

Shire of Denmark Minutes



SPECIAL MEETING OF ELECTORS

HELD IN THE COUNCIL CHAMBERS,
953 SOUTH COAST HIGHWAY, DENMARK,
FRIDAY, 19 DECEMBER 2014.

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1. INFORMATION ON HOW THE SPECIAL ELECTORS MEETING IS CONDUCTED

Pursuant to the Local Government Act 1995 and the Local Government (Administration) Regulations 1996.

- The only matter to be discussed at this meeting is the matter detailed under Item 4 of this Agenda.
- Each Elector who is present is entitled to one vote on each matter to be decided at the meeting but does not have to vote.
- All decisions are to be made by a simple majority of electors present.
- Voting is to be conducted so that no voter's vote is secret.
- Only Electors are permitted to vote.
- The Shire President is to preside over this meeting.
- The meeting procedure to be followed, other than those listed above, is to be determined by the person presiding.
- All Electors present are required to sign the Attendance Register, available at the entry to the Council Chambers, with their name and address.
- Please state your name and suburb of residence (locality) before making your statement or asking your question.
- The Shire President will call for a mover and a seconder for any motions.
- The CEO is to cause minutes of the proceedings to be kept and preserved and ensure that copies of the minutes are made available for inspection by members of the public before the Council meeting at which decisions made at this meeting are first considered.
- All decisions made at the meeting are to be considered at the next ordinary Council meeting or, if that is not practicable, at the first ordinary Council meeting after that meeting; or at a special meeting called for that purpose, whichever happens first.

2. DECLARATION OF OPENING

5.02pm - *The Presiding Person, Shire President, Cr Thornton, declared the meeting open.*

Mr Howard Bush requested permission to record the meeting.

The Shire President advised that he would not permit recording of the meeting.

Cr Thornton requested that all Electors present sign the Attendance Register and explained where it was located.

The Shire President stated that he was aware there was some conjecture within the community that he had deliberately called the Special Electors Meeting on the same night as the community Christmas Party to try and get less people to attend the meeting. Cr Thornton stated that he wished to dispel the insinuation by providing the details of how the meeting date was chosen. Cr Thornton stated that when the request was received, Council had a statutory obligation to hold the meeting within 35 days of receiving the request; Council also had a statutory obligation to advertise the meeting for a period of 14 days. Cr Thornton advised that due to the Christmas and New Year period, including the Shire Office shutdown during that time, meant that the most suitable date for the meeting was Friday, 19 December.

3. RECORD OF ATTENDANCE & APOLOGIES

Electors present were required to sign the Attendance Register, available at the entry to the Council Chambers, with their name and address.

ATTENDANCE – Electors Present

Cr Ross Thornton, Shire President, Presiding Person
Cr John Sampson, Deputy Shire President
Cr Kelli Gillies (via instantaneous communication)
Cr Jan Lewis
Cr Ian Osborne
Cr Dawn Pedro
Cr Belinda Rowland
Cr Roger Seeney
Dale Stewart, Chief Executive Officer
Annette Harbron, Director of Planning & Sustainability
Claire Thompson, Executive Assistant
Adrian Hinds
Lex Harry
Carol Harry
Ian Mulholland
Colin Carlisle
Jim King
Margaret King
Trevor Morse
Liz Morse
Ray Wyle
Frank Mahony
Margaret Papaelias
Louis Papaelias
Cynthia Bush
Howard Bush
Sally Prickett
Chris Prickett
Deborah Feld
Ronald Feld
Pip O'Dell

Lee Joyce
Josephine Mitchell
Philip Rowe
A Cartwright
Selma Clay
Ian Hardwick
Carl Wesley
Shashona Kealy
Linda Barnes
Jack Beverley
Bart Lebbing
Polly Edwards
Cyril Edwards
Fay Malcolm
Wendy Edgely
Adrian Baer
Graham Greenhalgh
Stephen Bailey
Glenda Bailey

APOLOGIES

Cr David Morrell

4. PURPOSE OF THE MEETING

A request signed by 267 different Electors was submitted to the Shire President on Wednesday, 26 November 2014 requesting a Special Meeting of Electors for the following purpose.

“The details of the matter to be discussed at the special meeting concern the Application for Planning for the “Denmark Thrills and Spills Adventure Park” and matters arising from the Application including but not restricted to:

- Inadequacy of public/community consultation process in this matter
- Council responsibility to preserve amenity of local residents in neighbouring residential zones
- Adherence to Town Planning Scheme 3
- Inappropriate nature of the nominated site
- Effects on property value and loss of amenity to local residents
- Impact on local businesses
- Noise levels
- Lighting spill
- Hours of operation
- ‘After Hours’ activity and service/maintenance vehicles
- Signage, perimeter fencing and security
- Firefighting provision
- Venue permit and potential for expansion
- Traffic management and vehicle flow
- Traffic impact on local roads and town centre
- Waste management and removal
- Environmental impact
- Staffing levels, health and safety
- Accreditation, training and standards
- Any other related matters of concern to local residents.”

The Presiding Person called for questions and/or comments from Electors.

Mr Bart Lebbing

Mr Lebbing stated that he wished for his questions and comments to be recorded in the Minutes, to which the Presiding Person agreed. Mr Lebbing stated as follows;

“To give a brief description of what happened with this application of the Adventure Park at Mt.Shadforth Road:

I would like to have this train of events verified and would like it to be recorded in the minutes of the Council, to have it available to the Public.

In May 2014 the CEO/ director for planning received an application re an adventure park. There were two applicants at the time: Amelia Monaghan and Leah Matek.

The application was revised until the 15th of September, when it was approved for admission by the CEO and Director for Planning.

On the 10th of October 9 letters went out to adjoining landowners, which were not received until the 14th of October. It took 3-4 weeks from accepting the application for the Shire officers to contact these landowners. Other landowners on who this application also could have an impact were not considered by the Shire and they had to find out by word of mouth. Several Shire Councillors were also not aware of this project at this time.

So on the 10th of October these letters went out, with a date set for the 31st of October for close of submissions/ public input, which satisfied the legal requirement of 21 days.

On the 21st of October at the Council meeting there were several concerned residents who spoke of their concern related to this project and the non-consideration for the people living in close proximity to the site chosen for this project. The lack of concrete information in siteplan and application were also discussed.

The CEO disclosed that he had underestimated public concern, and the Director for Planning then extended the public input period until the next council meeting at the 2nd of December.

On the 11th of November a petition was received by the Shire Council, asking for the non acception [sic] of the application, which was signed by 120 residents living in the vicinity of the project.

A meeting between the proponents with Councillors and the CEO took place mid November.

The people in the direct vicinity to the proposed park, requested the CEO to meet with Councillors to voice concerns. This demand was denied, and in it's place one person was allowed to make a deputation at the following Council meeting on the 2nd of December

Later in November one of the applicants withdrew from the project, and we had now one applicant: Amelia Monaghan.

On the 2nd of December, 42 submissions were received, with only 2 in favour of the project.

Many issues of concern were raised in the submissions, some were addressed in the report to Council, others were not.

At public question time several people spoke of their concern, re lack of information supplied, non adherence to LPS3, and yet other issues, such as effect on endangered species habitat in the area.

A petition was tabled at this meeting as well, signed by 267 electors, received by Council on the 26th of November, asking for an electors meeting to discuss a range of issues related to this application, as well as the lack of community consultation.

The Shire president and CEO set the meeting date on the 19th of December at 5 o'clock, which was exactly the same time as the Christmas party street parade and Christmas celebration in the centre of this town.

Jan Lewis tabled a motion to postpone a decision on this application, until after this electors meeting had taken place, on the 23^d of December. This motion was lost 5-4.

Then Council voted on a motion put by John Sampson that the application be approved subject to conditions. This motion was carried 6-3."

Dr Cyril Edwards

Dr Edwards referred to the Town Planning Scheme No. 3's reference to activities on rural land noting that 'other activities' not considered 'normal' should take the local amenity into consideration.

The Shire President responded stating that the activity had fallen into the land use category of "private recreation".

The Director of Planning & Sustainability added that land use "private recreation" was an "AA" use in the 'Rural' zone, that is a use that may be appropriate in the zone.

Mr Lex Harry

Mr Harry referred to the planning services information sheet's advice that applications needed to be signed by all signatories and stated that he did not believe that this had occurred with the Adventure Park application. Mr Harry stated that he did not accept the Officer's previous comments that this had occurred and that the application should have been deemed incomplete if it wasn't adequately signed by all signatories.

Mr Harry asked why this application hadn't been treated similarly to commercial applications which required, generally, a higher standard to that of residential applications. Mr Harry stated that he had tried to be informed about the proposal however the application lacked any detail, such as even where the driveway was to be located.

Mr Harry expressed his disappointment in general as to the standard of the application and how the matter was handled by Council Officers.

Ms Wendy Edgley

Ms Edgley asked what the definition of private recreation was.

The Director of Planning & Sustainability responded stating that pursuant to the Town Planning Scheme No. 3, private recreation referred to land and buildings used for recreation which are not normally opened to the public without charge.

Mrs Deborah Feld

Mrs Feld stated that she would like to move a motion.

DECISION

MOVED: DEBORAH FELD

SECONDED: JIM KING

Regardless of the statute that council gives notice of applications in accordance to TPS3.

All applications that currently come under a zoning of AA use be dealt with in future, exactly the same as applications that come under SA use such that the following minimum advertising takes place;

- a) A notice be published in a newspaper circulating in the scheme area for a minimum of 21 days prior to consideration of the application; and
- b) A sign be placed on the property in a conspicuous position on the land for a similar minimum period.

CARRIED

Mr Colin Carlisle

Mr Carlisle stated that he couldn't believe that this type of development didn't need to be advertised and asked how the consultation process was selected. Mr Carlisle stated that he had heard that the initial application had been amended and asked why this didn't reset any statutory timeframes.

The Director of Planning & Sustainability advised that landowners that adjoined the site were the ones selected for initial consultation and that amendments to an application, particularly once the concerns of adjoining landowners were considered by the applicant, was not unusual.

Mr Carlisle expressed his concerns about noise abatement given that the park was likely to generate substantial noise and that he would like to see Council's decision reviewed by the State Administrative Tribunal. Mr Carlisle stated that he believed the way that Council had handled the application was a fiasco and the whole process had been an impost on the community.

Mr Louis Papaelias

Mr Papaelias spoke about his concerns and his perception of gross unfairness to landowners and questioned what Council had had to lose by deferring consideration of the decision until after the Special Electors Meeting. Mr Papaelias stated that he believed landowners who were affected by the proposed had been treated unfairly and was disappointed that whilst the Shire President and Councillors had met with the proponent, affected landowners had been declined a similar request. Mr Papaelias referred to Council's decision to rush the decision through because of fear it would go to the State Administrative Tribunal was a scare tactic and was disappointed Council had not deferred their decision until after the Special Electors Meeting.

Mr Howard Bush

Mr Bush referred to Town Planning Scheme No. 3, Policy No. 29, specifically the management issues for the Scotsdale Brook Catchment and asked if this had been addressed by the applicant.

The Director of Planning & Sustainability responded stating that provisions of the Policy were considered by Officers when assessing the application and it was considered that they had been adequately addressed to the satisfaction of Council Officers.

Ms Josie Mitchell

Ms Mitchell questioned whether the application had been given due diligence by Officers at all and that she believed that some of the comments within the application were anecdotal and not factual and some of these statements had been repeated in the Officer's Report rather than properly researched. Ms Mitchell referred to comments relating to noise levels and asked whether Officers had actually done any research into the actual noise levels and buffer zones of other similar parks in Australian or New

Zealand. Ms Mitchell referred to the information and videos which she had provided for Councillor information at the meeting held on 2 December 2014 and advised that she had contacted some other similar parks who had informed her that they had buffer zones of at least 400m. Ms Mitchell asked why the buffer zone for all activities had been amended in the Officer's Recommendation from the time the Agenda was published to the time when the meeting was held.

The Director of Planning & Sustainability advised that the wording in the original Officer Recommendation had been incorrect and that they had corrected it via an Amended Officer Recommendation.

Ms Mitchell asked whether other similar parks had been looked at during the assessment process.

The Director of Planning & Sustainability stated that whilst not recorded in detail in the report, similar, existing parks had been considered during the assessment of the application.

Ms Mitchell stated that she believed that all of the submissions had been dismissed and that due consideration had not been given in relation to short and long term impacts of nearby property owners and residents. Ms Mitchell advised that she was aware of a recent offer to purchase a property in Abernethy Court that had been withdrawn as a result of Council approving the Adventure Park application.

Ms Mitchell thanked those Councillors who voted against the motion and noted that during the debate not one Councillor that supported the proposal had referenced the conflicts where rural land and residential land abut.

Mr Frank Mahony

Mr Mahony stated that he believed that the research done by the planning department regarding similar parks had been deficient and that he was disappointed that he had not been given any direct response to the questions that he had raised in his submission. Mr Mahony noted that he did not believe that the Adventure Park was a suitable development for Denmark and didn't believe that it had been thought through adequately. Mr Mahony referred to a question that he had asked previously, noting that he had not received a response, about whether the dam was going to be fenced and expressed concerns about the potential dangers of having an unfenced dam, particularly for young children. Mr Mahony suggested that Council could place a retrospective planning condition on the development to require the dam to be fenced.

Mr Mahony referred to Council's consultation process and suggested that perhaps an area of the Council's website could be used specifically to list all planning applications received by Council Officers so that the public could be informed sooner and raise any matters of any potential conflict or concern.

Mr Kim Lisson

Mr Lisson referred to Council's draft Community Engagement Policy and Framework noting, firstly that the Policy & Framework had taken three years to get to its draft stage and that he believed there had been inadequate community consultation on this proposal. Mr Lisson referred to the objective of the Policy and then stated that, in keeping with the Policy's objective, Council should have deferred the decision on the application until after the Special Electors Meeting.

Mr Jim King

Mr King referred to Cr Pedro's comments at the 2 December 2014 with respect to noise from the Denmark Airport disturbing her peace, stating that the buffer zone from her place and the Airport was substantially greater than that between the proposed Adventure Park and neighbouring landowners. Mr King also noted that noise from the Airport was not continuous as it would be from the Adventure Park. Mr King stated that whilst Cr Thornton's comment that people who purchased property in the Airport Estate had to put

up with noise from aircraft was true, those people also had to sign an acknowledgement prior to purchase that they were aware that they were buying land that would be subject to aircraft noise.

Mr King thanked Cr Lewis for her deferral motion notwithstanding it was lost and stated that he felt let down that Council did not defer their decision, even just out of respect to the Residents & Ratepayers, regardless of whether there was any potential cost to Council to defend its decision through the State Administrative Tribunal (SAT). Mr King added that he believed that whatever it may have cost the Shire to deal with SAT it was going to cost adjoining and nearby residents to the Adventure Park a whole lot more in both financial terms and amenity.

Mr Lex Harry

Mr Harry advised that he had felt that even prior to the Council meeting on 2 December 2014 the decision had been almost a *fata compli* after hearing comments made by Councillors and the CEO at and prior to the meeting.

Mr Harry stated that ratepayers and residents had invested money in the Shire by purchasing property, were spending their money in the Shire for goods and services and that Council should have taken this into consideration and deferred the item until after the Special Electors Meeting. Mr Harry stated that whilst tourism was good and important, ratepayers and residents invested in the Shire 52 weeks of the year not just during holiday periods and that that should be considered important as well.

Mr Harry referred to conflicts between adjoining land zoning areas and asked whether it would be possible for Council to consider in the future that when residential lots are approved some sort of protection zone be established so that it protects the amenity of adjoining landowners. Mr Harry stated that perhaps planning policies could be established to highlight, manage or avoid potential conflicts between landowners. Mr Harry was concerned that people on boundaries had no protection for their investment.

The Shire President advised that a number of community workshops in relation to the Local Planning Scheme No. 4 had been held earlier in the year, and once the document was available for advertising that submissions could be lodged then.

Ms Josie Mitchell

Ms Mitchell asked what the timeframe was for Local Planning Scheme No. 4.

The Director of Planning & Sustainability responded stating that initially it was planned to have a draft by the end of 2014 however due to external factors at a State level it is now likely to be mid 2015, noting that it needed EPA and WAPC/Minister for Planning for consent to advertise and these timeframes are covered by statutory timeframes. Taking into account advertising, consideration of submissions etc. is was likely to be mid 2016 at the earliest that Local Planning Scheme No. 4 would be gazetted.

DECISION

MOVED: HOWARD BUSH

SECONDED: JOSIE MITCHELL

That all planning applications adhere to a strict set of minimum requirements before the application is receipted by the planning department. This includes all obligations under the current Town Planning Scheme.

CARRIED

DECISION

MOVED: DEBORAH FELD

SECONDED: RON FELD

In future, in regard to applications to Council, if there is concern about the application, by community, that an in-depth investigation into the application is exercised and that concerns of residents/ratepayers are heard and genuinely considered.

CARRIED

Mr Trevor Morse

Mr Morse expressed his concern about the cost that this issue had had on the community particularly in relation to whether Council could be trusted to make long term decisions. Mr Morse stated that he had not seen any reference to any environmental impact of the proposed development and that there were also issues relating to traffic along Mt Shadforth Road and Peace Street. Mr Morse asked whether the Council had considered improving Peace Street and that he did not believe that it was just about traffic monitoring but about monitoring how people use the road.

Mr Colin Carlisle

Mr Carlisle stated that he believed that it was obvious that the decision made by Council by approving the Adventure Park application was unacceptable to the community and that it should be challenged and overturned.

DECISION

MOVED: JOSIE MITCHELL

SECONDED: DEBORAH FELD

That the motions passed tonight be deferred to the Ordinary Council meeting scheduled for Tuesday, 20 January 2015.

CARRIED

5. CLOSURE

7.05pm – There being no further business to discuss the Presiding Person advised that the decisions would now be considered by Council at the 23 December 2014 Ordinary Meeting of Council and declared the meeting closed.