

ATTACHMENT No [1] - VICSES - Draft Land Lease

- (b) keep the Storage Areas clean and tidy;
- (c) have regard to the rights and interests of other users of the land upon which the Storage Areas are located;
- (d) not in any way obstruct the entrances, exits and driveways to the Land or the land upon which the Storage Areas are located; and
- (e) not park delivery vehicles during loading or unloading in any places other than those which the Council may allot for those purposes.

The Council will not be liable to the Tenant for any damage or loss sustained by the Tenant as a result of this grant of licence for use of the Storage Areas.

6. Common Areas

The Tenant is granted the right to use the [specify common areas such as kitchen or toilets or include a reference to the common areas marked on the plan] (**Common Areas**) on [specify days and hours] during the Term on a non-exclusive basis for the purpose of [kitchen facilities/toilet facilities for its employees, volunteers, contractors, agents, invitees and persons the Tenant allows on the Land]. The Tenant must:

- (a) observe all laws and regulations as they pertain to the Common Areas;
- (b) only use the Common Areas for their intended purposes;
- (c) keep the Common Areas clean and tidy following their use by the Tenant;
- (d) have regard to the rights and interests of other users of the Common Areas; and
- (e) not obstruct the Common Areas or any access to them.

The Council will not be liable to the Tenant for any damage or loss sustained by the Tenant as a result of this grant of licence for use of the Common Areas.

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4. A WELL RUN COUNCIL

ITEM NO: 9.2.3

**LAND LEASE TO VICTORIA STATE EMERGENCY SERVICE AUTHORITY
(NUMURKAH SES) (cont'd)**

ATTACHMENT No [1] - VICSES - Draft Land Lease

Annexure B Plan of Land

FILE NO: 05022020
1. A GREAT PLACE TO LIVE

ITEM NO: 9.3.1

INNOVATIVE SERVICES ARE BETTER SERVICES

RECOMMENDATION

That Council:

- Endorse the Innovative Services are Better Services program;
- Endorse seeking Expressions of Interest from service providers to deliver the Innovative Services are Better Services program; and
- Note the intention to fund in the 2020/21 financial year: the Home and Community Care Program for Younger People to an amount of \$17,250; and the Innovative Services are Better Services program to the amount of \$132,750.

1. Executive Summary

Following the transition from the HACC program of aged care to the Federal Government's Commonwealth Home Support Program (CHSP), and disability support services to the National Disability Insurance Scheme (NDIS), historical arrangements for the funding of these services have ceased. Neither the CHSP nor the NDIS programs have any agreement around, need of, or provision for, Council funding. The HACC Program for Younger People (PYP) continues to operate for those clients under 65 years in receipt of services who were ineligible for the NDIS.

Accordingly, there is an opportunity for Council to re-define its role in supporting residents and visitors who are frail aged or who have a disability.

While there is an option for Council to absorb funds for other purposes, discussions to date have indicated a desire that funds in the order of previously committed allocations, will continue to be provided to support residents who are frail aged or who have a disability. Accordingly, this report outlines proposals for the maintenance of funding to the remaining HACC PYP and management of the re-distribution of residual funds for the purposes of using these funds to support innovative service or program offerings that meet unmet need and are otherwise unfunded by government.

2. Background and Options

Following the transition from HACC of aged care to the Federal Government and disability support services to the NDIS, historical arrangements for the funding of these services, including Council's role have changed. Neither the CHSP nor the NDIS programs have any agreement around, need of, or provision for, Council funds.

Additionally, and importantly, given the competitive nature of the care delivery sector arising from implementation of consumer choice there is no discretionary option to continue to provide funding for these programs.

While the establishment of the CHSP and the NDIS addressed the needs of the majority of HACC clients, there remains small populations of clients under 65 years who are ineligible for the NDIS. These clients continue to receive services under a revised HACC program called HACC PYP. Theoretically, Councils can elect to continue contributing to these services.

In Moira Shire, HACC services have been delivered by the Moira Health Care Alliance (MHA Care). Council have contributed to the delivery of HACC services via a funding allocation to this agency. In the 2019/20 budget Council's commitment is \$150,000.

FILE NO: 05022020
1. A GREAT PLACE TO LIVE

ITEM NO: 9.3.1

INNOVATIVE SERVICES ARE BETTER SERVICES (cont'd)

The implementation of the new community care programs has changed the community care landscape considerably. While creating new services, these have also created new gaps in service delivery and highlighted opportunities for further service need. Therefore, it is proposed that Council undertake an EOI process, for service providers across the Shire to express interest for funding to implement innovative service opportunities promoting community engagement and connectivity, for residents in the target populations.

The EOI concepts should demonstrate sustainability, address identified gaps in the broader support system and will make a significant difference in promoting health and wellbeing and/or safety within the target populations.

The funds will be offered on a three-year basis to allow providers to have funding surety and time to implement and assess program benefits. It is intended that, where relevant, the funds can be used to lever funds from other sources, to further augment program offerings. The programs will be acquitted annually in accordance with the provisions in the MOU, including demonstration of agreed KPI's and outcomes.

It is further proposed that Council maintain funding to the HACC PYP program in accordance with the historical funding agreement with MHA Care the amount of which to be determined by ratio of clients in this program to clients that have transitioned to the NDIS and CHSP.

3. Financial Implications

While the overall funding for allocation will not increase, there will be increased demand on officer time to progress the EOI process and implementation. There will be some cost for design and publicity. These can be met through operational budgets.

Proposed allocation:

MHA Care (HACC PYP)	\$17,250.00
Innovative Services are Better Services Program	\$132,750.00
TOTAL	\$150,000.00

As previously noted MHA Care have continued to accept clients under 65 years. The current proposal is in principle and the amount cited the minimum for the client volume on the books at the time of transition. Any change to the allocation would result in a corresponding reduction in the pool of funds available through the EOI process and therefore not affect the bottom line.

4. Risk Management

There is a risk that the public will perceive that funding has been withdrawn from MHA Care rather than from those programs that Council can no longer fund. A detailed communications' plan has been developed designed to promote positive messaging around the opportunity the introduction of CHSP and NDIS have provided for reallocation of moneys to address unmet need in our communities (and Council's commitment to do this).

5. Internal and External Consultation

Officers have consulted with Council's procurement team regarding the optimum method of flowing funding for the purposes outlined in this report. An EOI process has been recommended.

FILE NO: 05022020
1. A GREAT PLACE TO LIVE

ITEM NO: 9.3.1

INNOVATIVE SERVICES ARE BETTER SERVICES (cont'd)

Contact with the current provider MHA Care has been consistent in articulating Council's intention to review funds allocated to the HACC program and the rationale for this.

6. National and State Context

The establishment of the CHSP and NDIS are national programs responding to support needs of people who are frail aged or who have a disability. In addition, the Victorian State Government has continued to fund a HACC PYP program to support those clients under 65 years who are ineligible to receive support from the NDIS.

7. Council Plan Strategy

These proposals accord with the Council Plan Strategy 1: *A great place to live*.

8. Legislative / Policy Implications

There are no legislative or policy implications.

This work has been precipitated by significant program reforms in both the aged and disability care sectors respectively, both of which have negated the capacity for Council to fund services replacing HACC services. Council can still make a contribution to the remaining HACC Service, HACC PYP.

9. Environmental Impact

There are no environmental impacts arising from the actions detailed in this report.

10. Conflict of Interest Considerations

There are no conflicts of interest associated with this report.

11. Conclusion

Council currently makes a contribution of \$150k for the delivery of HACC services. HACC services (in the majority) have now been replaced by the CHSP and NDIS, these programs cannot be funded by Council.

There are a small contingent of clients who are not eligible for the NDIS and who remain on a revised HACC program, HACC PYP. It is proposed that Council maintain proportionate funding to MHA Care for this program and seek to re-distribute of remaining funds to projects and programs that will meet unmet need in the target populations in our communities.

It is recommended that Council endorse the actions proposed in this report to facilitate continued support of residents and visitors who are frail aged or who have a disability.

Attachments

Nil

FILE NO: 3
3. A CLEAN GREEN ENVIRONMENT

ITEM NO: 9.3.2

SUPPLY OF ELECTRICITY FOR SMALL TARIFFS

RECOMMENDATION

That Council:

1. Consent to join the State Purchasing (SPC) contract SS-04-2018 for the Supply of Electricity for Small Tariffs with Australian Gas & Light company (AGL) as the service provider.
2. Authorise Council Officers to approve orders for services under the contract within delegated authorities; and
3. Authorise the Chief Executive Officer to extend the contract subject to the terms and conditions.

1. Executive Summary

On the 24th July 2019, the Moira Shire Council approved the commitment of 100% of its electricity load to the Local Government Power Purchasing Agreement (LG PPA).

The project team coordinating the LG PPA have recently updated the buyers group of participating Councils that the project has experienced a delay. As a result, the project can no longer guarantee a start date of 1 July 2020.

Therefore Councils with electricity contracts expiring 30 June 2020 will need to secure an interim contract for a short period, until they can roll-in to the PPA contract. The Moira Shire Councils 'small market' sites contract is affected by this disruption and as a result, Council will need to secure an interim contract for these sites.

Officers have considered and evaluated a number of options available to Council to secure an interim contract prior to the LG PPA commencing. The result of this evaluation is the recommendation for Council to sign up to the existing State Purchasing (SPC) contract, with AGL as the supplier.

This report seeks Council endorsement to join the SPC contract allowing Council to participate in the 18-month small tariff sites contract with AGL.

Access to the State Purchasing (SPC) contract SS-04-2018 is permitted via Ministerial Approval for Local Government access (attached) and is in accordance with Council's Procurement Guidelines and Section 186 of the *Local Government Act 1989*.

2. Background and Options

Currently Council is contracted with Municipal Association of Victoria (MAV) until the 30 June 2020; as such, we are unable to commence usage of energy through the SPC contract until 1 July 2020.

Supervision

The Superintendent will be Sally Rice, General Manager Community and the Superintendent's Representative will be James Steinfort, Environmental Sustainability Officer.

Contract Term

The contract is for an 18-month period expiring 31 Dec 2021.

Once this SPC contract expires on 31 December 2021, Council will be able to roll its small market sites into the LG PPA as intended.

FILE NO: 3
3. A CLEAN GREEN ENVIRONMENT

ITEM NO: 9.3.2

SUPPLY OF ELECTRICITY FOR SMALL TARIFFS (cont'd)

Type of Contract

The contract is a Schedule of Rates contract for Councils small tariff sites.

3. Financial Implications

The cost for the supply of energy to Councils small tariff sites is included in each department's operational budget.

4. Risk Management

In order to comply with Council's procurement guidelines and Section 186 of the *Local Government Act 1989* for the supply of goods, Council must either test the market itself or enter into an existing agreement which is compliant with Section 186 of the *Local Government Act 1989*.

5. Internal and External Consultation

External - The tender was previously advertised by SPC Procurement.

6. Regional Context

Participating in the SPC contract provides regional Council's better value for money due to the collaborative buying power.

7. Council Plan Strategy

Utilising the SPC panel for these services will assist Council in meeting the objective of smarter delivery of existing services and programs; in addition, undertaking the tender process demonstrates good governance.

8. Legislative / Policy Implications

The tender process was undertaken in accordance with the requirements of the Local Government Act and Council's adopted policy.

9. Environmental Impact

The SPC specification and subsequent contract included the option to purchase green power allowing Council to consider green power usage in the future.

10. Conflict of Interest Considerations

There was no conflict of interest declared for this tender evaluation process.

11. Conclusion

It is recommended that Council join the SPC contract SS-04-2018 for the Supply of Electricity for Small Tariffs in order to source energy through Australian Gas & Light company (AGL).

Attachments

- 1 Ministerial Exemption
- 2 SPC - STATE PURCHASING CONTRACTS - LETTER - *printed in separate document*

FILE NO: 3
3. A CLEAN GREEN ENVIRONMENT

ITEM NO: 9.3.2

SUPPLY OF ELECTRICITY FOR SMALL TARIFFS (cont'd)

ATTACHMENT No [1] - Ministerial Exemption

**LOCAL GOVERNMENT ACT 1989
SECTION 186**

APPROVAL OF ARRANGEMENTS

I, Richard Wynne MP, Minister for Local Government approve 'Whole of Government' State Purchase Contracts as arrangements for the purposes of section 186(5)(c) of the Local Government Act 1989 (the Act)

This approval is granted in the following manner

- Councils and regional library corporations wishing to procure goods and services under State Purchase Contracts must adhere to the rules associated with the individual State Purchase Contracts
- In accessing State Purchase Contracts, councils and regional library corporations will be subject to the 'Fair Payments Policy' under which all invoices must be paid within 30 days of their receipt (or as long a period as allowed under an individual State Purchase Contract)

I give this approval for the following reasons –

- a) State Purchase Contracts are established for use by State Government Departments and Agencies and represent 'good value',
- b) State Purchase Contracts are established following a rigorous open and transparent public tendering process within the meaning of section 186 of the Act, and
- c) giving the local government sector access to State Purchase Contracts will enable councils and regional library corporations to take advantage of the savings that will flow through their access



RICHARD WYNNE MP
Minister for Local Government

Date 1 / 18 / 2009

FILE NO: C023/19
4. A WELL RUN COUNCIL

ITEM NO: 9.3.3

C023/19 - GROUND WATER SAMPLING

RECOMMENDATION

That Council:

1. Award contract C023/19 – Ground Water Sampling to Glaeba (03) Pty Ltd t/a Environmental Earth Services Vic.
2. Authorise the Chief Executive Officer to sign and seal the contract documents.

1. Executive Summary

Moira Shire Council invited submissions from suitably qualified organisations registered under the Municipal Association of Victoria (MAV) Contaminated Land, Landfill and Environmental Audit contract CL7700.

A Ministerial exemption allows Council to enter into a contract with suitable suppliers that responded a public tender conducted by the MAV.

Council sought written quotes from six suppliers registered on the MAV panel to conduct quarterly sampling of groundwater, leachate and surface water at various locations within Moira Shire.

The submission and subsequent Conditions of Contract are in accordance with the

After consideration of the submissions received, the evaluation panel recommends that Contract C023/19 be awarded to Glaeba (03) Pty Ltd t/a Environmental Earth Services Vic.

2. Background and Options

The contract shall be for an initial term of 5 years and shall commence the date agreed between the Council and the Contractor.

Upon mutual agreement, the Contract may extend in single periods of twelve months to a maximum contract period of seven years (5+1+1).

Date of Public Notice

Council sought submissions through the MAV contract CL7700 – Contaminated Land, Landfill and Environmental Audit by invitation only.

Tenders closed at 5.00pm on closed Friday 14 February 2020.

Receipt of Tenders

A total of six submissions were received from the following organisations:

1. BlueSphere Environmental Pty Ltd
2. Kleinfelder Australia Pty Ltd
3. Edge Group Pty Ltd
4. Mackenzie Environmental Pty Ltd
5. Glaeba (03) Pty Ltd t/a Environmental Earth Sciences VIC
6. Meinhardt Australia Pty Ltd

FILE NO: C023/19
4. A WELL RUN COUNCIL

ITEM NO: 9.3.3

C023/19 - GROUND WATER SAMPLING (cont'd)

Supervision

Superintendent – General Manager Community
Superintendent Representative - Coordinator Waste Management Services

Panel Membership

The submissions were evaluated by the following positions:

- Coordinator Waste Management Services
- Recycle and Waste Project Officer

The evaluation was moderated by the Procurement Coordinator.

Non-conforming tenders

No submission was considered to be non-conforming.

Tender Evaluation

The criteria and weightings utilised are detailed in the following table:

Evaluation Criteria	Evaluation Weighting
Price	40%
Track Record	20%
Skills and Resources	20%
Compliance with Specification	10%
Contribution to Local Economy	10%

For more information, please refer to Appendix A – Evaluation Summary (Confidential).

3. Financial Implications

The cost of the services provided under this contract is within the approved 2019/20 budget and future operational budgets will be set in accordance with the agreed contract rates.

4. Risk Management

In accordance with Council's *Environmental Protection Act 2000* responsibilities, this contract is in place to identify potentially erroneous results or concentrations / levels that are of concern with Councils groundwater, surface water and leachate at the landfill sites.

If anomalies are identified Council is to be contacted immediately and agree to an appropriate response such as resampling.

5. Internal and External Consultation

The specification was approved by the responsible officer and General Manager Community.

6. Regional Context

This project contributes to the strategic objective of continuing to maintain and provide facilities and services that our community value and need.

FILE NO: C023/19
4. A WELL RUN COUNCIL

ITEM NO: 9.3.3

C023/19 - GROUND WATER SAMPLING (cont'd)

7. Council Plan Strategy

The Council Plan addresses the need for a well-run Council by implementing a transparent, engaging and accountable governance structure for current and future generations. The processes undertaken to award the contract meet the legislative and policy requirements relating to procurement and tendering.

8. Legislative / Policy Implications

The tender process was undertaken by the MAV in accordance with the requirements of the section 186 of the Local Government Act and Council's adopted Procurement Policy.

9. Environmental Impact

This contract is in place to conform to Councils requirements under the *Environmental Protection Act 2000*.

10. Conflict of Interest Considerations

There was no conflict of interest declared for this tender evaluation process.

11. Conclusion

After consideration of the submissions received, including price and all specification requirements, the evaluation panel recommends that Contract C023/19 be awarded to Glaeba (03) Pty Ltd t/a Environmental Earth Services Vic.

Attachments

- 1 C023 19 - Ground Water Sampling - APPENDIX A EVALUATION SUMMARY - *printed in separate document*

FILE NO: D17/78665
1. A GREAT PLACE TO LIVE

ITEM NO: 9.4.1

DISCOUNTED CAT DESEXING PROGRAM

RECOMMENDATION

That Council consider the allocation of \$20,000 in its 2020 – 2021 budget toward the implementation of the National Desexing Network Co-Operative cat desexing program for access by residents who are holders of pension, concession or health care cards, on low incomes, or with large numbers of cats.

1. Executive Summary

The National Desexing Network (NDN) operate a discounted cat desexing program. The program facilitates subsidised cat desexing costs for residents who are holders of pension, concession or health care cards, on low incomes or, with large numbers of cats.

National Desexing Programs are effective in:

- reducing costs for animal management;
- increasing compliance with animal local and state laws;
- reducing nuisance issues for animal and non-animal owners;
- reduce the number of unwanted and undesexed cats in our community.
- helping to achieve a sustainable reduction in impounded and euthanased animals.
- having a promotional media strategy which encourages low income earners to desex their cats whilst also informing the whole community about the importance of desexing, and the need for early age desexing.

While the NDN operate the program, the subsidy toward the desexing cost is funded by the local Council.

Moira Shire Council's pound statistics for the past two years demonstrates the high number of feral and unwanted cats that have been impounded. Desexing of cats should assist in reducing this number.

It is recommended that Council consider an allocation of \$20,000 in its 2020 – 2021 budget toward the implementation of the NDN program.

2. Background and Options

The euthanasia rates of both dogs and cats are a concern in pounds, in particularly for cats who have high euthanasia rates. An effective strategy in reducing the number of unwanted cats in the community is to implement a discounted cat desexing program.

RSPCA Victoria's website reports that '*Cats start breeding as young as five months of age. If left undesexed, just one female cat and her offspring can produce up to 5,000 cats in seven years*'.

The National Desexing Network (NDN) is an initiative of the Animal Welfare League of Queensland. It was established in 2004 and through a nationwide network of 160 participating veterinary clinics, has helped to desex around 200,000 cats and dogs

FILE NO: D17/78665
1. A GREAT PLACE TO LIVE

ITEM NO: 9.4.1

DISCOUNTED CAT DESEXING PROGRAM (cont'd)

nationwide. 30 Councils in Queensland and New South Wales are currently involved in the program.

The cost to implement the NDN program are shared between the owners, Council and veterinarians:

CATS	Owner pays	Council Subsidy	Vet receives*
Male cat castration	\$55	\$45	\$100
Female cat spay (first cat)	\$65	\$85	\$150
Female cat spay (additional cats in same household)	\$50	\$100	\$150
Pregnant or In-season	-	\$55	\$55

The NDN provides customised fliers for each Council, as well as a media release to help promote Council's NDN Cooperative Desexing Program. This includes free posters and media in July's National Desexing Month.

During the 2018/19 period 367 cats were admitted into the Moira Shire Council pound. Of these only 5% were reclaimed by their owners and 59% euthanised. During the 2017/18 period, 394 cats were admitted with only 4% reclaimed by their owners and 70% euthanised. The program will be reviewed after 12 months and the effectiveness of the program to be assessed against the number of cats admitted to the pound.

3. Financial Implications

It is recommended Council allocates \$20 000 toward the subsidy allow the implementation of the NDN program in Moira Shire. Should there be a demonstrated reduction in the number of cats being admitted to the pound, consideration could be given to extending the program, including increasing the budget.

4. Risk Management

Implementation of the Domestic Animal Management (DAM) Plan aims to address, or at least reduce, many risks associated with animal management through promoting and supporting responsible pet ownership and management of animals and the protection of the environment.

5. Internal and External Consultation

Officers have liaised with the four veterinary clinics within Moira Shire Council – Cobram (and Yarrawonga) Veterinary Clinic, Numurkah Vet Clinic, Brennan's Veterinary Services and Kyabram (Nathalia) Veterinary Clinic. All veterinarians have expressed their support for this program and have indicated that they would participate in this program.

FILE NO: D17/78665
1. A GREAT PLACE TO LIVE

ITEM NO: 9.4.1

DISCOUNTED CAT DESEXING PROGRAM (cont'd)

6. Regional Context

Moira Shire's DAM Plan to address 'Overpopulation and high euthanasia' is to 'endeavour to reduce the number of registered dogs and cats that are currently entire and not part of a Domestic Animal Breeding business. The activity to address this is to 'Investigate discount desexing days or ongoing subsidised desexing for pets of low income earners via agreements with organisations and implement if required'. This framework correlates with the Community and Region expectations.

7. Council Plan Strategy

Implementing this part of the DAM Plan will assist with Council's strategy of Improving Moira's liveability by encouraging safe and resilient communities.

8. Legislative / Policy Implications

The Domestic Animals Act 1994 (the Act), the Domestic Animals Regulations 2015 (the Regulations) and all relevant Codes of Practice aim at promoting animal welfare, the responsible ownership of dogs and cats and the protection of the environment through the provision of various animal management services.

9. Environmental Impact

The DAM plan promotes and encourages responsible pet ownership which in turn aids to restrict damage to the natural environment.

10. Conflict of Interest Considerations

There are no officer conflict of interest issues to consider within this report.

11. Conclusion

A Council subsidised NDN Cooperative Desexing Program is a proactive animal management strategy, essential in trying to reduce the oversupply of cats and kittens in the community. It provides positive and ethical outcomes for animals, owners and the whole community.

Council's participation in a discounted cat desexing program will reduce the number of entire registered cats that are not part of a Domestic Animal Breeding business. This will comply with Council's current DAM Plan.

It is therefore recommended that Council consider allocating \$20,000 toward the program in the 2020-2021 budget.

Attachments

Nil

FILE NO: C052/19
4. A WELL RUN COUNCIL

ITEM NO: 9.4.2

C052/19 - PROVISION OF TRAFFIC MANAGEMENT SERVICES PANEL

RECOMMENDATION

That Council:

1. Award panel contract C052/19 – Provision of Traffic Management Services to the following tenderers:
 - Jarvis Delahey Contractors Pty Ltd
 - Go Traffic Pty Ltd
 - Worktrainers Ltd trading as Game Traffic and Contracting
 - Bedrock Traffic Control Pty Ltd
2. Authorise the Chief Executive Officer to sign and seal the contract documents.

1. Executive Summary

Moira Shire Council invited submissions from suitably qualified organisations or individuals to create a panel of contractors to provide Traffic Management Services in support of Councils maintenance works and capital works programs.

After consideration of the submissions, the evaluation panel recommends that all tenderers listed in the recommendation be placed on the panel.

2. Background and Options

The services under this contract will ensure and provide for the safe movement of traffic and the protection of persons and property through and/or around the work sites within the boundaries of the Moira Shire Council.

3. Contract Details

This contract shall be for an initial term of 2 years with the option to extend in single periods of 1 year to a maximum contract period of 5 years (2+1+1+1).

4. Date of Public Notice

Paper	Date
The Border Mail	25 January 2020
Shepparton News	28 January 2020
Cobram Courier	29 January 2020
Numurkah Leader	29 January 2020
Yarrawonga Chronicle	29 January 2020

Submissions closed 19 February 2020.

Receipt of Tenders

Four submissions were received.

Supervision

Superintendent – Manager Operations

Superintendent Representative – Superintendent Works and Services

FILE NO: C052/19
4. A WELL RUN COUNCIL

ITEM NO: 9.4.2

**C052/19 - PROVISION OF TRAFFIC MANAGEMENT SERVICES PANEL
(cont'd)**

Panel Membership

The submissions were independently evaluated in TenderSearch by the following positions:

- Superintendent Works and Services
- Superintendent Parks and Town Maintenance
- Project Supervisor

The Procurement Coordinator moderated the evaluation.

Non-conforming tenders

There were no non-conforming submissions.

Tender Evaluation

The following evaluation criteria and weightings used were:

Evaluation Criteria	Evaluation Weighting
Price	30%
Track Record	20%
Skills and Resources	20%
Contribution to Local Economy	10%
Management of Schedules	10%
Compliance with Specification	10%

5. Financial Implications

Submitted rates from the recommended tenderers are fair, reasonable and comparable to current rates.

6. Risk Management

Tenderers addressed risk management issues as part of the tender, additional risks associated with the works under contract will be managed on an individual project basis.

7. Internal and External Consultation

Council advertised the tender through the TenderSearch website and the local news media including the Border Mail and the Shepparton News.

The Superintendent Works and Services, Manager Operations and General Manager Infrastructure approved the specification.

8. Regional Context

Businesses located within the Moira Shire have a 10% weighting applied to their tenders.

FILE NO: C052/19
4. A WELL RUN COUNCIL

ITEM NO: 9.4.2

**C052/19 - PROVISION OF TRAFFIC MANAGEMENT SERVICES PANEL
(cont'd)**

9. Council Plan Strategy

The Council Plan addresses the need for a well-run Council by implementing a transparent, engaging and accountable governance structure for current and future generations. The processes undertaken to award the contract meet the legislative and policy requirements relating to procurement and tendering.

10. Legislative / Policy Implications

The tender process was undertaken in accordance with the requirements of the section 186 of the Local Government Act and Council's adopted Procurement Policy.

11. Environmental Impact

There were no environmental implications relating to the tender process. Additional environmental risks associated with the works under contract will be managed on an individual project basis.

12. Conflict of Interest Considerations

There was no conflict of interest declared for this tender evaluation process.

13. Conclusion

The recommendation is to place all tenders on panel contract C052/19 Traffic Management Services.

Attachments

- 1 C052 19 -Provision of Traffic Management Services Panel - APPENDIX A EVALUATION SUMMARY - *printed in separate document*

FILE NO: C062/19
4. A WELL RUN COUNCIL

ITEM NO: 9.4.3

**C062/19 - SUPPLY AND DELIVERY OF PRE-CAST CONCRETE PRODUCTS
PANEL**

RECOMMENDATION

That Council:

1. Award panel contract C062/19 – Supply and Delivery of Pre-Cast Concrete Products to the following tenderers:
 - Precast Concrete Wangaratta Pty Ltd
 - Modcast Pty Ltd
 - Milcast Australia Pty Ltd
 - Precast Civil Industries Pty Ltd
2. Authorise the Chief Executive Officer to sign and seal the contract documents.

1. Executive Summary

Moira Shire Council invited submissions from suitably qualified organisations or individuals to create a panel of contractors for the supply and delivery of pre-cast concrete products.

After consideration of the submissions, the tender evaluation panel recommends that all tenderers be placed on the panel.

2. Background and Options

Council is responsible for the condition of a wide range of assets within the municipality. These assets include road and drainage infrastructure, buildings and facilities. Council operates both reactive and routine maintenance programs to ensure that the assets in place fulfil their function.

This contract is for the supply and delivery of Pre-Cast Concrete Products related to the maintenance and construction of Council assets.

3. Contract Details

The schedule of rates contract is for an initial term of 1 year and may extend in single periods of two years to a maximum contract period of five years (1+2+2).

Date of Public Notice

Paper	Date
The Border Mail	25 January 2020
Shepparton News	28 January 2020
Cobram Courier	29 January 2020
Numurkah Leader	29 January 2020
Yarrawonga Chronicle	29 January 2020

Submissions closed 19 February 2020.

FILE NO: C062/19
4. A WELL RUN COUNCIL

ITEM NO: 9.4.3

**C062/19 - SUPPLY AND DELIVERY OF PRE-CAST CONCRETE PRODUCTS
PANEL (cont'd)**

Receipt of Tenders

Four submissions were received.

Supervision

Superintendent – Manager Operations

Superintendent Representative – Superintendent Works and Services

Panel Membership

Staff in the following positions independently evaluated the submissions in TenderSearch:

- Manager Operations
- Superintendent Works and Services
- Team Leader Tungamah

The Procurement Coordinator moderated the tender evaluation.

Non-conforming tenders

There were no non-conforming tenders.

Tender Evaluation

The following evaluation criteria and weightings were used:

Evaluation Criteria	Evaluation Weighting
Price	30%
Track Record	20%
Skills and Resources	20%
Contribution to Local Economy	10%
Management of Schedules	10%
Compliance with Specification	10%

4. Financial Implications

Submitted rates from the recommended tenderers are fair, reasonable and comparable to current rates.

5. Risk Management

Tenderers addressed risk management issues as part of the tender, additional risks associated with the works under contract will be managed on an individual project basis.

6. Internal and External Consultation

Council advertised the tender through the TenderSearch website and the local news media including the Border Mail and the Shepparton News.

The Superintendent Works and Services, Manager Operations and General Manager Infrastructure approved the specification.

FILE NO: C062/19
4. A WELL RUN COUNCIL

ITEM NO: 9.4.3

**C062/19 - SUPPLY AND DELIVERY OF PRE-CAST CONCRETE PRODUCTS
PANEL (cont'd)**

7. Regional Context

Businesses located within the Moira Shire have a 10% weighting applied to their tenders.

8. Council Plan Strategy

The Council Plan addresses the need for a well-run Council by implementing a transparent, engaging and accountable governance structure for current and future generations. The processes undertaken to award the contract meet the legislative and policy requirements relating to procurement and tendering.

9. Legislative / Policy Implications

The tender process was undertaken in accordance with the requirements of the section 186 of the Local Government Act and Council's adopted Procurement Policy.

10. Environmental Impact

There were no environmental implications relating to the tender process. Additional environmental risks associated with the works under contract will be managed on an individual project basis.

11. Conflict of Interest Considerations

There was no conflict of interest declared for this tender evaluation process.

12. Conclusion

The recommendation is to place all tenders on panel contract C062/19 Supply and Delivery of Pre-Cast Concrete Products.

Attachments

- 1 C062 19 -Supply and Delivery of Pre-Cast Concrete Products Panel - APPENDIX A EVALUATION SUMMARY - *printed in separate document*

FILE NO: C056/19
4. A WELL RUN COUNCIL

ITEM NO: 9.4.4

C056/19 - FINANCE OF ONE SPLIT CAB TIPPER

RECOMMENDATION

That Council:

1. Award contract C056/19 – Finance of One Split Cab Tipper to Whitehorse Trucks Pty Ltd.
2. Authorise the Chief Executive Officer to sign and seal the contract documents.

1. Executive Summary

Moira Shire Council invited submissions from suitably qualified companies for the supply and delivery or finance of one Split Space Cab Tip Truck with the option to:

- Purchase the vehicle outright
- Lease the vehicle over a 5-year lease term.

The submission and subsequent Conditions of Contract were to be in accordance with the Municipal Association of Victoria (MAV) contract NPN04-13 – Trucks.

After consideration of the submissions, the tender evaluation panel recommends that contract C056/19 be awarded to Whitehorse Trucks Pty Ltd.

2. Background and Options

The vehicle will be used by Council's Municipal Concreter for tasks related to concreting projects. The vehicle is expected to travel 30,000 kms per annum.

Contract Details

The contract is for a 5 year lease term inclusive of maintenance.

Date of Public Notice

Submissions were sought through the MAV contract NPN04 -13 – Trucks. Submissions were by invitation only and closed Friday 7 February 2020.

Receipt of Tenders

3 Submissions were received.

Supervision

Superintendent – Manager Operations
Superintendent Representative – Fleet and Store Administrator

Panel Membership

Staff in the following positions independently evaluated the submissions:

- Municipal Concreter
- Superintendent Works and Services
- Fleet and Store Administrator

The Procurement Coordinator moderated the tender evaluation.

FILE NO: C056/19
4. A WELL RUN COUNCIL

ITEM NO: 9.4.4

C056/19 - FINANCE OF ONE SPLIT CAB TIPPER (cont'd)

Non-conforming tenders

Two of the three submissions were non-conforming. One tender was non-conforming due to the tendered truck being outside specification and the other for not providing lease terms.

Tender Evaluation

The following evaluation criteria and weightings were used:

Evaluation Criteria	Evaluation Weighting
Price	40%
Compliance with Specification	30%
Track Record	10%
Management of Schedules	10%
Contribution to Local Economy	10%

3. Financial Implications

The 2019/20 budget contains sufficient funds to lease the truck, future budgets will be set in accordance with the agreed lease costs.

Risk Management

In order to minimise the risks associated with the purchase of plant, the specification contained the following conditions:

- The vehicle shall comply with all Federal and State Government Legislative requirements as well as all relevant Australian Standards and Australian Design Rules.
- Two (2) copies each of the operator, parts and workshop manuals shall be supplied (one hard copy and one disk) for the vehicle.
- On delivery, an induction of the capabilities of the vehicle is to be done for nominated Council staff.

4. Internal and External Consultation

The Fleet and Store Administrator, Manager Operations and General Manager Infrastructure approved the specification.

5. Regional Context

Businesses located within the Moira Shire have a 10% weighting applied to their tenders.

6. Council Plan Strategy

The Council Plan addresses the need for a well-run Council by implementing a transparent, engaging and accountable governance structure for current and future generations. The processes undertaken to award the contract meet the legislative and policy requirements relating to procurement and tendering.

7. Legislative / Policy Implications

The tender process was undertaken in accordance with the requirements of the section 186 of the Local Government Act and Council's adopted Procurement Policy.

FILE NO: C056/19
4. A WELL RUN COUNCIL

ITEM NO: 9.4.4

C056/19 - FINANCE OF ONE SPLIT CAB TIPPER (cont'd)

8. Environmental Impact

The proposed truck meets all the latest pollution and environmental requirements for vehicles of this type.

9. Conflict of Interest Considerations

There was no conflict of interest declared for this tender evaluation process.

10. Conclusion

The recommendation is to award contract C056/19 Finance of one Split Cab Tipper to Whitehorse Trucks Pty Ltd.

Attachments

- 1 C056/19 - Finance of One Split Cab Tipper - APPENDIX A (Confidential) - *printed in separate document*

FILE NO: VARIOUS

ITEM NO: 14

URGENT GENERAL BUSINESS**Clause 60 of Council's "Meeting Procedures Local Law 2017 states:****60. Urgent general business**

- 1) Councillors must provide an outline of the matters to be considered before Council can accept the motion to consider urgent business. The outline must demonstrate how the matter meets the criteria for urgent business.
- 2) Urgent business can only be admitted by resolution of Council
- 3) Urgent business must not be admitted as urgent business unless
 - a) It relates to or arises out of a matter which has arisen since distribution of the agenda
 - b) Is manifestly urgent
 - c) Is material to the function of Council
 - d) Requires an urgent council resolution
 - e) Is otherwise determined by the CEO.
- 4) Only the mover of an urgency motion may speak to the motion before it is put.

FILE NO: VARIOUS

ITEM NO: 15

QUESTIONS FROM THE PUBLIC GALLERY

Clause 61 of Council’s “Meeting Procedures Local Law 2017 states:

61. Question Time

The Council will hold a Public Question Time of up to 30 minutes duration at each Ordinary Meeting, to enable members of the public to receive answers to questions previously submitted for consideration, and if the submitted questions are dealt with in less than the 30 minute period, the Chair can invite questions from the floor.

- 1) At every ordinary meeting of the Council a maximum of 30 minutes may be allocated to enable members of the public to submit questions to Council.
- 2) The time allocated may be extended by unanimous resolution of Council.
- 3) Sub-clause (1) does not apply during any period when the Council has resolved to close a meeting in respect of a matter under section 89(2) of the Act.
- 4) To assist the accurate recording of minutes and addressing any questions that may require written response or follow up, the Chief Executive Officer may require questions to be submitted in writing.
- 5) No person may submit more than two (2) questions at any one (1) meeting.
- 6) The Chairperson or member of Council staff nominated by the Chairperson may read a question to those present.
- 7) No question must be so read unless:
 - a) the person asking the same is in the gallery at the time it is due to be read; and
 - b) the person asking the question reads the same when called upon by the Chairperson to do so.
 - c) A question may be disallowed by the Chairperson if it:
 - d) relates to a matter outside the duties, functions and powers of Council;
 - e) is defamatory, indecent, abusive, offensive, irrelevant, trivial or objectionable in language or substance;
 - f) deals with a subject matter already answered;
 - g) is aimed at embarrassing a Councillor or a member of Council staff;
 - h) relates to personnel matters;
 - i) relates to the personal hardship of any resident or ratepayer;
 - j) relates to industrial matters;
 - k) relates to contractual matters;
 - l) relates to proposed developments;
 - m) relates to legal advice;
 - n) relates to matters affecting the security of Council property; or
 - o) relates to any other matter which Council considers would prejudice Council or any person.
- 8) The Chairperson may request a Councillor or member of Council staff to respond, if possible, to the question.
- 9) Councillor or member of Council staff may require a question to be put on notice until the next Ordinary meeting, at which time the question must be answered, or elect to submit a written answer to the person asking the question.
- 10) A Councillor or member of Council staff may advise Council that it is his or her opinion that the reply to a question should be given in a meeting closed to members of the public. The Councillor or member of Council staff must state briefly the reason why the reply should be so given and, unless Council resolves to the contrary, the reply to such question must be so given.

FILE NO: VARIOUS

ITEM NO: 16

MEETING ADJOURNMENT

RECOMMENDATION

That pursuant to Sections 89(2) (h) of the Local Government Act, 1989, this meeting of Council be closed to members of the public in order for Council to discuss personnel and contractual matters which the Council considers would prejudice the Council or any person.

RECOMMENDATION

That pursuant to Section 89(2) of the Local Government Act 1989, Council resolve to continue in open session.

RECOMMENDATION

That the recommendations of the "Closed" Meeting of Council be adopted.