

15 REPORTS FROM OFFICERS - GENERAL MANAGER

15.1 DOUGHERTY APARTMENTS RETIREMENT HOUSING PROJECT – DIRECTOR APPOINTMENT TENURE

ATTACHMENTS:	1. DIRECTOR APPOINTMENT AGREEMENT
RESPONSIBLE OFFICER:	DEBRA JUST – GENERAL MANAGER
AUTHOR:	MARNIE HILLMAN – GOVERNANCE MANAGER
CITY STRATEGY LINK:	6.1.1 A COUNCIL THAT IS OPEN, ACCOUNTABLE AND REPRESENTS ITS CONSTITUENTS
MEETING DATE:	14 NOVEMBER 2016

Purpose of Report

The purpose of this report is to reaffirm the appointment period for current Council appointees to the Dougherty Apartments Retirement Housing Project (“Dougherty”) Board and seek Council endorsement of the Director Agreement for future appointments to the Board.

Background

At the Ordinary Council Meeting of the 24 October 2016, Council resolved to (in respect of Dougherty) appoint Councillor Lynne Saville as the member’s representative with the General Manager as the second-named appointment. In addition, Council resolved to:

- 2. Delegate authority to the General Manager to establish a standard form of agreement for Director appointments and execute these on behalf of Council, in line with the term of service as resolved at the Ordinary Council Meeting of the 26 September 2016 with a draft to be brought back to the 14 November 2016 Ordinary Council Meeting for endorsement; and*
- 3. Receive a report in November 2016 regarding proposed communication protocols between the Dougherty Board and Members of the Company.*

A Councillor briefing was held on the 7 November 2016 regarding both the Director Agreement and the communication protocols. A report regarding the communication protocols will form part of the agenda for the Ordinary Council Meeting scheduled for the 28 November 2016.

Discussion

Legal advice has identified that the process by which Council currently appoints Directors to the Board of Dougherty lacks formality and certainty. As past practice, Council’s appointees to the Dougherty Board have tacitly stood down where new appointments are made by Council. The new appointments have been treated as an automatic vacation of the previous appointee from the Board. While courteous, this practice does not provide clear direction from Council to its appointees as to the period of the appointment. It also does not provide certainty that appointed Directors will retire in line with Council’s resolved appointment

period. It is of particular risk given the pre-merger environment as it unlikely that customs and courtesies will carry into how Council is administered after amalgamation.

The Dougherty constitution provides that Directors may vacate their position by resignation. While not desirable, there is also an option available to Council to retire its appointed Directors by resolution. In order to avoid a situation where resignations are instigated by Council resolution, an instrument of Director appointment is proposed (attached). This agreement stipulates a period of appointment and therefore ensures that resignations are automatic upon the expiry of the term.

The Director Agreement also outlines some rights and obligations of Council's appointees to the board. These include the provisions for:

- resignation by Directors;
- obligations to provide briefings and notify Council of disqualification or suspension;
- management of conflict of interest; and
- management of confidentiality.

In order to avoid complicating arrangements for the current appointees to the board, it is not proposed to implement the attached agreement for current appointees. Instead, it is suggested that the retirement date of current appointees be confirmed by Council resolution.

Conclusion

Currently there is no formal arrangement between Council and its appointees to the Dougherty Board of Directors. Legal advice has recommended that Council enter into written agreements with its Director appointees in order to provide clarity regarding the period of appointment. It is proposed that this occur for Council's future appointees to the Board and that the appointment dates of current Directors be clarified by Council resolution.

OFFICER'S RECOMMENDATION

That Council:

- 1. Adopt the attached Director Instrument of Appointment for future Council appointments to the Dougherty Board of Directors; and**
- 2. Confirm that:**
 - **the appointment period for Council's current appointees to the Dougherty Board of Directors, Councillors Norton and Coppock, is from 26 September 2016 until 26 September 2017; and**
 - **both Directors are expected to resign effective of this conclusion date unless reappointed by Council for the following term.**

ATTACHMENT 1

[insert date]

[insert name of Director Appointee]
[insert address]

Dear [insert name of Director Appointee]

Appointment as Council's director appointee on the Dougherty Board

We are pleased to appoint you to represent Willoughby City Council ("**Council**") as its nominee director ("**Director Appointee**") on the board of directors ("**Board**") of Dougherty Apartments Retirement Housing Project ("**Company**"). This letter sets out the terms of your appointment as Director Appointee.

1 Term of appointment

Your appointment commences on [insert date of Council's appointment meeting] and terminates 1 year after that date ("**Initial Term**").

Council may, in its absolute discretion, reappoint you as Director Appointee beyond the Initial Term for an additional term of 1 year on a rolling basis annually (each additional term is an "**Extended Term**").

Council may, in its absolute discretion, terminate your appointment as Director Appointee at any time.

In the event that Council terminates your appointment or does not reappoint you for an Extended Term, you must (if Council requests):

- assist Council in ensuring that the Board appoints a replacement director who has been nominated by Council; and
- submit to the Company a letter of resignation as soon as possible but ensuring that a properly constituted Board is in existence at all times and that the Council's replacement director has been appointed to the Board.

2 Resignation

In the event that you wish to resign from the role of Director Appointee of your own accord, Council requests that you give Council as much advance notice as possible so that Council may plan appropriately.

You must comply with the same procedures as set out in section 1 of this letter.

3 **Your obligations to Council**

As a Director Appointee, you must:

- provide Council with quarterly briefings (or as determined by Council) in connection with its membership in Dougherty so that Council may be fully informed about the management, operations and activities of Dougherty as permitted under the communications protocol;
- provide Council with additional briefings/updates and address any queries from Council as requested by Council from time to time as permitted under the communications protocol; and
- immediately notify Council if you become disqualified or suspended from acting as a director of any company.

4 **Managing potential conflicts**

As a director of the Company, you will owe directors duties to the Company under statute and common law.

At the same time, in your role as Director Appointee, you should have regard to Council's interests as a member of the Company and act in accordance with Council's interests (unless doing so conflicts with your duties as a director of the Company).

You also have duties that are owed to Council as a councillor of Council pursuant to the *Local Government Act 1993* (NSW).

Please adhere to the communications protocols that are in place between the Company, its members and the Board. These protocols are aimed at assisting you in managing potential conflicts between your role as a director of the Company and your role as a nominee of Council.

You must immediately inform Council if you have an actual or potential personal conflict of interest or may lead to a reasonable perception of an actual or potential personal conflict of interest.

5 **Confidentiality**

You will receive confidential information about the Company in your role. The communications protocols set out the regime in which you can share that information with Council.

Please note that you will likely be in possession of, or are have access to, information that is confidential to Council in your role as a councillor. These should not be disclosed to the Company or your fellow directors on the Board who have not been appointed by Council.

6 **Time commitment**

It is expected that you will contribute sufficient time to your role as a director of the Company to enable you to adequately fulfil your duties to the Company and to Council as its appointee.

In the absence of exceptional circumstances, it is expected that you will attend all Board meetings, meetings of any Board Committees of which you are a member and all Council meetings held in connection with its membership in the Company.

Your time commitment will be affected by the issues confronting the Company from time to time. At times, it is anticipated that you will need to be available at short notice and there may be periods where you will be asked to commit to substantial periods of time. You are expected to meet any reasonable time commitment which is more than currently anticipated.

While it is a matter for each director to determine the appropriate time required to prepare for, and properly discharge their duties, we anticipate your duties as Director Appointee will involve a

significant number of hours. By accepting your appointment, you confirm that you will be able to devote sufficient time to appropriately perform your duties and responsibilities.

7 Insurance

As a director of the Company, the Company will arrange for directors' and officers' insurance cover to be taken out in respect of your appointment.

8 Entire agreement

This letter sets out all the terms of your appointment and replaces any previous agreements or representations (oral or written) that may have been made to you.

Please sign and return the enclosed copy of this letter to acknowledge and accept these terms of your appointment.

Yours sincerely

[name of person signing]

[General Manager]

For and on behalf of Willoughby City Council

Date

Accepted and agreed:

Name ***[insert name of Director Appointee]***

Date