

NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING

18.1 ONSLOW EMERGENCY SERVICES BUILDING – OUTSTANDING LOAN

FILE REFERENCE: CS.ES. 03.00

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NAME OF APPLICANT/RESPONDENT: Department of Fire & Emergency Services (DFES)

DATE REPORT WRITTEN: 8 December 2014

DISCLOSURE OF FINANCIAL INTEREST: The author has no financial interest in the matter.

PREVIOUS MEETING REFERENCE: 13.12.408 - Ordinary Meeting of Council 6 December 2005
13.08.373 - Ordinary Meeting of Council 16 August 2005

Summary

At its Ordinary meeting of 16 August 2005 Council resolved to become a signatory to a Memorandum of Understanding (MoU) with Fire & Emergency Services Authority (FESA), now Department of Fire and Emergency Services (DFES), to establish the Onslow Volunteer Emergency Services being an amalgamation of the Onslow Bush Fire Brigade & State Emergency Services units under the control of FESA.

It was also resolved to agree in principal to the disposal of the Onslow Emergency Services Building. On 6 December 2005 Council, at its Ordinary Meeting, resolved in part to transfer the tenure of the Onslow Emergency Service Building to FESA subject to FESA becoming responsible for the outstanding loan on the facility and any financial outlay required for the transfer thereof.

In the dealings with the Department of Lands instead of the land being transferred across to FESA it was sold to FESA as a green title. FESA paid the money they had allocated for the loan transfer to the Department for Lands believing it was to be returned to the Shire for the loan. This did not occur though, and the loan remained as a Shire responsibility. Various attempts had apparently been made over the years to resolve the situation, but none had met with success. Recent discussions and negotiations have resulted in an offer of \$160,000 from DEFS as a "full and final settlement".

Background

At its Ordinary meeting of 16 August 2005 Council resolved to become a signatory to a Memorandum of Understanding (MoU) with the Fire & Emergency Services Authority (FESA), now Department of Fire and Emergency Services (DFES) to establish the Onslow Volunteer Emergency Services (being an amalgamation of the Onslow Bush Fire Brigade & State Emergency Services units under the control of FESA).

It was also resolved to agree in principal to the disposal of the Onslow Emergency Services Building.

The land on which the building stands is lot 971, Land Administration Plan 20088, 1.1975 ha. in area, C.T. Vol. 3111, Folio 994.

At the 6 December 2005 Ordinary Meeting, Council considered a report which detailed the procedures and financial implications relating to the transfer of the building. At that meeting Council resolved (in part) the following:

That :-

1. *Council agree to transfer the tenure of the Onslow Emergency Service Building to FESA subject to:-*
 - i) *FESA to become responsible for the outstanding loan on the facility and any financial outlay required for the transfer thereof;*

Comment

During the process of transfer, instead of the land being transferred to FESA, and the payment of the outstanding loan being made to the Shire, the land was sold by the Department of Lands as a green title. FESA paid the money it had allocated for the loan transfer to the Department for Lands, believing it was to be returned to the Shire for the loan. This was not picked up at the time and the loan remained on the Shire's books of account. This effectively transferred the building to FESA without the requirement to compensate the Shire for the building. Over several years discussions were had as to how and why this position eventuated and the confusion resulted in a stalemate where no payment or agreement to compensate the Shire was reached.

The CEO met with FESA in Perth on 10 October to discuss the history of the situation and follow up discussions occurred on 8 December 2014. Those negotiations have reached what is believed to be a suitable compromise and if endorsed by Council, will close this almost decade long matter.

The DEFS position was to offer the Shire fifty percent of the outstanding loan (which was \$238,000). The Shire position proposed that one hundred percent of the loan cost be refunded (as originally resolved) even if that sum was split over a couple of financial years. The eventual "middle ground" position reached was that a "one off" sum of \$160,000 would be taken back to the respective authorities for consideration.

Legal advice is that the Shire has an arguable case, but given that the only other way of potentially recovering any of that loan figure would be to go to the expense of preparing a legal case and take the matter to court to argue that an "agreement having been reached" in 2005, this figure was considered a fair and reasonable compromise to bring back to Council for its consideration.

Consultation

Chief Executive Officer

Executive Manager – Corporate Services

Project Support Officer - Strategic & Economic Development

Statutory Environment

Local Government Act 1995 S6.15 Local government's ability to receive revenue and income and Local Government (Financial Management) Regulations 1996.

The original sale was an exempt Section 3.58 land transaction under Functions and General Regulation 30(2)(c) – sale to a government agency.

Financial Implications

In light of the uncertainty that has surrounded this issue over an extended period of time, there is no current official provision made for the recovery of the debt. The securing of the \$160,000 will therefore represent an unbudgeted income and be allocated to the various expenses already committed to and to be dealt with as part of the mid-year budget review.

The final loan repayment was made by the Shire on the loan in question, in January 2014.

Strategic Implications

Shire of Ashburton 10 Year Community Strategic Plan 2012-2022

Goal 02 – Enduring Partnerships

Objective 02 – Enduring Partnerships with Industry and Government

Risk Management

This item has been evaluated against the Shire of Ashburton’s Risk Management Policy CORP5 Risk Matrix. The perceived level of risk is considered to be “Low” risk and can be managed by routine procedures, and is unlikely to need specific application of resources.

Policy Implications

There are no policy implications for this matter.

Voting Requirement

Simple Majority Required

Recommendation

That Council agree to accept the proposed \$160,000 from the Department of Fire and Emergency Services, being an offer to settle the matter of the Onslow Emergency Services Building sale (lot 971, Land Administration Plan 20088, 1.1975 ha. in area, C.T. Vol. 3111, Folio 994 – ref: 6 December 2005 Ordinary Council Meeting).