



Shire of Northam
Heritage, Commerce and Lifestyle

Shire of Northam

Agenda

Special Council Meeting

27 February 2019



NOTICE PAPER
Ordinary Council Meeting
27 February 2019

President and Councillors

I inform you that a Special Council meeting will be held in the Council Chambers, located at 395 Fitzgerald Street, Northam on 27 February 2019 at 7:00pm.

Yours faithfully



Jason Whiteaker
Chief Executive Officer

DISCLAIMER

This agenda has yet to be dealt with by the Council. The Recommendations shown at the foot of each item have yet to be considered by the Council and are not to be interpreted as being the position of the Council. The minutes of the meeting held to discuss this agenda should be read to ascertain the decision of the Council.

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1. DECLARATION OF OPENING

2. ATTENDANCE

Council:

Shire President
Deputy Shire President
Councillors

C R Antonio
M P Ryan
J E G Williams
C L Davidson
S B Pollard
A J Mencshelyi
T M Little
J Proud
C P Della

Staff:

Chief Executive Officer
Executive Manager Engineering Services
Executive Manager Community Services
Executive Manager Corporate Services
Executive Assistant – CEO

J B Whiteaker
C D Kleynhans
R Rayson
C Young
A C McCall

2.1 APOLOGIES

Executive Manager Development Services C B Hunt

2.2 APPROVED LEAVE OF ABSENCE

Cr R W Tinetti has been granted leave of absence from 16 February 2019 to 25 March 2019 (inclusive).

3. DISCLOSURE OF INTERESTS

Item Name	Item No.	Name	Type of Interest	Nature of Interest



4. ANNOUNCEMENT BY THE PRESIDING MEMBER (WITHOUT DISCUSSION)

Nil.

5. PUBLIC QUESTION TIME

5.1 PUBLIC QUESTIONS

6. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil.

7. RECEIVING OF PETITIONS, PRESENTATIONS AND DEPUTATIONS

7.1 PETITIONS

Nil.

7.2 PRESENTATIONS

Nil.

7.3 DEPUTATIONS

8. APPLICATION FOR LEAVE OF ABSENCE

Nil.

9. CONFIRMATION OF MINUTES

Nil.

10. ITEMS BROUGHT FORWARD FOR THE CONVENIENCE OF THOSE IN THE PUBLIC GALLERY

11. REPORTS OF COMMITTEE MEETINGS

Nil.

12. SPECIAL ITEMS

12.1 MOTORISED MOBILITY DEVICE ACCESS-NORTHAM LIBRARY

Address:	298 Fitzgerald Street, Northam
Owner:	Shire of Northam
Applicant:	Shire of Northam
File Reference:	1.3.1.3
Reporting Officer:	Jason Whiteaker Chief Executive Officer
Responsible Officer:	Jason Whiteaker Chief Executive Officer
Officer Declaration of Interest:	Impartiality – have been subject to a range of personal attacks by the individual referenced in this report
Voting Requirement:	Simple Majority
Press release to be issued:	Yes.

BRIEF

For Council to consider access arrangements to the Northam Library for a motorised mobility devices.

ATTACHMENTS

Attachment 1: Provided as a separate confidential attachment.

BACKGROUND / DETAILS

In February 2018, The Manager of Digital Information and Innovation (MDII), as the Manager of Northam Library, made a determination regarding allowing access to the Northam Library for Mobility Scooters (Gophers). The MDII made the assessment based on a range of Occupational Health and Safety concerns, including those of patrons and library staff. These Occupational Health and Safety concerns included, but were not limited to:

- Concern for patrons, particularly the elderly and young children, that the Northam Library, due to its age and design, was considered to not be configured to cope with the use of gophers within the small confines due to the speed and manoeuvrability.
- Concern for staff, who were previously physically assisting some gopher users, into and out of a chair into the lift, and to the public access

computers upstairs. Staff were also physically assisting some gopher users to the toilet facilities. This practice is dangerous to staff, who were not trained in manual handling of patrons, and are not employed to undertake such duties.

To assist those library patrons that use gophers to access library facilities, a number of steps were put in place. These included:

- Provision of a wheelchair and walking frame for use of those patrons to provide access when in the library.
- Provision of computer facilities on the ground floor of the Library to enable those patrons to have access to the internet, online catalogue etc.
- Staff assisting patrons with retrieving books off shelves.
- Patrons were also advised of other Library services available to them, such as the house bound book deliveries.

These arrangements appear to have been generally accepted by the majority of gopher users, with the exception of one specific individual. Other members of the library who utilise gophers are currently adhering to the policy with little or no inconvenience.

There are two issues which have been confronting staff over the past ten months, being

1. The appropriateness of a gopher utilising the Northam library, whilst providing a safe environment for both staff and members of the community;
2. The sordid behaviour of one aggrieved individual, which has been directed at the staff of the Shire of Northam

Whilst the focus of this report is on the first matter, it is important for Council to understand the second matter as context to current complaints being directed toward the staff, who at all times have remained professional and polite.

1. The appropriateness of a gopher utilising the Northam library, whilst providing a safe environment for both staff and members of the community;

- There is a distinct lack of information / standards / precedents in relation to gopher access to public facilities
- There is currently a parliamentary enquiry into the Need for regulation of mobility scooters, also known as motorised

wheelchairs. This highlights the challenge around gopher use in general, let alone use inside public buildings. ([https://www.aph.gov.au/Parliamentary Business/Committees/Senate/Rural and Regional Affairs and Transport/MobilityScooters/Report/c02](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/MobilityScooters/Report/c02))

- Staff consulted with the gopher users in an attempt to develop a strategy to ensure the users ongoing access to the library, whilst maintaining a safe environment for staff and other patrons. All gopher users are adhering to the new arrangements, with little or no complaint or impact on library use
- As a result of ongoing concerns in relation to access, staff spent a considerable amount of time trying to identify other local governments across Australia who had dealt with a similar issue – unfortunately staff were unable to find anything that was similar
- Staff attempted to identify an ‘expert’ in the disability access industry who would address the gopher issue, unfortunately due to the lack of regulations or standards, staff were unable to find anyone to look at the matter specifically
- The main issue appears to be that the current legislation references applicable Australian Standards, in this case Australian Standard AS1428.1 (2009). This standard provides minimum mandatory technical access requirements to ensure compliance, however, there is a gap in their accessibility provisions in a number of areas, particularly gophers
- Due to the above, the Access Auditors are unable to provide specific advice on the access issues for gophers
- Staff did however undertaken a general disability access audit, which was presented to Council – August 2018. As a result of the audit Council resolved;

RECOMMENDATION / COUNCIL DECISION

Minute No: C.3456

Moved: Cr Williams

Seconded: Cr Ryan

That Council:

- 1. Receives the Disability Access Audit Report prepared for Northam Library;**

2. Request officers to prepare a Disability Action Plan for Northam Library, and adjacent former Council office to be presented to Council for endorsement, prior to implementation; and
3. Reaffirms the position of the Chief Executive Officer to not allow gopher access into the library at this time and reviews this position on receipt of the Disability Action Plan.

CARRIED 8/0

- Subsequent to Council resolution of August 2018, officers commissioned a Disability Access Action report for Northam Library, which was presented for Council in January 2019, where council resolved the following:

RECOMMENDATION / COUNCIL DECISION

Minute No: C.3583

Moved: Cr Little

Seconded: Cr Della

That Council:

1. Endorse the draft Disability Action Plan prepared for Northam Library; and
2. Endorse the Action List, and timeframes, as outlined in the Disability Action Plan Strategies & Timeframes Table (Attachment 3) authorising expenditure from the following accounts:
 - Sewer Line (11359004);
 - Repairs to Exterior Steps (11359004); and
 - General Building Maintenance (unspecified), (11359004).
3. Endorse an allocation of \$12,704 be included in the 2019/20 Draft Budget to complete the items detailed within the Disability Action Plan Strategies & Timeframes Table (Attachment 3) which also takes into consideration changes to legislation for mobility scooters where practicable.

CARRIED 7/1

Officers are now in the process of actioning the items as listed in the report.

- Council staff have also had an independent risk assessment undertaken by Local Government Insurance Services. Staff were very clear that while the aggrieved individual had certainly personalised this issue, the requirement was for an objective assessment of whether Council, from an OHS and Risk perspective, should allow gopher access into the library. The verbal advice provided by LGIS is to support the position of the



Chief Executive Officer in not allowing direct access into the library by gophers due to the unreasonable risk this creates for staff and patrons (full report will be made available)

- A complaint was made by the aggrieved individual to the Equal Opportunity Commission (EOC). Staff have been providing information over the past 4 months, there has been no determination to this point. The EOC has indicated they would like to arrange conciliation between the parties. The Chief Executive Officer has indicated some concern given the behaviour of the individual and this issue being about the access in general, as opposed to the access of this particular individual only. However the Chief Executive Officer has agreed, at this stage to proceed with some form of conciliation. As yet no confirmation has been received if the aggrieved individual is prepared to enter into discussions.
- An action was commenced against Council, the lawyers appointed by the aggrieved individual, in relation to the disability discrimination act, however this action was ceased on the advice of the lawyers.

2. The sordid behaviour of one aggrieved individual, which has been directed at the staff of the Shire of Northam

While the behaviour of this individual is not the 'nub' of the issue, it certainly has contributed to some of the outcomes that have occurred. As a consequence it is felt appropriate for Council to have a clear understanding of these matters in making an informed determination on these matters.

- In relation to this aggrieved individual, initial discussions were held in regard to what was proposed (i.e. not allowing gophers into the library).
- The aggrieved individual objected to this decision, citing that he needs to access the library on his gopher due to mobility issues.
- Following initial discussions with this individual, a number of meetings and investigations have taken place to try and assist the persons desire to utilise the library whilst also providing a safe environment for library employees and patrons. This included a meeting on 16 March with Council staff, Jason Whiteaker (CEO, Ross Rayson (Executive Manager Community Services) and Nicole Hampton (Manager Killara). Ms Hampton was included due to her knowledge in the area of aged and Disability Services.

- At the aforementioned meeting, there was a verbal agreement with the aggrieved individual on an access plan, without driving his gopher into the library, which was to be trialled for a period of one month and then reassessed. A letter which was sighted at the meeting, stated the individual had limited mobility, but was able to walk short distances of up to 15 metres. The trial involved the library staff providing assistance to this person once in the library, such as pushing him in the provided wheelchair, provision of a lap top computer on the ground floor, and assisting with retrieving books from the shelves when requested.
- The aggrieved individual has never attended the library under those conditions, but instead commenced a series of attacks both in person and in writing, (mostly personal and of an abusive nature) directed at the CEO, Library Manager, and to a lesser extent Executive Manager Community Services and Killara Manager.
- Since the initial meeting with the aggrieved individual, Council staff have been subjected to a constant barrage of attack, some verbal and some in written form. A chronology of events, and correspondence is attached under separate cover. In particular the CEO and Library Manager, but also Executive Manager Community Services and Manager Killara, have been the subject of many, mostly public documents, containing very graphic and personal allegations. Officers are concerned about the welfare of all staff in the library, who have expressed concerns about their personal safety when confronted by this person, and who have been subject to, or witness to, some appalling and disgusting language and behaviour from this individual towards their Manager.
- This individual was banned from the Library for a period of two months, in July 2018, due to his behaviour, which included offensive and insulting language directed to staff members.
- This individual has been the subject of a Misconduct Restraining Order, taken out by a library staff member independently of Council, which restricted his access to the library until end of January 2019. Whilst the MRO has been lifted, the individual has been instructed by the Court that he is not to take his Gopher into the library until granted permission to do so. He has broken that court order twice since 1 February 2019.
- This person has also signed an undertaking at court to be polite to library staff and to obey the rules of the Library. He has contravened that undertaking at least twice since 1 February 2019.
- This individual attended the Council Forum meeting of 13 February 2019 to question whether he is allowed to enter the Library.

CONSIDERATIONS

Strategic Community / Corporate Business Plan

Theme Area 2 - Community Well Being

Outcome 2.1-People in the Shire of Northam feel that their community is caring and inclusive

Financial / Resource Implications

Council has committed funding of approximately \$95,000 over the next 2 financial years to implement the recommendations of the Access Audit Action Plan. Additional alterations to Library design and configuration will come at a cost, yet to be determined.

Legislative Compliance

Disability Discrimination Act 1992.

Disability (Access to Premises-Buildings) Standards 2010.

Australian Human Rights Commission Act 1986.

Policy Implications

Nil.

Stakeholder Engagement / Consultation

The Disability Access Audit and Action Plan were prepared by an Access consultant for the Shire of Northam. Staff engaged fully with the aggrieved individual in the initial stages to formulate a plan to access the Library. The plan was never enacted by the complainant.

Risk Implications

- Reputational –High
 - This is an extremely unfortunate set of circumstance and outcome. Council does risk significant risk of reputational damage as a result of the position that has been taken previously. This could be mitigated to an extent by ensuring the community understands the background and decision making process applied in coming to the current position.
- Financial - Moderate
 - Council may be exposed to insurance claims for any injuries which occur as a result of gophers accessing the library building.
- Compliance - Moderate
 - The risk with allowing access is that the Shire of Northam potentially will be in breach of legislation, which could result in prosecution and financial penalty. However, this has been mitigated by the creation of an Access Audit and Action Plan, which provides Council a clear direction under current legislation.
- Legal –Moderate

- It is unlawful for a person who, whether for payment or not, provides goods or services, or makes facilities available, to discriminate against another person on the ground of the other person's disability. Advice received to date is that Council is complying with its legislative requirements.

OFFICER'S COMMENT

Council has a number of options available to it in relation to this matter. These options are explored below;

- *Not allow Gophers into the Library.* From a compliance point of view, as there is no clear legislation on the use of gophers it is difficult for Council to make a decision based compliance. As stated in council report of 23 January 2019, officers are working on correcting issues of access as identified in the Access Action Plan, and are reviewing Library operations based on information they have in relation to these devices. It is unknown whether, once any changes are made, there will be a requirement for further changes once legislation is drafted. (e.g.' the current lift requires work to make sure it is compliant. Under new legislation, there may be a requirement to alter the lift again, at significant cost.
- Not allow Gophers into the library, however adding that Council direct the Chief Executive Office to continue to explore options for safe entry into library for gopher users, in the context of ensuring the risk and service delivery to staff and other library users is acceptable / manageable. This is similar to the first option with the added requirement for the Chief Executive Officer to continue to explore viable options for entry of gophers into the library. Whilst this may not be possible, it should still be incumbent on the Council to explore options and avenues to allow access to the library by gopher users – which would be the most beneficial outcome to not only the gopher users, but also the Council.
- *Provide special permission for the aggrieved individual only to access the Library in his gopher.* It is unclear whether this would be seen as discrimination by other gopher users, who currently utilise the Library and park outside.
- *Allow access to gophers into the Library, on a conditional basis.* – Could potentially be seen as discriminatory as it is not providing full access to Council services. This would at least allow a level of risk mitigation / management. For example Council could allow access for 2 hours from 10am each Friday.

- *Allow full access to gophers unconditionally:* What will need to be determined is the cost both financially and in service provision, that would result if modifications were required to the Library for this to occur.

In addition there are certainly concerns from staff in relation to the method adopted by the aggrieved individual in dealing with his specific concerns. Whilst the individual is within their rights to express their views in public forums on any range of matters, any such behaviour which is threatening toward staff in or around Council facilities will be dealt with strongly and will result in banning the individual from attending Council facilities.

RECOMMENDATION

That Council:

- 1. Reaffirms the current position of Council and the Chief Executive Officer to not allow gopher access into the library, until such time as it can be demonstrated that access can be granted in a manner which is safe to both staff and other library users.**
- 2. Directs the Chief Executive Office to continue to explore options for safe entry into library for gopher users, in the context of ensuring the risk and service delivery to staff and other library users is acceptable.**
- 3. Requests the Chief Executive Officer to keep the Shire President informed on progress of completion of the actions from the Disability Action Plan and the endeavours to provide safe access to the library by gopher users.**

12.2 TENDER 7 OF 2018 – SUPPLY AND LAY ARTIFICIAL HOCKEY PLAYING SURFACE

Address:	Bert Hawke Reserve, Northam
Owner:	Shire of Northam
Applicant:	Shire of Northam
File Reference:	8.2.9.1
Reporting Officer:	Sue Connell
Responsible Officer:	Clinton Kleynhans
Officer Declaration of Interest:	Jason Whiteaker – Chief Executive Officer - impartiality as a current member of the Northam hockey club
Voting Requirement:	Majority
Press release to be issued:	Yes

BRIEF

For Council to approve the award of RFT 7 of 2018 for Supply and Lay Artificial Hockey Playing Surface (subject to conditions).

ATTACHMENTS

- Attachment 1: Evaluation Report (confidential).
Attachment 2: Evaluation Matrix (confidential).

BACKGROUND / DETAILS

Request for tenders were called on the 6th October 2108 in the West Australian. The tender closed on Friday 31st October 2018.

Tenderers were invited to provide a tendered price to deliver works under contract to Supply and Lay an Artificial Hockey Playing Surface as directed by the Principal or its nominated representative.

Employee's present at the tender opening were Councils Governance Officer and Executive Manager Engineering Services.

Tenders were independently assessed by the Executive Manager Community Services, Executive Manager Developments Services, and Purchasing Officer.

CONSIDERATIONS

Strategic Community / Corporate Business Plan

Theme Area: Community Wellbeing

Outcome 2.2: There are a variety of recreation and leisure activities available for all ages, across the Shire of Northam.

- Maintain a range of sporting facilities in Northam, as expected of a Regional Centre.
- To have well maintained reserves within the Shire of Northam.

Financial / Resource Implications

An amount of \$400,000 has been included in the adopted 2018/19 Budget for the delivery of this project.

The following budget summary is provided for stage one of the turf project, stage 2 (which includes lighting, electronic scoreboard, additional perimeter fencing and spectator seating) is currently subject to a Federal Grant application which is due to be announced in late December 2018. In the event this funding is unsuccessful, the hockey club will look at alternative grant opportunities. Stage 1 can however continue in isolation.

HOCKEY TURF BUDGET ESTIMATES					
				<i>ALL FIGURES EX GST</i>	
				QUOTE	PROPOSED
Base costs	DSR Budget			175,625	
	ACTUAL				175,625
Asphalt & Kerbing	Supercivil	A & K	3 quotes received	121,293	121,293
Shockpad	TT		Tendered	358,870	358,870
Fencing	Midalia	materials	Quotes received	12,500	12,500
TOTAL TURF INSTALL					668,288
				Funded By:-	
				Northam Hockey Assoc Cash	- 6,363
				Northam Hockey Assoc - secured sponsorship	- 261,925
				Shire of Northam	- 400,000
TOTAL TURF FUNDING					-668,288

The Hockey Association have an additional \$40,000 in cash available for contingency. If this is not required, the intent is to utilise these funds to leverage stage 2 through the State CSRFF if the Federal application is unsuccessful.

Legislative Compliance

Section 3.57 of the Local Government Act 1995;



Local Government (Functions & General) Regulations 1996 prescribe the manner that Tenders are called and awarded.

In addition to the above, Council has an adopted Policy with respect to Regional Price Preference as set out below:

Policy Implications

"F 3.4 Regional Price Preference

Policy: *Council's Regional Price Preference for locally produced goods and services will apply to all goods and services for which tenders are let, unless the Shire of Northam determines otherwise, and is to be:*

Up to 10% where the contract is for goods or services (including construction (building) services), up to the maximum price reduction of \$100,000, if the Local Government is seeking tenders for the provision of those goods or services for the first time due to those goods or services having been, until then, undertaken by the local government"

This policy has been applied within the tender assessment process.

Stakeholder Engagement / Consultation

The Hockey Association have been consulted in relation to their preferred surface.

Risk Implications

- Reputational – Low
 - In the event there is an issue with the project, Council risks a level of reputational damage. This is considered more of a risk as various elements of the project are being delivered independent to the Council
- Financial - Low
 - No significant financial concern as Council has a set budget.
- Compliance - Medium
 - As the site works are being undertaken by a third party, as an in-kind contribution to the project, there is a risk in the event the works do not meet specification. This is being mitigated by the requirement for a geotechnical assessment of the works prior to the asphalt being laid, whilst the asphalt specification provided by the turf supplier is being provided to the contractor to ensure compliance. Engineering Services staff will sign off on these elements as hold points for the project.
- Legal – Low
 - Following Purchasing and Tenders Process.

OFFICER'S COMMENT

The submissions were assessed against the following pre-determined criteria's:

Compliance Criteria

- Compliance with the conditions in the request;
- Compliance with Specification;
- Financial capacity to perform the works;
- Intent to Sub-Contract;
- Declare any conflict of interest;
- Quality Assurance;
- Occupational Health and Safety requirements;
- Insurance coverage;
- Public consultation

Qualitative Criteria (Scored)

- | | |
|-------------------------------------|-----|
| • Pricing | 50% |
| • Relevant Experience | 25% |
| • Timeliness of Delivery/resourcing | 15% |
| • Safety and Risk Management | 10% |

Further detail is provided in the attached Appendices.

The Evaluation Panel recommends the contract be awarded to Tiger Turf, as the preferred supplier.

In relation to the other elements it is also recommended that the Council oversees the purchase of these items. This is being recommended to ensure that the project is delivered effectively (given the considerable financial commitment of the Council), whilst also maximising the Council funding available, as Council is able to claim back the GST, whereas the hockey association is not.

RECOMMENDATION

That Council, subject to the Chief Executive Officer being satisfied that the Northam Hockey Club is able to proceed with stage 1 of the project in full;

- 1. Award Tender 7 of 2018 for the Supply and installation of an Evo Pro Artificial Hockey Playing Surface to Tiger Turf for the sum of \$358,870 (GST exclusive);**
- 2. Authorise expenditure of up to \$400,000 to deliver all elements of stage 1 of the project.**
- 3. Authorise additional expenditure of up to \$40,000 to be reimbursed by the Northam Hockey Association.**

13. MATTERS BEHIND CLOSED DOORS

Nil.

14. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil.

15. URGENT BUSINESS APPROVED BY PERSON PRESIDING OR BY DECISION

Nil.

16. DECLARATION OF CLOSURE