



**Edward
River**
COUNCIL

Date: Thursday, 21 October 2021
Time: 9.00am
Location: Council Depot, Wanderer Street,
Deniliquin

BUSINESS PAPER

Supplementary Reports

Ordinary Council Meeting

21 October 2021

Philip Stone
General Manager

Order Of Business

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10 REPORTS TO COUNCIL**10.1 BOB WHITE MEMORIAL TRUST APPLICATION****Author:** Suni Campbell, Director Corporate Services**Authoriser:** Suni Campbell, Director Corporate Services**RECOMMENDATION**

That, in the event Council's request for the Bob White Memorial Trust be approved by the Minister for Local Government during the caretaker period, Council authorise the General Manager to take steps to establish the Bob White Memorial Trust in accordance with the Trust document provided to Council at the February 2021 Council meeting, resolution 2021/2.

BACKGROUND

In 2018, Council was informed that the Conargo Memorial Hall and Recreation Ground Committee (Committee) had been bequeathed a considerable sum through the Will of the Late Mr White. The bequest has been made to the Committee in three tranches which total \$2.63million. These funds are now invested on term deposit with Westpac Bank and can only be accessed if authorised and signed by two members of the Committee and the Council's Director Corporate Services.

At the February 2021 Council Meeting it was resolved (resolution number 2021/2) to endorse the establishment of the Bob White Memorial Trust and to apply to the Minister for Local Government to seek approval for the Trust. On 11 September 2021, correspondence was received from the Minister for Local Government denying our application for the formation of the Bob White Memorial Trust, as at Attachment 1.

ISSUE/DISCUSSION

Discussions have occurred between members of the Committee and Council representatives to determine next steps in continuing to seek the approval for a Trust. The Mayor will be reaching out various Ministers and will seek a meeting with the Minister for Local Government to further discuss our desire to establish a trust for the bequeathed sum.

STRATEGIC IMPLICATIONS

5. a community working together to achieve its potential

COMMUNITY STRATEGIC PLAN

5.1 Our community is informed and engaged

5.2 We collaborate and pursue partnerships that achieve great outcomes for our community

5.3 Our local government is efficient, innovative and financially sustainable

FINANCIAL IMPLICATIONS

No current budget implications

LEGISLATIVE IMPLICATIONS

Section 355 and 358 of the Local Government Act.

Clause 4 of the Local Government Council Amalgamations Proclamation 2016

Circular 07-49 "Criteria for Applications Under Section 358 of The Local Government Act 1993 – Formation of Corporations or Other Entities

ATTACHMENTS

1. Letter from Minister for Local Government - Bob White Memorial Trust



The Hon. Shelley Hancock MP
Minister for Local Government

Ref: A766081

Councillor Norm Brennan
Mayor
Edward River Council
180 Cressy Street
DENILIQUIN NSW 2710

By email: council@edwardriver.nsw.gov.au

Dear Councillor Brennan

I am writing in regard to Edward River Council's application of 26 March 2021 under section 358 of the *Local Government Act 1993* (the Act) for my consent to form a trust to administer the bequest made by the late Mr Bob White to the Conargo Memorial Hall and Recreation Ground Committee. (Committee).

After carefully considering the application, together with the further supporting information that Council provided to the Office of Local Government on 23 June 2021, I have decided not to grant consent as Council has not satisfied me, as required by section 358(3) of the Act, that the formation of the trust is in the public interest.

The reasons for my decision are as follows.

Firstly, Council's expressed reason for wishing to form the trust is its concern, and the concern of the Committee, about the potential risks of a future council or committee using the funds for purposes other than the scholarship proposal.

This risk is just one of the risks involved. As Council will appreciate, the establishment of a trust necessarily means that a legal entity, separate from Council, will then control the funds. Since the Act was passed in 1993, the risks of allowing councils to operate through separate legal entities have become better understood. These entities are often gifted council assets. However, the oversight and operation of the entities are not subject to the oversight and limitation mechanisms to which councils are subject under the Act. In this regard it appears that Mr White did not share either the Council's or the Committee's concerns as to the future application of the funds in that he appears to have simply made a bequest to the Committee. If he had concerns, then in making the bequest he could have directed that the funds be held in a specific trust form.

There is a deliberate public policy associated with subjecting councils to the oversight and limitation mechanisms in the Act. Allowing councils to operate outside these mechanisms and limitations through the use of entities is contrary to that public policy. In considering whether or not the grant of consent is in the public interest it is open to me to have regard to this public policy.

Secondly, the creation of a trust is not the only option available to Council to ensure that the bequest is protected and directed to the scholarship proposal in perpetuity. As Council is aware, there are already entities established for this purpose such as the Country Education Foundation (CEF) to which the bequest could be directed. If Council and the Committee want a locally specific arrangement, they can look to a local foundation under the umbrella of the CEF.

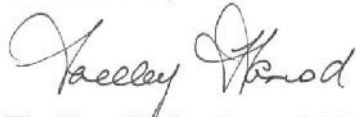
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Thirdly, the establishment and ongoing administration of a trust incurs considerable costs. It would appear more financially prudent for Council and the Committee to pursue the objects of the proposed trust within Council's own administration and resources rather than creating a duplicate administration with necessary attendant costs.

Likewise, the CEF may offer a cost effective alternative to the creation of a standalone trust as envisaged by Council and the Committee.

At my request, Mr Grant Gleeson of the Office of Local Government is available by telephone on (02) 4428 4136 or by email at grantgleeson@olg.nsw.gov.au should you have any questions.

Yours sincerely



The Hon. Shelley Hancock MP
Minister for Local Government

11 SEP 2021