



Minutes

Special Council Meeting

Wednesday 1 December 2021

Special Council Meeting – 1 December 2021

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Minutes of the Special Meeting of Council held at the Murray Shire Council, 1915 Pinjarra Road, Pinjarra on Wednesday 1 December 2021.

1. DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS

The Presiding Member Cr D Bolt declared the meeting open the time being 4.30pm.

2. ATTENDANCES/APOLOGIES/LEAVE OF ABSENCE

Cr D Bolt	President
Cr D McLarty	Deputy President
Cr S Kirkham	Councillor
Cr D Pike	Councillor
Cr S Lee	Councillor
Cr G Black	Councillor
Cr A Rogers	Councillor
Mr D Unsworth	Chief Executive Officer
Mr A Smith	Director Infrastructure Services
Mr R Peake	Director Planning and Sustainability
Ms L McGuirk	Director Community and Economic Development
Dr C Vass	General Manager, WA Food Innovation Precinct
Ms Jenni Brown (via videolink)	Project Manager, WA Food Innovation Precinct
Mrs M Toner	CEO Executive Support Officer

Mr Brad Schrader, WAFIP architectural consultant from Realcom also attended via videolink to provide professional advice.

APOLOGY

Cr C Rose
Cr S Carter

3. PURPOSE OF MEETING

To consider the Western Australian Food Innovation Precinct Food Technology Facility Fit-Out.

4. PUBLIC QUESTION TIME

In accordance with Section 7(4)(b) of the Local Government (Administration) Regulations 1996, a Council at a Special Meeting is not required to answer a question that does not relate to the purpose of the meeting. It is therefore requested that only questions that relate to items on the agenda be asked.

5. PETITIONS AND APPROVED DEPUTATIONS

Nil.

6. ACKNOWLEDGEMENT OF RECEIPT OF DISCLOSURE OF INTERESTS (BY PRESIDING MEMBER)

Nil

7. REPORTS

Nil.

8. MEETING CLOSED TO THE PUBLIC (CONFIDENTIAL BUSINESS)

8.1 Western Australian Food Innovation Precinct (WAFIP) Fit-Out Contract

File Ref: T21/1
Previous Items: SCM. 29 Mar 2021 Item 8.1 (SCM21/054)
OCM. 25 Nov 2021 Item 11.2 (OCM21/201)
Applicant: Not applicable
Author and Title: Dean Unsworth, Chief Executive Officer
Conflict of Interests: Nil
Voting Requirements Simple Majority

RECOMMENDATION/COUNCIL DECISION:

SCM21/202

Moved: Cr D McLarty

Seconded: Cr S Lee

That Council proceeds behind closed doors the time being 4.31pm as per Section 5.23(2)(c) of the *Local Government Act 1995* for the purpose of considering confidential item 8.1 Western Australian Food Innovation Precinct Fit-Out Contract.

CARRIED UNANIMOUSLY 7/0

COUNCIL DECISION:

Suspension of Meeting Procedures Local Law

SCM21/203

Moved: Cr A Rogers

Seconded: Cr D McLarty

That Council suspend Meeting Procedures (as per Shire of Murray Meeting Procedures Local Law 2015 Clause 12.1) to allow open discussion on Confidential item 8.1 Western Australian Food Innovation Precinct – Food Technology Facility Fit-Out Contract, the time being 4.31pm.

CARRIED UNANIMOUSLY 7/0

COUNCIL DECISION:

That Council resume Meeting Procedures (as per Shire of Murray Meeting Procedures Local Law Clause 12.1) the time being 5.38pm.

SCM21/204

Moved: Cr D McLarty

Seconded: Cr A Rogers

CARRIED UNANIMOUSLY 7/0

OFFICER RECOMMENDATION 1

That Council rescinds point 1 and 2 Council Resolution number OCM21/200 made at the Ordinary Council Meeting held on 25 November 2021 being:

1. *The funding model to construct the fit-out is to be shared by the Department of Primary Industry & Regional Development, Murdoch University, the Shire of Murray and, potentially the Australian Government.*
2. *If funding of \$1,800,000 can be provided by external parties by 5pm, Monday 29 November 2021, then Council will support the FTF fit-out with the following Shire of Murray financial allocation:*
 - *\$670,000 from the WAFIP Construction budget;*
 - *Up to \$568,000 treated as security from the remaining Enterprise Support Programme;*
 - *That any further contingency savings is replaced back into the Enterprise Support Programme; and*
 - *All efforts are made, including good-will commitments from DPIRD, to source various external grant funds to replenish the ESP.*

Note: A Special Majority, being a mover, a seconded and a third person must support this Motion in writing before it has been considered. A latter will be provided before the item is discussed for signatures before the item can be discussed.

COUNCIL DECISION:**SCM21/205**

Moved: Cr A Rogers

Seconded: Cr S Lee

Third Support: Cr D McLarty

That Council rescinds point 1, 2 and 4 of Council Resolution number OCM21/200 made at the Ordinary Council Meeting held on 25 November 2021 being:

2. *The funding model to construct the fit-out is to be shared by the Department of Primary Industry & Regional Development, Murdoch University, the Shire of Murray and, potentially the Australian Government.*
2. *If funding of \$1,800,000 can be provided by external parties by 5pm, Monday 29 November 2021, then Council will support the FTF fit-out with the following Shire of Murray financial allocation:*
 - *\$670,000 from the WAFIP Construction budget;*
 - *Up to \$568,000 treated as security from the remaining Enterprise Support Programme;*
 - *That any further contingency savings is replaced back into the Enterprise Support Programme; and*
 - *All efforts are made, including good-will commitments from DPIRD, to source various external grant funds to replenish the ESP.*
4. *Council notes the advice from Realcom Management Consultants in that it does not support the amount of \$670,000 allocated to fit-out costs of the FTF as a separate smaller project if the funding for the FTF fit-out is not obtained.*

CARRIED UNANIMOUSLY 7/0

REASON FOR CHANGE: Point 4 from Council Resolution OCM21/200 was also included in the rescission motion to give the CEO delegated authority to allocate the contingency amount of \$670,000 if an opportunity arises where it can be allocated to assist the WAFIP meeting its vision.

OFFICER RECOMMENDATION 2

That Council

1. Proceeds as per the original tender decision from 29 March 2021 (SCM21/054).
2. Acknowledges that the fit-out for the FTF is required to go to a formal tender process as this component of the WAFIP is outside the scope of the tender that was formally accepted on 29 March 2021.
3. Delegates to the Chief Executive Officer that available contingency of \$670,000 be allocated towards a floor and services to the FTF building.
4. Requests that DPIRD and Murdoch University works with the Shire of Murray preparing a Building Better Regions Fund grant submission towards fit-out and equipment for the FTF facility using \$1 million State Government fund already allocated to the FTF and potentially \$366,000 allocated by Murdoch University.
5. Includes the FTF fit-out project as a priority project as part of its 2022 Federal Election lobby strategy.
6. Authorises the Chief Executive Officer to seek alternative tenants to the WAFIP immediately if DPIRD or Murdoch University advises that they do not wish to continue to be tenants of the WAFIP.

COUNCIL DECISION:

SCM21/206

Moved: Cr D McLarty

Seconded: Cr S Kirkham

That Council:

1. **Proceeds as per the original tender decision from 29 March 2021 (SCM21/054).**
2. **Acknowledges that the fit-out for the FTF is required to go to a formal tender process as this component of the WAFIP is outside the scope of the tender that was formally accepted on 29 March 2021.**
3. **Delegates to the Chief Executive Officer that available contingency of \$670,000 may be allocated towards the WAFIP building if it is prudent to use and assists in achieving the WAFIP vision.**
4. **Requests that DPIRD and Murdoch University works with the Shire of Murray preparing a Building Better Regions Fund grant submission towards fit-out and equipment for the FTF facility using \$1 million State Government funds already allocated to the FTF and potentially \$366,000 allocated by Murdoch University.**

5. **Includes the FTF fit-out project as a priority project as part of its 2022 Federal Election lobby strategy.**
6. **Authorises the Chief Executive Officer to seek alternative tenants to the WAFIP immediately if DPIRD or Murdoch University advises that they do not wish to continue to be tenants of the WAFIP.**

CARRIED UNANIMOUSLY 7/0

REASON FOR CHANGE: Point 3 was changed in order to give more flexibility with the contingency amount of \$670,000 if the opportunity arises to better meet the vision of the WAFIP.

COUNCIL DECISION:

SCM21/207

Moved: Cr A Rogers

Seconded: Cr S Lee

That Council treat (SCM21/205) as confidential due to the commercial-in-confidence information contained within.

CARRIED UNANIMOUSLY 7/0

In Brief

- The WAFIP capital project construction commenced in April 2021 and is currently on schedule for practical completion in May 2022.
- Since the commencement of the construction programme, the State Government allocated \$10M towards equipment towards a component of the project – the Food Technology Facility (FTF).
- Still unresolved is the fit-out funding model for the Food Technology Facility (FTF).
- Council considered this item at the Council meeting 25 November, however the requested funding from the Australian Government has not come to fruition.
- The builders, Cooper & Oxley are requiring an urgent decision on whether to proceed with the tendered project, or to undertake the FTF fit-out.
- Due to the Local Government Tender Regulations Council cannot proceed with the FTF fit-out as it is outside the scope of the original tender and could not be considered a 'minor variation'.
- Since receiving budget approval for the FTF in July 2021, the Department of Primary Industries and Regional Development (DPIRD) have been working with its project partners (Future Food Systems CRC and Murdoch University) to give shape to this program.
- With the WAFIP construction already underway from April (to meet grant conditions) and the government approval to fund the FTF only forthcoming in July, the disconnect in timelines is evident. Once DPIRD-CRC-Murdoch University agreed on a preferred design layout for the FTF in June, the fit-out cost estimate of \$2.3M was received in July. Following the detailed design process, which the Shire funded, the final cost is \$2,662,200 M plus a time delay cost of \$372K (total - \$3,034,200) and a delay in construction completion of the Production facility to August 2022 is to be expected.
- Council considered an item at the November 25, 2021 to consider how this funding shortfall could be met.

- The required funding of \$1,800,000 has not been obtained, and therefore this report is provided to Council to consider a funding strategy in order to secure the necessary funds to fit-out the FTF.
- Officers will provide a presentation to Council at this meeting looking at the pathways to meeting the WAFIP vision in the event that DPIRD and Murdoch withdraw their interest in the WAFIP and what this would mean to the business model.

Background

The Shire of Murray received a Regional Growth Fund (RGF) grant of \$21.75M from the Australian Government to construct the WAFIP by 30 June 2022. The WAFIP aims to comprise of a Research & Development Centre, Innovation Centre, Production – Food Technology Facility (FTF) and a Production – Warehouse (Brewery).

Design discussions were led by the Project Manager appointed by the Shire of Murray with Murdoch University and Fund Singapore between 2019 and 2020. A tender package was released in January 2021 and the tender was awarded to Cooper and Oxley in March 2021. WAFIP construction commenced in April 2021.

The State Government offered an election commitment of \$10M to fund an FTF at the WAFIP which was triggered after the March 2021 State election. However, with the WAFIP construction already underway from April (to meet grant conditions) and the government approval to fund the FTF only forthcoming in July, there is a disconnect of timelines. Once DPIRD-CRC-Murdoch University agreed on a preferred design layout for the FTF in June, the fit-out cost estimate of \$2.3M was received in July. Following the detailed design process, which the Shire funded, the final cost is \$2,662,200 M plus a time delay cost of \$372K (total - \$3,034,200) and a delay in construction completion of the Production facility to August 2022 is to be expected.

Council considered a report at the 25 November 2021 Ordinary Council meeting, and it was resolved that:

1. *The funding model to construct the fit-out is to be shared by the Department of Primary Industry & Regional Development, Murdoch University, the Shire of Murray and, potentially the Australian Government.*
2. *If funding of \$1,800,000 can be provided by external parties by 5pm, Monday 29 November 2021, then Council will support the FTF fit-out with the following Shire of Murray financial allocation:*
 - *\$670,000 from the WAFIP Construction budget;*
 - *Up to \$568,000 treated as security from the remaining Enterprise Support Programme;*
 - *That any further contingency savings is replaced back into the Enterprise Support Programme; and*
 - *All efforts are made, including good-will commitments from DPIRD, to source various external grant funds to replenish the ESP.*
3. *If the funding of \$3,038,000 cannot be sourced by 5pm, Monday 29 November, then the Chief Executive Officer is to direct the WAFIP builders, Cooper and Oxley to continue its current construction programme as per the accepted tender and does not proceed with the fit-out of the Food Technology Facility.*
4. *Council notes the advice from Realcom Management Consultants in that it does not support the amount of \$670,000 being allocated to fit-out costs of the FTF as a separate smaller project if the funding for the FTF fit-out is not obtained.*

Report Detail

After a review of the Local Government Tender Regulations, the proposed FTF fit-out is outside the original tender scope of the project and cannot be considered a 'minor variation' given the cost magnitude. Therefore, at a meeting held with DPIRD and the PDC on the morning of 1 December 2021, the CEO advised that the FTF fit-out will be required to be a separate tender to meet legal requirements of the Regulations.

However, in order to develop a separate tender, funding sources are required to be sourced prior to that tender process.

The cost estimates for the fit-out of the FTF as supplied by Cooper & Oxley is \$3,038,000. However, this is not market tested and in that figure there is a project delay cost of \$372,500.

By not proceeding now, this provides the following outcomes:

1. Allow the building programme to continue and meet the practical completion time of late May 2022.
2. Consider how best to use \$670,000 of available contingency now to include into the FTF which will take pressure off the tender cost when the fit-out project is tendered.
3. Allow time to prepare and apply for the upcoming Building Better Regions Fund (BBRF) round, expected to be announced in December with an announcement made before the May 2022 Federal election.
4. A more thorough and transparent process to allow a true market testing of the costs to fit-out the FTF.
5. the previously sacrificed amount of \$568,000 from the Shires Enterprise Support Programme (ESP) can now remain in its original form and be used for industry activation.
6. As the fit-out time delay penalty was \$372,500, a separate tender could be undertaken and potentially that amount could be saved. The time delay cost was due to the FTF building not being able to be completed until August 31. By finishing the building shell by the due date, the successful tenderer could come in immediately following the completion of the building and undertake those works from June to August, meaning that variation costs would not be a factor.

As can be seen in the Council Resolution, an amount of \$1,800,000 was required to be sourced based on the current estimate which would have then been the pathway for the construction programme to include the FTF equipment fit-out. Since that meeting however, a total of \$1,366,000 has been obtained. With this funding the current financial model looks as such:

- | | |
|--|-------------------|
| • State Government untied commitment (approval received 30/11) | \$1,000,000 |
| • Murdoch University funding (approval received 29/11) | \$ 366,000 |
| • Shire of Murray construction contingency** | \$ 670,000 |
| • Shire of Murray Enterprise Support Programme | <u>\$ 568,000</u> |
| • Total funds available | \$2,604,000 |

- FIF Fit-out additional costs \$2,662,200
 - Time related costs \$ 372,423
 - TOTAL FTF Fit-Out \$3,034,623
- Total short-fall based on the cost estimate \$ 430,623

** Note that this amount will be allocated to the FTF as part of the original tender, bringing down the funds available but also bringing down the cost estimate of the FTF cost estimate.

If the tender price was at the same amount as the cost estimate received by our builders (Cooper and Oxley) there is a shortfall of \$430,000. If the BBRF application was unsuccessful and the costs were the same, there will undoubtedly be a request for Council to consider allocating the short-fall. In order to prepare a funding and lobby strategy, it would be very beneficial to ask Council if there is any appetite to allocate funds from its municipal account to fund the shortfall.

If the BBRF application is unsuccessful and the amount needed to fund the FTF have not been secured, there is a project risk that DPIRD to withdraw from the WAFIP and in turn, that could trigger Murdoch University to also withdraw.

It is proposed that Council be given a briefing from officers at this meeting to consider what the WAFIP project looks like without DPIRD and Murdoch as tenants.

Murray 2031 Strategic Community Plan

Focus Area	Thriving Economy
Aspiration	To create diverse and prosperous economy that supports innovation, training opportunities and provides a variety of business, tourism and employment opportunities.
Strategy	Build and maintain the Transform Peel initiative.

Murray 2021-2025 Corporate Business Plan

Focus Area	Thriving Economy
Objective	An economy that is focused on key success factors for growth; knowledge and innovation; export income and investment; infrastructure and local capacity.
Strategy	Build and maintain the Transform Peel initiative.
Actions	Deliver the Western Australian Food Innovation Precinct.

Other Strategic Links

Western Australian Food Innovation Precinct Business Plan.

Statutory Environment

Unbudgeted funds are required to be approved by Absolute Majority of Council.

Sustainability & Risk Considerations

Economic - (Impact on the Economy of the Shire and Region)

There are significant long-term economic benefits to the Shire and the region if the FTF programme proceeded. However, at this point the project is unfunded by \$2.3 million, and without firm financial commitments from stakeholders, the project will not be able to proceed in the short term.

Social - (Quality of life to community and/or affected landowners)

Having a strong and vibrant economy adds significantly to the social well-being of the district and the region.

Environment – (Impact on environment’s sustainability)

Nil.

Policy Implications

Nil.

Risk Management Implications

<i>Risk Level</i>	<i>Comment</i>
Low	Tender programme - The recommendation is to proceed with the current tender programme, and hence there is low risk to that strategy.

<i>Risk Level</i>	<i>Comment</i>
High	Providing a funding shortfall to the magnitude of the cost estimate - There is high risk to Council’s financial position if it was to allocate \$430,000 of funding towards the FTF fit-out.

Consultation

- Minister for Primary Industry and Regional Development
- Department of Primary Industry and Regional Development
- Peel Development Commission
- Murdoch University

Resource Implications*Financial*

If funding of up to \$430,623 it would add stress onto the Shire’s financial position.

As well as the WAFIP, there are 2 other critical projects that the Council is currently Planning to deliver in the coming two (2) years which also need to be considered as part of this decision, being:

- a) Exchange Hotel; and
- b) Replacement of George Beacham Pavilion.

A Council report is being prepared for the December Council meeting that is considering the funding mix of these two high priority projects. The strategy being presented is as follows:

The Exchange (over 3 years)

- | | |
|--------------------------------|------------------|
| • BBRF Grant Funds (confirmed) | \$2,335,257 |
| • Loan Funds | \$1,700,000 |
| • Waste Reserve | \$1,000,000 |
| • Asset Enhancement Reserve | \$ 105,317 |
| • Municipal Funds | <u>\$ 48,911</u> |

Total \$5,189,485

George Beacham Pavilion replacement (over 2 years)

• LRCI Phase 3 Grant Funds	\$1,176,844
• CSRFF Grant Funds (application pending)	\$1,201,194
• Asset Enhancement Reserve	\$1,100,000
• Municipal Funds	<u>\$ 298,239</u>
Total	\$3,776,277

The above puts significant pressure on the Shires funds. An additional \$430,623 is a significant challenge to Council's financial position, however, the risks in not progressing have been stated above.

If Council were to fund the DPIRD-CRC fit-out (current) shortfall and find an additional \$430,623 it could be taken from the Asset Enhancement Reserve. If the funding structures of the above 2 structures are accepted and an additional amount is required for the FTF fit-out, the Asset Enhancement Reserve would be affected as follows:

Below is the Cash Reserves movement if all three projects are funded, and the effect on the Shires financial capacity.

ASSET ENHANCEMENT RESERVE	\$	\$
Current estimated balance to 30 June 2022		1,632,587
Proposed Exchange allocation	(105,317)	
Proposed George Beacham Pavilion	(1,100,000)	
Sub-Total (Remaining)		427,270
Proposed WAFIP FTF Fit-Out	(430,623)	
New estimated balance to 30 June 2022		(3,353)

Another critical issue to consider is the major effect this would have on the Long-Term Finance Plan (LTFP). An amount of \$500,000 has been allocated in the LTFP to be available to fund Council's 2023/24 'discretionary' projects. If the WAFIP FTF is funded from the Asset Enhancement Reserve, the Council's 'discretionary' budgets are seriously affected:

- 2022/23 \$422,584
- 2023/24 \$206,293
- 2024/25 \$760,988.

WASTE RESERVE	\$	\$
Opening Balance		2,388,829
Exchange allocation already authorised	(500,000)	
Further Exchange allocation proposed	(500,000)	
Revised estimated balance to 30 June 2022		1,388,829

The LTFP has a provision to pay back the Waste Reserve at \$250,000 per year for 4 years commencing in 2026/27.

Workforce

There is risk to Council that the funding for the Business Manager will not be covered by the previously expected rental income if DPIRD and Murdoch withdraw until new tenants

were secured. In recent days, Murdoch University have agreed to provide their previously pre-paid rental for Years 1 and 2 of \$366,000. However, Murdoch's financial model is based on this amount to be recouped via free use of the FTF facility by DPIRD. While this is of critical importance to their financial model and critical to reduce Council's exposure, there has only been one casual conversation between DPIRD and Murdoch with DPIRD not committing to this request. This would then push the WAFIP into a financial loss situation and that loss would be required to be funded from Council's municipal fund.

Options

Council has the option of:

Option 1:

Pursue FTF (via a separate tender) with the Shire allocating \$568,000 from its own ESP funds, and a further \$430,623 from its own Council revenue.

RISKS TO CONSIDER:

- DPIRD are only using the FTF as a 4-year 'pilot' programme.
- DPIRD have not signed a Lease or even an Agreement to Lease.
- DPIRD have stated (from a lower level officer) that they will not consider any rent increases (currently \$50 m2 which is already subsidised by approx. \$110m2) or increase its allocation to outgoings (currently at \$60m2). The risk is that if the outgoings are higher, for example \$100m2, the Shire would be required to absorb \$160,000 over the 4 years to fund DPIRD operating costs.
- DPIRD will not take the responsibility of maintenance costs for their facility.

Option 2:

Pursue Production facility as per tender and the Shire-DPIRD-Murdoch University and the CRC negotiate the FTF fit out as a separate project scope. This would only be done if the remaining funds are secured from the Australian Government. Not obtaining the necessary Australian Government funds poses a number of risks to the project:

RISKS TO CONSIDER

- DPIRD will withdraw from the WAFIP project and with it the \$10 million towards the FTF.
- If DPIRD leave, then the Murdoch programme is very different and potentially unviable.
- Later opening date.

BENEFITS/OPPORTUNITIES

- DPIRD-CRC would have time to inform themselves as to the equipment the industry is seeking.
- Potentially no time delay costs.
- Murdoch University-CRC can undertake an 'end user analysis' to inform the equipment requirements for the FTF.
- The Innovation Centre can open as planned in June 2021.

Conclusion

From a legal perspective, the Shire is not permitted to consider the FTF as part of the original WAFIP tender. This has been resolved and advice sent to all stakeholders.

However, discussion is needed as a matter of some urgency in terms of funding options if Australian Government funds are not successful.

The State has now confirmed \$1 million towards the FTF fit-out. If a BBRF application is successful then there is not a funding short-fall.

However, if Australian Government funds are not sourced, then there is a potential cash short-fall. In order to go to tender, it is a requirement to have a reasonable budget formally allocated. Going by the current rates, there is a \$430,000 shortfall. While this may change, given that the cost of construction is increasing rapidly, there is some possibility that this may not reduce.

It also should be noted that Council is providing subsidised rent rates, which is a total subsidy on market rates to approximately \$450,000 p.a.

If \$430,623 is allocated, this amount alone is approximately 2.5% of rates income.

It is normal practice for a lessor (the Shire) to expect the lessee (DPIRD) to fund their equipment and fit-out. While it is acknowledged that DPIRD bring \$9 million to the table, (\$7 million in equipment and fit out), the financial capacity and capability of the Shire to fund DPIRD's fit-out must be paramount. Why can't the State find the remaining \$430,623 when there is still \$7 million in its budget?

With important committed projects, the Exchange and the George Beacham Pavilion already committed, it appears beyond the capability of the Shire to be able to stretch its finances to source a further \$430,623. Further, the risk matrix that is included within this report identifies numerous issues that have not been resolved and results in an unacceptable risk that Council should take.

There is no reason why DPIRD cannot use their funds to undertake their own fit-out once the building has been completed. By then, the DPIRD-CRC 'end user' analysis that will take 3 months to take may then inform them on what equipment they wish to purchase, as at this point they are not adequately informed as to what equipment they actually require.

COUNCIL DECISION:

SCM21/208

Moved: Cr A Rogers

Seconded: Cr D McLarty

That Council proceeds with open doors the time being 5.43pm.

CARRIED UNANIMOUSLY 7/0

9. CLOSURE OF MEETING

There being no further business the Presiding Member declared the meeting closed the time being 5.43 pm.