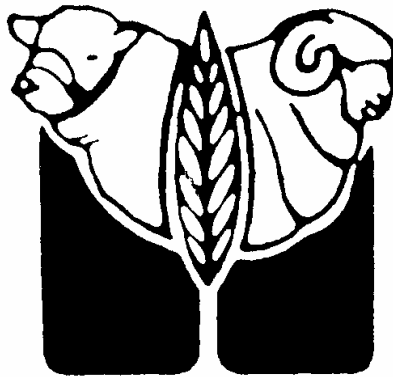


MINUTES



ORDINARY MEETING

HELD

THURSDAY 17 DECEMBER 2009

COMMENCED AT 3.30PM

AT

SHIRE OF BOYUP BROOK CHAMBERS
ABEL STREET – BOYUP BROOK

TABLE OF CONTENTS

1	RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE PREVIOUSLY APPROVED ..	3
1.1	Attendance.....	3
1.2	Leave of Absence.....	3
2	PUBLIC QUESTION TIME	3
2.1	Response to Previous Public Questions Taken on Notice	3
2.2	Public Question Time	3
3	APPLICATIONS FOR LEAVE OF ABSENCE	3
4	PETITIONS/DEPUTATIONS/PRESENTATIONS/REPORTS	3
5	CONFIRMATION OF MINUTES	4
6	PRESIDENTIAL COMMUNICATIONS	4
7	REPORTS OF OFFICERS	4
7.1	MANAGER WORKS & SERVICES	4
7.2	MANAGER – FINANCE.....	5
7.2.1	Accounts for Payment.....	5
7.2.2	November 2009 Monthly Statements of Financial Activity	6
7.3	CHIEF EXECUTIVE OFFICER	8
7.3.1	Boyup Brook Tourism Association – electricity charges.....	8
7.3.2	Development application- Single story dwelling - lot 21 Westbourne Road.....	10
8	COMMITTEE REPORTS	14
8.1.1	Minutes of the Blackwood River Valley Marketing Association Inc.	14
8.1.2	Draft Minutes Warren Blackwood Strategic Alliance Board Meeting	14
9	MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN	15
10	CONFIDENTIAL MATTERS.....	15
11	LATE ITEMS.....	15
11.1	Local Government Reform – Minister for Local Government's determination	15
11.2	Inglis Street road reserve – encroachment by St Mary's School	23
11.3	Implementation of New Food Safety Legislation	31
11.4	Minutes of the Forward Planning Committee	34
11.5	Minutes of the Youth Advisory Council Meetings	35
11.6	Minutes of the WA Local Government Association South West Zone Meeting	36
11.7	Nomination of Cr Downing for SWDC	37
12	CLOSURE OF MEETING	37

1 RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE PREVIOUSLY APPROVED

1.1 Attendance

Cr T Ginnane – Shire President
Cr T Doust – Deputy Shire President
Cr R Downing
Cr M Giles
Cr B O'Hare
Cr T Oversby

STAFF: Mr Alan Lamb (Chief Executive Officer)
 Mr Keith Jones (Manager of Finance)
 Mr John Eddy (Manager of Works and Services)

Apologies

Cr E Biddle
Cr P Marshall

1.2 Leave of Absence

Nil

2 PUBLIC QUESTION TIME

2.1 Response to Previous Public Questions Taken on Notice

Nil

2.2 Public Question Time

Nil

3 APPLICATIONS FOR LEAVE OF ABSENCE

Nil

4 PETITIONS/DEPUTATIONS/PRESENTATIONS/REPORTS

Nil

5 CONFIRMATION OF MINUTES

5.1 Ordinary Meeting of Council Thursday 19 November 2009.

COUNCIL DECISION AND OFFICER RECOMMENDATION – ITEM 5.1

MOVED: Cr Doust

SECONDED: Cr Oversby

That the minutes of the Ordinary Meeting of Council held on Thursday 19 November 2009, be confirmed as an accurate record.

CARRIED 6/0

Res 262/09

6 PRESIDENTIAL COMMUNICATIONS

Attended both school end of year ceremonies.

13 January 2010 has a meeting with Mr Terry Redman MLA.

7 REPORTS OF OFFICERS

7.1 MANAGER WORKS & SERVICES

Nil

7.2 **MANAGER – FINANCE**

7.2.1 **Accounts for Payment**

<i>Location:</i>	<i>Not applicable</i>
<i>Applicant:</i>	<i>Not applicable</i>
<i>File:</i>	<i>FM/1/002</i>
<i>Disclosure of Officer Interest:</i>	<i>None</i>
<i>Date:</i>	<i>10 December 2009</i>
<i>Author:</i>	<i>Keith Jones – Manager of Finance</i>
<i>Authorizing Officer:</i>	<i>Not applicable</i>
<i>Attachments:</i>	<i>Yes – List of Accounts Paid</i>

SUMMARY

Report recommends the acceptance and approval of the Schedule of Accounts for Payment.

BACKGROUND

Invoices have been received during the month of November 2009.

COMMENT

Accounts are presented for consideration (see appendix 7.2.1) or where paid by direct debit pursuant to the Council's "Authorisation to Make Payments" policy.

CONSULTATION

Nil

STATUTORY OBLIGATIONS

Local Government (Financial Management) Regulations Act 1009, Regulation 12; and Regulations 13(3) (a) (b); 13(1); and 13(4).

POLICY IMPLICATIONS

Accounts are presented for consideration or where paid by direct debit pursuant to the Council's "Authorization to Make Payments" policy.

BUDGET/FINANCIAL IMPLICATIONS

Account payments are in accordance with the adopted budget for 2009/10 or authorized by separate resolution.

STRATEGIC IMPLICATIONS

Nil

VOTING REQUIREMENTS

Simple Majority

COUNCIL DECISION AND OFFICER RECOMMENDATION – ITEM 7.2.1

MOVED: Cr Downing

SECONDED: Cr O’Hare

That the payment of accounts for November 2009 as presented totalling \$710,817.59 and as represented by cheque voucher numbers 17776 – 17832 totalling \$187,497.63, and accounts paid by direct electronic payments through the Municipal Account totalling \$523,319.96 be endorsed.

CARRIED 6/0

Res 263/09

7.2.2 November 2009 Monthly Statements of Financial Activity

<i>Location:</i>	<i>Not applicable</i>
<i>Applicant:</i>	<i>Not applicable</i>
<i>File:</i>	<i>FM/10/003</i>
<i>Disclosure of Officer Interest:</i>	<i>None</i>
<i>Date:</i>	<i>10 December 2009</i>
<i>Author:</i>	<i>Keith Jones – Manager of Finance</i>
<i>Authorizing Officer:</i>	<i>Not applicable</i>
<i>Attachments:</i>	<i>Yes – Financial Reports</i>

SUMMARY

Report recommends Council receive the Balance Sheet and Operating Statement for the month ended 30 November 2009 and Investment Schedule for the month ended 31 December 2009.

BACKGROUND

Section 6.4 of the Local Government Act 1995 places financial reporting obligations on local government operations.

Regulation 34 (1)–(4) of the Local Government (Financial Management) Regulations 1996 requires the local government to prepare a ‘Monthly Statement of Financial Activity’.

The regulations also prescribe the content of the report.

The reports are attached – see appendix 7.2.2

COMMENT

Nil

CONSULTATION

Nil

STATUTORY OBLIGATIONS

Local Government (Financial Management) Regulations 1996, s34 (1) (a)
Local Government (Financial Management) Regulations 1996, s19 (1) (2) (a) (b)
Local Government (Financial Management) Regulations 1996, s34 (2) (a) (b)

POLICY IMPLICATIONS

Nil

BUDGET/FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

VOTING REQUIREMENTS

Simple Majority

COUNCIL DECISION AND OFFICER RECOMMENDATION – ITEM 7.2.2

MOVED: Cr O’Hare

SECONDED: Cr Doust

That the November 2009 Monthly Statements of Financial Activity as presented, be received.

CARRIED 6/0

Res 264/09

7.3 **CHIEF EXECUTIVE OFFICER**

7.3.1 Boyup Brook Tourism Association – electricity charges

Location:	<i>Reserve 12315</i>
Applicant:	<i>Boyup Brook Tourism Association Inc</i>
File:	
Disclosure of Officer Interest:	<i>None</i>
Date:	<i>9 December 2009</i>
Author:	<i>Alan lamb</i>
Authorizing Officer:	<i>Not applicable</i>
Attachments:	<i>Nil</i>

SUMMARY

The purpose of this report is to bring before Council the Boyup Brook Tourism Association Inc (BBTA) request for a contribution toward electricity costs and to recommend that it be agreed to.

BACKGROUND

In 1997 a lease agreement was entered into (Shire Council as lessor and BBTA as lessee). The lease expired 30/9/2007 and has continued on a month by month basis since then. This is not out of the ordinary, and is a usual practice where leases expire, the main difficulty is that there is no security of tenure past one month and so the process of drafting a new lease has commenced.

There appears to have been no modifications to the lease provisions during the term of the lease or after it expired.

The lease provides for the Premises to be the whole of Reserve 12315. That is the whole of the land bounded by Bridge Street, Forrest and Abel Streets and so includes the park and all improvements. The lessee is to pay for all outgoing which, according to the lease, includes all rates, taxes, charges, assessments, outgoing and impositions whatsoever (Shire and water rates etc). The lessee is to pay all charges for water consumption, electricity, gas, telephone and meter readings for the Demised Premises (that is they pay for all costs associated with the park and buildings). The lessee is to maintain the Demised Premises in good clean and substantial tenantable repair and condition to the reasonable satisfaction of the lessor (this is taken to be maintenance of the land and the buildings because these constitute the premises). There is also a repainting and repapering clause that adds further burden to the lessee.

The rent is \$1.00 per year.

COMMENT

There is nothing to indicate why the BBTA would have leased the whole of the reserve and taken on responsibility for the buildings and grounds of the reserve but this is what the lease provides for so Council appears to have no obligation with regard to the electricity charges. It is noted that improvements were done on the reserve after the lease was

signed but in the absence of any documentation to the contrary it appears that the BBTA became responsible for these once they were built.

To put the potential impact of the lease provisions in to perspective, Council's budget for that reserve for 2009/10 was in the order of \$15,000 (after adjusting for extraordinary items) and it is probable that BBTA is responsible for these costs. It is suggested though that whilst there may have been some good reason for the BBTA to lease the whole of the reserve and pay all costs in 1997 this appears to be a great imposition now and it is suggested that no action be taken to review the position and make adjustments at this time.

BBTA is working on its requests for a new lease and it is hoped that a draft would be with Council before the end of the financial year.

In the interim it is suggested that whilst it appears the BBTA is responsible for the electricity charges it is not equitable for it to pay for usage in the park and public toilets. The BBTA seeks a 50% contribution toward charges this year. Based on previous year's charges it appears that the average is in the order of \$530.00. It is noted though that electricity charges are on the rise and so it is recommended that Council agrees to contribute \$300 toward electricity charges for 2009/10

CONSULTATION

The author has corresponded with BBTA and has spoken with Council's delegate on its management committee.

STATUTORY OBLIGATIONS

Nil

POLICY IMPLICATIONS

Nil

BUDGET/FINANCIAL IMPLICATIONS

No specific provision was made in the budget for this proposed payment however there may be compensating savings in within this area. Also, as noted last meeting, a budget adjustment that will be recommended at the budget review (to be done following December 2009) which will result is a small surplus.

STRATEGIC IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

- **Environmental**
There are no known significant environmental issues.
- **Economic**
There are no known significant economic issues.

- **Social**
There are no known significant social issues.

VOTING REQUIREMENTS

Absolute majority

COUNCIL DECISION AND OFFICER RECOMMENDATION – ITEM 7.3.1

MOVED: Cr O’Hare

SECONDED: Cr Doust

That Council

1. amend the 2009/10 budget to make provision for expenditure of \$300 for Electricity for the Boyup Brook Tourist Centre.
2. agree to the Boyup Brook Tourism Association Inc request and make a contribution of \$300 toward electricity charges for Reserve 12315.

CARRIED BY ABSOLUTE MAJORITY 6/0

Res 265/09

7.3.2 Development application- Single story dwelling - lot 21 Westbourne Road.

Location:	<i>Lot 21 Westbourne Road Chowerup</i>
Applicant:	<i>GR and SL Mead</i>
File:	<i>AS15145</i>
Disclosure of Officer Interest:	<i>None</i>
Date:	<i>10 December 2009</i>
Author:	<i>Alan Lamb</i>
Authorizing Officer:	<i>Not applicable</i>
Attachments:	<i>Copy of application and a Landgate image of the location</i>

SUMMARY

The purpose of this report is to put the application before Council with a recommendation that it be approved.

BACKGROUND

GR and SL Mead made application to build a single story dwelling on their property located on Westbourne Road.

COMMENT

It should be noted that there is an existing dwelling on the lot and so this would be the second dwelling. As will be seen under the heading Statutory Obligations, the lot is zoned Rural and so the owners are restricted to having only one single dwelling erected and occupied except where Council is satisfied that an additional house is necessary or desirable for the continuation of bona fide agricultural activity. The applicants’ note that

they intend to occupy the new dwelling and that the existing dwelling is to be used to house a farm worker.

It is noted that the applicants own a number of lots adjoining the lot in question and others in the area and so could build on one of these where there are no other dwellings but it is their preference to have their and their farm workers accommodation on the one and so retaining the full use of other lots for agricultural purposes. The owners have explored the options of demolishing the exiting house or relocating it but their first preference is to build on Lot 21 and retain the existing house there.

The application is not supported by the detail that might otherwise be required such as plan and elevation plans of the proposed dwelling. These are needed to establish factors such as the location and size of windows, balconies, verandas etc to establish matters such as overlooking. They are also needed to verify that setback requirements are met. In this case the plans that have been supplied do show that the proposed dwelling would be located more than the required 10m from any boundary (minimum distance is 200m). The applicant also is yet to select the precise position of the proposed dwelling and the plan shows two sites, one 475m from Westbourne Road and the other 812m. It is suggested that either site may be appropriate.

CONSULTATION

The author has consulted with the applicants.

STATUTORY OBLIGATIONS

Town Planing Scheme 2 applies.

The Scheme provides in relation to the Rural Zone as follows:
“The Rural Zone is intended primarily for the preservation of agriculturally significant land. Land within the Scheme Area is capable of high levels of agricultural production and is therefore a valuable resource worthy of protection. Council shall therefore seek to ensure that no action is taken to jeopardise that potential”. It is suggested that the proposed additional dwelling could be placed on another of the owner’s lots and so, in terms of land lost to production, there would be no net loss.

The Scheme also directs that Council, in considering applications for subdivision, rezoning and planning consent in the Rural zone, Council shall have regard to:

Scheme	Comments
The need to protect the agricultural practices of the Rural zone in light of its importance to the district	It is suggested that the proposed additional dwelling will facilitate the retention of people on the land in order to properly manage and work the land.
The need to protect the area from uses which will reduce the amount of land available for agriculture	It is suggested that the proposed additional dwelling will have minimal impact on the amount of land available for agriculture.
The need to preserve the rural character and rural appearance of the area	It is suggested that the additional dwelling on the same lot as the original house and farm sheds will be in keeping with the rural appearance of the area. It is noted that the house will be between 475m and 812m of the public road and so not be a dominating feature.
Where rural land is being subdivided for closer development, the proposal should be supported with evidence outlining the land's suitability and capability for further development	Not applicable.

The Scheme further provides as follows:

Scheme	Comment
Council shall encourage the continued use of land within the Rural Zone for the entire spectrum of broadacre and intensive rural activities except in close proximity to the town where such activities, by their very nature , may detract from the residential and environmental quality within the town	It is suggested that the additional dwelling will encourage the continued use of land as provided for, as this will free up accommodation to better enable the land holder to attract and keep people on the land.
No building development in shall be located within 10m of any boundary of a lot in the Rural Zone	The two proposed sites are well away from boundaries. The closest boundary will be 200 m away from the development.
Not more than one single dwelling house may be erected and occupied on a lot within the Rural Zone except where Council is satisfied that an additional house is necessary or desirable for the continuation of a bona fide agricultural activity.	It is suggested that the second dwelling is necessary for the continuation of a bona fide agricultural activity because it frees up the existing house for staff.

POLICY IMPLICATIONS

Nil

BUDGET/FINANCIAL IMPLICATIONS

The Planning application fee is \$1,150

STRATEGIC IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

- **Environmental**
There are no known significant environmental issues.
- **Economic**
There are no known significant economic issues.
- **Social**
There are no known significant social issues.

VOTING REQUIREMENTS

Simple majority

OFFICER RECOMMENDATION – ITEM 7.3.2

That Council approves the application for a second single story dwelling of Lot 21 Westbourne Road subject to:

- 1. Compliance with Town Planning Scheme 2**
- 2. The site being one of the two as shown on the plan attached to the planning application.**
- 3. Planning approval being valid for two years from the date the applicant is notified of Council's decision.**

COUNCIL DECISION – ITEM 7.3.2

MOVED: Cr Doust

SECONDED: Cr Downing

That in accordance with section 5.2.6 of the Shire of Boyup Brook Town Planning Scheme No. 2 Council approves the application for a second single story dwelling of Lot 21 Westbourne Road as it is satisfied that the additional house will be used as a part of the bona fide agricultural activities subject to:

- 1. Compliance with Town Planning Scheme 2**
- 2. The site being one of the two as shown on the plan attached to the planning application.**
- 3. Planning approval being valid for two years from the date the applicant is notified of Council's decision.**

CARRIED 6/0

Res 266/09

8 COMMITTEE REPORTS

8.1.1 Minutes of the Blackwood River Valley Marketing Association Inc.

BACKGROUND:

A meeting of the Blackwood River Valley Marketing Association Inc. was held on 10th November 2009.

Minutes of the meeting are laid on the table and circulated (*refer to appendix 8.1.1*)

COUNCIL DECISION AND OFFICER RECOMMENDATION – ITEM 8.1.1

MOVED: Cr Oversby

SECONDED: Cr Doust

That the minutes of the Blackwood River Valley Marketing Association Inc. held on 10th November 2009 be received.

CARRIED 6/0

Res 267/09

8.1.2 Draft Minutes Warren Blackwood Strategic Alliance Board Meeting

BACKGROUND:

A meeting of the Warren Blackwood Strategic Alliance was held on 1st December 2009.

Minutes of the meeting are laid on the table and circulated (*refer to appendix 8.1.2*)

OFFICER RECOMMENDATION – ITEM 8.1.2

That the minutes of the Warren Blackwood Strategic Alliance held on 1st December 2009 be received.

COUNCIL DECISION – ITEM 8.1.2

MOVED: Cr Giles

SECONDED: Cr Doust

That the minutes of the Warren Blackwood Strategic Alliance held on 1st December 2009 be received and the Shire President and CEO prepare a list of Council's concerns and present it to the Warren Blackwood Strategic Alliance.

CARRIED 6/0

Res 268/09

NOTE

Concerns were expressed over the Alliance's financial position should it not be able to use a portion of the Country Local Government Find regional grant funds to support its operation, and other matters, and Council was of the opinion that the Alliance should be advised of these concerns.

9 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

10 CONFIDENTIAL MATTERS

Nil

11 LATE ITEMS

MOTION

MOVED: Cr Giles

SECONDED: Cr Oversby

That the late items be tabled for discussion as listed.

- 11.1 Local Government Reform – Minister for Local Government’s determination**
- 11.2 Inglis Street road reserve – encroachment by St Mary’s School**
- 11.3 Implementation of New Food Safety Legislation**
- 11.4 Minutes of the Forward Planning Committee**
- 11.5 Minutes of the Youth Advisory Council**
- 11.6 Minutes of WA Local Government Association South West Zone**
- 11.7 Nomination of Cr Downing for SWDC**

CARRIED 6/0

Res 269/09

11.1 Local Government Reform – Minister for Local Government’s determination

Location:	<i>Not applicable</i>
Applicant:	<i>Not applicable</i>
File:	<i>GR/31/009</i>
Disclosure of Officer Interest:	<i>An interest is declared as an Officer employed by the Shire Council who’s future employment may be affected by Council’s determination.</i>
Date:	<i>11 December 2009</i>
Author:	<i>Alan Lamb</i>
Authorizing Officer:	<i>Not applicable</i>
Attachments:	<i>Minister for Local Government’s letter and advice from WALGA</i>

SUMMARY

The purpose of this report is to put before Council the Minister for Local Government’s determination with respect to Local Government reform with a recommendation that Council reaffirms its previous position.

BACKGROUND

The attached letter comes after the Local Government Reform Steering Committee has reviewed Council's submission. The Minister has determined that the best way to move forward is through the creation of Regional Transition or Regional Collaborative groups. The Minister's plan is that a Regional Transition Group will provide the structure for transitioning several local governments into a single entity by 2013.

COMMENT

The Minister's letter appears to be a standard letter that has been sent to quite a number of Councils in the State (it is understood that Kalgoorlie, the Shires around Bunbury, Collie, the Shires in the 4WD VROC, and Busselton received the same letter. Efforts are being made to determine which Councils received the letter but at this stage it appears to be many and there appears to be no pattern (ie if small Councils or only those that scored category three in the Minister's assessment process then there would have been some pattern to the approach which could have give a hint at the rational behind it but there does not appear to be a pattern).

The letter gives no reply by date and so the matter could be put off till the February meeting if that was the desire but it is suggested that Council deal with the matter now and respond by reconfirming the position it stated in its submission.

In summary, the submission noted that Council did not favour amalgamation but would look to forming a regional grouping (VROC) with the Shires of Bridgetown/Greenbushes and Donnybrook/Balingup. That this group would look sharing and other initiatives to improve services and that this grouping may look at the option of amalgamation in the future.

The following resolution was passed at the November 2009 Council meeting;

That given the recent election of new Councillors, the Council confirms it is opposed to the amalgamation of the Shire of Boyup Brook with any neighbouring Local Governments and will work towards achieving what is required to show that the Shire has the organisational and financial capacity to meet current and future community needs.

WALGA has provided the attached advice to another Council. The Officer recommendation to that Council is to thank the Minister for his offer but decline it and advise that Council is willing to further consider a Regional Collaborative Group with specified Councils. It is understood that the report and recommendation that was included in the briefing notes is becoming a template for a number of Shires and whilst their Council are yet to meet and make a decision it appears that the trend will be to say to decline the Minister's offer.

CONSULTATION

The author has spoken with colleagues.

STATUTORY OBLIGATIONS

The following Schedule from the Local Government Act deals with the amalgamation process:

Schedule 2.1 — Provisions about creating, changing the boundaries of, and abolishing districts

[Section 2.1(2)]

1. Terms used in this Schedule

In this Schedule, unless the contrary intention appears —

affected electors, in relation to a proposal, means —

- (a) electors whose eligibility as electors comes from residence, or ownership or occupation of property, in the area directly affected by the proposal; or
- (b) where an area of the State is not within or is not declared to be a district, people who could be electors if it were because of residence, or ownership or occupation of property, in the area directly affected by the proposal;

affected local government means a local government directly affected by a proposal;

notice means notice given or published in such manner as the Advisory Board considers appropriate in the circumstances;

proposal means a proposal made under clause 2 that an order be made as to any or all of the matters referred to in section 2.1.

2. Making a proposal

(1) A proposal may be made to the Advisory Board by —

- (a) the Minister;
- (b) an affected local government;
- (c) 2 or more affected local governments, jointly; or
- (d) affected electors who —
 - (i) are at least 250 in number; or
 - (ii) are at least 10% of the total number of affected electors.

(2) A proposal is to —

- (a) set out clearly the nature of the proposal, the reasons for making the proposal and the effects of the proposal on local governments;
- (b) be accompanied by a plan illustrating any proposed changes to the boundaries of a district; and
- (c) comply with any regulations about proposals.

[Clause 2 amended by No. 49 of 2004 s. 67(2).]

3. Dealing with proposals

(1) The Advisory Board is to consider any proposal.

(2) The Advisory Board may, in a written report to the Minister, recommend* that the Minister reject a proposal if, in the Board's opinion —

- (a) the proposal is substantially similar in effect to a proposal on which the Board has made a recommendation to the Minister within the period of 2 years immediately before the proposal is made;
- (aa) where the proposal was made by affected electors under clause 2(1)(d), that the majority of those electors no longer support the proposal; or
- (b) the proposal is frivolous or otherwise not in the interests of good government.

** Absolute majority required.*

(3) If, in the Advisory Board's opinion, the proposal is —

- (a) one of a minor nature; and
- (b) not one about which public submissions need be invited,

the Board may, in a written report to the Minister, recommend* that the Minister reject the proposal or that an order be made in accordance with the proposal.

** Absolute majority required.*

- (4) Unless it makes a recommendation under subclause (2) or (3), the Advisory Board is to formally inquire into the proposal.

[Clause 3 amended by No. 64 of 1998 s. 52(2); No. 49 of 2004 s. 67(3).]

4. Notice of inquiry

- (1) Where a formal inquiry is required the Advisory Board is to give —
- (a) notice to affected local governments, affected electors and the other electors of districts directly affected by the proposal; and
 - (b) a report to the Minister.
- (2) The notice and report under subclause (1) are to —
- (a) advise that there will be a formal inquiry into the proposal;
 - (b) set out details of the inquiry and its proposed scope; and
 - (c) advise that submissions may be made to the Board not later than 6 weeks after the date the notice is first given about —
 - (i) the proposal; or
 - (ii) the scope of the inquiry.
- (3) If, after considering submissions made under subclause (2)(c), the Advisory Board decides* that the scope of the formal inquiry is to be significantly different from that set out in the notice and report under subclause (1), it is to give —
- (a) another notice to affected local governments, affected electors and the other electors of districts directly affected by the proposal; and
 - (b) another report to the Minister.
- (4) The notice and report under subclause (3) are to —
- (a) set out the revised scope of the inquiry; and
 - (b) advise that further submissions about the proposal, or submissions about matters relevant to the revised scope of the inquiry, may be made to the Board within the time set out in the notice.

** Absolute majority required.*

5. Conduct of inquiry

- (1) A formal inquiry is to be carried out, and any hearing for the purposes of the inquiry is to be conducted, in a way that makes it as easy as possible for interested parties to participate fully.
- (2) In carrying out a formal inquiry the Advisory Board is to consider submissions made to it under clause 4(2)(c) and (4)(b) and have regard, where applicable, to —
- (a) community of interests;
 - (b) physical and topographic features;
 - (c) demographic trends;
 - (d) economic factors;
 - (e) the history of the area;
 - (f) transport and communication;
 - (g) matters affecting the viability of local governments; and
 - (h) the effective delivery of local government services,

but this does not limit the matters that it may take into consideration.

6. Recommendation by Advisory Board

- (1) After formally inquiring into a proposal, the Advisory Board, in a written report to the Minister, is to recommend* —
 - (a) that the Minister reject the proposal;
 - (b) that an order be made in accordance with the proposal; or
 - (c) if it thinks fit after complying with subclause (2), the making of some other order that may be made under section 2.1.

** Absolute majority required.*

- (2) The Advisory Board is not to recommend to the Minister the making of an order that is significantly different from the proposal into which it formally inquired unless the Board has —
 - (a) given* notice to affected local governments, affected electors and the other electors of districts directly affected by the recommendation of its intention to do so;
 - (b) afforded adequate opportunity for submissions to be made about the intended order; and
 - (c) considered any submissions made.

** Absolute majority required.*

7. Minister may require a poll of electors

In order to assist in deciding whether or not to accept a recommendation of the Advisory Board made under clause 6, the Minister may require that the Board's recommendation be put to a poll of the electors of districts directly affected by the recommendation.

8. Electors may demand a poll on a recommended amalgamation

- (1) Where the Advisory Board recommends to the Minister the making of an order to abolish 2 or more districts (*the districts*) and amalgamate them into one or more districts, the Board is to give notice to affected local governments, affected electors and the other electors of districts directly affected by the recommendation about the recommendation.
- (2) The notice to affected electors has to notify them of their right to request a poll about the recommendation under subclause (3).
- (3) If, within one month after the notice is given, the Minister receives a request made in accordance with regulations and signed by at least 250, or at least 10%, of the electors of one of the districts asking for the recommendation to be put to a poll of electors of that district, the Minister is to require that the Board's recommendation be put to a poll accordingly.
- (4) This clause does not limit the Minister's power under clause 7 to require a recommendation to be put to a poll in any case.

[Clause 8 amended by No. 64 of 1998 s. 52(3).]

9. Procedure for holding poll

- (1) Where, under clause 7 or 8, the Minister requires that a recommendation be put to a poll —
 - (a) the Advisory Board is to —
 - (i) determine the question or questions to be answered by electors; and
 - (ii) prepare a summary of the case for each way of answering the question or questions;and
 - (b) any local government directed by the Minister to do so is to —
 - (i) in accordance with directions by the Minister, make the summary available to the electors before the poll is conducted; and
 - (ii) subject to subclause (2), declare* the Electoral Commissioner, or a person approved by the Electoral Commissioner, to be responsible for the conduct of the poll under Part 4, and return the results to the Minister.

** Absolute majority required.*

- (2) Before making a declaration under subclause (1)(b)(ii), the local government is to obtain the written agreement of the Electoral Commissioner.

[Clause 9 amended by No. 49 of 2004 s. 67(4) and (5).]

10. Minister may accept or reject recommendation

- (1) Subject to subclause (2), the Minister may accept or reject a recommendation of the Advisory Board made under clause 3 or 6.
- (2) If at a poll held as required by clause 8 —
 - (a) at least 50% of the electors of one of the districts vote; and
 - (b) of those electors of that district who vote, a majority vote against the recommendation,the Minister is to reject the recommendation.
- (3) If the recommendation is that an order be made and it is accepted, the Minister can make an appropriate recommendation to the Governor under section 2.1.

10A. Recommendations regarding names, wards and representation

- (1) The Advisory Board may —
 - (a) when it makes its recommendations under clause 3 or 6; or
 - (b) after the Minister has accepted its recommendations under clause 10,in a written report to the Minister, recommend the making of an order to do any of the things referred to in section 2.2(1), 2.3(1) or (2) or 2.18(1) or (3) that the Board considers appropriate.
- (2) In making its recommendations under subclause (1) the Advisory Board —
 - (a) may consult with the public and interested parties to such extent as it considers appropriate; and
 - (b) is to take into account the matters referred to in clause 8(c) to (g) of Schedule 2.2 so far as they are applicable.

[Clause 10A inserted by No. 64 of 1998 s. 52(4).]

11. Transitional arrangements for orders about districts

- (1) Regulations may provide for matters to give effect to orders made under section 2.1 including —
 - (a) the vesting, transfer, assumption or adjustment of property, rights and liabilities of a local government;
 - (b) the extinguishment of rights of a local government;
 - (c) the winding up of the affairs of a local government;
 - (d) the continuation of actions and other proceedings brought by or against a local government before the taking effect of an order under section 2.1;
 - (e) the bringing of actions and other proceedings that could have been brought by or against a local government before the taking effect of an order under section 2.1;
 - (f) if the effect of an order under section 2.1 is to unite 2 or more districts, the determination of the persons who are to be the first mayor or president, and deputy mayor or deputy president, of the new local government;
 - (g) the continuation of any act, matter or thing being done under another written law by, or involving, a local government.
- (2) Subject to regulations referred to in subclause (1), where an order is made under section 2.1 any local governments affected by the order (including any new local government created as a result of the order) are to negotiate as to any adjustment or transfer between them of property, rights and liabilities.

- (3) Where an order is made under section 2.1 the Governor may, by order under section 9.62(1), give directions as to any of the matters set out in subclause (1) if, and to the extent that, those matters are not resolved by regulations referred to in that subclause or by negotiation under subclause (2).
- (4) A contract of employment that a person has with a local government is not to be terminated or varied as a result (wholly or partly) of an order under section 2.1 so as to make it less favourable to that person unless —
 - (a) compensation acceptable to the person is made; or
 - (b) a period of at least 2 years has elapsed since the order had effect.
- (5) The rights and entitlements of a person whose contract of employment is transferred from one local government to another, whether arising under the contract or by reason of it, are to be no less favourable to that person after the transfer than they would have been had the person's employment been continuous with the first local government.
- (6) If land ceases to be in a particular district as a result of an order under section 2.1, any written law that would have applied in respect of it if the order had not been made continues to apply in respect of the land to the extent that its continued application would be consistent with —
 - (a) any written law made after the order was made; and
 - (b) any order made by the Governor under subclause (8).
- (7) Regulations may make provision as to whether or not, or the modifications subject to which, a written law continues to apply in respect of land under subclause (6).
- (8) The Governor may, in a particular case, by order, vary the effect of subclause (6) and regulations made in accordance with subclause (7).

POLICY IMPLICATIONS

Nil

BUDGET/FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

- **Environmental**
There are no known significant environmental issues.
- **Economic**
There are no known significant economic issues.
- **Social**
There are no known significant social issues.

VOTING REQUIREMENTS

Simple majority.

COUNCIL DECISION AND OFFICER RECOMMENDATION – ITEM 11.1

MOVED: Cr Doust

SECONDED: Cr Downing

That the Minister for Local Government be advised that Council thanks the Minister for Local Government for the opportunity to participate in the formation of a Regional Transition Group with other local governments, however Council declines the offer. As noted in Council's reform submission it will look to forming a regional group (VROC) with the Shires of Bridgetown/Greenbushes and Donnybrook/Balingup and consider further opportunities for improving services to the community. Council is making significant inroads in addressing shortcomings it recognised in its long term asset management and financial planning and has this as its first priority for its newly formed Forward Planning Committee.

CARRIED 5/1

Res 270/09

Disclosure of Impartiality Interest Item 11.2 – Cr Doust

Prior to any consideration of item 11.2 Cr Doust disclosed an impartiality interest in this matter. The nature of his interest is that his wife works for St Mary's School.

Disclosure of Impartiality Interest Item 11.2 – Cr Giles

Prior to any consideration of item 11.2 Cr Giles disclosed an impartiality interest in this matter. The nature of his interest is that his partner is a member of St Mary's School Board.

11.2 Inglis Street road reserve – encroachment by St Mary’s School

Location:	<i>Inglis Street between Knapp and</i>
Applicant:	<i>Not applicable</i>
File:	
Disclosure of Officer Interest:	<i>None</i>
Date:	<i>15 December 2009</i>
Author:	<i>Alan Lamb</i>
Authorizing Officer:	<i>Not applicable</i>
Attachments:	<i>Item from May 2008 minutes, plan provided to Council May 2008, Landgate images of the road and adjoining land, letter sent to school,</i>

SUMMARY

This matter is brought before Council.

BACKGROUND

In May 2008 Council dealt with an item headed “St Mary’s Catholic School – Use of Road Reserve”. The report (attachment 1) noted that the school “requested permission to erect a fence along the boundary of the unmade section of Inglis Street”. It also noted that “The School has established a playing field along the unmade section of Inglis Street” and referred to an attached plan (attachment 2).

The recommendation was as follows:

That permission be granted to St Mary’s School to erect a fence, up to 2.4 metres in height, along the eastern boundary of the Inglis Street road reserve, as shown on the attached plan, subject to approval, in writing, being obtained from adjoining property owners.

The Council resolution was as follows:

That permission be granted to St Mary’s School to erect a fence, up to 2.4 metres in height, along the western boundary of the Inglis Street road reserve, as shown on the attached plan.

It has been noted that the school plans to erect a fence in the near future along the edge of its oval to stop balls rolling down the embankment etc. Also that it is clear that the oval is located partly on the road reserve and appears to have been there for some time.

COMMENT

In researching this matter it was noted that the May 2008 agenda item heading referred to the “use of” the road reserve, it the spoke of a fence along the boundary and noted that “The School has established a playing field along the side of the unmade section of Inglis Street” and referred to an attached plan that shows the playing field fully contained within land controlled by the school and the proposed fence along the boundary between the school land and the road. Putting these two together the proposed fence is then clearly along the western boundary of the road reserve and this is reinforced by reference to the Dividing Fences Act, as such it is noted that there would have been no need to seek

Council approval for a boundary fence to be erected and one would have to question why the matter was put to Council. However this does not line up with the item heading which refers to "use of" the reserve" as clearly a boundary fence is not use of the reserve. This contradictory line is pursued under "Comment" where it is suggested that the fence would be on the eastern side of the road reserve and be the boundary fence with lots 5, 6 and 211 and that consent of those Owners would be required. So now the fence is along the other side of the road reserve and this is further reinforced by the recommendation that notes the eastern side location. Council ultimately resolved that the fence could be on the western boundary but there was no note as to why the officer recommendation was not followed.

Attached is a copy of a letter from our records that appears to be the letter that was sent to the school (attachment 5). It will be noted that this aligns with the recommendation and not the resolution.

As will be seen from the attached Landgate images (attachments 3 and 4), the school oval clearly encroaches into the road reserve. Also that the reserve is much wider than a normal town street. It appears from the images that the oval does not extend to the midway point of the road reserve and that there would be sufficient room to build a road on the unoccupied portion of the reserve.

It should be noted at this point that Council does not have the authority to approve of a fence or an oval to be erected on a road reserve under its control. Therefore the only answer to a request for these would have to be "no" and perhaps if Council is going to deal with the matter of the fence it should then consider requiring that the unauthorised use of the road reserve be discontinued. It is suggested though that given the length of time the school has been there and the anticipated length of time the oval has encroached into the reserve, Council, as an entity must have been aware of this and has chosen the option of doing nothing, which, it is suggested, is very valid given the situation.

It is suggested that the matter of a fence along either boundary of the reserve is not a matter that would normally be brought to Council. Land holders throughout the state erect boundary fences and whilst these are sometimes the subject of building licence applications they are not generally matters that get to the Council level. In this case it could be argued that regardless of who paid for or put a boundary fence up (ie if the school paid for and erected a boundary fence for the owners of land adjoining the eastern boundary), it is still a boundary fence issue and so, based on the information available other than the item title that suggested a use of the road reserve was sought but this did not appear to have been the subject of the report as it only dealt with the fence along a boundary, this was not a matter for Council determination and so the previous report may not have needed to have been put to Council.

It is noted that the report dealt only with boundary fences and not with the use of the road reserve and so Council's resolution to allow a boundary fence was not in opposition to a fence within the reserve. Therefore, it is suggested that Council did not, at that time, deal with a request for a fence on the reserve, reject this and approve a boundary fence. As such the proposal to build a fence within the reserve is not contrary to a Council decision.

The planned fence along the eastern side of the oval may be seen as a different sort of occupation of the reserve to building an oval and embankment, but this is not the author's view. It is suggested that whatever structure is erected a portion of the reserve is then less available to the public to use. Whilst people could drive down the portion of the oval that is on the reserve it is suggested that most would see the oval as a barrier and not do so. Pedestrians wanting to walk along the reserve may not see this as a barrier but the

proposed fence would form no more of a barrier because it is, as it is understood, to run along the road reserve and not across it. Similarly, the embankment on the east side of the oval (i.e. the oval is a higher elevation than the road reserve's natural surface) would be a barrier to some who may wish to walk across the reserve and so a fence at the top of the embankment may pose no greater barrier than the embankment does. It is not clear what the demand for access across or along the reserve is but it is noted that the existing and proposed encroachments are not opposed by the two property owners who would be most affected, that there are a good sealed road and path alternatives for the general public and that the road reserve is uneven, rocky and well vegetated and so does not appear to be a viable access way for pedestrians and could not be used by vehicles. It is noted that the proposed fence is not on the edge of the encroachment, it will be at the top of the embankment and along the edge of the oval some distance in from the edge of the encroachment and so be no more of an encroachment than the existing oval. It is therefore suggested that if a fence was to be put where it is proposed to be put it would pose no more of a problem than the oval may be.

There do not appear to have been any complaints about the oval encroaching into the reserve and checking with the owners of lots 5 and 6 and 211 they have no complaint about the oval being there nor do they have any problem with a fence being placed along the edge of the oval. Both wanted to retain access from Inglis Street and asked about the road being made up. Both were assured that the approach to them was not binding and that should a fence be erected and should it be a problem they could complain and seek to have it removed. Given that there appears to have been no complaints about the oval it is anticipated there would be no complaints about the fence.

State Land Services (SLS) were contacted to ascertain what options might be available and it was noted that SLS could lease a portion of the road reserve to the school.

It should be noted that Council has a potential liability for what occurs on lands it manages. The implications of this are that anyone negotiating the road reserve, and are injured (ie to person or property), may be able to claim that Council was negligent. Given the poor and natural state of the unmade portion of reserve in question it is doubted that such claims could be successful. The improvements however offer a different potential result and it is envisaged that school children racing to get a ball running down the embankment at the end of the oval are at risk and that a fence placed on the edge of the oval to prevent the ball and the children from going beyond the edge of the oval would reduce the risk to children and so reduce the exposure Council may have to claims.

Council has a number of options in relation to the illegal use of the reserve (that includes the current and proposed uses) and these include:

- Do nothing. It is suggested that Council has taken the "do nothing" option in relation to the oval and so could do the same with the fence. Given that Council has now, perhaps for at least the second, and there could have been earlier reports on matters relating to the encroachment, time been made aware of the situation some may see this as no longer being an option. However it is noted that thought the state road reserves are occupied without authority and the general practice appears to be to do nothing until there is a need to do something. It is highly likely that there are other examples in this Shire of road reserves being used by adjoining landowners and that these will not come to light until there is a need to look at making the road up, or the like. In the end on the day it is up to Council to decide if it could simply not deal with the issue of the fence that it is understood may be planned to be erected in the school holidays. There is no application before Council in relation to it and Council has not previously rejected an application for it.

- Prohibit the erection of the fence. Council cannot approve of the fence being built and so the only action it could take is to seek prevent it from being built. It is suggested though that that this course of action should be followed by moves to have all encroachments removed because it is not logical to differentiate between perceptions of what is good or bad about aspects of an illegal occupation of the reserve. If the occupation is wrong then every aspect of the occupation is wrong. Council does not have the power to approve of the school's use, it only has the power to prohibit and prevent use of the reserve.
- Not deal with this item at this time. This is a late item that is being put forward and Council does not have to deal with late items. This option is preferred by the author as it will enable the St Mary's School Board to look at all options and then put a request to Council in the new year. It is expected that this process would take some time and it is anticipated that the matter might be put to Council in April 2010. It is noted that Council has a number of issues to deal with in relation to land and other assets under its ownership and management and suggested that this is no more urgent or important than the fairly lengthy list currently being compiled and so perhaps could be added to this list and dealt with in a priority order that is determined based on knowledge of all that has to be done and the impact/cost of attending to these.
- Commence the process to close a portion of the road reserve. This process will entail costs for advertising, surveying the area to clearly identify boundaries and what portion of the road reserve is to be closed, etc. No estimates have been obtained but it is expected that these costs could be accommodated within what has been budgeted for road maintenance. This action is the start of another range of options that include:
 - Recommend to SLS that the closed portion be given a freehold title and then offered for sale. This option will not guarantee that the school could purchase the land. It is understood that the land would be the subject of an open offer and so other entities could purchase it. Having said this, it is unlikely that the land would have an attraction for anyone other than the school and it would be hoped that commonsense would prevail when and if the land is sold. The school may see the purchase price (SLS will determine this) as a problem and so may not prefer this option.
 - Recommend to the School and SLS that the reserve purpose be amended to School Purposes or the like and the school be given management of the reserve. It is not clear if this is possible however it is noted that the reserve at the intersections of Robinson Avenue and Jays Road (R23887) is a Church Site reserve that is controlled by the Catholic Church (this may be via a management order, lease or something similar and so it is assumed that what ever process was used for this reserve could be used for the reserve in question).
 - Recommend to SLS that the reserve be placed in Council's hands to manage with authority to lease and that Council then lease the land out to the school.

It is recommended that if Council chooses to tackle the issue of the fence that its only course of action is to oppose it and so should seek to have this opposition enforced. Also that it cannot deal with the matter of the fence in isolation of the encroachment and so should deal with the entire matter not aspects of it.

It is recommended that the "do nothing" option is valid in that it has done this in the past in relation to this section of road reserve, there will be a number of other similar examples of road reserves being occupied by neighbouring property owners in this Shire and many hundreds in the State so this is not a isolated case.

It is recommended that St Mary's Board of Management be given the opportunity to look at options it may have and the put a proposal to Council on the matter of its encroachment into the road reserve before Council decides what its position will be.

CONSULTATION

The author has spoken with school principal, Councillors, State Land Services and fellow members of staff.

STATUTORY OBLIGATIONS

The following section of the Local Government Act has application if the road or a portion of it is to be closed:

3.50. Closing certain thoroughfares to vehicles

(1) A local government may close any thoroughfare that it manages to the passage of vehicles, wholly or partially, for a period not exceeding 4 weeks.

(1a) A local government may, by local public notice, order that a thoroughfare that it manages is wholly or partially closed to the passage of vehicles for a period exceeding 4 weeks.

(2) The order may limit the closure to vehicles of any class, to particular times, or to such other case or class of case as may be specified in the order and may contain exceptions.

[(3) deleted]

(4) Before it makes an order wholly or partially closing a thoroughfare to the passage of vehicles for a period exceeding 4 weeks or continuing the closure of a thoroughfare, the local government is to —

- (a) give local public notice of the proposed order giving details of the proposal, including the location of the thoroughfare and where, when, and why it would be closed, and inviting submissions from any person who wishes to make a submission;
- (b) give written notice to each person who —
 - (i) is prescribed for the purposes of this section; or
 - (ii) owns land that is prescribed for the purposes of this section;and
- (c) allow a reasonable time for submissions to be made and consider any submissions made.

(5) The local government is to send to the Commissioner of Main Roads appointed under the *Main Roads Act 1930* a copy of the contents of the notice required by subsection (4)(a).

(6) An order under this section has effect according to its terms, but may be revoked by the local government, or by the Minister, by order of which local public notice is given.

[(7) deleted]

(8) If, under subsection (1), a thoroughfare is closed without giving local public notice, the local government is to give local public notice of the closure as soon as practicable after the thoroughfare is closed.

(9) The requirement in subsection (8) ceases to apply if the thoroughfare is reopened.

[Section 3.50 amended by No. 1 of 1998 s. 11; No. 64 of 1998 s. 15; No. 49 of 2004 s. 26.]

3.50A. Partial closure of thoroughfare for repairs or maintenance

Despite section 3.50, a local government may partially and temporarily close a thoroughfare, without giving local public notice, if the closure —

- (a) is for the purpose of carrying out repairs or maintenance; and
- (b) is unlikely to have a significant adverse effect on users of the thoroughfare.

POLICY IMPLICATIONS

It may be argued that the following policy on road verge development has some application. It is put that it does not because there is no made up road and therefore no verge but the policy is included for information:

<i>POLICY NO.</i>	<i>W.06</i>
<i>POLICY SUBJECT</i>	<i>Road Verge Development Criteria</i>
<i>ADOPTION DATE</i>	<i>17 June 2004</i>
<i>VARIATION DATE</i>	<i>21 December 2007</i>

Objective

To determine guidelines for the development of road verges.

Statement

Council's policy is to encourage and support the development of road verges in urban areas, either maintained grass style or dry garden style or a mixture of both.

The preferred style is the fully grassed option with irrigation and up to two trees/20m of frontage. Any irrigation system is to be installed and operated to avoid nuisance to the public. All pipes are to be installed at a minimum depth of 400mm and approved pop-up type sprinkler equipment is preferred.

The trees shall not be planted on the 3.5m offset so as to avoid electrical power lines and all other services. No trees are to be planted within 15m of street corners or within 7m of crossovers.

Subject to keeping the verge clear for the first 2.5m width from kerb of seal a dry garden style of small vegetation, shrubs and ground covers may be established, however, no large rocks or non frangible items can be placed on the road reserve. Weed control using plastic sheeting with aggregate, tan bark, pine chips, pea gravel overlay is acceptable.

Any improvements placed or constructed on the verge is placed there at the risk of the property owner. The Shire will endeavour to preserve the layout, but no guarantee can be given.

No assistance can be given by the Shire for development, ongoing operation or maintenance costs.

The Shire will supply up to two trees of a mutually agreed species, provided the property owner agrees to plant and maintain them in a caring manner. Large trees are not to be planted in residential areas where the verge is less than 10m wide. Spreading varieties also are not supported unless they can be set well back to avoid intrusion into traffic safety sight lines. Poisonous trees and shrubs are not permitted to be planted on any road verge.

The Shire does not approve the full gravelling of verges in urban areas because:

1. This is not in keeping with the amenity of the area.
2. The action will tend to encourage undesirable verge parking on a semi-permanent basis.

The levels of new verge areas shall be compatible with properties on either side and shall slope toward the kerb at a 1 in 40 grade approximately or the property line level should be 150mm above the top of the kerb. Where the Shire has designated one side of the road for a future footpath or dual use path levels are to be provided by Shire's staff.

It could also be argued that the following policy on road closures has some relevance however it is suggested that any closure would be only partial and so not cause detrimental affect on owners of adjoining properties:

POLICY NO.	W.02
POLICY SUBJECT	Preservation of Gazetted Roads
ADOPTION DATE	17 June 2004
VARIATION DATE	21 December 2007

Objective

To preserve gazetted roads.

Statement

Applications received for road closures will only be considered if the proposal does not create a situation where an existing location will no longer be provided with a surveyed road.

Although in many instances a road is not constructed, it provides the Shire with the opportunity for an access at some time in the future should the need arise.

BUDGET/FINANCIAL IMPLICATIONS

The implications will depend on what Council decides to do. If the road closure option is taken then there will be survey and advertising costs. No specific provision was made in the budget for this but costs could be met from the road maintenance budget.

STRATEGIC IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

- **Environmental**
There are no known significant environmental issues.
- **Economic**
There are no known significant economic issues.
- **Social**
There are no known significant social issues.

VOTING REQUIREMENTS

Simple majority

OFFICER RECOMMENDATION – ITEM 11.2

That Council receives this report.

COUNCIL DECISION – MOVE INTO COMMITTEE

MOVED: Cr Giles

SECONDED: Cr Oversby

That the Council move into a committee of the whole under clause 15.6 of the Standing Orders, Local Law No 1 to allow members free discussion on the matter.

CARRIED 6/0

Res 271/09

4:22pm The Manager of Finance left the chambers
4:23pm The Manager of Finance entered the chambers

4:24pm Cr Oversby left the chambers
4:25pm Cr Oversby entered the chambers

COUNCIL DECISION – MOVE OUT OF COMMITTEE

MOVED: Cr Oversby

SECONDED: Cr Giles

That the Council moves out of committee of the whole under clause 15.6 of the Standing Orders, Local law No.1.

CARRIED 6/0

Res 272/09

COUNCIL DECISION – ITEM 11.2

MOVED: Cr Doust

SECONDED: Cr Oversby

That :-

- 1. The CEO advise St Mary’s School in writing that the Council has not at any time approved the erection of a fence on any portion of the Inglis Street road reserve adjoining the school grounds;**
- 2. The CEO also advise St Mary’s School that the Council is prepared to consider any of the options available to allow the school to use a portion of the Inglis Street road reserve for recreation purposes.**

CARRIED 6/0

Res 273/09

NOTE

Elected members felt it necessary to clarify and reiterate the Council position on this matter.

11.3 Implementation of New Food Safety Legislation

<i>Location:</i>	<i>Not applicable</i>
<i>Applicant:</i>	<i>Not applicable</i>
<i>File:</i>	<i>PH/39/001</i>
<i>Disclosure of Officer Interest:</i>	<i>None</i>
<i>Date:</i>	<i>12 December 2009</i>
<i>Author:</i>	<i>Wayne Jolley – Environmental Health Officer</i>
<i>Authorizing Officer:</i>	<i>Alan Lamb - CEO</i>
<i>Attachments:</i>	<i>None</i>

SUMMARY

New food legislation has been recently introduced, which requires the notification or registration of all food businesses (i.e. any enterprise that sells food of any kind, including fund-raising events).

The legislation empowers local government to raise fees under the *Local Government Act 1995*, in respect to:

- Notification of food businesses (except fundraising activities);
- Registration of food businesses; and
- Annual inspection fees.

This item is intended to inform Council and foreshadow a proposed strategy in relation to the above.

It is necessary for each local government to authorise an officer/s under the new legislation, as the environmental health officer is authorised under the existing Health Act.

BACKGROUND

After a number of years of development, the following new nationally consistent food legislation has been introduced:

- *Food Act 2008 (July 2009)*;
- *Food Regulations 2009 (October 2009)*; and
- Chapter 3 of the *Australia New Zealand Food Standards Code (i.e. Food Safety Standards)*

These replace the Food provisions of the *Health Act 1911* and the *Health (Food Hygiene) Regulations 1993*.

A food business is an enterprise or activity whereby food is handled for sale or is sold and includes charitable or community activities and one-off events. "Sale" is defined very broadly and is intended to capture all circumstances. The Act requires that any food business formally notifies the relevant local government of its activity and further requires that all food businesses are registered except:

- Fundraising events;
- Businesses selling only low risk packaged foods (e.g. Service Stations selling packaged confectionary); and
- Food businesses providing complimentary drinks, in conjunction with another business (e.g. Hairdresser providing tea or coffee).

It was intended that all businesses be registered by 31st December, a target that cannot be reasonably met by this Shire and it is understood, many others.

The Act empowers a local government to prescribe fees under Part 6 Division 5 Subdivision 2 of the *Local Government Act 1995*, for notification or registration and annual inspection of food businesses.

The Environmental Health Officer is currently authorised under the *Health Act 1911*, to administer food provisions within the Health Act but that authorisation is not transferable for administration of the new food legislation.

COMMENT

Firstly, existing and accepted food businesses in the Shire (e.g. Food shops, B&B's etc.) are aware of impending legislation changes because the Environmental Health Officer has kept them informed over the passed two years or more.

In broad terms, the legislation changes mean that:

- Activities such as Bed & Breakfast establishments, wineries and fundraising activities will now be regarded as "food business";
- Any "food business" is required to notify the Shire before it begins to operate (including fundraising activities);
- Most food businesses will be registered (but not fundraising activities);
- The Shire may raise fees to recover costs in relation to food surveillance activities (except in the case of fundraising activities);
- Shire Local Laws in relation to Food and Trading in Public Places may need to be amended as a consequence;

In order to implement the changes within the Shire district, it is intended to prepare a proposed strategy for Council's consideration, which may include:

- Publicity to broadcast the changes and obligations, throughout the community;

- Communications with all known and on-going food businesses;
- Registration of food businesses;
- Proposed fees;
- An implementation timeline; and
- Changes to Local Laws, Policy etc..

An "Authorised Officer", to administer the new legislation can be appointed immediately. A local government or the Chief Executive Officer of the local government are empowered to appoint an existing environmental health officer as an "Authorised Officer" for this purpose (s8, s122 *Food Act 2008* and reg56 *Food Regulations 2009*. This is intended to provide a local government with a seamless transfer of authority from old to new legislation.

CONSULTATION

There has been discussion with most of the known food businesses about the introduction of the Food Safety Standards, over the last 2-3 years, during which the Environmental Health Officer has largely applied the Food Safety Standards. Around two years ago, the Shire conducted a seminar at the Boyup Brook Club for this purpose.

STATUTORY OBLIGATIONS

Food Act 2008

Food Regulations 2009

Food Safety Standards – 3.1.1, 3.2.2, and 3.2.3

POLICY IMPLICATIONS

Related Policy or Local Laws will need to be reviewed and possibly amended.

BUDGET/FINANCIAL IMPLICATIONS

An opportunity exists for the Shire to raise fees in relation to notification, registration and annual inspection of food businesses.

STRATEGIC IMPLICATIONS

A strategy should be prepared in respect to implementation of the new legislation, which should be approved by Council.

SUSTAINABILITY IMPLICATIONS

The Shire's ability to raise fees for on-going inspection of food businesses improves the financial sustainability of mandatory food safety surveillance activities.

VOTING REQUIREMENTS

Simple majority

COUNCIL DECISION AND OFFICER RECOMMENDATION – ITEM 11.3

MOVED: Cr Downing

SECONDED: Cr Doust

That Council endorse the proposal of the Environmental Health Officer to prepare a strategy for the implementation of new food safety legislation, which proposal is to be submitted to Council's next meeting in February 2010, for approval.

The Council endorse the Chief Executive Officer's appointment of the Shire's current Environmental Health Officer, Mr. Wayne Jolley, as an Authorised Officer under the *Food Act 2008*.

CARRIED 6/0

Res 274/09

11.4 Minutes of the Forward Planning Committee

Location:	N/A
Applicant:	N/A
File:	
Disclosure of Officer Interest:	Nil
Date:	3 December 2009
Author:	Forward Planning Committee
Authorizing Officer:	N/A
Attachments:	Yes – Minutes

BACKGROUND:

A meeting of the Boyup Brook Forward Planning Committee was held on 3 December 2009.

Minutes of the meeting are laid on the table and circulated (*refer to appendix 11.4*)

COUNCIL DECISION AND OFFICER RECOMMENDATION – ITEM 11.4

MOVED: Cr Giles

SECONDED: Cr Downing

That the minutes of the Forward Planning Committee held on 3rd December 2009 be received.

CARRIED 6/0

Res 275/09

COUNCIL DECISION AND COMMITTEE RECOMMENDATION – ITEM 11.4

MOVED: Cr Oversby

SECONDED: Cr Giles

That the Forward Planning Committee adopts the following schedule of forward planning matters as matters it will deal with and that the order of listing be the order of priority:

Project	Notes
Infrastructure and asset management plan.	Dot point three on checklist scorecard above. Work has commenced on this and there is an item on the asset management plan in this meetings agenda
Long term financial plan	Dot point one, two and ten on checklist scorecard above. Logically cannot be completed until infrastructure and asset management plan is done as these will determine what funding is required to keep/replace the Shire's currently held assets.
Review of Strategic Plan ensuring that it is linked to the long term financial plan.	Logically, this would be done once the infrastructure and asset management planning had been completed and the impact of this had been reflected in long term financial plans so that the ability to fund new initiatives could be determined. It is felt that this could be priority number three and it could include matters such as the heated pool and sporting complex plan.

CARRIED 6/0

Res 276/09

11.5 Minutes of the Youth Advisory Council Meetings

Location: N/A
Applicant: N/A
File: IM/37/004
Disclosure of Officer Interest: Nil
Date: 10th December 2009
Author: Youth Advisory Council .
Authorizing Officer: N/A
Attachments: Yes – Minutes

BACKGROUND:

Meetings of the Youth Advisory Council were held on 13th October, 20th October, 27th October, 10th November, 17th November, 24th November, 2009.

Minutes of the meeting are laid on the table and circulated (*refer to appendix 11.5*)

COUNCIL DECISION AND OFFICER RECOMMENDATION – ITEM 11.5

MOVED: Cr Downing

SECONDED: Cr Oversby

That the minutes of the Youth Advisory Council held on 13th October, 20th October, 27th October, 10th November, 17th November, 24th November, 2009 be received.

CARRIED 6/0

Res 277/09

11.6 Minutes of the WA Local Government Association South West Zone Meeting

Location: N/A
Applicant: N/A
File: IM/37/003
Disclosure of Officer Interest: Nil
Date: 10th December 2009
Author: WA Local Government Assn. South West Zone.
Authorizing Officer: N/A
Attachments: Yes – Minutes

BACKGROUND:

A meeting of the WA Local Government Association South West Zone was held on 27th November, 2009 at the Shire of Donnybrook-Balingup.

Minutes of the meeting are laid on the table and circulated (*refer to appendix 11.6*)

COUNCIL DECISION AND OFFICER RECOMMENDATION – ITEM 11.6

MOVED: Cr Downing

SECONDED: Cr Doust

That the minutes of the WA Local Government Association South West Zone held on 27th November, 2009 at the Shire of Donnybrook-Balingup be received.

CARRIED 6/0

Res 278/09

11.7 Nomination of Cr Downing for SWDC

COUNCIL DECISION – ITEM 11.7

MOVED: Cr Giles

SECONDED: Cr Oversby

That the Council endorses the nomination by Councillor Downing for a position as Local Government Representative on the South West Development Commission Board.

CARRIED 6/0

Res 279/09

12 CLOSURE OF MEETING

There being no further business the Shire President, Cr Terry Ginnane, thanked Councillors and Staff for their attendance and declared the meeting closed at 4:53pm