



SHIRE OF BODDINGTON

'The Council and Staff of the Shire of Boddington, in partnership with the community, are committed to operating effectively and efficiently to provide quality lifestyle opportunities that encourage population growth and development'

MINUTES

**For The
Special Meeting of Council
To consider an artwork being constructed at 32
Bannister Road Boddington**

Held At

5 PM, Tuesday 4th September 2012

**at the
Shire of Boddington Council Chambers
at 39 Bannister Road Boddington**

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Minutes

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1 DECLARATION OF OPENING:

The Shire President, Cr Allert declared the meeting open at 5:00pm.

2 ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE:

Cr J R Allert President
Cr DN Veitch Deputy President
Cr PR Carrotts
Cr GJ Day
Cr J Goodgame
Cr N Crilly

Mr G Sherry	Chief Executive Officer
Ms C Martin	Director Corporate Services
Mr P Haas	Principal Environmental Health Officer/Building Surveyor
Mr S Thompson	Planning Consultant
Mr T Pearson	Director Special Projects
Mrs A Patten	Manager Community Services
Mr P Langan	Manager Works Services

APOLOGIES:

Cr EK Hoek

VISITORS:

3 DISCLOSURE OF FINANCIAL INTEREST:

Nil

4 PUBLIC QUESTION TIME:

Nil

5 PETITIONS/ DEPUTATIONS/ PRESENTATIONS/ SUBMISSIONS:

Nil

6 CONFIRMATION OF MINUTES:

Nil

7 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION:

Nil

8 REPORTS OF OFFICERS AND COMMITTEES:

8.1 CHIEF EXECUTIVE OFFICER:

8.1.1 Proposed Artwork – 32 Bannister Road Boddington

Location: 32 Bannister Road, Boddington
File Ref. No: ADM 0583/A421
Disclosure of Interest: Nil
Date: 3rd September 2012
Author: Gary Sherry

Summary

Council is to consider the approval process and involvement in a project to construct an art installation associated with the Boddington Centenary Project by renowned artist Mr Len Zuks at 32 Bannister Road, Boddington.

Background

Mr Zuks is an award winning artist who grew up and was educated in Boddington. He has family who still live in Boddington. Mr Zuks has been particularly active in Boddington and has a range of iconic sculptures and artworks on display in public locations around Boddington.

Mr Zuks attended the Council SuperTowns visioning forum in April 2012 and was taken by the desire to improve the Boddington Main Street. Mr Zuks discussed at that time an art installation that presented as a historic shop façade that would also fit with the Boddington Centenary celebrations. Mr Zuks had no direct contact with Council staff from that time.

32 Bannister Road is owned by Mr Don Tyler. Mr Tyler, normally somewhat reluctant for the use of this property for other activities, also attended the Visioning Forum with Len. While Mr Tyler is happy for the artwork to be erected on his property, he does not wish to incur any costs such as insurance. Mr Tyler would be happy to lease the property to Council for the term that the artwork is located on his property.

Council staff held a number of informal discussions with a range of people in contact with Mr Zuks over the requirements for erecting the art installation. These discussions included that:

- There is a requirement for a planning application for the installation. This was expressed again after the erection of the “emus” art installation on 41 Bannister Road;
- There was not a requirement for a formal building licence given the temporary nature of the structure.

The discussions did not include any advice of the requirement to obtain formal permission from the Shire to construct anything on the footpath.

Council staff did have discussions with the Boddington CRC and with associates of Len’s prior to the works commencing. The Boddington CRC provided a hand drawn sketch of the artwork. From an associate of Mr Zuks’ Council also received a copy of the construction drawings for the steel framework of the façade on Wednesday 29th August 2012. This correspondence asked what else would be required for Council to be satisfied with the project. The drawings of the artwork do show a high degree of structural integrity but do not include the verandah to be constructed over the footpath.

Mr Zuks has subsequently advised staff that he believed that he had the required approval to commence the structure. He has also advised that this project was his contribution to the Boddington Centenary celebrations and was not part of any other project in Boddington for which he has been commissioned and is being paid. The Boddington CRC has also subsequently confirmed this.

Without any formal planning approval and without providing Council with any significant drawings, Mr Zuks commenced construction on Thursday 30th August 2012. Without a Council planning approval the construction of the artwork are currently illegal. Aware of the links to the community centenary celebration and the relatively low impact in the initial stages, a low key enforcement approach was taken. Shire staff initially had to establish the links between the owner of the property, whose has the responsibility to complete the planning application, and the artist who was completing the construction.

On Friday 31st August 2012, when construction on the footpath commenced, staff asked Mr Zuks to cease work, because without any information on the artwork, staff were concerned over public private safety. Shire staff did not have contact details for Mr Zuks at that time and tried to have him provide further information relating to the project including:

- Blocking the footpath to pedestrian traffic whilst being erected to ensure pedestrian safety.
- Blocking the three car parking bays in front of the façade whilst being erected
- Details of the wall covering. I am concerned that the wind will not be able to pass through the façade thus exerting pressure on the western side possibly causing the façade to tip onto the footpath
- Details required of the verandah roof of the façade to ensure the safety of pedestrians passing underneath
- Some assurance that the façade is of a temporary nature and not a permanent structure. A date for removal should suffice. This should also be part of the Planning Application.

Mr Zuks advised shire staff and others on Saturday 1st September 2012 that he would be in Boddington on Thursday 6th to remove the artwork in an appropriate manner. He also apologised for any inconvenience he had caused.

Subsequent conversations with Mr Zuks indicated that he may consider completing the artwork if a solution to the issues outlined above can be found. Mr Zuks has indicated that he would be supportive of the artwork being displayed until about Christmas or January.

Comment

There are several issues relating to this matter.

The first issue is that as advised early without a Council planning approval the construction of the artwork are currently illegal. A retrospective planning application is possible to allow the continued project.

The second issue is that the owner of the land is not willing to have any responsibility for the project. To achieve any positive solution it is likely that Council will be required to take control of the land to allow the project to proceed.

The remaining issue is that Mr Zuks has limited time available to work in Boddington over the next few weeks, and an early completion of the artwork would allow visitors to community events in Boddington, including the centenary celebrations this weekend.

The matters for consideration are discussed below.

1. *Planning Application*

Should a planning application have been lodged to construct the artwork solely on 32 Bannister Road prior to the commencement, the application would have required:

- a basic but readable block/site plan;
- providing a basic plan for construction;
- payment of \$139 for the Planning Application fee;
- filling in a Planning Application form with the landowner to sign; and
- ideally providing a brief letter explaining the proposal. In particular outlining how long the structure is intended to be on site and what insurances or in place.

A planning application permits neighbours and other parties with an interest in the application to make comment on the application prior to a decision being made. Feedback to a planning application often provides information that can be included as a condition in the Planning approval. To date the only formal feedback received by Council on the artwork has been one complaint that quite correctly states that Council's process have not been followed. Certainly the artwork has created a lot of talk in the community.

A retrospective planning application is never ideal, it is legally possible for Council to permit such an application. Staff could provide information to and seek comment from neighbours of 32 Bannister Road.

The significant issue in considering a retrospective planning application is that Council does not wish to handle planning matters in this way. If Council establishes that in this case there is public good, without considerable private benefit, it can be permitted without establishing a precedent for ongoing application.

Had an application been submitted prior to construction, staff would have made a decision using delegated authority provided by Council. Given the information now available to staff and a presumption of favourable feedback from neighbours, it is likely that a conditional approval would have been granted.

2. *Land Ownership*

In preparing a planning application the owner of 32 Bannister Road, Mr Don Tyler, has indicated that he does not wish to incur cost in this project from a planning application or from taking out insurance. Mr Tyler's associates have advised that it would be possible for Council to lease this property for the term of the centenary celebrations for effectively no cost.

Under this scenario, Mr Zuks would retain ownership of the artwork, Mr Tyler would permit the artworks construction, but Council would be responsible for:

- preparing the planning application; and
- maintaining the site but not have responsibility for the artwork.

It would indicate that Council has some level of responsibility for the project as well.

3. *Structural Integrity and public safety.*

At the current time, Council staff have now received some information about the structure of the construction of the artwork. There are other issues relating to the cladding of the artwork and the construction of the verandah over the road reserve that could be resolved with Mr Zuks prior to construction.

In any future work, the access to the site needs to be better controlled to ensure that members of the public cannot access to the site or park their vehicles adjacent to the construction.

4. Moving Forward

It is reasoned by staff that the benefits of Council permitting and participating directly to provide an artwork in the Boddington main street outweighs the potential impacts of establishing a precedent for retrospective planning applications.

The proposal, made by a respected artist will establish an artwork, at the artists cost, that will provide amenity to local residents and be an attraction for visitors for the remainder of this year.

Without any investment by Council in the construction, should the artwork need to be removed, the costs and requirements of demolition are substantially less than the construction and would be able to be cost effectively done by Council staff if required.

The artist has a proven track record of delivering quality, interesting, structurally sound artworks in Boddington on Council reserves. Further the artist has local links and continues to return to work in Boddington.

Strategic Implications

The proposed artwork is anticipated to activate the Boddington main street through a period when the most significant community events are held in Boddington. Activating the Boddington main street, through this and other projects is a worthwhile event.

Statutory Environment

Planning and Development Act,.

The Chief Executive Officer has been Delegated Authority to decide most planning applications where public notice has been given.

Policy Implications - Nil

Financial Implications

It is anticipated that the erection and management of the artwork can be completed with little financial cost to Council. It is suggested that this low level of financial cost should be a condition of Council participating directly.

It is anticipated that the lease of 32 Bannister Road should be able to be completed for no direct cost to Council.

Economic Implications - Nil

Social Implications

The artwork has the potential to provide a substantially improved main street aspect for at least a short time frame. The artwork will hide a portion of one of the vacant lots which local residents have described as forming a hole in the Boddington main street.

The artwork will complement and provide a talking point in the Boddington Main Street for all of the upcoming public events including the centenary celebrations, Lions Rodeo and Field of Quilts.

Environmental Considerations – Nil

Consultation

Council staff have consulted with Mr Len Zuks, Mr Allen Prince acting for Mr Don Tyler and Ms Elizabeth Hoek, Manager of the Boddington CRC.

To date little public consultation has occurred, but a retrospective planning application would permit the opportunity for neighbours to provide comment to Council.

Options

Council can resolve:

1. the Officer's Recommendation;
2. an amended Officer's Recommendation; or
3. to advise Mr Zuks that the artwork under construction on 32 Bannister Road is an illegal structure and it must be removed;

Voting Requirements - Simple Majority

OFFICER'S RECOMMENDATION – ITEM 8.1.1
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Council Resolution	131/12	Moved	Cr Veitch
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That Council:

1. **seek to obtain the lease or control of 32 Bannister Road for the term of the artwork proposed to be constructed on the site remains there;**
2. **will obtain the lease or control of 32 Bannister Road for no direct financial contribution to the owner of 32 Bannister Road;**
3. **permit Mr Len Zuks to immediately complete the construction of his artwork on 32 Bannister Road conditional upon:**
 - a. **Council staff being satisfied with details of the wall covering prior to construction recommencing; and**
 - b. **Council staff being satisfied with details of the verandah roof construction of the artwork prior to construction recommencing**
 - c. **the footpath adjacent to the construction being closed to pedestrian traffic whilst being erected to ensure pedestrian safety.**
 - d. **the three car parking bays adjacent to the construction being closed whilst being erected to ensure no damage to road users and parked cars;**
4. **Lodge a retrospective planning application for the construction of the artwork designed by Mr Len Zuks on 32 Bannister Road;**
5. **Waive the fee for lodgement of any planning application for the construction of the artwork designed by Mr Len Zuks on 32 Bannister Road**

6. Advertise any retrospective planning application seeking comment from interested neighbours of Lot 32 Bannister Road; and
7. Subject to conditional planning approval being granted, advise Mr Len Zuks that Council may require future modification of the artwork.

Seconded Cr Crilly Carried 5/1

Cr Carrotts requested that his vote against this recommendation be recorded.

9 ELECTED MEMBERS' MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN:

Nil

10 URGENT BUSINESS WITHOUT NOTICE (WITH THE APPROVAL OF THE PRESIDENT OR MEETING):

Nil

11 CONFIDENTIAL ITEMS:

Nil

12 CLOSURE OF MEETING:

With no further business to discuss the Shire President, Cr Allert, closed the meeting at 5:25pm.

These minutes were confirmed by the Council as a true and accurate record at the Ordinary Council Meeting held on Tuesday 18th September 2012

.....
J R ALLERT

President