



MINUTES

Special Council Meeting

3 August 2021

CONFIRMATION OF MINUTES

These Minutes have been CONFIRMED as the official record for the Shire of Gingin's Special Council Meeting held on 3 August 2021.

**Councillor C W Fewster
SHIRE PRESIDENT**

Date of Confirmation: _____

DISCLAIMER

Members of the public are advised that Council agendas, recommendations, minutes and resolutions are subject to confirmation by Council and therefore, prior to relying on them, one should refer to the subsequent meeting of Council with respect to their accuracy.

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The Shire of Gingin disclaims any liability for any loss whatsoever and howsoever caused arising out of reliance by any person or legal entity on any such act, omission or statement or intimation occurring during Council meetings or discussions. Any person or legal entity who acts or fails to act in reliance upon any statement does so at that person's or legal entity's own risk.

Applicants and other interested parties should refrain from taking any action until such time as written advice is received confirming Council's decision with respect to any particular issue.

ACKNOWLEDGEMENT OF COUNTRY



The Shire of Gingin would like to acknowledge the Yued people who are the traditional custodians of this land. The Shire would like to pay respect to the Elders past, present and emerging of the Yued Nation and extend this respect to all Aboriginal people. The Shire also recognises the living culture of the Yued people and the unique contribution they have made to the Gingin region.

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ORDER OF BUSINESS

1 DECLARATION OF OPENING

The Deputy Shire President declared the meeting open at 12:33 pm and welcomed all in attendance.

2 RECORD OF ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE

2.1 ATTENDANCE

Councillors – J K Rule (Deputy Shire President), L Balcombe, F J Johnson, J E Morton, F J Peczka, and A R Vis.

Staff – A Cook (Chief Executive Officer), L Crichton (Executive Manager Corporate and Community Services), M Haramboure (Executive Manager Operations and Assets), R Kelly (Executive Manager Regulatory and Development Services) and L Burt (Coordinator Governance/Minute Officer).

Gallery – There were no members of the public present in the Gallery.

2.2 APOLOGIES

Councillor C W Fewster (Shire President)
Councillor J C Lobb

2.3 LEAVE OF ABSENCE

Councillor J Court

3 DISCLOSURES OF INTEREST

Nil

4 PUBLIC QUESTION TIME

4.1 RESPONSES TO PUBLIC QUESTIONS PREVIOUSLY TAKEN ON NOTICE

Nil

4.2 PUBLIC QUESTIONS

Nil

5 PETITIONS

Nil

6 APPLICATIONS FOR LEAVE OF ABSENCE

Nil

7 ANNOUNCEMENTS BY THE PRESIDING MEMBER

Nil

8 UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS

Nil

9 QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN

Nil

10 REPORTS - OFFICE OF THE CEO

10.1 DISPOSITION OF PROPERTY - LEASE OF GUILDERTON STORE AND CAFE/RESTAURANT

File	A4268
Author	Aaron Cook - Chief Executive Officer
Reporting Officer	Aaron Cook - Chief Executive Officer
Refer	6 July 2021, Item 17.1
Appendices	Nil

DISCLOSURES OF INTEREST

Nil

PURPOSE

For Council to consider a submission made by Ms Katherine Enright regarding the disposition of the Guilderton Store and Café/Restaurant via lease to Belgravia Leisure.

BACKGROUND

Council at its Special Council Meeting held on 6 July 2021 resolved to award Belgravia Leisure the lease of the Guilderton Store and Café/Restaurant subject to completion of the disposition of property procedures required by s.3.58 of the *Local Government Act 1995*.

One submission was received during the public submission period, which must be considered by Council prior to a final decision being made with respect to the disposition of property.

It is noted that the submission is from Ms Katherine Enright, daughter of the previous lessees. Background to dealings with Mr and Mrs Enright over the term of the lease was provided in the previous Officer Report, and it is not proposed to replicate the information here. However, in brief the Enrights previously sought a new lease for the premises which was not agreed to by Council. Subsequently they have made various claims that the previous CEO gave a commitment to a lease extension, which have not be substantiated.

Prior to the lease expiring the Enrights were advised of Council's intention to test the marketplace before entering into a new lease for the premises. This had lead to some activity on social media in an attempt to influence Council's position.

COMMENT

The submission received from Ms Enright provides a list of reasons why the property should not be leased to Belgravia Leisure, including accusations of conflict of interest against the author and previous staff.

	Point Raised	Officer Comment
1.	<i>I find that there has been a massive conflict of interest with this whole process and the CEO Aaron Cook having previous dealings with the belgravia group and some individuals associated with the Belgravia group, being they have worked on different shires together in the past.</i>	This statement is incorrect. The author worked with the YMCA WA some 8 years ago and the officer that he dealt with at the time now works for Belgravia Leisure. There is and never has been any additional interaction between these officers outside of the scope of work.
2.	<i>I strongly oppose the deposition of the belgravia group taking over the lease when a formal deposition was sent in from the current lesser requesting a extension and re tenancy of their lease more than once. Which is normal for any extension of any commercial lease.</i>	The current lessee has been advised of Council's desire to test the market for several years and all extension periods included in the existing lease have been exhausted. Council's decision is not just merely based on placing a tenant into the property but rather seeking the best outcome for the community, visitors and the Shire of Gingin.
3.	<i>There appears to be no negotiation with the current lessee to match or counter what the belgravia group have offered to keep this current business in there tenancy after requesting a 7 plus 7 year lease which was denied but now has been given to the belgravia group. Belgravia were informed prior to the current lessee they gained the tenancy.</i>	Council is not in a position to negotiate with either party as it was a tender process that was facilitated. The decision is not based on the total of rent paid but rather service provision that will be of most benefit, and proven track record in operating successful tourism-based businesses of a similar nature. The proposed disposition is a new stand-alone lease and not an extension to the previous lease. It is correct that the report author contacted Belgravia Leisure by phone. This is not unusual in matters of this nature, and there is nothing in legislation that prohibits such an action. Both tenderers were formally advised of Council's decision, in writing, on 8 July 2021.

4.	<p><i>Small family business need to be supported. After all isn't that what makes small country towns. Moore river locals have always fought to keep it undeveloped and big developers out since I was a child . That's what our tourist love about moore river.</i></p>	<p>Whilst this might be the submitter's feelings in regard to protecting small business, the outcome desired by Council is to achieve a higher level of service provision and to drive further economic activity.</p>
5.	<p><i>It's a shame the shire and all the people who are supposed to be the voice of the people have been lost.</i></p>	<p>Whilst the submitter has her opinion, there are many facets to this decision that are not being considered. Elected Members are making a decision based on the most beneficial outcome for the Guilderton community and the Shire of Gingin as a whole.</p>
6.	<p><i>Hopefully MR Aaron Cook and that of the belgravia group will honour some form of good will and compensation to this business so they can get some reimbursement back for fittings and fixtures and goodwill.</i></p>	<p>It was a commercial decision of the previous tenant to purchase the lease with only a limited amount of time left on the lease. How the business has been facilitated during that time is not a consideration of Council or the author.</p>

The matters put forward by Ms Enright are emotive in nature; in the opinion of the report author the submission does not impact on any of the factors considered by Council in selecting Belgravia Leisure as the preferred tenderer, nor does it raise any additional issues that may influence Council's position on this matter.

STATUTORY/LOCAL LAW IMPLICATIONS

Local Government Act 1995
Part 3 Functions of local governments
Division 3 Executive functions of local governments
Section 3.58 Disposing of Property

POLICY IMPLICATIONS

Nil

BUDGET IMPLICATIONS

There are no budget implications associated with this item.

STRATEGIC IMPLICATIONS

Shire of Gingin Strategic Community Plan 2019-2029

Focus Area	Economic Development
Objective	4 – To support economic development through the Shire’s service delivery
Outcome	4.1 Tourist Playground
Key Service Area	Economic Development and Tourism Infrastructure
Priorities	Nil

VOTING REQUIREMENTS - SIMPLE MAJORITY

COUNCIL RESOLUTION/OFFICER RECOMMENDATION

MOVED: Councillor Balcombe **SECONDED:** Councillor Vis

That Council:

1. Acknowledge the submission made by Ms Kathryn Enright and note that the submission does not contain any arguments that impact on the factors considered by Council in selecting Belgravia Leisure as the preferred tenderer or raise any additional issues that should influence Council’s position;
2. Agree to proceed with the disposition via lease of the Guilderton Store and Café/Restaurant to Belgravia Leisure for a period of seven years with a further period of seven years at a rental income of \$50,000 plus GST per annum; and
3. Authorise the CEO to proceed with preparation and execution of an appropriate lease agreement, including affixing of the Common Seal of the Shire of Gingin.

**CARRIED UNANIMOUSLY
6 / 0**

FOR: *Councillor Rule, Councillor Balcombe, Councillor Johnson, Councillor Morton, Councillor Peczka and Councillor Vis*

AGAINST: *Nil*

Note: The CEO advised that the figure of \$50,000 per annum including GST which appeared in Part 2 of the Officer's Recommendation in the Agenda was incorrect. The tendered figure (previously considered by Council at its meeting on 6 July 2021) was in fact \$50,000 plus GST (or \$55,000 including GST). This was an administrative error, and Part 2 of the Officer's Recommendation was amended accordingly prior to Council voting on the matter.

11 REPORTS - CORPORATE AND COMMUNITY SERVICES

Nil

12 REPORTS - REGULATORY AND DEVELOPMENT SERVICES

Nil

13 REPORTS - OPERATIONS AND ASSETS

Nil

14 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

15 COUNCILLORS' OFFICIAL REPORTS

Nil

16 NEW BUSINESS OF AN URGENT NATURE

Nil

17 MATTERS FOR WHICH MEETING IS TO BE CLOSED TO THE PUBLIC

Nil

18 CLOSURE

There being no further business, the Deputy Shire President declared the meeting closed at 12:50pm.

The next Ordinary Council Meeting will be held in Council Chambers at the Shire of Gingin Administration Centre, 7 Brockman Street, Gingin on 17 August 2021, commencing at 3:00pm.