



Policy Review and Development Committee

Minutes

16 August 2017

Committee Terms of Reference

- 1** *To review all existing Bunbury City Council policies within a two year period, in line with the local government election cycle and facilitate the development of new policies for consideration by Council on an ongoing basis.*
- 2** *To make recommendations to Council on matters of policy, policy review and policy development.*
- 3** *To explore opportunities that promote policy development in all areas that are within Council's jurisdiction.*
- 4** *To allow any draft policy developed and fully considered by another Advisory Committee of Council to be referred directly to Council for consideration.*
- 5** *To provide Bunbury City Councillors with assistance and support to develop new Council policies.*

City of Bunbury
4 Stephen Street
Bunbury WA 6230
Western Australia
Correspondence to:
Post Office Box 21
Bunbury WA 6231

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Members of the public to note that recommendations made by this committee are not final and will be subject to adoption (or otherwise) at a future meeting of the Bunbury City Council.

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1. Declaration of Opening

The Presiding Member declared the meeting open at 10.00am.

2. Disclaimer

Not applicable to this committee.

3. Announcements from the Presiding Member

Nil

4. Attendances

Committee Members:

Member Name	Representing
Mayor Gary Brennan	City of Bunbury
Cr Brendan Kelly (Presiding Member)	City of Bunbury
Cr Wendy Giles	City of Bunbury
Cr Monique Warnock	City of Bunbury

Ex-officio Members (non-voting):

Member Name	Title
Mr Mal Osborne	A/Chief Executive Officer

Support Staff:

Name	Title
Mr Greg Golinski	Manager Governance
Mrs Felicity Anderson	A/Director Planning and Development Services
Mrs Kristen Mildwaters	A/Manager Major Projects and Property
Mrs Leanne French	Senior Governance and Risk Officer
Mr John Kowal	Manager Sport and Recreation
Ms Stephanie Addison-Brown	Director Corporate and Community Services

4.1 Apologies

Cr James Hayward

4.2 Approved Leave of Absence

Nil

5. Declaration of Interest

Nil.

6. Public Question Time

Not applicable

7. Confirmation of Minutes

Committee Decision:

Moved: Cr Warnock

Seconded: Mayor Brennan

The minutes of the Policy Review and Development Committee Meeting held on 15 June 2017 are confirmed as a true and accurate record.

CARRIED

8. Petitions, Presentations and Deputations

8.1 Petitions

Nil

8.2 Presentations

Nil

8.3 Deputations

Nil

9. Method of Dealing with Agenda Business

Items were dealt with in the order they appeared on the agenda.

10. Reports

10.1 Proposed New Policy: Applications Lodged by Staff or Elected Members

Applicant/Proponent:	Internal
Responsible Officer:	Greg Golinski, Manager Governance
Responsible Manager:	Greg Golinski, Manager Governance
Executive:	Mal Osborne, Acting Chief Executive Officer
Attachments:	Appendix 1: Draft Policy – Applications Lodged by Staff or Elected Members

Summary

The purpose of this report is for the Policy Review and Development Committee (PRDC) to consider a new policy relating to how the City will deal with development applications (or similar) that are lodged by staff and/or Elected Members.

A copy of the proposed policy is at Appendix 1.

Executive Recommendation

That the Policy Review and Development Committee recommend that Council adopt a new policy entitled *Applications Lodged by Staff or Elected Members* as presented.

Strategic Relevance

Key Priority Area 5	Corporate
Objective 5.2	Maintain a high standard of corporate governance and improve access to information

Background

The City of Bunbury does not currently have a policy in place to deal with development applications if they were to be received from either an Elected Member or a senior staff member.

Council Policy Compliance

This report proposes the adoption of a new Council policy.

Legislative Compliance

Not applicable

Officer Comments

The proposed policy requires that applications for development, land use or subdivision lodged by a member of the Executive Leadership Team, assessing officer, or Elected Member are referred to Council for consideration. The only exceptions are for an application that is:

- a) For that person's own place of residence or is an expansion/upgrading of a place of business that was previously granted development approval and complies with the following:
 - i. the provisions of the Local Planning Scheme;
 - ii. the deemed-to-comply provisions of State Planning Policy 3.1 Residential Design Codes (the 'R-Codes'); and
 - iii. the provisions of any relevant adopted Local Planning Policy and/or Local Law.
- b) For a minor modification to an approved plan of development;
- c) An extension of time for a development approval when there has been no significant or substantial change other than the expiration of time;
- d) For the amalgamation of lots or realignment of lot boundaries; or
- e) For certifying the clearance of freehold or survey strata subdivision conditions in accordance with the conditions of approval.

Adopting such a policy is considered beneficial in the interests of openness and transparency. From the perspective of the general public, this will result in greater probity, with no ability for there to be a perception of bias or undue influence for the determination of any applications that might currently be approved by an Officer under delegation.

Analysis of Financial and Budget Implications

There are no budget implications from this item.

Community Consultation

Not applicable

Councillor/Officer Consultation

This report is presented to the PRDC for consideration.

Outcome of Meeting – 16 August 2017

The Executive Recommendation as printed was moved by Cr Giles and seconded by Cr Kelly.

The Presiding Member put the motion to the vote and it was carried by casting vote, 2 votes for and 2 votes against as follows:

Committee Recommendation

That the Policy Review and Development Committee recommend that Council adopt a new policy entitled Applications Lodged by Staff or Elected Members as presented.

10.2 Review of Code of Conduct

Applicant/Proponent:	Internal
Responsible Officer:	Leanne French, Senior Governance and Risk Officer
Responsible Manager:	Greg Golinski, Manager Governance
Executive:	Mal Osborne, Acting Chief Executive Officer
Attachments:	Appendix 2: Revised Code of Conduct

Summary

Under the provisions of section 5.103 of the *Local Government Act 1995*, every Local Government is to prepare and adopt a code of conduct to be observed by council members, committee members and employees.

The City of Bunbury has and current Code of Conduct, and in line with best practice and good governance, we endeavour to conduct a biennial review of the Code. The Code of Conduct was last reviewed by Council in 2015.

Executive Recommendation

That the Policy Review and Development Committee recommend that Council, pursuant to section 5.103 of the *Local Government Act 1995*, adopt the revised Code of Conduct as presented at Appendix 2.

Strategic Relevance

Key Priority Area 5: Corporate
Objective 5.2: Maintain a high standard of corporate governance and improve access to information

Background

The City's Code of Conduct communicates expected standards of conduct and integrity to all those who represent or are employed by the City of Bunbury. The Code contributes to building and sustaining a culture of integrity, and creates a robust and transparent framework in which we operate, which is fundamental to good organisational performance and public confidence.

The Code includes provisions in relation to conflicts of interest and acceptance of notifications of gifts, as required by the *Local Government (Administration) Regulations 1996* and refers to the statutory *Local Government (Codes of Conduct) Regulations 2007*.

Council Policy Compliance

There is no policy compliance consideration impacting on this report, however the Code of Conduct does refer to underpinning Council Policies and Corporate Guidelines.

Legislative Compliance

Consideration of this matter is a requirement under the provision of section 5.103 of *the Local Government Act 1995*.

Part 9 of the *Local Government (Administration) Regulations 1996* details requirements to be included in a Code of Conduct.

Officer Comments

A revised version of the Code has been prepared to take into consideration amended legislation such as the *Corruption Crime and Misconduct Act 2003*, and the requirements of acceptance and notifications of gifts.

The Code provides a framework supporting ethical and accountable standards of conduct and decision making, and has been reworked in line with contemporary standards, addressing integrity topics that elected members, committee members and employees will likely encounter.

The framework is supported by electronic links to enabling legislation and regulations, whole-of-sector governance instruments, supporting Council Policies and Corporate Guidelines and includes relevant procedures for reporting and breach management.

Analysis of Financial and Budget Implications

There are no financial or budgetary implications impacting from the recommendations of this report.

Community Consultation

N/A

Councillor/Officer Consultation

The executive leadership team and managers have been consulted in the development of the Code of Conduct.

Outcome of Meeting – 16 August 2017

Cr Giles moved and Mayor Brennan seconded that Standing Orders be suspended to allow general discussion in relation to this item. The motion was carried.

General discussion took place in relation to this item, with some emphasis on the fact that although the Code of Conduct is binding on Officers, it only provides guiding principles of behaviour for Elected Members.

It was suggested that the Code of Conduct be reviewed again following the 2017 City of Bunbury election, to enable the “new” Council to have some input into its content.

It was also suggested that the next review include a proposed clause governing land dealings and personal development applications by Elected Member and senior staff.

Cr Giles moved and Mayor Brennan seconded that Standing Orders be resumed. The motion was carried.

The Executive Recommendation with the addition of 2 additional points was moved by Mayor Brennan and seconded by Cr Warnock as follows:

That the Policy Review and Development Committee recommend that Council:

- 1. Pursuant to section 5.103 of the Local Government Act 1995, adopt the revised Code of Conduct as presented at Appendix 2.*
- 2. Request the Chief Executive Officer include a report facilitating a subsequent review of the Code of Conduct in the agenda of the first meeting of the Policy Review and Development Committee following the 2017 City of Bunbury election.*
- 3. Request the Chief Executive Officer prepare a clause for inclusion in the next revision of the Code of Conduct governing land dealings and personal development applications by Elected Member and senior staff.*

The Presiding Member put the motion to the vote and it was carried unanimously.

Committee Recommendation

That the Policy Review and Development Committee recommend that Council:

- 1. Pursuant to section 5.103 of the Local Government Act 1995, adopt the revised Code of Conduct as presented at Appendix 2.***
- 2. Request the Chief Executive Officer include a report facilitating a subsequent review of the Code of Conduct in the agenda of the first meeting of the Policy Review and Development Committee following the 2017 City of Bunbury election.***
- 3. Request the Chief Executive Officer prepare a clause for inclusion in the next revision of the Code of Conduct governing land dealings and personal development applications by Elected Member and senior staff.***

10.3 Leases and Licences

Applicant/Proponent:	Internal
Responsible Officer:	Kristen Mildwaters, A/Manager Major Projects and Property John Kowal, Manager Sport and Recreation
Responsible Manager:	Kristen Mildwaters, A/Manager Major Projects and Property
Executive:	Felicity Anderson, A/Director Planning and Development Services
Attachments:	CONFIDENTIAL Appendix 3: Financial Modelling

Summary

Following Council Decision 182/17 on 16 May 2017, the policy relating to Leases and Licences is referred back to the Policy Review and Development Committee (PRDC) for consideration and with additional information provided within this report.

Recommendation

The Policy Review and Development Committee recommend that Council:

1. Note the request by Council for the Policy Review and Development Committee to provide a proposal containing specific guidelines and objectives for the community leases at the August 2017 Policy Review Committee Meeting for consideration of Council;
2. Note the information provided as part of this review; and
3. Adopt Option _____ as the preferred option for assessment of leases and licences, to be applied effective immediately against the parameters of the current Leases and Licences policy.

Background

On a number of occasions the issue of how to charge sporting and community groups a rent fee for the use of City owned, managed or maintained facilities or land has been reviewed both via Council, Executive Leadership Team (ELT), the PRDC and via workshops with the sporting and community groups themselves.

Prior to the Council Meeting held 16 May 2017, the Major Projects and Property Department and the Sport and Recreation Department consulted with a number of sporting and community groups who are due for the current policy to be applied.

The current policy is applicable to these groups due to one of the following reasons:

- Their lease has been in 'holding over' awaiting the adoption of a policy;
- Their lease stipulates they are due for a rent review; or
- Their current lease has expired.

Council Decision 182/17

That Council:

1. *Note the information as provided by each group through the consultation process.*

2. *Request the Policy Review & Development Committee to provide a proposal containing specific guidelines and objectives for the community leases at the August 2017 Policy Review Committee Meeting for consideration of Council.*
3. *Agree that the status quo in relation to licence, lease and rents continues to apply pending the review.*

Officers have since met with and obtained legal advice from the City's solicitor, Peter Ray of Slee Anderson and Pidgeon, in relation to whether the 'ownership' of a building can be transferred to another party.

The discussion highlighted a number of issues in what could be considered a complex legal dealing should the City attempt this process.

The first issue Peter discussed was that we need to separate out what is Crown and what is freehold. Land that is Crown, the City has no right to approve the severance of a fixed or permanent structure to the land, where it is owned by the Crown.

Under common law, unless acknowledgement of ownership over buildings and improvements is declared prior to it being built, then it becomes the property of the land owner. This scenario applies to both freehold and Crown.

A clause in a lease of a building already built does not suffice. In essence, the present situation is that the City ultimately owns every building built on our freehold land and the Crown (with responsibility burdened upon the City) owns every building built on Crown land. This occurred either as soon as the buildings were built or at the expiry of the first term.

Peter advised that the next issue is whether or not the City can then transfer those responsibilities and liabilities as the building owner on to another party. In short the answer is that we can mitigate the risks but we can never fully absolve ourselves from being liable.

Although we can mitigate the risks by contracting out maintenance responsibilities, require regular inspections and require the lessees to produce insurances, a third party entering upon that property who is not a party to the contract can still hold the 'owner' liable for any loss, claim, injury or death.

In preparation of the PRDC meeting, the Major Projects and Property Department have met with the Sport and Recreation Department to discuss some possible alternatives.

What was agreed between the parties is that trying to incorporate a social or community based discount was not only difficult to measure, it was also something that was voted out of previous policy recommendations by Council and not wanted by the sporting and community groups.

The current policy allows for the measure of community benefit to be considered within the appeals process and this is then reported to Council for consideration, however, is time consuming, difficult to measure and subjective.

The parties also agree that any proposed policy and modelling that is undertaken should be simple and fair across the groups. However, to date the officers require direction from Council and the PRDC on what the objectives of the policy are meant to achieve.

Officers would like to seek from the PRDC clarity on the objective of undertaking this review. Whether the officers look at methodology sympathetic to a:

- Income generating exercise;
- Cost recovery only;
- For community benefit (no cost); or
- Other defined option.

Direction on what Council’s objectives are will provide the officers with the clarity to prepare modelling that aligns with these objectives.

In the interim and for the PRDC to consider, the officers have prepared some alternative options and basic modelling concepts, however, note that there are many more methods and modelling options that can be explored. Modelling is attached under confidential cover at Appendix 3.

Option 1:

- 1A: Overall discount to current fees of 25%;
- 1B: Overall discount to current fees of 50%; and
- 1C: Overall discount to current fees of 75%.

Option 2:

Remove all land fees for groups who built their facility and where the City supplies no maintenance. For some groups who are only charged the land fee, the overall reduction will equate to 100%.

Option 3:

Building Built		Structural Maintenance		Minor Maintenance		Discount
Club	City	Club	City	Club	City	
√		√		√		100%
	√		√	√		50%
	√		√		√	0%

To provide some background to the current income, when the policy was previously endorsed by Council, officers were given permission to reduce the rent fee for the clubs whose rent was decreasing almost immediately.

A number of clubs were able to immediately have significantly reduced rent fees that they were then able to return to their leased facilities and club operations.

Some of the feedback at the time was that they were now fairly being charged for their facility and not because it happened to be better located or because they had made large building improvements or extensions.

The increases were only to be applied to clubs when they were due for a rent review or their lease was due for renewal as their contracts allowed. This application resulted in a loss of income for the City but provided a 'quick win' for a number of the clubs and provided ample notice to the clubs receiving an increase.

The total annual rental income from sporting and community groups for 2015/16 was \$114,655.82. For 2016/17 this was calculated at \$99,353.71 ex GST with the immediate decrease in rent applied. This was a total loss from the previous year of \$15,302.11 ex GST.

In 2017/18, should the policy be applied including both the decreases and increases as due, the total rental income from sporting and community groups is \$118,371.38 ex GST. This figure only just surpassed the 2015/16 amount due to CPI increases and the addition of several new leases.

Costs to the City

To assist the PRDC with their decision making process, some information on associated costs is provided below. It is necessary to seek direction on how these costs should be recovered or whether they should be absorbed.

To prepare a lease, the cost to the City is calculated at \$2,254.15 in actual staff time and costs. The City charges a fee of \$575.00 ex GST for document preparation, resulting in a detriment of \$1,679.15 for each lease prepared. The current policy does not allow officers to charge those on a 'peppercorn' lease arrangement a document preparation fee.

In terms of 'maintenance', the City spent a total of \$97,911.41 on 'leased' building maintenance for sporting and community groups in 2016/17 and \$43,275.98 ex GST in 2015/16.

Almost two thirds of the money spent on these leased buildings in 2015/16 went into leased community facilities such as the Senior Citizens and the In Town Lunch Centre, both of which are on peppercorn leases and not subject to the increases.

In 2016/17, the trend of spending on the Senior Citizens and the In Town lunch Centre continued, however, additional works were done to the Surf Life Saving Club, calculated at \$24,698.22, as well as larger items of structural maintenance to the Michael Eastman Pavilion (Runners Club) and the Kit Keddie Pavilion (Dog Club).

It is important to note in these 'maintenance costs', expenditure on security, alarm monitoring, damage to buildings through vandalism, rodent control and fire monitoring services are included in these costs. It should also be noted that these are costs incurred for operating these facilities where items such as electrical, plumbing, programmed painting and roof repairs are just one component of 'maintenance'.

The City's Asset Management Department, have advised that at present we do not have an estimate on what needs to be or should be spent on our leased buildings, however, they are working on obtaining this data in future.

It is likely that based on the age and condition of many of the leased buildings, the required maintenance costs are likely to be higher than what is being spent. When reviewing the types of maintenance being carried out on our leased buildings, it was evident that majority of the works were reactive in nature and small repairs.

It is also to be noted that a lack of reporting from clubs and a willingness to undertake minor repairs and maintenance themselves can contribute to low expenditure.

Additional Considerations

To provide some perspective, the total lease revenue raised via leased and licenced premises in 2017/18 is projected as \$1,005,278 ex GST. The sporting and community group lease income consists of just over 11% of the City's overall lease revenue annually.

The City received rates from a number of the sporting and community groups totalling \$75,949.32 in land rates alone. With the addition of \$18,239.62 in Waste Services Rates, the City received a total of \$94,188.94. These rates have decreased in 2017/18 to \$92,247.39 due to a lower GRV rating on property values.

Not all groups pay rates due to existing lease conditions and legislative exemptions. The officers have been working to ensure every lease reflects the need to pay rates as leases are being renewed however, there are some pre-existing and long-standing leases with individual conditions.

Council Policy Compliance

Leases and Licences Policy

Legislative Compliance

Compliance with Section 3.58 of the Local Government Act 1995 where exemptions under Regulation 30 of the Local Government (Functions and General Regulations) 1996 do not apply is applicable.

Officer Comments

To date, the officers have extensively researched, consulted and modelled a number of scenarios. These proposed policies are then adopted through both the PRDC and Council.

With the adoption of a new proposed policy or where a revision is undertaken, the item has been referred back to Council and the PRDC due to an individual club or a small number of clubs that are not satisfied with the increase to their rent.

In preparation for the current policy to be adopted, the workshops showed that of the clubs that attended the workshops, 58% agreed or strongly agreed that the current process was fair and equitable, with only 21% who did not. The other 21% were neutral.

When asked if they agreed with the proposed fees, as adopted and forming the current policy, 50% of groups agreed or strongly agreed, 29% disagreed and 21% were neutral.

Of the 38 groups subject to the current policy, 57% of the groups rent decreased and an appeals process was adopted so that clubs receiving increases would obtain individual consideration of their circumstances and have Council address their rent separately to the policy.

Should the PRDC provide another recommendation to Council that is endorsed, it is possible that this will then result in further complaints from clubs and further referral to the PRDC and Council.

These processes have so far cost the City significantly in staff time and resources and further reviews, modelling and workshops will continue to incur a cost to the City.

The introduction of a new or revised policy may also add to confusion and misinterpretation from the sporting and community groups, who have been shown, workshoped and voted on a number of different policy recommendations over the past three years.

The officers are also bound by existing lease arrangements and without utilising legal advice and having the lessees and licensees agree to the terms and conditions of any new policy, the City must act within the limitations of those existing agreements.

We must note that these existing agreements can also vary depending on their age and that a uniform approach and conditioning is an aim of the Major Projects and Property Department and a preference of the groups.

To achieve this it will take time as old leases expire and are replaced by current versions. One example of an unusual circumstance is the Badminton Club, a long term lease with no ability to increase rent for the life of the contract. Typically the City now applies a 5 year term with a further 5 year option with annual CPI increases and 3-5 year reviews.

Analysis of Financial and Budget Implications

The PRDC's determination of the objectives of Council will essentially alter what methodology is used to determine the lease and licence fees of sporting and community groups.

There are tangible costs to the City for preparing leases and maintaining leased premises however, these costs may be considered as minor in comparison to overall rental income or when compared to the income received on rates.

Modelling on proposed methodology is attached to this report for reference.

Community Consultation

To date a large amount of consultation has been undertaken with the sporting and community groups in the form of discussion papers, workshops and individual group meetings.

Officers continue to liaise with groups affected by the policy on a daily basis and previously prepared a Communication and Stakeholder Management Plan to assist with the communication process as a resolution of Council.

Officers will continue to liaise with groups following the PRDC meeting.

Councillor/Officer Consultation

This policy has been discussed with Council, ELT and the PRDC on numerous occasions and will continue to be reviewed and discussed until further resolution on the matter is made.

Outcome of Meeting – 16 August 2017

Cr Warnock moved and Cr Giles seconded that Standing Orders be suspended to allow general discussion in relation to this item. The motion was carried.

General discussion took place in relation to this item, with some emphasis on rates vs lease charges. It was suggested that the application of GRV rates vs the minimum rate vs lease payments be raised for discussion at a future budget workshop.

Mayor Brennan moved and Cr Giles seconded that Standing Orders be resumed. The motion was carried.

Points 1 and 2 of the Executive Recommendation were moved by Mayor Brennan and seconded by Cr Warnock as follows:

The Policy Review and Development Committee recommend that Council:

- 1. Note the request by Council for the Policy Review and Development Committee to provide a proposal containing specific guidelines and objectives for the community leases at the August 2017 Policy Review Committee Meeting for consideration of Council;*
- 2. Note the information provided as part of this review.*

It was noted that this motion effectively supports the status quo regarding how leases and licences are dealt with by the City of Bunbury.

The Presiding Member put the motion to the vote and it was carried 3 votes to 1.

Committee Recommendation

The Policy Review and Development Committee recommend that Council:

- 1. Note the request by Council for the Policy Review and Development Committee to provide a proposal containing specific guidelines and objectives for the community leases at the August 2017 Policy Review Committee Meeting for consideration of Council;***
- 2. Note the information provided as part of this review.***

10.4 Review of Council Policy: Annual Performance Appraisal and Salary Review

Applicant/Proponent:	Internal
Responsible Officer:	Odetta Robertson, Manager Human Resources
Responsible Manager:	Odetta Robertson, Manager Human Resources
Executive:	Mal Osborne, A/Chief Executive Officer
Attachments:	Appendix 4: Council Policy Annual Performance Appraisal and Salary Review

Summary

The purpose of this report is for the Policy Review and Development Committee (PRDC) to review Council's current policy – Annual Performance Appraisal and Salary Review.

Executive Recommendation

That the Policy Review and Development Committee recommend that Council note the review of Council Policy Annual Performance Appraisal and Salary review with no changes recommended.

Strategic Relevance

Key Priority Area 5	Corporate
Objective 5.2	Maintain a high standard of corporate governance and improve access to information

Background

This policy was last reviewed by the PRDC in September 2015, as is now due for its biennial review in accordance with the policy review schedule.

Council Policy Compliance

This report facilitates the revision of an existing Council policy.

Legislative Compliance

Nil

Officer Comments

Officers have undertaken a review of the current policy as attached at Appendix 4. The policy is considered relevant in its current form and as such no amendments are recommended.

Analysis of Financial and Budget Implications

There are no budget implications from this item.

Community Consultation

Not applicable

Councillor/Officer Consultation

This report is presented to the PRDC for consideration.

Outcome of Meeting – 16 August 2017

The Executive Recommendation as printed was moved by Mayor Brennan and seconded by Cr Giles.

The Presiding Member put the motion to the vote and it was carried unanimously as follows:

Committee Recommendation

That the Policy Review and Development Committee recommend that Council note the review of Council Policy Annual Performance Appraisal and Salary review with no changes recommended.

11. Applications for Leave of Absence

Not applicable to this committee.

12. Questions from Members

12.1 Response to Previous Questions from Members taken on Notice

Nil

12.2 Questions from Members

Nil

13. Urgent Business

Nil

14. Date of Next Meeting

TBC following City of Bunbury election.

15. Close of Meeting

The Presiding Member closed the meeting at 11.01am, noting that this was the last meeting of the committee prior to the October City of Bunbury election. He thanked Members and staff for their contributions over the past 2 years.