

Minutes

SPECIAL MEETING OF COUNCIL

13 February 2019

By signing these minutes I certify that they were confirmed at the Ordinary Meeting of Council held on 26 February 2019 by resolution of Council.

**CR DAN BULL, MAYOR
CHAIRPERSON**



Meeting Procedures

1. All Council meeting are open to the public, except for matters dealt with under 'Confidential Items'.
2. Members of the public who are unfamiliar with meeting proceedings are invited to seek advice prior to the meeting from a City Staff Member.
3. Members of the public may ask a question during 'Public Question Time'.
4. Meeting procedures are in accordance with the City's Standing Orders Local Law 2018.
5. To facilitate smooth running of the meeting, silence is to be observed in the public gallery at all times, except for 'Public Question Time'.
6. This meeting will be audio recorded in accordance with the resolution of Council of 17 May 2016.
7. Persons are not permitted to record (visual or audio) at the Council meeting without prior approval of the Council.
8. In the event of an emergency, please follow the instructions of City of Bayswater Staff.

City of Bayswater

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Council Chambers

Seating Plan



Andrew Brien
CEO



Cr Dan Bull
Mayor



Cr Elli Petersen-Pik



Cr Giorgia Johnson



Cr Catherine Ehrhardt



Cr Lorna Clarke



Cr Barry McKenna



Cr Stephanie Gray



Cr Sally Palmer



Cr Michelle Sutherland



Cr Chris Cornish
Deputy Mayor



Cr Filomena Piffaretti



Des Abel, DCD



Doug Pearson, DWI



Carissa Bywater, DCS

Agendas
and Minutes
Officer

Press

Gallery

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intentionally*

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MINUTES

Minutes of the Special Meeting of the Bayswater City Council which took place in the Council Chambers, City of Bayswater Civic Centre, 61 Broun Avenue, Morley on **13 February 2019** commencing at 6:30pm.

1. OFFICIAL OPENING

The Chairperson, Cr Dan Bull, Mayor, declared the meeting open at 6:30pm.

2. ACKNOWLEDGEMENT OF COUNTRY

The Chairperson, CR DAN BULL, MAYOR, acknowledged the Traditional Custodians of the land, the Whadjuk people of the Noongar nation, and paid respects to Elders past, present and emerging.

3. ANNOUNCEMENTS FROM THE PRESIDING MEMBER

Nil.

4. ATTENDANCE

Members

West Ward

Cr Dan Bull, Mayor (Chairperson)
Cr Lorna Clarke
Cr Giorgia Johnson

Central Ward

Cr Chris Cornish, Deputy Mayor
Cr Sally Palmer

North Ward

Cr Stephanie Gray
Cr Filomena Piffaretti
Cr Michelle Sutherland

South Ward

Cr Catherine Ehrhardt

Officers

Mr Andrew Brien	Chief Executive Officer
Ms Carissa Bywater	Director Corporate and Strategy
Ms Cassandra Flanigan	Executive Support/Research Officer

Observers

Press - 0
Public - 0

4.1 Apologies

Cr Elli Petersen-Pik

Cr Barry McKenna – did not attend the meeting and no apology provided

4.2 Approved Leave of Absence

Nil.

4.3 Applications for Leave of Absence

Nil.

5. DISCLOSURE OF INTEREST SUMMARY

In accordance with section 5.65 of the *Local Government Act 1995*:

A member who has an interest in any matter to be discussed at a Council or Committee meeting that will be attended by the member must disclose the nature of the interest -

- (a) in a written notice given to the CEO before the meeting; or
- (b) at the meeting immediately before the matter is discussed.

The following disclosures of interest were made at the meeting:

Name	Item No.	Type of Interest	Nature of Interest
CHIEF EXECUTIVE OFFICER, MR ANDREW BRIEN	8.1	<i>Impartial Interest</i>	<i>My son-in-law works for Hall and Prior, a company mentioned in the report.</i>

6. PUBLIC QUESTION TIME

In accordance with the *Local Government Act 1995*, the *Local Government (Administration) Regulations 1996* and the *City of Bayswater Standing Orders Local Law 2018* the following procedures relate to public question time:

1. A member of the public who raises a question during question time, is to state his or her name and address.
2. Each member of the public with a question is entitled to ask up to 3 questions.
3. The minimum time to be allocated for public question time is 15 minutes.
4. Questions from the public must relate to a matter affecting the local government. Questions relating to matters of business listed on the minutes will be considered in the first instance, followed by questions relating to Council business not listed on the minutes.
5. A summary of each question raised by members of the public at the meeting and a summary of the response to the question will be included in the minutes of the meeting.
6. Where a question is taken on notice at the meeting, a summary of the response to the question will be provided in writing to the member of public and included in the minutes for the following meeting.

6.1 Responses to Public Questions Taken on Notice

Nil.

6.2 Public Question Time

As there were no members of the public in attendance, no questions were asked.

7. PRESENTATIONS

7.1 Petitions

Nil.

7.2 Presentations

Nil.

7.3 Deputations

Nil.

7.4 Delegates Reports

Nil.

8. REPORTS

8.1 Mertome Village - Project Update

Owner:	City of Bayswater	
Responsible Branch:	Financial Services	
Responsible Directorate:	Corporate and Strategy	
Authority/Discretion:	<input type="checkbox"/> Advocacy <input checked="" type="checkbox"/> Executive/Strategic <input checked="" type="checkbox"/> Legislative	<input type="checkbox"/> Review <input type="checkbox"/> Quasi-Judicial <input type="checkbox"/> Information Purposes
Voting Requirement:	ABSOLUTE MAJORITY REQUIRED	
Attachments:	N/A	
Refer:	Item 10.2.1: OCM 12.02.2019 Item 10.34: OCM 27.11.2018 Item 11.4: OCM 26.06.2018 Item 11.3: OCM 12.12.2017 Item 11.2: OCM 28.03.2017 Item 13.9: OCM 06.12.2016 Item 13.8: OCM 23.08.2016 Item 13.6: OCM 02.08.2016	

MR ANDREW BRIEN, CHIEF EXECUTIVE OFFICER. DECLARED AN IMPARTIAL INTEREST

In accordance with regulation 11 of the Local Government (Rules of Conduct) Regulations 2007 Mr Andrew Brien, Chief Executive Officer, declared an impartial interest in this item as his son-in-law works for Hall & Prior, a company mentioned in the report. Mr Brien remained in the room during voting on this item.

SUMMARY

For Council to resolve to give local public notice of the proposed disposal (via a long-term lease arrangement) of Lot 16 (30) Winifred Road, Bayswater and Lot 386 (3) Bassendean Road, Bayswater to Fresh Fields Management (Mertome Village) Pty Ltd (a related company within the Hall & Prior Health and Aged Care Group).

OFFICER'S RECOMMENDATION

That Council:

1. Authorises the replacement of *"The Trust Company (Australia) Limited as custodian and agent for Heathley Asset Management Limited as Responsible Entity of the Heathley Aged Care Property Fund No.1"* with *"Fresh Fields Management (Mertome Village) Pty Ltd"* as the tenant under the proposed lease of Lot 16 (30) Winifred Road, Bayswater and Lot 386 (3) Bassendean Road, Bayswater (Lease), with consequential amendments made to the Lease and the Sale of Business Agreement.
2. Authorises the advertising, by local public notice, of the proposed disposal (via a long-term lease arrangement) of Lot 16 (30) Winifred Road, Bayswater and Lot 386 (3) Bassendean Road, Bayswater to Fresh Fields Management (Mertome Village) Pty Ltd (as the proposed tenant under the lease) in accordance with section 3.58(3) and section 3.58(4) of the *Local Government Act 1995*.

**CR CHRIS CORNISH, DEPUTY MAYOR MOVED, CR DAN BULL, MAYOR SECONDED
CARRIED UNANIMOUSLY BY AN ABSOLUTE MAJORITY: 9/0**

BACKGROUND

At its Ordinary Meeting on 12 February, 2018 an Addendum was provided to be read in conjunction with Item 10.2.1: Mertome Village - Project Update. The Addendum provided an update on Tranby Hostel and advised that the Officers Recommendation for this item was changed. Council resolved the following:

3. *Notes that Uniting Church Homes (trading as Juniper) (Juniper) has advised the City that it intends to vacate Tranby Hall when its licence agreement with the City of Bayswater (the Juniper Licence) expires on 31 March 2019 and that it does not wish to exercise its rights to hold-over beyond this date.*
4. *Notes that in order to:*
 - (a) *facilitate an orderly transition between Juniper and the prospective purchaser of Mertome Village, Fresh Fields Management (Mertome Village) Pty Ltd (Fresh Fields); and*
 - (b) *allow existing residents of Tranby Hall to remain in-situ,*

Fresh Fields has requested a right to occupy Tranby Hall on and from 31 March 2019.
5. *Authorises the grant of a temporary licence to Fresh Fields to use and occupy the building known as Tranby Hostel (but excluding Mertome Hall) on and from 31 March 2019 on identical terms to the Juniper Licence save for the following amendments:*
 - (a) *the commencement of the licence will be subject to and conditional upon:*
 - (i) *the City fully discharging its obligations under section 3.58 and section 3.59 of the Local Government Act and resolving to proceed with transaction documents for the sale of the Mertome Village business assets (Business Sale Agreement) and the grant of the long-term lease (Lease) to Fresh Fields; and*
 - (ii) *Fresh Fields and the City entering into the Lease and the Business Sale Agreement;*
 - (b) *the term of the licence will not exceed 3 months;*
 - (c) *the term of the licence will automatically terminate on the commencement of the Lease.*
6. *Authorises the Mayor and the Chief Executive Officer to execute the licence agreement with Fresh Fields subject to the conditions precedent in paragraph 3(a) above being satisfied and the final terms of the licence agreement being acceptable to the Chief Executive Officer.*
7. *Authorises the Chief Executive Officer to give notice to Juniper that it is released from its make good obligations under the Juniper Licence subject to Juniper satisfying the following conditions:*
 - (a) *Juniper entering into the Facility Transition Agreement for Tranby Hall with Fresh Fields and complying with all of its obligations under this agreement;*
 - (b) *Juniper must not remove any of the air-conditioning plant from the licensed premises; and*
 - (c) *Juniper delivering up possession of the licensed premises in a reasonably neat and tidy condition.*

Consequently, the Officers Recommendation in relation to the proposed public notice for the Mertome Village transaction was omitted.

EXTERNAL CONSULTATION

As part of maintaining open communication, a number of meetings have been held with residents of the village over the past two years culminating in Council's resolution of 2 August 2016 to

essentially pursue a long-term lease arrangement for the land and sell the business and assets situated on Lot 16, 30 Winifred Road, Bayswater held by the City of Bayswater.

Since this resolution, Council, at its meeting of 23 August 2016, endorsed the Community Engagement Plan for the Redevelopment of Mertome Village project. Information sheets have been sent to residents and 'drop in' sessions also held at the Mertome Hall as part of the commitment given to keeping residents informed. The Mertome project has also featured in a number of corporate publications and media articles.

OFFICER'S COMMENTS

Amendments to Ground Lease and Business Sale Agreement

Notification has been received from Hall & Prior and Heathley of their desire to substitute Fresh Fields Management (Mertome Village) Pty Ltd as the tenant under the Lease. All of the key terms of the Lease remain unchanged.

If this change is implemented, the City will be entering into a Lease with the purchaser and operator of the Mertome Village business (i.e. Fresh Fields Management (Mertome Village) Pty Ltd (instead of Heathley). This means the City will be dealing directly with the company who is in ultimate occupation of Mertome Village. As the public notice of the Business Plan identified Heathley as the tenant, the City will need to give public notice of the proposed Lease to Fresh Fields Management (Mertome Village) Pty Ltd and consider any submissions in accordance with s. 3.58 of the *Local Government Act* (LGA) before it enters into the Lease.

Depending on the outcome of the advertising of the proposed Lease to Fresh Fields Management (Mertome Village) Pty Ltd as tenant pursuant to section 3.58 of the LGA the City may not need to prepare and advertise a new business plan before it enters into the Lease. Any submissions received during this public notice period will be the subject of a further report to Council.

LEGISLATIVE COMPLIANCE

Section 17 of the *Retirement Villages Act 1992* states that a resident has a right to occupy his/her residential premises until:

- the resident dies; or
- the residence contract is terminated by the resident in accordance with the residence contract or under the *Retirement Villages Act 1992*; or
- the resident abandons the residential premises; or
- the residence contract is terminated by the State Administrative Tribunal (SAT); or
- the holder of the mortgage, charge or other encumbrance that was in existence before the commencement of this section becomes entitled to vacant possession of the premises in pursuance of rights conferred by the mortgage, charge or other encumbrance.

So, while a resident has a contract (which they all do), they cannot be moved out of Mertome Village without their consent, and any redevelopment needs to happen in consultation with residents.

Notwithstanding this, the Railway Reserve land (comprising Lots 402, 403, 404, 405 and 406 on Plan 3404 forming part of Mertome Gardens) has no registered memorial; the City has a leasehold interest in the Railway Reserve land. This lease with the WA Government Railways Commission ends on 31 December 2032. A Draft Railway Land Management Agreement between the City and Hall & Prior is being drafted for these units.

The *Retirement Villages Act 1992* places numerous obligations on the owner of land within a retirement village. A long-term lease will, by necessity, result in Council retaining some risk in relation to the retirement village. Appropriate risk allocation has been a guiding principle for the City in negotiations with Hall & Prior and Heathley.

FINANCIAL IMPLICATIONS

An allocation of \$200,000 has been made in the 2018-2019 budget for redevelopment of Mertome Village. This allocation provides for legal advisory, commercial advisory and ancillary costs of this project. The indicative cost for public notice is \$1,000 and has been allowed for in the adopted budget.

STRATEGIC IMPLICATIONS

In accordance with the City of Bayswater Strategic Community Plan 2017-2027, the following applies:

Theme: Our Community.

Aspiration: An active and engaged community.

Outcome C1: A strong sense of community through the provision of quality services and facilities.

CONCLUSION

This report is submitted to Council for approval of the substitution of Fresh Fields Management (Mertome Village) Pty Ltd as tenant under the Lease, and for advertising of the proposed Lease to Fresh Fields Management (Mertome Village) Pty Ltd as tenant pursuant to section 3.58 of the *Local Government Act 1995* with respect to the Mertome Village transaction process.

It is considered appropriate that Council resolve to give public notice of this change as it will allow this transaction process to progress.

9. MEETING CLOSED TO THE PUBLIC

Nil.

9.1 Matters for Which the Meeting May be Closed

Nil.

9.2 Public Reading of Resolutions That May be Made Public

Nil.

10. CLOSURE

There being no further business to discuss, the Chairperson, Cr Dan Bull, Mayor, declared the meeting closed at 6:32pm.