



Minutes

ORDINARY MEETING OF COUNCIL

HELD IN THE COUNCIL CHAMBERS,
953 SOUTH COAST HIGHWAY, DENMARK
ON TUESDAY, 2 DECEMBER 2014.

Contents	Page No.
	2
1. DISCLAIMER	2
1. DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS	3
2. RECORD OF ATTENDANCE/APOLOGIES/APPROVED LEAVE OF ABSENCE	3
3. ANNOUNCEMENTS BY THE PERSON PRESIDING	4
4. PUBLIC QUESTION TIME	4
4.1 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE	4
4.2 PUBLIC QUESTIONS	5
4.3 QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN	4
4.4 PRESENTATION, DEPUTATIONS & PETITIONS	4
4.4.1 DEPUTATION – MR M RUSSCHER – ITEM. 8.1.2 - PROPOSED HOLIDAY HOME (STANDARD) – NO. 32 (LOT 128) GILBERT AVENUE, DENMARK	4
4.4.2 DEPUTATION – MS J MITCHELL – ITEM 8.1.1 PROPOSED DENMARK THRILLS ADVENTURE PARK	4
4.4.3 DEPUTATION – MS A MONAGHAN – ITEM 8.1.1 PROPOSED DENMARK THRILLS ADVENTURE PARK	5
5. APPLICATIONS FOR LEAVE OF ABSENCE	10
6. CONFIRMATION OF MINUTES	10
6.1 ORDINARY COUNCIL MEETING – 11 NOVEMBER 2014	10
7. ELECTED MEMBERS MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN	10
8. REPORTS OF OFFICERS	11
8.1 DIRECTOR OF PLANNING & SUSTAINABILITY	11
8.1.1 PROPOSED PRIVATE RECREATION (ADVENTURE PARK) – PART OF NO. 380 (LOT 343) MOUNT SHADFORTH ROAD AND NO.75 (LOT 344) MCNABB ROAD, SHADFORTH	11
8.1.2 PROPOSED HOLIDAY HOME (STANDARD) – NO. 32 (LOT 128) GILBERT AVENUE, DENMARK	24
8.1.3 PROPOSED CLOSURE OF THREE (3) UNMADE ROAD RESERVES IN VICINITY OF DENMARK NO. 3 RAILWAY STATION RESERVE (RESERVE 30277)	31
8.1.4 DENMARK-NORNALUP HERITAGE RAIL TRAIL POLICY	34
8.1.5 DENMARK RIVERSIDE CLUB DEVELOPMENT	43
8.2 DIRECTOR OF COMMUNITY & REGULATORY SERVICES – Nil	55
8.3 DIRECTOR OF INFRASTRUCTURE SERVICES - Nil	55
8.4 DIRECTOR OF FINANCE & ADMINISTRATION	55
8.4.1 FINANCIAL STATEMENT FOR THE MONTH ENDING 31 OCTOBER 2014	55
8.5 CHIEF EXECUTIVE OFFICER	58
8.5.1 ORDINARY COUNCIL MEETING DATES FOR 2015	58
8.5.2 WOODTURNERS OF DENMARK 2015 EXHIBITION – REQUEST FOR SPONSORSHIP	63
8.5.3 RETURNED & SERVICES LEAGUE OF AUSTRALIA HALL	67
8.5.4 DENMARK TOURISM INC. RENEWAL OF LEASE	73
9. COMMITTEE REPORTS & RECOMMENDATIONS – Nil	77
10. MATTERS BEHIND CLOSED DOORS	77
10.1 2015 CITIZEN & COMMUNITY GROUP OR EVENT OF THE YEAR AWARDS	78
10.2 SPORTSPERSON OF THE YEAR AWARDS 2014	82
11. NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING	85
12. CLOSURE	85

Ordinary Council Meeting

2 December 2014

DISCLAIMER

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1. DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS

4.04pm - The Shire President, Cr Thornton, declared the meeting open.

2. RECORD OF ATTENDANCE/APOLOGIES/APPROVED LEAVE OF ABSENCE

MEMBERS:

- Cr Ross Thornton (Shire President)
- Cr John Sampson (Deputy Shire President)
- Cr Kelli Gillies
- Cr Jan Lewis
- Cr David Morrell
- Cr Ian Osborne
- Cr Dawn Pedro
- Cr Roger Seeney
- Cr Belinda Rowland (from 5.49pm)

STAFF:

- Mr Dale Stewart (Chief Executive Officer)
- Mr Kim Dolzadelli (Director of Finance & Administration)
- Mrs Annette Harbron (Director of Planning & Sustainability)
- Mr Gregg Harwood (Director of Community & Regulatory Services)
- Mr Rob Whooley (Director of Infrastructure Services)
- Ms Claire Thompson (Executive Assistant)

APOLOGIES:

Nil

ON APPROVED LEAVE(S) OF ABSENCE:

Nil

ABSENT:

Nil

VISITORS:

Members of the public in attendance at the commencement of the meeting: 69
 Members of the press in attendance at the commencement of the meeting: Nil

DECLARATIONS OF INTEREST:

Name	Item No	Interest	Nature
Cr Osborne	8.1.5	Impartiality	Cr Osborne is a member of the Denmark Riverside Club Inc.
Cr Osborne	10.1	Impartiality	Cr Osborne was the nominator for one of the Citizen of the Year Award nominations.
Cr Thornton	8.5.4	Impartiality	Cr Thornton is the Council Delegate on the Denmark Tourism Inc. Board.
Cr Lewis	10.2	Impartiality	Cr Lewis' daughter is one of the nominees.
Cr Seeney	10.1	Impartiality	Cr Seeney was the supporter of one of the Citizen of the Year Award nominations.

3. ANNOUNCEMENTS BY THE PERSON PRESIDING

Nil

4. PUBLIC QUESTION TIME**4.1 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

Nil

The Shire President stated that he presumed that many of the people in the public gallery were present to comment or ask questions about a couple of items which the Council were due to receive deputations on at the meeting. For this reason Cr Thornton suggested that Council may wish to move to Item 4.4, Deputations, on the Agenda to allow those present to hear the deputations first and then make any comments or ask questions during public question time which weren't covered in the deputations.

COUNCIL RESOLUTION

MOVED: CR MORRELL

SECONDED: CR SAMPSON

That the meeting move to Item 4.4 on the Agenda to allow the deputations to be heard prior to public question time.

CARRIED: 9/0

Res: 011214

The meeting proceeded to Item 4.4 on the Agenda.

4.4 PRESENTATIONS, DEPUTATIONS & PETITIONS

In accordance with Section 5.24 of the Local Government Act 1995, Sections 5, 6 and 7 of the Local Government (Administration) Regulations and section 3.3 and 3.13 of the Shire of Denmark Standing Orders Local Law, the procedure for persons seeking a deputation and for the Presiding Officer of a Council or Committee Meeting dealing with Public Questions or Presentations, Deputations and Petitions shall be as per Council Policy P040118 which can be downloaded from Council's website at <http://www.denmark.wa.gov.au/council-meetings>.

In summary however, prior approval of the Presiding Person is required and deputations should be for no longer than 15 minutes and by a maximum of two persons addressing the Council.

4.4.1 Deputation – Mr M Russcher – Item 8.1.2 - Proposed Holiday Home (Standard) – No. 32 (Lot 128) Gilbert Avenue, Denmark

Mr Russcher presented a deputation on behalf of a number of residents in relation to the proposed Holiday Home (Standard) – No. 32 (Lot 128) Gilbert Avenue, Denmark.

4.4.2 Deputation – Ms J Mitchell – Item 8.1.1 (Proposed Private Recreation (Adventure Park) – Part of No. 380 (Lot 343) Mount Shadforth Road and No. 75 (Lot 344) McNabb Road, Shadforth)

Ms Mitchell presented a deputation with respect to the proposed Denmark Adventure Park, the subject of Item 8.1.1 on the Agenda on behalf of a number of residents.

The Shire President advised that he had received a request, signed by approximately 267 Electors, to convene a Special Electors Meeting with respect to the Denmark Adventure Park development. Cr Thornton advised that he had determined that the date for the meeting would be Friday, 19 December 2014 at 5.00pm in the Council Chambers as this would allow for the minimum 14 days public notice, as required by the Local Government Act 1995.

The request for the Special Electors Meeting read as follows;

“Local Government Act 1995 Local Government (Administration) Regulations 1996

REQUEST FOR A SPECIAL MEETING OF ELECTORS

To: The Chief Executive Officer of the Shire of Denmark/Denmark Shire President

- 1) *Under section 5.28 of the Local Government Act 1995, we the electors of the Shire of Denmark, whose names, addresses and signatures are set out in the attached lists, and who comprise electors, request that a special meeting of the electors of the district be held.*
- 2) *The details of the matter to be discussed at the special meeting concern the Application For Planning for the “Denmark Thrills and Spills Adventure Park” and matters arising from the Application including but not restricted to:*
 - *Inadequacy of public/community consultation process in this matter*
 - *Council responsibility to preserve amenity of local residents in neighbouring residential zones*
 - *Adherence to Town Planning Scheme 3*
 - *Inappropriate nature of the nominated site*
 - *Effects on property value and loss of amenity to local residents*
 - *Impact on local businesses*
 - *Noise levels*
 - *Lighting spill*
 - *Hours of operation*
 - *‘After Hours’ activity and service/maintenance vehicles*
 - *Signage, perimeter fencing and security*
 - *Firefighting provision*
 - *Venue permit and potential for expansion*
 - *Traffic management and vehicle flow*
 - *Traffic impact on local roads and town centre*
 - *Waste management and removal*
 - *Environmental impact*
 - *Staffing levels, health and safety*
 - *Accreditation, training and standards*
 - *Any other related matters of concern to local residents*

We the undersigned request that a special meeting of electors of the shire of Denmark be held.”

4.4.3 Deputation – Ms A Monaghan – Item 8.1.1 (Proposed Private Recreation (Adventure Park) – Part of No. 380 (Lot 343) Mount Shadforth Road and No.75 (Lot 344) McNabb Road, Shadforth)

Ms Monaghan, the applicant, presented a deputation in relation to the proposed Denmark Adventure Park, the subject of Item 8.1.1 on the Agenda.

The Shire President announced that the meeting would now move to Item 4.2 on the Agenda being Public Question Time.

4.2 PUBLIC QUESTIONS

In accordance with Section 5.24 of the Local Government Act 1995, Council conducts a public question time to enable members of the public to address Council or ask questions of Council. The procedure for public question time can be found on the wall near the entrance to the Council Chambers or can be downloaded from our website at <http://www.denmark.wa.gov.au/council-meetings>.

Questions from the public are invited and welcomed at this point of the Agenda.

In accordance with clause 3.2 (2) & (3) of the Shire of Denmark Standing Orders Local Law, a second Public Question Time will be held, if required and the meeting is not concluded prior, at approximately 6.00pm.

Questions from the Public

4.2.1 Ms Justine Nagorski – Item 8.1.1 (Proposed Private Recreation (Adventure Park) – Part of No. 380 (Lot 343) Mount Shadforth Road and No. 75 (Lot 344) McNabb Road, Shadforth)

Ms Nagorski, Chief Executive Officer of Denmark Tourism Inc., spoke in support of the application.

4.2.2 Mrs Deborah Feld – Item 8.1.1 (Proposed Private Recreation (Adventure Park) – Part of No. 380 (Lot 343) Mount Shadforth Road and No. 75 (Lot 344) McNabb Road, Shadforth)

Mrs Feld spoke in opposition to the application noting that it was the location which she objected to not the proposal itself.

4.2.3 Mr Geoff Bowley – Item 8.1.5 (Denmark Riverside Club Development)

Mr Bowley spoke on behalf of the Denmark Riverside Club and expressed some concerns that they had with the Officer's Recommendation. Mr Bowley asked Council to consider amending the conditions relating to the car park, application fees and demolition of the current club house and noted what their Club would like to see the conditions amended to.

5.04pm – The Director of Infrastructure Services left the room and did not return.

4.2.4 Mr Jim King – Item 8.1.1 (Proposed Private Recreation (Adventure Park) – Part of No. 380 (Lot 343) Mount Shadforth Road and No. 75 (Lot 344) McNabb Road, Shadforth)

Mr King spoke in opposition to the application noting that it was the location which he objected to not the proposal itself.

5.24pm – Cr Seeney left the room.

5.26pm – Cr Seeney returned to the room.

4.2.5 Mr Louis Papaelias – Item 8.1.1 (Proposed Private Recreation (Adventure Park) – Part of No. 380 (Lot 343) Mount Shadforth Road and No. 75 (Lot 344) McNabb Road, Shadforth)

Mr Papaelias spoke in opposition to the application noting that it was the location which he objected to not the proposal itself.

4.2.6 Mr Lex Harry – Item 8.1.1 (Proposed Private Recreation (Adventure Park) – Part of No. 380 (Lot 343) Mount Shadforth Road and No. 75 (Lot 344) McNabb Road, Shadforth)

Mr Harry asked a number of questions relating to the validity of the application such as whether it had been signed by all landowners, whether modifications (such change of name of the park, proposed activities and applicant details) were permissible to the initial application.

The Director of Planning & Sustainability advised that they were satisfied that the landowner had signed the application and all changes to the application had been made in writing and accepted by Council Officers.

4.2.7 Mr Karl Richardson – Item 8.1.1 (Proposed Private Recreation (Adventure Park) – Part of No. 380 (Lot 343) Mount Shadforth Road and No. 75 (Lot 344) McNabb Road, Shadforth)

Mr Richardson spoke in support of the application.

4.2.8 Mr Andrew Ellis – Proposed Closure of Boat Launching at Ocean Beach at Certain Times

Mr Ellis asked the Shire President to clarify his comment to the meeting held on Saturday regarding the Ocean Beach boat ramp where Cr Thornton mentioned he envisaged a permanent boat ramp being construction at Ocean Beach within two to three years' time. Mr Ellis also asked what formal motion there had been to close the boat ramp and whether the CEO could authorise the purchase of radios for the Shire's paid lifeguards to use to guide vessels into shore over the peak holiday periods.

The Shire President confirmed that the construction of a permanent boat ramp within three years was possible as he was aware of a potential future funding source through Royalties for Regions and the Great Southern Development Commission's Regional Blueprint, should the site be determined as suitable.

Cr Thornton stated a formal decision to close the boat ramp had not been made and that Council was only advertising the possibility seeking submissions. Cr Thornton stated that the matter would be formally considered, together with submissions, at the Council meeting to be held on 23 December 2014.

The Chief Executive Officer advised that Council could fund radios for lifeguards should it so wish however a representative on behalf of the Denmark Surf Life Saving Club had advised at the Council meeting of 11 November 2014 that they would not participate in guiding vessels through the channel via two way radio communication.

5.49pm – Cr Rowland entered the room.

5.49pm – Cr Lewis left the room.

4.2.9 Mr Bart Lebbing – Item 8.1.1 (Proposed Private Recreation (Adventure Park) – Part of No. 380 (Lot 343) Mount Shadforth Road and No. 75 (Lot 344) McNabb Road, Shadforth)

Mr Lebbing spoke in opposition to the application and asked why it was allowed to be lodged with what appeared to be insufficient information.

The Shire President responded stating that Council Officers had considered that the application had sufficient information for it to be assessed and therefore it was able to be formally submitted.

The Director of Planning & Sustainability stated that Officers had worked with the applicant to get the application to a stage where it had sufficient information and was generally compliant to then be assessed.

The Chief Executive Officer added that Council Officers received approximately 300 applications each year and most of them were from 'Mum and Dad' applicants, not developers, builders or other professionals. For this reason, Council Officers generally sought sufficient information to enable general compliance but generally not exact detail, in order to assess an application for planning approval.

5.53pm – Cr Lewis returned to the room.

- 4.2.10 Mr David Rule – Item 8.1.4 (Denmark-Nornalup Heritage Rail Trail Policy)**
Mr Rule expressed concern that the policy threatened existing use of the trail by adjoining farmers and residents and stated some concerns about gate restrictions.
- 4.2.11 Mr Peter Naylor – Proposed Closure of Boat Launching at Ocean Beach at Certain Times**
Mr Naylor from Denmark Sea Rescue Group asked what Council was afraid of and if it was dual use of the area then the same issues would be present at Parry Beach. Mr Naylor what the difference was.

The Shire President responded stating that the difference was that there had been an incident at Ocean Beach and that at peak times, such as Christmas, New Year and Easter, huge numbers of residents and visitors visited Ocean Beach and that, generally, there were not as many people at the other locations and therefore there was a reduced risk of any conflict.

- 4.2.12 Mr Frank Mahony – Item 8.1.1 (Proposed Private Recreation (Adventure Park) – Part of No. 380 (Lot 343) Mount Shadforth Road and No. 75 (Lot 344) McNabb Road, Shadforth)**
Mr Mahoney spoke in opposition to the application noting that it was the location which he objected to not the proposal itself and raised some concerns regarding potential risks to cockatoo habitats.
- 4.2.13 Mr Roger Symonds – Item 8.1.1 (Proposed Private Recreation (Adventure Park) – Part of No. 380 (Lot 343) Mount Shadforth Road and No. 75 (Lot 344) McNabb Road, Shadforth)**
Mr Symonds asked whether there was going to be a meeting held regarding the proposal before it went through.

The Shire President advised that a Special Electors Meeting on the matter had been called on 19 December 2014 however due to statutory timeframes, Council would be considering the matter at tonight's meeting which may result in a determination on the application.

- 4.2.14 Ms Anne Cartwright – Item 8.1.1 (Proposed Private Recreation (Adventure Park) – Part of No. 380 (Lot 343) Mount Shadforth Road and No. 75 (Lot 344) McNabb Road, Shadforth)**
Ms Cartwright raised concerns about the proposal particularly safety issues around increased traffic on Mt Shadforth Road.
- 4.2.15 Mr Dale Smith – Item 8.1.1 (Proposed Private Recreation (Adventure Park) – Part of No. 380 (Lot 343) Mount Shadforth Road and No. 75 (Lot 344) McNabb Road, Shadforth)**
Mr Smith spoke in support of the application and asked whether the speed limit on Mt Shadforth Road could be reduced.

The Chief Executive Officer stated that Council could reduce the speed limit if it so wished and noted that Council Officers could investigate the suggestion and provide information to Council or the Council's Roadwise Advisory Committee.

Cr Morrell, as the Chair of the Shire of Denmark's Roadwise Advisory Committee, noted the concerns and that Council had recently undertaken speed and traffic volume analysis on the road.

4.2.16 Mr Don Smith – Proposed Closure of Boat Launching at Ocean Beach at Certain Times

Mr Smith, President of the Denmark Sea Rescue Group, asked whether Council had sought any legal advice on their duties of boat launching facilities and whether Council were considering undertaking a risk analysis before making a decision on the 23 December.

The Chief Executive Officer responded stating that a risk assessment could be undertaken prior to Council making a determination on the 23 December and that he did not believe that formal legal advice was required however Council could request him to obtain legal advice should they so wish.

4.2.17 Mr Russell Carter – Proposed Closure of Boat Launching at Ocean Beach at Certain Times

Mr Carter, from the Denmark Sea Rescue Group, spoke against the proposed closure and wished to clarify a number of things that he believed to be misconceptions.

4.2.18 Mr Trevor Morse – Item 8.1.1 (Proposed Private Recreation (Adventure Park) – Part of No. 380 (Lot 343) Mount Shadforth Road and No. 75 (Lot 344) McNabb Road, Shadforth)

Mr Morse spoke in opposition to the application.

4.2.19 Mr Robin Birchall – Proposed Closure of Boat Launching at Ocean Beach at Certain Times

Mr Birchall spoke in opposition to the proposed closure and asked Council to clarify what the risk was and stated that he believed there was just as much risk to swimmers from surfboards at Ocean Beach.

The Shire President advised that the risk was the quantity of users during the proposed closure times and that he believed that surfers were not generally near swimmers.

4.2.20 Mr Des Hockley – Proposed Closure of Boat Launching at Ocean Beach at Certain Times

Mr Hockley spoke in opposition to the proposed closure and asked what jurisdiction the Council actually had over the areas.

The Chief Executive Officer advised that Council controlled the land to the low water mark.

4.2.21 Mr Phillip Rowe – Item 8.1.1 (Proposed Private Recreation (Adventure Park) – Part of No. 380 (Lot 343) Mount Shadforth Road and No. 75 (Lot 344) McNabb Road, Shadforth)

Mr Rowe spoke in opposition to the application.

COUNCIL RESOLUTION	
MOVED: CR LEWIS	SECONDED: CR GILLIES
That the meeting be adjourned for a short recess.	
CARRIED: 9/0	Res: 021214

7.28pm – The meeting resumed with all Councillors & Staff who were present prior to the adjournment.

4.3 QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN

Nil

The Shire President proceeded to Item 5 on the Agenda given that Item 4.4 had previously been dealt with prior to Public Question Time.

5. APPLICATIONS FOR FUTURE LEAVE OF ABSENCE

A Council may, by resolution, grant leave of absence, to a member, for future meetings.

COUNCIL RESOLUTION	ITEM 5.1
MOVED: CR SAMPSON	SECONDED: CR SEENEY
That Council grant Leave of Absence to:	
1. Cr Osborne for 20 January 2015 and 14 April 2015; and	
2. Cr Gillies for 20 January 2015.	
CARRIED UNANIMOUSLY: 9/0	Res: 031214

6. CONFIRMATION OF MINUTES**6.1 ORDINARY COUNCIL MEETING**

COUNCIL RESOLUTION & OFFICER RECOMMENDATION	ITEM 6.1
MOVED: CR MORRELL	SECONDED: CR SEENEY
That the minutes of the Ordinary Meeting of Council held on the 11 November 2014 be confirmed as a true and correct record of the proceedings.	
CARRIED UNANIMOUSLY: 9/0	Res: 041214

7. ELECTED MEMBERS MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

8. REPORTS OF OFFICERS

8.1 Director of Planning & Sustainability

8.1.1 PROPOSED PRIVATE RECREATION (ADVENTURE PARK) – PART OF NO. 380 (LOT 343) MOUNT SHADFORTH ROAD AND NO.75 (LOT 344) MCNABB ROAD, SHADFORTH

File Ref:	A1721; A343 (2014/97)
Applicant / Proponent:	A Monaghan
Subject Land / Locality:	Part of No. 380 (Lot 343) Mount Shadforth Road and No.75 (Lot 344) McNabb Road, Shadforth
Disclosure of Officer Interest:	Nil
Date:	18 November 2014
Author:	Marieke de Vries, Senior Town Planner
Authorising Officer:	Annette Harbron, Director of Planning & Sustainability
Attachments:	8.1.1a – Planning Application Documentation 8.1.1b – Schedule of Submissions 8.1.1c – Proponent’s Response to Submission Received 8.1.1d – Example Noise Levels

Summary:

The proponent is seeking Planning Approval for a Private Recreation (Adventure Park) on Part of No. 380 (Lot 343) Mount Shadforth Road and No. 75 (Lot 344) McNabb Road, Shadforth.

Having regard to the issues raised in the submissions, the relevant provisions of TPS No. 3, the Local Planning Strategy, relevant policy provisions and the additional information provided by the applicant it is considered that the proposed development is of a nature and scale that is compatible with the location. It is therefore recommended that Planning Approval be granted subject to appropriate conditions.

Background:

Current Application

An application for Planning Approval was lodged with Planning Services in May 2014 seeking Planning Approval for a Private Recreation (Adventure Park). Following liaison with the proponent, amended plans were received in September 2014 – refer Attachment 8.1.1a.

Consultation:

External Consultation:

- The application was referred to nine (9) adjoining landowners inviting comment on the proposal.
- The application was referred to the Department of Environment Regulation and the Department of Agriculture and Food WA
- The applicant

Whilst not statutorily required, public advertising of the proposal was undertaken in accordance with Clause 6.4 of TPS No. 3, with two (2) government agency and forty two (42) public submissions received – noting of the forty two (42) submissions received, three (3) were in support of the proposal. Attached as Attachment 8.1.1b is the Schedule of Submissions – with the submissions received being entered into the schedule as verbatim. Column 4 of the Schedule of Submissions represents Planning Services comments/response to the submission (noting the key issues are addressed in detail below). The proponent has also provided a response to the submissions received – refer Attachment 8.1.1c.

Internal Consultation:

- Development Co-ordination Unit

Statutory Obligations:

Town Planning Scheme No. 3 (TPS No. 3) specifies the pertinent planning provisions for the proposed use.

Should Council refuse this Planning Application, as per the provisions of the *Planning and Development Act 2005* the applicant can apply to the State Administrative Tribunal for a Right of Review.

Policy Implications:

Clause 8.2.4 of TPS No. 3 states:

A Town Planning Scheme Policy shall not bind the Council in respect of any application for planning consent but the Council shall take into account the provisions of the policy and the objectives which the policy was designed to achieve before making its decision.

➤ *Town Planning Scheme Policy No. 29: Rural Settlement Strategy (TPS Policy 29)*

TPS Policy 29 sets out the relevant policy implications relating to this proposal. The subject property is within the Scotsdale Brook Catchment, which has the following objectives:

- 6.3.1 *To conserve the potential of the area to support horticulture on capable land and in such a manner that it will not further exacerbate problems identified in the above management issues.*
- 6.3.2 *To encourage horticultural activities on appropriate land.*
- 6.3.3 *To improve water quality and prevent further eutrophication of Wilson Inlet through inappropriate land use and development.*
- 6.3.4 *To encourage the development of small scale tourist orientated developments such as holiday accommodation providing they will not compromise the primary objective 6.3.1 above.*
- 6.3.5 *To not support proposals for special rural.*
- 6.3.6 *To encourage the preparation of an integrated catchment management plan in order to address existing and potential management issues and land use conflicts.*

It is noted that the Policy distinguishes between low and high impact tourist development, based on the following measures:

“...land area required, the potential for conflict with surrounding land uses, impact on services and the amount of capital investment required. High impact proposals are generally determined on traffic impact, scale and design and will only be favoured in the identified tourist nodes or the nodal rural settlements with specific tourist zoning. Low impact proposals include facilities such as small chalet developments and bed and breakfast accommodation and these may be considered over the entire Shire.”

Noting that Mount Shadforth Road is identified in the Policy as an ‘*important strategic tourist route*’ and that the scale and design of the development is such that it will not impact the future agricultural use of the land, consistent with *State Planning Policy 2.5*, it is considered that the development is appropriate at the proposed location, albeit that it sits somewhere in the middle in terms of being a low or high impact development as per the Policy.

➤ *Council Policy: P130201 Tourism Policy*

Due regard has also been given to Councils Tourism Policy which includes the following objectives:

- a) *To recognise tourism as a social and economic force and as a major or potential major employer within the Shire of Denmark.*
- b) *To foster and create a community awareness of the benefits of tourism within the Shire of Denmark.*

- c) *To ensure that Council will guide and influence the development of tourism in the Shire of Denmark.*
- d) *To provide the basic facilities and infrastructure sufficient to encourage development.*
- e) *To ensure that facilities within the Shire are adequate to cater for visitors and residents.*
- f) *To ensure that the attributes of the natural environment within the Shire are managed sustainably so as to maintain and enhance the resource base on which the tourism industry relies.*

The development is considered by Planning Services to be consistent with these objectives.

Budget / Financial Implications:

There are no known financial implications upon the Council's current Budget or Plan for the Future.

Strategic Implications:

The report and officer recommendation is consistent with Council's adopted Mission and Vision and assists to achieve the following specific adopted Strategic Objectives and Goals.

Environment Objective: Denmark's natural environment is regionally significant, wild and beautiful, yet so inviting and fragile that its protection and enhancement is carefully balanced in meeting the needs of current and future generations' lifestyle, development and tourism needs.

Environment Goal: Natural Environment – that the Shire of Denmark acknowledge the importance of the natural environment to the residents of Denmark and the region, and works with residents and all relevant agencies to maintain a high standard of environmental protection and its integration with community life.

Economic Objective: Denmark's economy is diverse and vibrant – its primate industries of tourism and agriculture rely on and enjoy natural and other assets that are sensibly managed and promoted.

Economic Goal: Development – that the Shire of Denmark closely monitor development and associated infrastructure needs in the region, and acts in conjunction with other authorities and agencies to plan development which is sensitive, timely and appropriate to the community's needs.

Economic Goal: Tourism – that the Shire of Denmark acknowledge the importance of tourism to the region, and by innovative policies, practices and partnerships, facilitates and encourages the greater year-round sustainability of tourism, whilst monitoring and managing its impacts.

Governance Objective: The Shire of Denmark provides renowned leadership in sustainability, is effective with both its consultation with its people and its management of its assets, and provides transparent and fiscally responsible decision making.

Governance Goal: Planning – that the Shire of Denmark work with other relevant authorities and agencies to develop and implement planning policies and decisions that not only reflect the wishes of the community, but also provide the region with appropriate development options.

Sustainability Implications:

➤ **Governance:**

There are no known significant governance considerations relating to the report or officer recommendation.

➤ **Environmental:**

There are no known significant environmental considerations relating to the report or officer recommendation, noting that substantial vegetation is not proposed to be removed.

➤ **Economic:**

Tourism developments are recognised as major contributors to the local economy.

➤ **Social:**

It is considered that the social issues referenced in the majority of submissions received on this proposal can be addressed via conditions of planning approval and/or management responsibilities of the operators if the development is approved by Council.

➤ **Risk:**

Risk	Risk Likelihood (based on history and with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
The proponent may lodge an application for review to the State Administrative Tribunal if the Council's decision was to refuse the proposal.	Possible (3)	Minor (2)	Moderate (5-9)	Failure to meet Statutory, Regulatory or Compliance Requirements	Accept Officer Recommendation as the decision is based on sound planning grounds. If a decision is made to refuse the application, Council is to provide reasoning to support a sound defence at the State Administrative Tribunal should the applicant wish to pursue a Right of Review.

Comment/Conclusion:

Assessment of the proposal has had regard to the relevant provisions of TPS No.3, the Local Planning Strategy, relevant Council and/or Town Planning Scheme Policies (refer 'Policy' section of this report), State Planning Policies as well as the issues raised from submissions received on the proposal.

➤ *Town Planning Scheme No.3* (TPS No. 3)

In accordance with Town Planning Scheme No. 3 (TPS No. 3), the subject site is zoned "Rural", with the purpose/intent of this zoning being for the range of normal rural activities conducted in the Shire and to protect such land from inappropriate uses.

Having regard to the definitions within TPS No. 3, the use class of 'Private Recreation' applies to this development proposal – being "land and buildings used for recreation which are not normally open to the public without charge". As per Table 1 – Zoning Table of TPS No.3, the use class of 'Private Recreation' is an 'AA' use in a "Rural" zone – that is Council may, at its discretion, permit the use in the zone.

Whilst there are no specific requirements pertaining to 'Private Recreation' in TPS No. 3 assessment has been undertaken against Part 5.1 – Development Standards, Part 5.11 - Amenity, 5.12 – Nuisance, Part 5.20 – Vehicle Access Ways and Part 5.21 – Off Street Parking. It is considered that the development is consistent with the relevant provisions or can be conditioned accordingly.

In relation to car parking requirements, Planning Services consider that utilising the car parking criteria associated with the land use classes of 'Places of Public Assembly and Entertainment' as per Appendix 11 – Parking Standards of TPS No.3 is appropriate – noting that this requires car parking bays to be provided at a rate of 1 per 4 persons.

Based on the maximum occupancy of 224 persons (as per the application documentation), a minimum of 56 car parking bays are required. Should the application be supported by Council, a condition of approval is recommended requiring a parking plan to be submitted for approval by Planning/Infrastructure Services prior to the issuance of a Building Permit.

In terms of appropriateness of this land use for the site, Planning Services consider that the location of the site on Mount Shadforth Road (a tourist route), and that the scale and design of the development will not impact the future agricultural use of the land it is considered appropriate for this activity to occur on 'Rural' zoned land in this location.

It should be noted that in accordance with Table 1- Zoning Table of TPS No. 3, the following are a range of land uses that can be considered, at Council's discretion on land that has a "Rural" zoning, including but not limited to:

- Boarding House – 'AA' use
- Caravan Park – 'SA' use
- Cellar Sales – 'SA' use
- Cottage Industry – 'AA' use
- Club Premises – 'SA' use
- Consulting Rooms – 'SA' use
- Cottage Industry – 'AA' use
- Education Establishment – 'SA' use
- Extractive Industry – 'AA' use
- Feedlot Farming – 'SA' use
- Fuel Depot – 'AA' use
- Gallery/Restaurant – 'SA' use
- Garden Centre – 'AA' use
- Holiday Accommodation - 'SA' use
- Holiday Home (Standard & Large) – 'SA' use
- Hotel – 'SA' use
- Kennels – 'SA' use
- Market – 'AA' use
- Motel – 'SA' use
- Noxious Industry – 'SA' use
- Piggery – 'SA' use
- Private Recreation – 'AA' use
- Public Amusement – 'SA' use
- Public Worship – 'AA' use
- Residential Building – 'SA' use
- Restaurant – 'AA' use
- Rural Industry – 'SA' use
- Service Station – 'SA' use
- Tavern – 'SA' use
- Transport Depot – 'AA' use
- Veterinary Establishment – 'AA' use
- Winery – 'SA' use

- "AA" use: means that the Council may, at its discretion, permit the use in the zone.

- "SA" use: means that the Council may, at its discretion, permit the use in the zone after giving notice of application in accordance with Clause 6.4.

➤ *Local Planning Strategy (Strategy)*

In accordance with the Strategy, the subject land is designated 'Priority Agriculture', which is defined as:

“This zone is for land where:

- a) It has been identified by State agencies and the local government in consultation with the community as an agricultural area of State or regional significance; or*
- b) It has been identified in a local planning strategy as being an area of local agricultural significance; and*
- c) It is not already an existing Rural Residential or Rural Smallholdings development.*

As per the Strategy, the following provisions are relevant for rural (productive) land:

- *Objective – Identify and protect Priority Agriculture land which is of State and regional significance and General Agriculture land which is the balance of the rural land not identified for settlement or future subdivision.*
- *Strategy d) Retain remnant vegetation areas and encourage actions that support environmental enhancement through revegetation and waterways improvements.*
- *Implementation Point 2 – Council introduce a “Priority Agriculture” zone (or similar) into the Town Planning Scheme with provisions consistent with the objectives and appropriate land use classes etc, reflective of WAPC SPP 2.5 requirements, and zone the land identified as such in the Local Planning Strategy.*
- *Implementation Point 4 - Prior to introducing the “Priority Agriculture” and “General Agriculture Resource” zone provisions into the Town Planning Scheme, Council not support land uses considered incompatible.*

Given the proposal is a tourism development; the relevant provisions of the Strategy pertaining to Tourism are as follows:

- *Objective – To encourage eco-tourism and facilitate new tourism developments and choices of tourist accommodation types to enhance the Denmark Shire as a destination of choice for visitors.*
- *Strategy b) – To retain the low key level and natural character of the ‘natural environment’ tourist sites.*
- *Strategy c) – Support the protection of National Parks and eco-tourist style developments which introduce natural environment interaction and learning, in a similar manner as the Tree Top Walk.*
- *Strategy d) – Access to Denmark’s iconic tourist locations via the provision of good roads as outlined in Tourism WA’s Tourism Development Priorities. In association with well-maintained roads, tourists need to be guided via the provision of appropriately located, clear and visible signage.*
- *Strategy e) – Encourage new tourist developments to employ a sustainable approach with their developments and a desire to establish a tourism industry that supports and enhances the local community, protects its environment and generates economic benefit.*
- *Strategy f) – Embrace new tourism attractions and/or developments which achieve the objective above as they bring investment and employment into the area.*
- *Strategy g) – To protect the longevity of tourist uses through appropriately zoned sites which contain flexibility for new development or extensions of existing developments to proceed.*
- *Implementation Point 3 – Council in considering development and/or subdivision applications for new tourist developments, prior to the adoption of a Local Planning Strategy, give due regard to Planning Bulletin 83/2011: Planning for Tourism.*

Given the designation of ‘Priority Agriculture’ on the land and the zoning of “Rural” that applies to the subject site, the proposal was referred to the Department of Agriculture and Food WA for comment, with their response being as follows:

No comment to make. The proposal isn’t changing the land’s availability for future use if the Tourism Venture isn’t maintained.

The proposed development is considered to be in keeping with the relevant Strategy provisions, being a low key eco-tourist style development which encourages

environment interaction. The subject site is located on a tourist drive which provides access to a number of Denmark's key tourist sites, such as Castelli Estate, Southern End Restaurant & Function Centre and Karri Mia Caravan Park & Resort.

➤ *Key Issues Raised from Submissions*

There are a number of reoccurring key issues raised in the submissions and these are addressed in detail below.

Noise

The majority of the submitters expressed concerns in relation to noise impacts arising from the development on-site.

In this regard it is noted that the applicant has agreed to not include night time activities which addresses concerns relating to concerns of noise in the evenings, noting that if the development is approved a condition of approval limiting operating hours from 9am to 5pm is recommended. The proponent has also advised that no amplification will be used for sound (i.e. no megaphones/speakers).

The majority of the activities are unpowered, with the powerdrop being the exception – on the basis that this involves the use of a mechanical fan.

In this regard the applicant has provided the following noise measurements:

- Distance from Fan: 2m
Sound level: 82.5 dB
- Distance from Fan: 15m
Sound level: ± 60 dB

Based on the above readings it is considered that the powerdrop fan will be compliant with the *Environmental Protection (Noise) Regulations 1997* and is unlikely to cause nuisance, noting that the sound level is comparable to an air conditioner at a 15m setback.

For comparison, refer to Attachment 8.1.1d – Example Noise Levels for a table with dB readings for various everyday sounds.

Most of the activities will be well setback from the surrounding properties, with the closest activity being the orbing and ziplining. The orbing track will be setback a minimum of approximately 120m from the closest dwelling – regardless sound will be minimal noting that the nature of the activity would muffle any loud screaming/squeals. In relation to the ziplining, which will run through the trees at the front of the property, should the development be approved it is recommended that a condition be imposed that requires no equipment (such as fixtures for the ziplining) be located within 100m of the McNabb Road property boundary.

It is noted that regardless of the above any noise from the development would need to comply with the *Environmental Protection (Noise) Regulations 1997*.

Visual Amenity

Many submitters also expressed concern on the visual impact. Reference was made in some submissions to Strategy b of the Local Planning Strategy, being “*To retain the low key level and natural character of the ‘natural environment’ tourist sites*”.

Having regard to the nature of the activities proposed, Planning Services consider that the proposal is very much this, given that the natural vegetation will form a key part of the development. The activities proposed are not visually obtrusive and are not comparable to “Gold Coast style”, plastic fantastic adventure parks. The proponent is keen to develop an environmentally sustainable/minimal impact development with minimal disturbance of existing vegetation (and noting that no Karri trees are proposed for removal).

As per Attachment 8.1.1c, the proponent has advised that new boundary fencing will not be installed. Some internal fencing is proposed, being timber style fencing to secure certain activities, such as the entrance to the zipline platform and around the power drop and 1.8m deer fencing with copper logs to secure the orbiting area. It is not considered that this type of fencing will be visually obtrusive.

Traffic Impact

The majority of submitters expressed concerns in relation to the traffic impact on safety and local amenity.

To this regard, Mount Shadforth Road is one of Denmark's main tourist drives, and is designated in the Local Planning Strategy as a 'Neighbourhood Connector Road'. The road is designed to carry large volumes of traffic, noting that Main Roads WA specifications for a 'Local Distributor' Road provide a maximum desirable volume of 6000 vehicles per day for such a road. Given the usage of the road as a tourist drive, and the location of existing tourist developments along Mount Shadforth Road (such as Castelli Estate, Southern End Restaurant & Function Centre, Karri Mia Caravan Park & Resort), it is not envisioned that the proposed development will cause as significant an increase to traffic volumes as alluded to in many submissions.

The location of the entry into the site off Mount Shadforth Road was considered in consultation with the Shire's Infrastructure Services staff to ensure issues of safety, sightlines, proximity to existing intersections etc were all taken into account. The primary access/egress point is to be located off Mount Shadforth Road, with the McNabb Road entrances only being used in emergency situations.

Light Pollution

Many of the submitters expressed concern in relation to the potential for light pollution from the property.

The applicant has advised that lighting will not be used for the development, noting that night time activities are no longer proposed.

Whilst no lighting has been proposed, should the development be approved it is recommended that a condition of planning approval be imposed that ensures that should any lighting be used (i.e. security lighting) that this be located/designed so as to avoid impact on surrounding properties.

Extent of Community Engagement

As per TPS No. 3, the proposed land use is an AA (discretionary) land use in a "Rural" zone, which can be considered without the statutory requirement for public advertising. Notwithstanding, following review of the proposal and noting that it was a low-scale tourism development proposal (and not a "Gold Coast theme style park" as some consider the proposal to be), Planning Services determined that referral of the application to the immediately adjoining landowners abutting the McNabb Road and Mount Shadforth Road boundaries of the site would be appropriate.

Upon receiving notification that others in the adjoining subdivisions were expressing some concerns in relation to the development proposal, details of the proposal were provided on the Shire's website and at the Shire Administration Office for the public to access the relevant document and provide a submission on if they wished to - noting that submissions have been accepted past the stated closing date for 31 October 2014 (being normal Shire practice that submissions will be received on issues up until the matter is determined).

As officially stated by Mr Dale Stewart, CEO of the Shire of Denmark, at the Ordinary Meeting of Council held on 21/10/14, he was aware of Council's obligations regarding

community consultation and that whilst Officers had complied with their obligations regarding the application, the level of public concern had been underestimated. The Draft Community Engagement Policy and Framework are exactly that - 'Draft' and out for public comment until 22 December 2014; but that notwithstanding officers stand by the draft and its intent and the CEO believes that the treatment by staff of the current application does not conflict with the principles or philosophies espoused therein.

➤ *Conclusion*

Having regard to the issues raised in the submissions, the relevant provisions of TPS No. 3, the Local Planning Strategy, relevant policy provisions and the additional information provided by the applicant it is considered that the proposed development is of a nature and scale that is compatible with the location.

Voting Requirements:

Simple majority.

COUNCIL RESOLUTION

MOVED: CR LEWIS

SECONDED: CR SEENEY

That the item be adjourned until the 23 December 2014.

LOST: 4/5

Res: 051214

OFFICER RECOMMENDATION

ITEM 8.1.1

That Council with respect to the planning application for the Proposed Private Recreation (Adventure Park) at Part of No. 380 (Lot 343) Mount Shadforth Road and No.75 (Lot 344) McNabb Road, Shadforth:

1. Notes the submissions received.
2. Grants Planning Approval subject to the following:

Conditions

- a) The Private Recreation (Adventure Park) shall be in accordance with the attached stamped approved details/plans and where marked red dated 15 September 2014.
 - All adventure park activities to be located at least 100 metres from the McNabb Road property boundary.
- b) This approval pertains to the following adventure park activities only:
 - i. Orbing (Hydro & Eclipse)
 - ii. Tubing
 - iii. Tarzan Adventure
 - iv. Super Fly Ziplining
 - v. Power Drop
 - vi. Funky Monkey Tree Climbing
 - vii. Bumper Soccer
 - viii. Stepping Stone Mazes
 - ix. Bocce
 - x. Hopscotch
 - xi. Chess
 - xii. Tree Swings

Any additional activities to the above will require specific approval of Council.

- c) The hours of operation of the Private Recreation (Adventure Park) shall be restricted to between 9am and 5pm (7 days a week).
- d) The maximum number of people (participants & spectators) on-site at any one time being 224 persons.
- c) The vehicle crossover from Mount Shadforth Road is to be constructed, drained and sealed (asphalt, concrete or brickpavers) to the satisfaction and specifications of the Shire of Denmark (Infrastructure Services) – refer enclosed vehicle crossover application form.

- e) A minimum of 56 car parking bays (incorporating one (1) disabled car parking bay and one (1) long vehicle parking bay) being provided on-site in accordance with the requirements of Australian Standard AS2890.1:2004 Parking Facilities – Off-Street Car Parking and the Building Code of Australia, with such car parking bays, manoeuvring and circulation areas being suitably constructed to a minimum all-weather standard (e.g. gravel, crushed rock), drained and thereafter maintained to facilitate access to the development by 2 wheel drive vehicles.
- f) Prior to the issuance of a Building Permit for the cafe, reception and/or toilet buildings, a car parking plan shall be submitted and approved by the Shire of Denmark (Planning/Infrastructure Services) which details the location of the 56 car parking bays and the associated accessway arrangements to the car parking area(s).
- g) The disabled car parking bay and associated landings/ramps/travel paths shall be suitably constructed and sealed (absolute minimum is two-coat seal) as per Australian Standard AS1428.1:2009 Design for Access and Mobility.
- h) The approved development shall be connected to an approved effluent disposal system to the satisfaction of the Shire of Denmark (Environmental Health Services).
- i) Prior to the submission of a Building Permit for the cafe, reception and/or toilet buildings, a Colours & Materials Schedule shall be submitted and approved by the Shire of Denmark (Planning Services).
- j) The installation of outdoor lighting shall be in accordance with the requirements of Australian Standard AS4282-1997: Control of the Obtrusive Effects of Outdoor Lighting.
- j) The approved development shall provide a potable water supply (i.e. rainwater tank) with a capacity of not less than 92,000 litres. The tank shall be installed in accordance with the Department of Health's standard on water tanks. This includes but is not limited to a "First Flush Water Diverter" (for detailed information see 'Water' link at <http://www.public.health.wa.gov.au>).
- k) The rainwater tank shall provide an adequate permanent water supply of not less than 10,000 litres for bush fire-fighting purposes, accessible by a DFES approved coupling for emergency purposes only, with such rainwater tank to be located to ensure that vehicle access is provided within 3 metres of the rainwater tank.
- l) The rainwater tank, and any pumping equipment or structure, shall be coloured, toned or painted to complement the colours of the development on-site.
- m) All stormwater and drainage run off from all roofed and impervious areas is to be retained on-site to the satisfaction of the Shire of Denmark (Infrastructure Services).
- n) Any fencing of the property boundaries of the site to be erected shall be 'rural' type fencing as per the Shire of Denmark's Local Law Relating to Fencing.
- o) Prior to the commencement of activities, a Road Maintenance Contribution for 'Other Tourist Related Land Uses' as per the Shire's operative Fees & Charges Schedule applicable at the time payment is made shall be paid to the Shire of Denmark – refer Advice Note c.

Advice Notes

- a) The approved cafe use must comply with the requirements of the Shire of Denmark Health Local Law and all food preparation areas to comply with *Health (Food Hygiene) Regulations* to the satisfaction of the Principal Environmental Health Officer. On completion of the fit out and prior to opening the premises and its operator must be registered with the Shire of Denmark as a food business. For more information please contact the Shire's Principal Environmental Health Officer on 9848 0312.
 - b) The cafe premises are to comply with the Australian New Zealand Food Standard Code - Standard 3.2.3 (Food Premises and Equipment).
 - c) In relation to Condition q, as per the 2014/15 Fees & Charges Schedule the amount is \$3240 (GST exempt).
 - d) Any signs proposed to be erected on-site may require the separate approval of the Shire of Denmark (Planning Approval and/or Signs Licence). Please liaise with Planning Services in regards to what approvals may be required.
 - e) All activities on-site are to comply with the *Environmental Protection (Noise) Regulations 1997*.
3. Advise the submitters of Council's decision.

The Officer advised prior to the meeting that the applicant had requested that the Power Drop component of the application be removed. The Director of Planning & Sustainability also noted that part a) relating to setbacks should only apply to the Super Fly Ziplining equipment and not all activities. The following amended Officer Recommendation has been provided to address these two amendments.

COUNCIL	RESOLUTION	&	AMENDED	OFFICER	ITEM 8.1.1
	RECOMMENDATION				
	MOVED: CR SAMPSON			SECONDED: CR OSBORNE	
That Council with respect to the planning application for the Proposed Private Recreation (Adventure Park) at Part of No. 380 (Lot 343) Mount Shadforth Road and No.75 (Lot 344) McNabb Road, Shadforth:					
1. Notes the submissions received.					
2. Grants Planning Approval subject to the following:					
<u>Conditions</u>					
a) The Private Recreation (Adventure Park) shall be in accordance with the attached stamped approved details/plans and where marked red dated 15 September 2014.					
<ul style="list-style-type: none"> • The Super Fly Ziplining equipment being located at least 100 metres from the McNabb Road property boundary. 					
b) This approval pertains to the following adventure park activities only:					
i. Orbing (Hydro & Eclipse)					
ii. Tubing					
iii. Tarzan Adventure					
iv. Super Fly Ziplining					
v. Funky Monkey Tree Climbing					
vi. Bumper Soccer					
vii. Stepping Stone Mazes					
viii. Bocce					
ix. Hopscotch					
x. Chess					
xi. Tree Swings					
Any additional activities to the above will require specific approval of Council.					

- c) The hours of operation of the Private Recreation (Adventure Park) shall be restricted to between 9am and 5pm (7 days a week).
- d) The maximum number of people (participants & spectators) on-site at any one time being 224 persons.
- e) The vehicle crossover from Mount Shadforth Road is to be constructed, drained and sealed (asphalt, concrete or brickpavers) to the satisfaction and specifications of the Shire of Denmark (Infrastructure Services) – refer enclosed vehicle crossover application form.
- f) A minimum of 56 car parking bays (incorporating one (1) disabled car parking bay and one (1) long vehicle parking bay) being provided on-site in accordance with the requirements of Australian Standard AS2890.1:2004 Parking Facilities – Off-Street Car Parking and the Building Code of Australia, with such car parking bays, manoeuvring and circulation areas being suitably constructed to a minimum all-weather standard (e.g. gravel, crushed rock), drained and thereafter maintained to facilitate access to the development by 2 wheel drive vehicles.
- g) Prior to the issuance of a Building Permit for the cafe, reception and/or toilet buildings, a car parking plan shall be submitted and approved by the Shire of Denmark (Planning/Infrastructure Services) which details the location of the 56 car parking bays and the associated accessway arrangements to the car parking area(s).
- h) The disabled car parking bay and associated landings/ramps/travel paths shall be suitably constructed and sealed (absolute minimum is two-coat seal) as per Australian Standard AS1428.1:2009 Design for Access and Mobility.
- i) The approved development shall be connected to an approved effluent disposal system to the satisfaction of the Shire of Denmark (Environmental Health Services).
- j) Prior to the submission of a Building Permit for the cafe, reception and/or toilet buildings, a Colours & Materials Schedule shall be submitted and approved by the Shire of Denmark (Planning Services).
- k) The installation of outdoor lighting shall be in accordance with the requirements of Australian Standard AS4282-1997: Control of the Obtrusive Effects of Outdoor Lighting.
- l) The approved development shall provide a potable water supply (i.e. rainwater tank) with a capacity of not less than 92,000 litres. The tank shall be installed in accordance with the Department of Health's standard on water tanks. This includes but is not limited to a "First Flush Water Diverter" (for detailed information see 'Water' link at <http://www.public.health.wa.gov.au>).
- m) The rainwater tank shall provide an adequate permanent water supply of not less than 10,000 litres for bush fire-fighting purposes, accessible by a DFES approved coupling for emergency purposes only, with such rainwater tank to be located to ensure that vehicle access is provided within 3 metres of the rainwater tank.
- n) The rainwater tank, and any pumping equipment or structure, shall be coloured, toned or painted to complement the colours of the development on-site.
- o) All stormwater and drainage run off from all roofed and impervious areas is to be retained on-site to the satisfaction of the Shire of Denmark (Infrastructure Services).
- p) Any fencing of the property boundaries of the site to be erected shall be 'rural' type fencing as per the Shire of Denmark's Local Law Relating to Fencing.
- q) Prior to the commencement of activities, a Road Maintenance Contribution for 'Other Tourist Related Land Uses' as per the Shire's operative Fees & Charges Schedule applicable at the time payment is made shall be paid to the Shire of Denmark – refer Advice Note c.

Advice Notes

- a) The approved cafe use must comply with the requirements of the Shire of Denmark Health Local Law and all food preparation areas to comply with *Health (Food Hygiene) Regulations* to the satisfaction of the Principal Environmental Health Officer. On completion of the fit out and prior to opening the premises and its operator must be registered with the Shire of Denmark as a food business. For more information please contact the Shire's Principal Environmental Health Officer on 9848 0312.
 - b) The cafe premises are to comply with the Australian New Zealand Food Standard Code - Standard 3.2.3 (Food Premises and Equipment).
 - c) In relation to Condition q, as per the 2014/15 Fees & Charges Schedule the amount is \$3,240 (GST exempt).
 - d) Any signs proposed to be erected on-site may require the separate approval of the Shire of Denmark (Planning Approval and/or Signs Licence). Please liaise with Planning Services in regards to what approvals may be required.
 - e) All activities on-site are to comply with the *Environmental Protection (Noise) Regulations 1997*.
3. Advise the submitters of Council's decision.

CARRIED: 6/3

Res: 061214

Cr Seeney requested that all Councillors' votes on the above resolution be recorded.

FOR: Cr Sampson, Cr Pedro, Cr Thornton, Cr Rowland, Cr Osborne & Cr Morrell.

AGAINST: Cr Seeney, Cr Lewis & Cr Gillies.

Prior to considering Item 8.1.2, the Shire President advised that the Applicant had requested that the Item be deferred to the next meeting to enable his attendance however he had ruled that there was no reason why it should be deferred.

8.1.2 PROPOSED HOLIDAY HOME (STANDARD) – NO. 32 (LOT 128) GILBERT AVENUE, DENMARK

File Ref:	A629 (2014/180)
Applicant / Proponent:	M Willicombe
Subject Land / Locality:	No.32 (Lot 128) Gilbert Avenue, Denmark
Disclosure of Officer Interest:	Nil
Date:	13 November 2014
Author:	Marieke de Vries, Senior Town Planner
Authorising Officer:	Annette Harbron, Director of Planning & Sustainability
Attachments:	8.1.2a – Planning Application Documentation 8.1.2b – Schedule of Submissions 8.1.2c – Proponent’s Response to Submission Received 8.1.2d – Map of Area Highlighting Location of Approved Holiday Homes in Gilbert Avenue, Adams Road & Payne Road

Summary:

The proponent is seeking Planning Approval for a Holiday Home (Standard) at No.32 (Lot 128) Gilbert Avenue, Denmark.

Having regard to the issues raised from the submissions received and the objectives and provisions of Town Planning Scheme Policy No. 19.4: Holiday Homes (Policy 19.4), it is recommended that Planning Approval be granted subject to appropriate conditions.

Background:

Current Application

A new application for Planning Approval was lodged with Planning Services in September 2014 seeking Planning Approval to use a proposed dwelling (approved July 2014 – Planning Consent 2014/78) as a Holiday Home (Standard) – refer Attachment 8.1.2a. Notwithstanding Council’s previous determination of refusal in relation to Planning Application 2014/107 (refer comments below in this regard), the Shire is required to consider this Planning Application accordingly.

Previous Application

Planning Application 2014/107 (being the same as the current application) was considered at the Ordinary Meeting of Council held on 19 August 2014, wherein Council resolved as follows: (Res No: 040814)

That Council with respect to the planning application for the Proposed Holiday Home (Standard) at No.32 (Lot 128) Gilbert Avenue, Denmark;

- 1. Notes the submissions received;*
- 2. Refuse Planning Approval due to concerns that it will have a detrimental effect on adjoining properties and the amenity of the neighbourhood because of the narrow lots and difficulty in constructing sufficient setbacks;*
- 3. That in combination with the other Holiday Accommodations in the immediate locality this will compound the detrimental effect on Lot 129; and*
- 4. Advise the submitters of Council’s decision.*

Following refusal of Planning Application 2014/107, the applicant lodged a Right of Review with the State Administrative Tribunal (SAT). The application is to be the subject of a Directions Hearing with SAT on 10 December 2014.

Policy 19.4

Policy 19.4 was adopted by Council at its meeting of 6 November 2012. Policy 19.4 provides details on preferred locations for the establishment/operation of holiday homes, minimum

development standards that dwellings need to comply with and management responsibilities to ensure that holiday homes are managed appropriately whilst ensuring the local character and amenity of the area is not compromised.

As per the provisions of Policy 19.4, the subject site is located within 'Area 1 – Wilson Inlet Environs' – which is one of the preferred locations for holiday homes to establish. The Policy identifies Area 1 as combining amenity settings, inlet locations and the provision of relatively close proximity to natural attractions and the Denmark town site.

At the Ordinary Meeting of Council held on 19 August 2014, supplementary to Council's resolution to refuse Planning Application 2014/107 Council resolved the following (Res No: 050814):

That Staff be requested to conduct;

- 1. A noise audit of the Weedon Hill area during the next summer holiday period; and*
- 2. Subject to Part 1, a general review of Town Planning Policy No. 19.4 – Home Holidays including consideration of possible removal of Weedon Hill from preferred Area 1.*

It is noted that the above is a current action, with the noise audit planned for this coming summer (2014/2015).

Consultation:

External Consultation:

- The application was referred to thirteen (13) adjoining landowners inviting comment on the proposal.
- The applicant

Internal Consultation:

- Development Co-ordination Unit

Statutory Obligations:

Town Planning Scheme No. 3 (TPS No. 3) specifies the pertinent planning provisions for the proposed use.

Should Council refuse this Planning Application, as per the provisions of the *Planning and Development Act 2005* the applicant can apply to the State Administrative Tribunal for a Right of Review.

It is noted that a Right of Review has already been lodged by the applicant following refusal of Planning Application 2014/107 and this matter is listed for a Directions Hearing on 10 December 2014.

Policy Implications:

Policy 19.4 – Holiday Homes provides details on preferred locations for the establishment/operation of holiday homes, minimum development standards that dwellings need to comply with and management responsibilities to ensure that holiday homes are managed appropriately whilst ensuring the local character and amenity of the area is not compromised.

Clause 8.2.4 of TPS No. 3 states:

A Town Planning Scheme Policy shall not bind the Council in respect of any application for planning consent but the Council shall take into account the provisions of the policy and the objectives which the policy was designed to achieve before making its decision.

Budget / Financial Implications:

There are no known financial implications upon the Council's current Budget or Plan for the Future.

Strategic Implications:

The report and officer recommendation is consistent with Council’s adopted Mission and Vision and assists to achieve the following specific adopted Strategic Objectives and Goals.

Governance Objective: The Shire of Denmark provides renowned leadership in sustainability, is effective with both its consultation with its people and its management of its assets, and provides transparent and fiscally responsible decision making.

Governance Goal: Planning - That the Shire of Denmark work with other relevant authorities and agencies to develop and implement planning policies and decisions that not only reflect the wishes of the community, but also provide the region with appropriate development options.

Sustainability Implications:

➤ **Governance:**

There are no known significant governance considerations relating to the report or officer recommendation, however it is noted that Planning Consent and registration of the premises as a Holiday Home with Health Services is a statutory requirement for Holiday Homes.

➤ **Environmental:**

There are no known significant environmental considerations relating to the report or officer recommendation, noting that the dwelling has been approved separately. It is further noted that the approved dwelling has been designed with care given to the retention of the natural features of the site.

➤ **Economic:**

Holiday Homes, when managed to a high standard make a positive contribution to Denmark’s tourism industry.

➤ **Social:**

Two of the key objectives of Policy 19.4 are to:

- Ensure that the predominant residential nature and character of neighbourhoods are retained; and
- Minimise negative impacts of holiday homes on the amenity of adjoining residents.

To this regard it is considered that with the proper management of holiday homes negative impacts can be minimised. Attest to this is a holiday home in Knowles Court that when advertised received twelve (12) objections. This holiday home was granted approval to operate by the Shire of Denmark in July 2013 and has operated without complaint since.

➤ **Risk:**

Risk	Risk Likelihood (based on history and with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That the Holiday Home is not managed to a high standard.	Possible (3)	Minor (2)	Moderate (5-9)	Failure to meet Statutory, Regulatory or Compliance Requirements	In circumstances where valid complaints regarding a holiday home are received, the Shire has the right to not renew the approvals to operate.
The proponent may lodge an application for review to the State Administrative Tribunal if the Council’s decision was to refuse the	Almost Certain (5)	Minor (2)	High (10-16)	Failure to meet Statutory, Regulatory or Compliance Requirements	Accept Officer Recommendation as the decision is based on sound planning grounds. If a decision is made to refuse the application, Council is to provide sound reasoning to support a sound defence

proposal.				at the State Administrative Tribunal should the applicant wish to pursue a Right of Review.
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Comment/Conclusion:

In accordance with Town Planning Scheme No. 3 (TPS No. 3), the subject site (lot size of 1012m²) is zoned “Residential (R10)”. As per Table 1 – Zoning Table of TPS No.3, the use class of ‘Holiday Home (Standard)’ is an ‘SA’ use in a Residential zone – that is Council may, at its discretion, permit the use in the zone after giving public notice of the application in accordance with Clause 6.4 of the TPS No. 3.

Public advertising of the proposal was undertaken in accordance with Clause 6.4 of TPS No. 3 (refer ‘Consultation’ section of the report), with four (4) submissions received. Attached as Attachment 8.1.2b is the Schedule of Submissions – with the submissions received being entered into the schedule as verbatim. Column 4 of the Schedule of Submissions represents Planning Services comments/response to the submission. The proponent has also provided a response to the submissions received – refer Attachment 8.1.2c.

A common concern raised by all four submitters is in relation to the number of holiday homes operating in Weedon Hill and the resultant perceived decline in neighbourhood amenity.

To this regard it is noted that there are currently 4 approved and operational holiday homes on Gilbert Avenue (equating to 12.5% of the properties in the street); 7 on Adams Road (equating to 41% of the properties in the street) and 8 on Payne Road (equating to 24% of the properties in the street) - refer Attachment 8.1.2d) for a map showing the location of the approved holiday homes on these three (3) streets.

It is acknowledged that this area of Weedon Hill is popular for Holiday Homes for the visual aesthetics of the area and proximity to Denmark townsite and to the inlet, these being part of the reasons for Policy 19.4 to identify the area as preferred for holiday homes.

Capping holiday home numbers in areas where they can be supported is difficult at best and decision making would not be fair and equitable should one holiday home be refused over another based on the timing of the application. It is not considered that there are grounds to refuse this particular application based on numbers. This issue is one that could be considered in a review of Policy 19.4, noting that proper process would need to be undertaken and a clear position made before Council staff begin picking and choosing which holiday homes to approve and which to reject.

The argument that holiday homes detract from the neighbourhood is one that comes up often with concerns in this instance raised for the potential for anti-social behaviour, noise, increased traffic and unkempt properties due to absentee owners. Individual responses to these concerns are addressed in the Schedule of Submissions (refer Attachment 8.1.2b), however in general terms, as these are speculative in nature and can be addressed should issues arise it is not considered that this is a valid reason for rejection of a new application. In this regard, it is noted that should issues arise during operation of the holiday home, the details of the Property Manager are provided to the surrounding neighbours such that in the first instance the Property Manager can be contacted to address such issues. There is also the ability to contact the local Police depending on the seriousness/severity of the issue. In circumstances where valid complaints regarding a holiday home are received, the Shire has the right to not renew the approvals to operate.

Having regard to the issues raised from the submissions and assessment of the proposal having regard to the objectives and provisions of Policy 19.4, it is recommended that Planning Approval be granted subject to appropriate conditions being imposed. As Planning Approval is only granted initially for 12 months from the date of registration of the premises as a holiday

home, in circumstances where valid complaints regarding the holiday home operations are received, the Shire has the right to not renew the approvals to operate.

Should Council consider that this proposal is unacceptable and are considering refusing this application, the following recommendation is provided for Council's reference:

That Council with respect to the planning application for the Proposed Holiday Home (Standard) at No.32 (Lot 128) Gilbert Avenue, Denmark:

1. *Notes the submissions received.*
2. *Refuse Planning Approval for the following reasons:*
 - a) *Due to the high number of Holiday Homes currently operating in Weedon Hill, it is considered that the proposal is inconsistent with the first objective of Policy 19.4: Holiday Homes, being "To ensure that the predominant residential nature and character of neighbourhoods are retained".*
 - b) *Due to the high numbers and residential density of the area it is considered that the proposed Holiday Home would have a negative amenity impact on the immediate neighbours.*
 - c) *Until such time as Policy 19.4 is reviewed as per Resolution No: 050814 of the Ordinary Meeting of Council held on 19 August 2014, Council is not supportive of new applications for Holiday Homes in Weedon Hill.*
3. *Advise the submitters of Council's decision.*

Voting Requirements:

Simple majority.

8.14pm – Cr Rowland left the room and did not return.

OFFICER RECOMMENDATION

ITEM 8.1.2

That Council with respect to the planning application for the Proposed Holiday Home (Standard) at No.32 (Lot 128) Gilbert Avenue, Denmark:

1. Notes the submissions received.
2. Grants Planning Approval subject to the following:

Conditions

 - f) The Holiday Home shall be in accordance with the attached stamped approved details/plans dated 16 September 2014.
 - g) This approval is valid for a temporary period of 1 year only and shall be subject to a new application in 12 months from the date of registration with the Shire of Denmark (refer Condition c), after which it may be renewed for a three year period (refer Advice Note i).
 - h) Prior to the commencement of activities, the premises must be registered with the Shire of Denmark (Health Services) as a holiday home, with fees payable as per Councils operative Fees and Charges Schedule at the initial 'premises' application stage and annually thereafter (refer Advice Note ii).
 - i) A maximum of six (6) persons exclusive of the owner/operator may be accommodated at any one time within the holiday home.
 - j) The holiday home can only be rented for a maximum period of 3 months to any one person in any one twelve (12) month period.
 - k) Owner/operators must provide and maintain a register of all people who utilise the holiday home during the year to Council's satisfaction. A receipt book must be kept.
 - l) Prior to the registration of the Premises as a Holiday Home, the applicant shall submit a Property Management Plan to the Shire of Denmark (Planning Services) for approval.
 - m) Prior to the commencement of activities, the applicant shall provide a copy of an approved Property Management Plan to adjoining land owners/occupiers (see Advice Note iii for extent of properties that notices are to be provided to). Copies of such correspondence shall be provided to the Shire of Denmark for its records.

- n) Prior to the commencement of activities, hardwired smoke alarms to be provided in the bedrooms and emergency lighting to exit the building to the satisfaction of the Shire of Denmark (Building Services) - refer Advice Note iv.
- o) Provision of two (2) car parking bays associated with the development, with the car parking bays, manoeuvring and circulation areas to be suitably constructed, sealed (concrete, asphalt or brick pavers), drained and thereafter maintained.
- p) The following information shall be provided to all tenants at the commencement of an agreement to occupy the premises:
 - Annual Registration Certificate;
 - Caretaker/manager or management company and its contact details;
 - Emergency contact details;
 - Code of Conduct; and
 - Fire and Emergency Plan.
- q) The provision of the following fire safety measures to the satisfaction of the Shire's Community Emergency Services Manager:
 - A fire blanket in the kitchen area;
 - Fire extinguishers;
 - Maintenance of a Building Protection Zone around the dwelling;
 - Implementation and display of the Fire and Emergency Plan;
- q) Signage shall be limited to a 0.2m² nameplate on the property.

Advice Notes

- i. Should the Shire receive valid complaints or the above conditions of approval are not adhered to, Council may consider refusing to grant a new and/or longer approval.
 - ii. Please contact the Shire's Principal Environmental Health Officer on 9848 0300 regarding the requirements for registration of the premises as a 'Holiday Home', noting approval will not be forthcoming until all relevant conditions of this Planning Approval have been complied with.
 - iii. The 'Property Management Plan' shall be provided to the following properties:
 - No.26 (Lot 131) Gilbert Avenue, Denmark
 - No.28 (Lot 130) Gilbert Avenue, Denmark
 - No.30 (Lot 129) Gilbert Avenue, Denmark
 - No.36 (Lot 1) Gilbert Avenue, Denmark
 - No.18 (Lot 30) Gilbert Avenue, Denmark
 - No.4 (Lot 204) Adams Road, Denmark
 - No.3 (Lot 114) Adams Road, Denmark
 - No.1 (Lot 115) Adams Road, Denmark
 - No.41 (Lot 137) Gilbert Avenue, Denmark
 - No.39 (Lot 138) Gilbert Avenue, Denmark
 - No.37 (Lot 139) Gilbert Avenue, Denmark
 - No.35 (Lot 140) Gilbert Avenue, Denmark
 - No.33 (Lot 141) Gilbert Avenue, Denmark
 - iv. In relation to Condition h, there is a need to provide emergency lighting on exit paths and hardwired smoke alarms are required in all bedrooms.
 - v. The applicant is advised that all activities on-site are to comply with the Environmental Protection (Noise) Regulations 1997.
3. Advise the submitters of Council's decision.

COUNCIL RESOLUTION

ITEM 8.1.2

MOVED: CR MORRELL

SECONDED: CR LEWIS

That Council with respect to the planning application for the Proposed Holiday Home (Standard) at No.32 (Lot 128) Gilbert Avenue, Denmark:

1. Notes the submissions received.
2. Refuse Planning Approval for the following reasons:
 - a) Due to the high number of Holiday Homes currently operating in Weedon Hill, it is considered that the proposal is inconsistent with the first objective of Policy 19.4: Holiday Homes, being "To ensure that the predominant residential nature and character of neighbourhoods are retained".
 - b) Due to the high numbers and residential density of the area it is considered that the proposed Holiday Home would have a negative amenity impact on the immediate neighbours.
 - c) Until such time as Policy 19.4 is reviewed as per Resolution No: 050814 of the Ordinary Meeting of Council held on 19 August 2014, Council is not supportive of new applications for Holiday Homes in Weedon Hill.
3. Advise the submitters of Council's decision.

THE MOTION WAS PUT & TIED: 4/4

THE SHIRE PRESIDENT WAS THEN REQUIRED TO EXERCISE HIS CASTING VOTE.

THE SHIRE PRESIDENT USED HIS CASTING VOTE & VOTED FOR THE MOTION WHICH WAS THEN CARRIED: 5/4

Res: 071214

8.1.3 PROPOSED CLOSURE OF THREE (3) UNMADE ROAD RESERVES IN VICINITY OF DENMARK NO. 3 RAILWAY STATION RESERVE (RESERVE 30277)

File Ref:	A3140; R30048
Applicant / Proponent:	Shire of Denmark
Subject Land / Locality:	Unmade Road Reserves in Vicinity of Denmark No. 3 Railway Station Reserve (Reserve 30277)
Disclosure of Officer Interest:	Nil
Date:	13 November 2014
Author:	Annette Harbron, Director of Planning & Sustainability
Authorising Officer:	Annette Harbron, Director of Planning & Sustainability
Attachments:	8.1.3a – Final Concept Plan for the Denmark Historical Railway Station Precinct 8.1.3b – Advertised Plan Showing Proposed Road Closures 8.1.3c – Schedule of Submissions 8.1.3d – Plan Showing Recommended Proposed Road Closures for Consideration by Minister for Lands

Summary:

Public advertising of the proposed closure of three (3) unmade road reserves in the vicinity of Denmark No. 3 Railway Station Reserve (Reserve 30277) has occurred, along with consultation with the relevant government departments/servicing authorities, and as a result it is recommended that Council resolve to close the roads, with the land to be amalgamated with the adjoining Reserve 30277.

Background:

At its Ordinary Meeting of Council held on 27 May 2014, Council considered the draft Denmark Historical Railway Station Precinct Concept Plan and resolved as follows (Res No: 240514):

That with respect to the draft Denmark Historical Railway Station Precinct at the Denmark No. 3 Railway Station Reserve, Council:

1. *Adopt the Concept Plan with amendments as shown in Attachment 8.5.1d;*
2. *Initiate the public advertising process regarding closure of the three (3) unmade road reserves being at the west and south side of Lot 1083 and at the south, western side of Reserve 30277;*
3. *Request the Minister for Lands to excise Lot 1083 from Reserve 14376 and amalgamate it into Reserve 30277;*
4. *Request the Minister for Lands to excise a portion of Lot 1086 from Reserve 15513 and amalgamate it into Reserve 30277 and adjust the road reserve to match the existing built road alignment;*
5. *Provide a copy of the final Concept Plan to all current Lessees and known stakeholders;*
6. *Advise the Spirit of Play that has amended the plan such that the label of the building that they currently lease is titled 'Old Post Office Building' so as to provide clarity that it is Council's view that at expanded community school at the site is not a long term complementary use at the Heritage Precinct.*

Attached as Attachment 8.1.3a is the final Concept Plan for the Denmark Historical Railway Station Precinct.

Consultation:

Public advertising of the proposed road closure was undertaken in accordance with the Section 58 of the *Land Administration Act 1997*, namely:

- Advertising notice in the 25 September 2014 edition of the Denmark Bulletin inviting public comment on the proposal;
- Letters to three (3) adjoining landowners inviting comment on the proposal; and
- Letters to Department of Mines & Petroleum, Department of Planning, Main Roads WA, Telstra, Water Corporation and Western Power inviting comment on the proposal.

Attached at Attachment 8.1.3b is the plan showing the proposed road closures and the resultant amalgamations and land dedication to reflect the actual alignment of Crellin Street.

In June 2014, the CEO and the Director of Planning & Sustainability met with the Manager South West & Great Southern Region of the Department of Lands (Mr Ron Pumphrey) to discuss a range of relevant land related matters, including the land related matters pertaining to Reserve 30277 and the surrounding land parcels. As a result of this meeting, it was determined that the road closure advertising process should be progressed first and then the Department of Lands can attend to the reserve and road reserve processes concurrently.

Statutory Obligations:

Section 58 of the *Land Administration Act 1997* sets out the process for road closures.

Policy Implications:

There are no known policy implications relating to the report or officer recommendation.

Budget / Financial Implications:

The costs associated with advertising of the proposed closure of the road reserves has been accommodated for within Council's existing advertising budget.

Any surveying costs required pertaining to the land that the Crellin Street alignment currently takes to be dedicated as road reserve can be accommodated for within Council's existing legal budget.

Strategic Implications:

From a Planning and Infrastructure Services perspective, the unmade road reserves are not required for road purposes and it is appropriate that the unmade road reserve be closed and amalgamated into the adjoining Reserve 30277 – which is a reserve that is subject to a Management Order to the Shire of Denmark for "Historical Precinct, Recreation & Community Purposes".

The report and officer recommendation is consistent with Council's adopted Mission and Vision and assists achieve the following specific adopted Strategic Objectives and Goals.

Governance Objective – the Shire of Denmark provides renowned leadership in sustainability, is effective with both its consultation with its people and its management of its assets, and provides transparent fiscally responsible decision making.

Sustainability Implications:

➤ **Governance**

The processes provided for in Section 58 of the *Land Administration Act 1997* pertaining to road closures has been adhered to.

➤ **Environmental:**

There are no known significant environmental considerations relating to the report or officer recommendation.

➤ **Economic:**

There are no known significant economic considerations relating to the report or officer recommendation.

➤ **Social:**

There are no known significant social considerations relating to the report or officer recommendation.

➤ **Risk:**

Risk	Risk Likelihood (based on history and with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That Council do not support the road closures	Unlikely (2)	Insignificant (1)	Low (1-4)	Inadequate Engagement - Community / Stakeholders / Crs	Accept Officer Recommendation
That the Minister for Lands does not support the road closures	Possible (3)	Insignificant (1)	Low (1-4)	Inadequate Engagement - Community / Stakeholders / Crs	Manage by liaison with Department of Lands staff as the matter progresses.

Comment/Conclusion:

Public advertising of the proposal has occurred as per Section 58 of the *Land Administration Act 1997*, with a total of seven (7) submissions received – refer Attachment 8.1.3c for the Schedule of Submissions.

Having regard to the submissions received and further review of the proposal, it is recommended that the proposed extent of the road closures be modified to remove a triangular portion of the unmade road reserve to the south of Lot 1083 where it intersects with Inlet Drive as this forms part of the Inlet Drive road reserve – refer Attachment 8.1.3d.

Voting Requirements:

Simple majority.

<p>COUNCIL RESOLUTION & OFFICER RECOMMENDATION</p> <p>MOVED: CR MORRELL</p> <p>That Council with respect to the proposed closure three (3) unmade road reserves in the vicinity of Denmark No. 3 Railway Station Reserve (Reserve 30277):</p> <ol style="list-style-type: none"> Note the submissions received; Request the Minister for Lands to close the roads as per Section 58(1) of the <i>Land Administration Act 1997</i>, with the land to be amalgamated with adjoining Reserve 30277 (as per Attachment 8.1.3 d); and Advise the submitters accordingly of Council’s resolution. <p>CARRIED UNANIMOUSLY: 8/0</p>	<p>ITEM 8.1.3</p> <p>SECONDED: CR SEENEY</p> <p>Res: 081214</p>
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8.1.4 DENMARK-NORNALUP HERITAGE RAIL TRAIL POLICY

File Ref:	A3300
Applicant / Proponent:	Not applicable
Subject Land / Locality:	Denmark-Nornalup Heritage Rail Trail
Disclosure of Officer Interest:	The author of the report discloses an Impartiality Interest as she lives adjoining the subject site
Date:	24 November 2014
Author:	Donna Sampey, Sustainability Officer
Authorising Officer:	Annette Harbron, Director of Planning & Sustainability
	8.1.4a – Draft Denmark-Nornalup Heritage Rail Trail – Vehicles, Gates and Fences Policy advertised for public comment
Attachments:	8.1.4b – Schedule of Submissions
	8.1.4c – Proposed Final Denmark-Nornalup Heritage Rail Trail Access Policy for adoption
	8.1.4d – Existing access agreements and new agreements requested

Summary:

In October 2010 Council resolved to advertise a draft Denmark-Nornalup Heritage Rail Trail Policy and investigate the implications of requiring stock-proof fencing along the Rail Trail.

The draft Rail Trail Policy was advertised for public comment in June 2014, with twenty (20) submissions received.

Following review of submissions and additional considerations by Shire staff, it is recommended that Council adopt the draft Rail Trail Policy with modifications.

Background:

At the Ordinary Meeting of Council held on 28 October 2010, Council considered an item relating to “Fencing Relocation of Heritage Trail – Wentworth Road”, wherein they resolved the following additional resolutions:

- Res No: 091010 - *That staff investigate the implications of requiring the landowner/landowners adjoining Reserve 42507 to construct stock proof fencing along their boundaries and to report to Council with recommendations.*
- Res No: 101010 - *That Council advertise the draft Heritage Rail Trail Policy in a local newspaper(s) for a period of 21 days and refer it to all relevant landowners who adjoin the Denmark-Nornalup Heritage Rail Trail for public inspection and comment prior to further considering the Policy.*

The need for a Denmark-Nornalup Heritage Rail Trail (hereafter referred to as ‘Rail Trail’) Policy, as detailed in the 28 October 2010 Council report, arose from perceived issues regarding:

- Access – recreational use of the Rail Trail was hampered by adjoining landowner’s gates being closed across the Rail Trail, meaning users had to continually open and close gates on Council land. The gates were recognised as providing no benefit to Council or users of the Rail Trail as a designated thoroughfare. Further importance was placed upon unhampered recreational use of the Rail Trail, given the alignment corresponds to the world-class Bibbulmun Track and Munda Biddi Trail in many areas.
- Adverse possession – the boundary fence line of properties adjoining the Rail Trail does not correspond to the cadastral boundary in some areas, meaning portions of Council’s Rail Trail reserve has been excluded from public use. While this has not prevented use of the Rail Trail by recreational users, it means that Council land is being used by adjoining landowners for private purposes eg. grazing, horticulture.

The 'Draft Heritage Trail Policy' included in the Officer's report to Council and resolved for advertising was:

1. The following policy applies to **gates** erected and or to be erected within (not on the cadastre boundary of) Council's Denmark – Nornalup Heritage Rail Trail:

a. They are to be licensed on an annual basis and registered in Council's Register of Public Gates.

b. The licence is renewable annually upon payment of the Council's adopted fee (\$30 in the 2010/2011 Budget).

c. The ownership of and responsibility for maintenance of any licensed gate lies with the licence holder.

d. In order to assist the efficient and safe movement of pedestrians, cyclists and horse riders, gates must be kept in the "open" position to allow uninterrupted thoroughfare of the trail unless required by the adjoining landowner and licence holder for temporary stock movement or management purposes. The maximum time a gate can be closed is 2 hours within any given day unless otherwise agreed by the CEO.

e. This Policy and the effect of permitting gates within the Rail Trail may be reviewed by Council from time to time.

2. The following policy applies to existing **fences** erected within (not on the cadastre boundary of) Council's Denmark – Nornalup Heritage Rail Trail:

a. Council land excluded from general access to the public will be subject to a standard management agreement between the Shire and the State Land Services with the following non exhaustive list of inclusions:

i. Term not to exceed 5 years with a further right of review not to exceed 5 years.

ii. The responsibility for maintenance of the fencing lies 100% with the lessee.

iii. Any replacement fences shall be positioned on the correct alignment of the Denmark – Nornalup Heritage Rail Trail.

b. The management agreement acknowledges the rights of the adjacent landowner and/or occupier to utilise the Denmark – Nornalup Heritage Rail Trail land the subject of the agreement in accordance with the following:

i. For property access;

ii. For grazing purposes;

iii. For replanting native or endemic vegetation; and

iv. Apart from water pipes and infrastructure constructed prior to 2000, no permanent infrastructure or development is permitted without the express written permission of the Council.

Consultation:

The version of the draft Rail Trail Policy advertised for public comment (refer Attachment 8.1.4a) differed slightly from the draft policy in the 28 October 2010 Council report. While the intent of the original draft policy was retained, the content of the draft policy which was advertised for public comment was updated to reflect changes in Council's Fees and Charges Schedule, exemptions provided for movement of certain vehicles and background information added on the intent of the policy.

Public advertising of the draft Rail Trail Policy commenced on 11 June 2014 and closed on 9 July 2014. During the advertising period the following consultation took place:

- Advertising notice in the Denmark Bulletin on 12 June 2014 inviting public comment;
- Referral to the 106 landowners directly adjoining the Rail Trail inviting public comment;
- Referral to the following government departments/interested stakeholders inviting comment:
 - Bibbulmun Track Foundation
 - Department of Parks and Wildlife
 - Department of Lands
 - Green Skills Inc.
 - Munda Biddi Trail Foundation; and,

- Advertising notice inviting public comment on the proposal and the associated draft policy displayed at the Shire Administration Office, the Shire Library and the Shire's website for the duration of the public advertising period.

The draft Rail Trail Policy was also referred to the 4 August 2014 Paths and Trails Advisory Committee (PATAC) meeting.

At the close of the advertising period, a total of twenty (20) submissions were received – thirteen (13) from the public and seven (7) from government departments/interested stakeholders. Attachment 8.1.4b is the Schedule of Submissions – with all submissions received being entered into the schedule as verbatim. Column 4 of the Schedule of Submissions represents Sustainability Service's comments/response to the submissions.

In developing the version of the draft Rail Trail Policy which is being presented to Council for adoption, liaison occurred with the City of Busselton and Shire of Augusta-Margaret River who are in the process of establishing the Busselton to Flinders Bay Rail Trail. City and Shire staff acknowledged to the Officer that whilst prohibiting all vehicle traffic to their Rail Trail is the optimal solution, they have realised it is not possible in a number of situations and planned to address requests for access to their Rail Trail on a case-by-case basis. The *Land Report for the Busselton to Flinders Bay Rail-Trail* recognised that "A permit for vehicle access over the reserve is one example that may be permitted under local law, subject to any conditions applied by the local government".

A number of Rail Trail and multiple-use policies have been developed by other Shires in Western Australia, including Serpentine-Jarrahdale, Busselton and Augusta-Margaret River. However, these policies are predominantly concerned with the establishment and maintenance of trails and do not specifically address access issues.

Statutory Obligations:

- The *Local Government (Uniform Local Provisions) Regulations 1996* includes the following related provisions for thoroughfares:
 - **Regulation 8. Separating land from public thoroughfare.** *A person who is the owner of occupier of land must keep in good repair any fence or gate that separates the land from a public thoroughfare.*
 - **Regulation 9. Permission to have gate across public thoroughfare.** (1) *A person may apply to the local government for permission to have a across a public thoroughfare under the control or management of the local government a gate or other device that enables motor traffic to pass across the public thoroughfare and prevents livestock from straying.*
 - (4) *The local government may impose such conditions as it thinks fit on granting permission under this regulation including, but not limited to, conditions on the construction, placement and maintenance of the gate or other device across the public thoroughfare*
 - (8) *A local government must keep a register of gates and other devices constructed in accordance with a permission granted under this regulation.*

The Shire has an active Gate Permit Register. Permits are issued as per Delegation D120108 with fees applied as per Council's Operative Fees and Charges Schedule.

- The *Shire of Denmark Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law (2001)* permits certain activities on thoroughfares (which is included in the definition of a public place) with a permit:
 - **Clause 4.1 Leaving animal or vehicle in public place or on local government property.** (1) *A person shall not leave an animal or a vehicle, or any part of a vehicle, in a public place or on local government so that it obstructs the use of any part of that*

public place or local government property, unless that person has first obtained a permit or is authorised to do so under a written law.

- Section 484 of the *Local Government (Miscellaneous Provisions) Act 1960* also establishes an offence for the owner of cattle to stray into a public place.
- The *Shire of Denmark Local Government Property Local Law* relates to the Rail Trail only where its tenure is 'reserve' for the purposes of 'Heritage Trail', not 'road reserve'. It allows the prohibition of certain activities on local government property:
 - **Clause 2.8 (1).** *A determination may provide that a person is prohibited from pursuing all or any of the following activities on specified local government property – (c) taking, riding or driving a vehicle on the property or a particular class of vehicle.*
- The *Shire of Denmark Local Laws Relating to Fencing* specifies the type of material prohibited for fencing along a thoroughfare:
 - **Clause 12. Barbed Wire and Broken Glass Fences.** *(6) An owner or occupier of a Rural Lot shall not place or affix barbed wire upon a fence on that Lot where the fence is adjacent to a thoroughfare or other public place unless the barbed wire is fixed to the side of the fence posts furthest from the thoroughfare or other public place.*
- The *Land Administration Act 1997* allows for the Shire, as management body of the Rail Trail, to submit a management plan to permit other uses of the Rail Trail reserve:
 - **Section 49. Management Plan for Managed Reserve.** *(1) A management body may submit to the Minister for his or her approval a plan for the development, management and use of the Crown land in its managed reserve for the purpose of that managed reserve.*

A Management Plan, approved by the Minister for Lands, exists for the Rail Trail reserve between Limbourne and McLeod Roads. The Plan formally permits vehicle access to Lots 3298, 5273, 7187, 7214 and 7313 Limbourne Road, which are otherwise land-locked. The Plan was last updated in June 2014.

- Section 3.50 of the *Local Government Act 1995* permits the Shire to close a thoroughfare to vehicles and sets conditions for notifying the public of the intended closure. This would apply to those areas of the Rail Trail whose current tenure is 'road reserve'.

Policy Implications:

The draft Denmark-Nornalup Heritage Rail Trail Access Policy will become a new Council policy if adopted by Council.

The *Proposal to Develop the Denmark-Nornalup Multi-Use Heritage Rail Trail Report* (Green Skills, 2001) acknowledged the need for continuing access to the Rail Trail by landholders and recommended:

“The Shire prepare Agreements with landholders using the railway reserve for access to their properties...”

Budget / Financial Implications:

As per Council's Operative Fees and Charges Schedule, a Gate Permit Fee is currently charged at \$30 (inc. GST). If adopted by Council, the draft Rail Trail Policy would require the creation of two new fees for the following permits:

- Grazing stock on the Rail Trail reserve; and,
- Vehicle access across or along the Rail Trail, where the permit applicant owns land directly opposite and on either side of the Rail Trail, and the access is required to

facilitate the current land use eg. farming; and/or where other means of access to the property is severely hampered, except via the Rail Trail.

The Officer recommends an annual fee of \$30 (inc. GST) for these permits, which is in line with the Gate Permit fee.

Note that in the Shire's 2014/15 Financial Year Budget, \$10,000 (excl. GST) has been allocated to maintenance of the Rail Trail, with a further \$40,000 (excl. GST) available to PATAC for paths and trails projects through the Shire, which may include the Rail Trail.

Strategic Implications:

The report and officer recommendation is consistent with Council's adopted Mission and Vision and assists achieve the following specific adopted Strategic Objectives and Goals.

Economic Objective – Denmark's economy is diverse and vibrant – its primary industries of tourism and agriculture rely on and enjoy natural and other assets that are sensibly managed and promoted.

Agriculture Goal - That the Shire of Denmark acknowledge agriculture as a diverse and prominent industry in the region, and implements and advocates for policies and strategies that will assist farming to improve its effectiveness and viability.

Social Objective – Denmark's communities, people and places are connected and creative, vibrant and dynamic, healthy and safe.

Recreation Goal - monitor all forms of recreational and cultural facilities and services, and take careful account of the level of community support for those in determining the improvements or new facilities to be supported together with their relative contribution to personal and community well-being.

Sustainability Implications:

➤ **Governance:**

The Gate Permit Register is already administered by Shire staff, noting two (2) new registers will be required for vehicle and grazing permits issued.

➤ **Environmental:**

The draft Rail Trail Policy allows Council to prohibit grazing of the Rail Trail reserve where there are environmental values.

➤ **Economic:**

The draft Rail Trail Policy will allow Council to regulate other uses of the Rail Trail. Keeping a track of these uses may enable Council to better identify the party responsible for any damage to Council's Rail Trail infrastructure and seek repair at their cost and to Council's satisfaction. This is a suggested condition of any permit issued to a landowner.

Where not already present, warning signage will need to be installed on sections of the Rail Trail where vehicle access is permitted. The signs are needed to warn recreational users about the presence of vehicles, set speed limits and any other conditions for vehicles. Signs of this nature are already in place in sections of the Rail Trail where vehicles have been permitted access under a formal Management Plan or Easement Lease approved by the Minister of Lands. 'Gate ahead' signs are generally already present in the required locations, but will need to be checked for any replacements/repairs needed.

➤ **Social:**

The Rail Trail is public land designated for the enjoyment of recreational users for the purposes of horse riding, bicycling and walking. In many areas, the Rail Trail shares an alignment with the internationally-renowned Munda Biddi Trail and Bibbulmun Track. Gates across the Rail Trail can diminish its primary use, by requiring recreational users to have to open and close gates.

Similarly, unauthorised vehicles on the Rail Trail create conflict and a safety hazard for recreational users and a liability issue for Council.

Historically, adjacent landowners have accessed the Rail Trail in order to move stock, graze stock, move between paddocks located on either side of the Rail Trail and access their property for convenience or when other routes are hindered eg. flooding. Some vehicle access and gates across the Rail Trail have already been formally approved through the Shire’s Gate Permit Register, Management Plans endorsed by the Minister for Lands and conditions contained within Easement Leases (refer Attachment 8.1.4c).

The draft Rail Trail Policy realises the need for continuing access by some adjoining landowners, but seeks to regulate and limit, wherever possible, their use of this public land in order to protect recreational user’s safety and ensure continued enjoyment, while minimising the risk of liability for Council. In enhancing the primary use of the Rail Trail, the draft Rail Trail Policy seeks to prohibit any further gates across the Rail Trail. Under delegation D120108, the CEO will need to determine whether to issue a permit for current, unapproved gates and set conditions for their use. The draft Rail Trail Policy also aims to reduce the number of vehicles using the Rail Trail by adjacent landowners and allows Council to minimise safety and liability risk through installation of appropriate warning signage.

➤ **Risk:**

Risk	Risk Likelihood (based on history and with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
Council are liable for death or injury to a trail user as a result of altercation with vehicle on trail	Rare (1)	Catastrophic (5)	Moderate (5-9)	Inadequate Employee or Visitor Safety & Security	Council adopt the draft Rail Trail Policy OR Accept that vehicles will utilise Rail Trail. Manage by placing signage along entire length of Rail Trail warning recreational users of vehicles on Trail

Comment/Conclusion:

Requirement for Stock Proof Fencing

Existing local laws and State Acts set provisions for adjoining landowners to ensure that livestock do not wander onto public places and provides a standard for fencing abutting public thoroughfares:

- *Local Government (Miscellaneous Provisions) Act 1960* – establishes an offence for cattle to be trespassing on a public place (Section 484);
- *Local Government (Uniform Local Provisions) Regulations 1996* – sets a maintenance standard for fencing abutting a thoroughfare (Regulation 8);
- *Shire of Denmark Local Laws Relating to Fencing* – prohibits certain types of materials from use in fencing abutting a thoroughfare (Clause 12).

As such, adjoining landowners are required to keep stock within their property. How they achieve this is up to the landowner, but if fencing is used, it must be of a good standard and any barbed wire must be located on the inside of the fence line.

With reference to the Council resolution relating to stock-proof fencing, Reserve 42507 makes up over half of the Rail Trail reserve west of Brazier Street, but the results of the investigation would apply equally to the remainder of the Rail Trail.

From an audit conducted by Shire staff in 2013, the Rail Trail alignment appears to be adequately fenced where there is stock in adjoining properties and the Shire Rangers have not reported any recent incidents of stock trespass on the Rail Trail due to inadequate fencing.

Policy

The final draft Rail Trail Policy which is now being presented to Council for adoption (refer Attachment 8.1.4c) has been altered from the version that was advertised for public comment. The following changes are proposed:

- No exemptions have been made for vehicle access along the Rail Trail, except where a formal Easement Lease or Management Plan approved by the Minister of Lands exists. A permit is now required for all types of vehicle access. This change has been made to simplify compliance enforcement for Shire staff and regulate all access in order to minimise the Shire's liability risk. This is also in line with the approach taken by other Shires managing Rail Trails.
- Grazing has been included, given a submission from an adjoining landowner has indicated this practice is still occurring on the Rail Trail.
- Suggested general conditions for permits issued by Council added.

Whilst there is a need for the draft Rail Trail Policy to protect recreational users, it also seeks to decrease the liability risk for Council by regulating other uses. The *Proposal to Develop the Denmark-Nornalup Multi-Use Heritage Rail Trail Report* (Green Skills, 2001) states that as land manager:

"There is no doubt that liability responsibility will rest with the trail developed – the Council – and hence, every attempt should be made to minimise exposure risk of legal action."

Through the permit system specified in the draft Rail Trail policy, Council is able to assess the application for use of the Rail Trail and determine whether it constitutes an acceptable risk to Rail Trail users. It is also able to implement mitigations eg. signage in those areas where use has been approved, to further increase safety to Rail Trail users.

Tenure of the Rail Trail is varied along its alignment, and includes:

- Road reserve – South Coast Highway. Managed by Main Roads WA.
- Road reserve (made and unmade) - Rudgyard Place. Managed by Council.
- Reserve 41815 – purpose 'Heritage Trail'. Managed by Council.
- Reserve 30277 – purpose 'No. 3 Railway Station'. Managed by Council.
- Reserve 42507 - purpose 'Heritage Trail'. Managed by Council.
- Road reserve – Limbourne Road. Managed by Council.
- Easement – Lot 603 on Deposited Plan 51563.
- Road reserve – Benson Road. Managed by Council.
- Road reserve (made and unmade) – Station Road. Managed by Council.

Where tenure is reserve for the purposes of 'Heritage Trail', Council is able to restrict vehicles from using the Rail Trail under the *Shire of Denmark Local Government Property Local Law* and require adjoining landowners to obtain a permit to use a vehicle on these sections of the Trail. However, where the Rail Trail tenure is 'road reserve', whether made or unmade, no law or act prevents vehicle access, including motorbikes, when a declaration is made pursuant to section 3.5 of the Local Government Act 1995 (after advertising and consideration of submissions). This may have implications for 'no vehicle access' signage already placed on the Rail Trail where the tenure is road reserve.

The Officer recommends Council review the tenure of the Rail Trail over its entire length in order to determine which areas should be retained as road reserve and those that should be changed to reserve for the purposes of 'Heritage Trail'. Unmade road reserves should also be considered for closure. Council can then legally enforce no vehicle access, except with Council approval under the provisions of the draft Rail Trail Policy. In this regard, Shire staff has already

had initial discussions with Department of Lands on this matter and they are supportive of such an approach.

A number of properties on the Rail Trail have existing Management Plans or Easement Leases approved by the Minister of Lands which contain conditions allowing vehicle access or gates across the Rail Trail, or have gates which have been approved in the Gate Permit Register. As part of the draft Rail Trail Policy public submissions, a number of landowners have requested continuing access to the Rail Trail (refer Attachment 8.1.4d). It is recommended Shire staff also contact landowners that appear to be accessing the Rail Trail via vehicle as a result of an audit undertaken in 2013 and formalise access if required.

Voting Requirements:

Simple majority for Item 8.1.4a.

Absolute majority for Item 8.1.4b (an absolute majority decision of Council is required for adoption or amendment of a fee or charge (section 6.16 of the Local Government Act 1995)).

8.42pm – *The Director of Planning & Sustainability left the room.*

8.43pm – *The Director of Planning & Sustainability returned to the room.*

8.46pm – *Cr Gillies left the room.*

OFFICER RECOMMENDATION

ITEM 8.1.4a

That with respect to the draft Denmark-Nornalup Heritage Rail Trail Policy, Council:

1. Note the submissions.
2. Adopt Attachment 8.1.4d as the final Policy.
3. Advise the submitters accordingly.
4. Require the tenure of the Rail Trail be reviewed to determine which areas to retain as road reserve and those which should be changed to reserve with purpose of "Heritage Trail".
5. Advertise its intent as per Section 3.50(4) of the *Local Government Act 1995* to permanently close unmade sections of road reserve on Rudgyard Place and Station Road which are part of the Rail Trail to motorised vehicles, machinery and equipment, including motorbikes and all-terrain vehicles.

COUNCIL RESOLUTION

ITEM 8.1.4a

MOVED: CR SEENEY

SECONDED: CR MORRELL

That with respect to the draft Denmark-Nornalup Heritage Rail Trail Policy, Council:

1. Note the submissions.
2. Adopt Attachment 8.1.4c as the final Policy with the following amendments:
 - a) Under 'Gates' – replace point d) with “Standard of gate and fencing directly adjoining the gate (connecting it to the property boundary fencing) is not to be constructed (either wholly or partly) of barbed wire or use an electrified fence and is in all other ways to be in accordance with the Shire of Denmark Local Laws Relating to Fencing; and,”
 - b) Under 'Uses Deemed Not Acceptable' – new point a) (iii) to read “Fencing shall not be constructed (either wholly or partly) of barbed wire or use an electrified fence”, with current point a) iii) to become point a) iv).
 - c) Delete the first bullet point under where permits are required and insert a new bullet point where permits do not apply as follows, “Access across or along the Rail Trail, where the owner of land directly opposite and on either side of the Rail Trail, and the access is required to facilitate the current land use eg. farming.”
3. Advise the submitters accordingly.
4. Require the tenure of the Rail Trail be reviewed to determine which areas to retain as road reserve and those which should be changed to reserve with purpose of “Heritage Trail”.
5. Advertise its intent as per Section 3.50(4) of the *Local Government Act 1995* to permanently close unmade sections of road reserve on Rudgyard Place and Station Road which are part of the Rail Trail to motorised vehicles, machinery and equipment, including motorbikes and all-terrain vehicles.

8.48pm – Cr Gillies returned to the room.

AMENDMENT

MOVED: CR PEDRO

SECONDED: CR SAMPSON

That Grazing be retained as being permitted within the Policy only until such time as funding is sought for re-vegetation of the area.

THE AMENDMENT WAS PUT & TIED: 4/4

THE SHIRE PRESIDENT WAS THEN REQUIRED TO EXERCISE HIS CASTING VOTE.

THE SHIRE PRESIDENT USED HIS CASTING VOTE & VOTED AGAINST THE MOTION WHICH WAS LOST: 4/5 Res: 091214

THE ORIGINAL MOTION WAS PUT & CARRIED UNANIMOUSLY: 8/0 Res: 101214

COUNCIL RESOLUTION & OFFICER RECOMMENDATION

ITEM 8.1.4b

MOVED: CR MORRELL

SECONDED: CR THORNTON

That with respect to the draft Denmark-Nornalup Heritage Rail Trail Policy, Council adopt the following charges with effect from its date of advertising:

Vehicle Access Permit and/or Grazing Access Permit for the Rail Trail at a fee of \$30 (inc. GST) each (per annum).

CARRIED UNANIMOUSLY: 8/0

Res: 111214

Prior to consideration of Item 8.1.5 the Chief Executive Officer, through the Presiding Person, brought to the attention of the meeting the following disclosure(s) of interest:

Cr Osborne is a member of the Denmark Riverside Club Inc. and as a consequence there may be a perception that his impartiality on this matter may be affected. Cr Osborne declares that he will consider this matter on its merits and vote accordingly.

8.1.5 DENMARK RIVERSIDE CLUB DEVELOPMENT

File Ref:	A3069
Applicant / Proponent:	PTX Architects on behalf of Denmark Riverside Club Inc.
Subject Land / Locality:	No. 3 (Lot 1110) Morgan Road, Denmark (Ptn of Reserve 20403)
Disclosure of Officer Interest:	Nil
Date:	19 November 2014
Author:	Annette Harbron, Director of Planning & Sustainability
Authorising Officer:	Annette Harbron, Director of Planning & Sustainability
Attachments:	8.1.5a Planning Application Documentation 8.1.5b Request for Waiver of Planning Application Fees & Public Advertising 8.1.5c Request for Cost Sharing Arrangement in Relation to Removal of Existing Clubhouse Building 8.1.5d Municipal Heritage Inventory (2011) Place Record Form for 'Old Railway Station'

Summary:

The lessees (Denmark Riverside Club Inc) are seeking to formally lodge planning approval for the demolition of the existing Club Premises (Bowling Club – Place of Heritage Value) and development of new Club Premises (Riverside Club) on No. 3 (Lot 1110) Morgan Road, Denmark (being portion of Reserve 20403).

As per the provisions of the lease and the Shire of Denmark's Procedure *OP040239: Construction of New or Significant Alternations to Building Structures on Council Land*, owner approval of the proposed development is required to be obtained prior to formal assessment of a Planning Application. In this regard, as per Delegation 130311: *Building Structures on Council Land*, the Chief Executive Officer only has delegation to sign on behalf of Council as the landowner for minor developments (defined as gazebos, verandahs, sheds and fences), with all major development applications to be referred to Council for consideration.

In addition to the matter of Council's approval as the landowner to the planning application, the following issues in relation to this project also require Council's consideration:

- Landowner approval for the future Demolition Permit, future Building Permit Application and future Effluent Disposal System applications;
- A request from Denmark Riverside Club Inc. to waive the planning and building application fees that apply;
- Determination on extent of community consultation to be undertaken having regard to Council Resolution No: 151112 and the Denmark Riverside Club Inc.'s request for further public advertising to be waived in light of the extent of community consultation already undertaken by the Denmark Riverside Club Inc. and potential timing issues; and
- A request from Denmark Riverside Club Inc. for Council to meet the costs of recovering and retaining the existing Bowling Club's building materials.

Overall, it is appropriate that Council consent to the applications in its capacity as landowner subject to some preliminary issues being addressed upfront pertaining to car parking construction requirements and visual amenity screening measures associated with the temporary clubhouse proposal – with clarity also being provided on fees, advertising requirements and demolition requirements.

Background:Planning Application

An application for Planning Approval was lodged with Planning Services in November 2014 for the demolition of the existing Club Premises (Bowling Club – Place of Heritage Value) and development of new Club Premises (Riverside Club) on No. 3 (Lot 1110) Morgan Road, Denmark (being portion of Reserve 20403). Attached as Attachment 8.1.5a is the planning application documentation submitted to date.

Upon receipt of the Planning Application, Planning Services advised the applicant (PTX Architects) and the lessees (Denmark Riverside Club Inc.) that the Planning Application was deemed incomplete until such time as the landowner (being the Shire of Denmark) has signed the planning application form, and that as per the provisions of the lease (being Clause 3.4a Alterations & Improvements) pertaining to the site and the Shire of Denmark's Procedure *OP040239: Construction of New or Significant Alternations to Building Structures on Council Land*, owner approval of the proposed development is required to be obtained prior to formal assessment of a Planning Application. In this regard, as per Delegation 130311: *Building Structures on Council Land*, the Chief Executive Officer only has delegation to sign on behalf of Council as the landowner for minor developments (defined as gazebos, verandahs, sheds and fences), with all major development applications to be referred to Council for Council consideration.

In addition to the above, Denmark Riverside Club Inc. are seeking Council's consideration to waive the following:

- Payment of the applicable planning application fee of \$6,146.10; and
- Requirement for public advertising of the proposal.

Attached as Attachment 8.1.5b is the Denmark Riverside Club Inc.'s correspondence in this regard.

Previous Council Resolutions

The Denmark Riverside Club's project has been the subject of numerous Council deliberations over the last few years mainly pertaining to funding applications.

Relevant resolutions of Council are provided below:

- Res No. 200311 from 22 March 2011 Ordinary Meeting of Council

That with respect to the request of the Denmark Bowling Club that Council support both the principle of demolition of their existing Clubhouse, being the former Denmark Railway Station Building, and also a one third cash contribution to a new Clubhouse at the location, Council respond as follows;

1. *That Council does not support the proposed demolition of the current building;*
2. *That Council is prepared to consider supporting applications for grants for a new Clubhouse at the current site to a maximum cash and or in-kind value of one-third, plus additional self-supporting loans, only if the Club can demonstrate to Council's satisfaction that it can meet its projected long term debt and ongoing commitments and has undertaken all necessary planning for the project.*
3. *That Council staff inspect the building with a view to helping Council and the Club determine its structural integrity and suitability for relocation and or modification.*
4. *If the Club wishes to proceed with planning for a new building on the site, that prior to part 2 being determined or considered, Council staff prepare for Council's consideration a draft concept plan for the Railway Heritage Precinct accommodating a relocated Railway Station Building for the purposes of undertaking community consultation.*

- Res No. 061211 from 20 December 2011 Ordinary Meeting of Council

That with respect to the Denmark Bowling Club's Riverside Project Committee's 15 November 2011 request for financial and organisational support Council respond as follows;

- 1. Council appoint Councillor Rowland and the Manager Recreation Services as the Council's representatives on the Denmark Bowling Club's Riverside Project Committee noting that they are there in an advisory and non-voting capacity only;*
- 2. That Council approves a \$1,000 donation to undertake the concept planning for the project from its Members Donation Account Number 1410082;*
- 3. Subject to Council's annual budget deliberations and the timing of the request in the context of Council's Long Term Financial Plan (draft), it is prepared to support the principle of a request for a maximum one third contribution (indicatively being up to \$533,000) to the project cost of stage 1 of the development subject to a successful CSRFF or similar grant application(s) (consistent with Council's resolution of 22 March 2011 numbered 200311);*
- 4. That Council does not support the request for an additional allocation of funding from the Shire's Royalties for Regions funding towards Stage 1 of the project as the determination of the funding source of Council's contribution is the prerogative of Council and access to funding in future years from the Country Local Government Fund is not guaranteed; and*
- 5. Council's consideration of support for stage 2 of the development relating to development of the John Clark Memorial Band Stand and associated foreshore area will be subject to consideration of the Project Committee's Concept Plan / Indigenous Heritage consultation, the Denmark Boating & Facilities Study and confirmation of indicative costings.*

- Res No. 110912 from 25 September 2012 Ordinary Meeting of Council
(NB: This pertains to a **LOST** motion)

That with respect to the CSRFF application submitted by the Riverside Clubs of Denmark, Council;

- 1. Recommend approval of their CSRFF application to the Department of Sport & Recreation.*
- 2. Contribute a maximum of 34% contribution of \$773,833 towards the total project cost of \$2,211,500 (all plus GST) subject to a successful CSRFF application.*
- 3. Agree to a self-supporting loan for the Riverside Clubs of \$160,000.*
- 4. Agree to act as a sponsor for a Riverside application for Regional Development Australia (RDA) (Fund Round 4) bid for 2013/14 funding to progress stage 2 and related work subject to the application and associated information being substantially prepared by the Clubs.*
- 5. Agree to funding the full cost of relocating and restumping the heritage portions of the former Railway Station at a site to be determined on the Denmark Railway Station No. 3 Reserve Heritage Precinct, estimated at a total cost of \$110,000 (plus GST), if it cannot be funded via other grants including through CSRFF and the RDA grant mentioned in part 3.*
- 6. Consider the funding of the agreed one third contribution of \$533,000 in the adoption of the 2013/14 Municipal Budget, subject to the project being supported by the Country Local Government Fund (CLGF) and a further \$240,833 in the 2014/15 Municipal Budget, subject to the project being supported by the CLGF in that year.*

- Res No. 151112 from 27 November 2012 Ordinary Meeting of Council

That with respect to request by the Riverside Clubs of Denmark (Inc.) to lodge a Round Three (3) Regional Development Australia Expression of Interest application submitted, Council;

- 1. Recognise the community value of the Riverside project;*
- 2. Agree to act as the sponsor for a RDA Round 3 Expression of Interest;*
- 3. Agree to contribute a maximum of \$490,852 (22%) towards the total project cost of \$2,211,500 (all plus GST) subject to successful RDA and CSRFF applications and the conditions in point 4;*
- 4. Note that it retains complete control over the financial commitment to the project and even if successful with the RDA application, Council reserves the right to evaluate their financial position dependent upon external factors such as continuation of the Country Local Government Fund and Royalties for Regions funding levels; and*
- 5. Consider the funding of the contribution of \$490,852 in the adoption of the 2014/15 Municipal Budget, subject to the conditions in point 4 and dependent upon success of the two (RDA*

and CSRFF) grant applications, which should be known by approximately March 2013 (stage two) and June 2013 (final approval) for RDA and March 2014 for CSRFF.

6. *Note that should the application be successful Council expects that the application will be required to be lodged as a development application with Council with the expectation that there would be requirement for comprehensive community consultation.*

➤ Res No. 110813 from 20 August 2013 Ordinary Meeting of Council

That with respect to the Riverside Clubs Inc.'s CSRFF Forward Planning Grant Round Application Council:

1. *Advise the Department of Sport and Recreation that the application received for the CSRFF Forward Planning Grant Round from the Denmark Riverside Club Inc. is supported by Council;*
2. *Agree to the principle of Council contributing a maximum of \$490,852 towards the total project cost of \$2,101,500 subject to a successful CSRFF application and Council being able to accommodate its contribution in consideration of the constraints of its 2014/15 and or 2015/16 financial year budgets which may be able to be sourced by other available grant funds such as the Country Local Government Fund (CGLF), at that time;*
3. *Agree to providing self-supporting loan(s) for the Denmark Riverside Club Inc. to a maximum of \$285,000 should the project proceed, noting this requires the acquittal of any previous self-supporting loans owing by the Denmark Bowling Club Inc.*

➤ Res No. 100814 from 19 August 2014 Ordinary Meeting of Council

That with respect to the Riverside Club Inc.'s CSRFF Forward Planning Grant round application, Council:

1. *Advise the Department of Sport and Recreation that the application received for the CSRFF Forward Planning grant round from the Denmark Riverside Club Inc. is supported by Council;*
2. *Agree to contribute a maximum of \$490,852 plus GST towards the total project cost of \$2,232,000 plus GST, subject to a successful CSRFF application;*
3. *Agree to a providing self-supporting loan(s) for the Denmark Riverside Club Inc. to a maximum of \$285,000 should the project proceed.*

In addition to the above, it should be noted that at the Ordinary Meeting of Council held on 27 May 2014, Council resolved to adopt the Denmark Historical Railway Station Precinct Concept Plan (Res No: 240514) – noting that this adopted plan provides for the relocation of the old Railway Station Building to the south west of the precinct with an option for community use (refer Attachment 8.1.3a in this agenda for the adopted Concept Plan).

Consultation:

Resolution No. 151112 from the 27 November 2012 Ordinary Meeting of Council references that the development application would be the subject of comprehensive community consultation.

To date, the Denmark Riverside Club Inc. have undertaken public consultation with regards to both stages of the overall project (refer Attachment 8.1.5a for the relevant information as provided by Denmark Riverside Club Inc.).

Notwithstanding Council's resolution 151112, Planning Services advises that the following advertising requirements apply to this planning application on the basis that the Bowling Club is listed as a 'Place of Heritage Value' in Town Planning Scheme No. 3 (TPS No. 3):

- Clause 7.3 Public Notice of Part VII Places of Heritage Value in TPS No. 3
The provisions of Clause 6.4 apply to applications for the approval of the Council under Clauses 7.1 and 7.2.
- Clause 6.4.2 Public Notice of Part VI Planning Consent in TPS No. 3

Where the Council is required or decides to give notice of an application as specified in Clause 6.4.1 the Council shall cause one or more of the following to be carried out:

- a) The owners and occupiers of land the Council considers likely to be affected by the application to be served with a notice in accordance with Clause 6.4.3;*
- b) A notice in accordance with Clause 6.4.3 to be published in a newspaper circulating in the Scheme Area; and*
- c) A sign displaying a notice in accordance with Clause 6.4.3 to be erected in a conspicuous position on the land for a period of 21 days.*

- Clause 5.1 Public Notification in Town Planning Scheme Policy No. 45: Planning Application Process for Heritage Places

Every planning application pertaining to a heritage place shall be referred to the Denmark Historical Society and/or the State Heritage Office (dependent on listing type) for comment.

In addition to the above, the proposal may, at the discretion of the Director of Planning & Sustainability having regard to the nature of the proposal and the significance of the place, be the subject of:

- *A newspaper advertisement inviting public comment for a minimum period of 21 days; and/or*
- *Letters to adjoining and/or nearby landowners inviting comment for a minimum period of 21 days.*

Statutory Obligations:

Clause 3.4a of the lease between Denmark Riverside Club Inc. and the Shire of Denmark (which expires on 30 October 2029) states:

Alterations and Improvements

Not to erect and build or permit or cause to be erected or built on the Leased Premises any buildings or improvements or to make any alterations or additions to the buildings or other improvements without the prior written approval of the Lessor and then only in strict accordance with plans and specifications first approved of in writing by the Lessor.

Consequently, and moreso having due regard to the Shire's Procedure *OP040239: Construction of New or Significant Alternations to Building Structures on Council Land* and related Delegation 130311: *Building Structures on Council Land*, that this matter is being referred to Council for consideration accordingly.

Should Council consent to the proposal as the landowner, it should be noted that Council as the decision making authority could still refuse the Planning Application - noting however that the applicant then has the ability to lodge a Right of Review with the State Administrative Tribunal as per the *Planning and Development Act 2005*.

Policy Implications:

Council Policy P100606: Payment of Planning & Building Fees by Not-For-Profit Community Organisations states:

When assessing planning and building applications received from not for profit community organisations on land not owned by or vested in Council, a reduction of 50% in the application fees payable shall be granted.

Where such an application relates to land owned by or vested in Council, a reduction of 100% payable to the Shire of Denmark shall apply.

Notes:

1. *All statutory charges levied by the State Government are to be paid in full by the applicant and are not subject to the provisions of this Policy.*

2. *The Shire of Denmark is unable to issue certificates of design compliance on land it owns and those fees will need to be payable by the applicant to a suitably registered Building Surveyor.*
3. *Organisation Wide Procedure Manual topic titled "Council Approved Discounts, Donations, Waivers or Reduced Fees" is to be implemented when applying this policy.*

Note: This policy does not relate to building applications to any residential dwellings nor any application totaling greater than \$1,000,000.

Notwithstanding that Reserve 20403 is the subject of a management order to the Shire of Denmark for the purpose of 'Recreation' and that Denmark Riverside Club Inc. are a not for profit community organisation, the development costs associated with this application are \$2,230,000 thus having regard to the provisions of Council Policy P100606 a reduction in the relevant application fees does not apply.

That said, Council has the ability to consider matters on their merit, and if considered appropriate they could determine that the applicant/lessee not be required to pay the relevant application fees to the Shire of Denmark.

Budget / Financial Implications:

Should Council wish to waiver the Shire application fees for this development (total \$8,481.10), the Shire of Denmark's Procedure OP040228: *Council Approved Discounts, Donated Fees or Products, Waivers or Reduced Rental/Lease Charges* states:

Where the Council by resolution, Council Policy or CEO under delegation, approves of a reduced, discounted or donated / waived fee, rental, lease or charge to apply to a particular external applicant (generally community groups) the value of the subsidy or discount shall be still 'credited' to the appropriate income account via either general journal effected by the Finance Directorate (requested by whichever Directorate is responsible for implementing the decision) or via cheque request to Council (note for administrative efficiency and reduced cost, journals are supported over cheque requests).

This same principle also applies to leased property to community groups that pay a significantly reduced fee to Council less than valuation or market (for example \$1 pa for a building). Note that whilst 'commercial' valuations are often helpful to ascertain the value of the discount, the cost of obtaining these valuations makes it counterproductive. A 'best guess' estimate of the rental value or an estimate obtained from a real estate agent would suffice in this instance.

In this way the following benefits accrue;

- *the service that had to 'bear' the Council / CEO determination to reduce the fee or charge will not be disadvantaged (in terms of reduced income to the relevant service area) and;*
- *the true cost of providing a particular service or facility is acknowledged and;*
- *there is less likelihood of one service area of Council subsidising another and as a result potentially being seen as less 'sustainable' and;*
- *Council appreciates (and has to budget for) the true cost of providing discounted / reduced fees and charges.*

The expense account 'drawn' from will generally be debited (costed) to a relevant Members Donations Account under Administration – Members of Council.

As at 19 November 2014, the current expenditure for Account 1410082 was \$3,942 – noting that the 14/15 Municipal Budget provides for a total expenditure of \$18,650.

Strategic Implications:

The report and officer recommendation is consistent with Council's adopted Mission and Vision and assists achieve the following specific adopted Strategic Objectives and Goals.

Governance Objective – the Shire of Denmark provides renowned leadership in sustainability, is effective with both its consultation with its people and its management of its assets, and provides transparent fiscally responsible decision making.

Sustainability Implications:

➤ **Governance**

Due regard has been given to the relevant Council Policy, Organisational Procedure Manual and Delegation Register provisions relating to the report and officer recommendation.

➤ **Environmental:**

Environmental considerations relating to the development proposal will be considered as part of the planning application process.

➤ **Economic:**

There are no known significant economic considerations relating to the report or officer recommendation.

➤ **Social:**

Social considerations (built heritage and indigenous heritage – given the property is adjacent to Denmark River) will be considered as part of the planning application process.

➤ **Risk:**

Risk	Risk Likelihood (based on history and with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That Council do not support the planning application as the landowner	Unlikely (2)	Insignificant (1)	Low (1-4)	Inadequate Engagement - Community / Stakeholders / Crs	Accept Officer Recommendation
That Council not support the request for the waiving of Shire application fees	Possible (3)	Insignificant (1)	Low (1-4)	Inadequate Engagement - Community / Stakeholders / Crs	Accept Officer Recommendation

Comment/Conclusion:

Landowner Approval for Required Applications

Council has been aware of this project for some time and at the 19 August 2014 Ordinary Meeting of Council resolved to agree to contribute a maximum of \$490,852 (plus GST) towards the total project cost of \$2,232,000 (plus GST) subject to a successful CSRFF application.

The Denmark Riverside Club Inc. have submitted their CSRFF application and it is anticipated that an announcement of successful applications will be made in February 2015 – noting this is the advice provided by the Department of Sport & Recreation as a result of recent enquiries by the Director of Planning & Sustainability.

Given Council’s financial support, and representation (in an advisory & non-voting capacity only) on the Riverside Project Committee (via Cr Belinda Rowland & Mr Damian Schwarzbach, Manager Recreation & Youth Services) it is appropriate that Council consent to the relevant applications that are required to progress this development proposal – being planning application, building permit applications, effluent disposal system application and demolition permit application.

In this regard it should be noted that although a formal assessment has not been undertaken by Planning Services to date, Planning Services provided preliminary comments on the December 2012 plans (noting such plans are similar to the plans currently lodged for planning application purposes) and have undertaken an initial assessment of the plans lodged to date and at this

stage have noted the following that Council may wish to provide some direction on (in its capacity as the landowner in the first instance at this stage) such that the applicant/lessee is aware of Council's requirements in this regard:

- The plans provide for a 26 bay sealed car park and an indicative layout for a 35 bay unsealed car park (final layout subject to finalisation of arborist's report). As per TPS No. 3 the car parking requirements for 'Clubs' is 1 car parking bay per 4 persons – thus with a maximum occupancy of 200 persons a minimum of 50 car parking bays are required to be provided on-site, and given the nature of the development and the location of the development being on the entrance to town it is recommended that Council should insist on the car parking areas being sealed (asphalt, concrete or brick paved) to the Shire specifications with all costs associated with this requirement attributed to the developer.

In this regard it is noted that in the CSRFF application documentation there is reference in the Quantity Surveyors report of *"Works to the 35 & 5 bay car park areas – to be completed by the Shire of Denmark"*. The Director of Planning & Sustainability discussed this reference in the CSRFF application with Mr Alan Davis from the Denmark Riverside Club and he advised that he considered they would be responsible for all development costs associated with the car parking and that this is likely to have been an oversight as such.

As a result, the officer recommendation provides reference that the car parking areas are to be sealed to Shire specifications and all costs associated with this requirement to be met by the developer in order to ensure that all parties are clear on the requirements that will apply in this regard upfront.

- In relation to the car park design as currently shown, the following is noted:
 - No provision has been made for long vehicle parking on-site – noting that although there is no legal requirement for long vehicle parking to be provided, it is considered that some bays should be provided on-site given the intended users of the facility (i.e. canoeists, kayakers). From a preliminary review of the plans it is considered there is potential to provide for long vehicle parking bays with some minor modifications to the car parking layout.
 - The two (2) car parks do not provide for vehicle connectivity, with advice received from the architect that the existing stairs on-site will be retained to provide pedestrian connectivity only, noting there are level differences between two car parking areas. In this regard it is acknowledged that this is the case but it is not an insurmountable level difference and the provision of a vehicle driveway connecting the two (2) car parking areas is considered a practical arrangement rather than having drivers needing to exit one (1) car parking area back onto the public road network to find a car parking spot in the other car parking area.
 - The width of the crossover onto Morgan Road (being approximately 17 metres) does not comply with the Shire's crossover specifications (maximum width of 10 metres for a commercial crossover). From discussions with the architect, the crossover as shown on the plans essentially relates to the current arrangement. From an officer perspective the current situation is acknowledged, however it is considered that with any redevelopment of the site that compliance with Shire specifications should be adhered to.
 - In relation to the driveway onto Fyfe Street, the current design provides for in and out movements either side of the existing padmount transformer located on-site. In this regard, Planning Services will refer the application to Western Power for their comment on whether this arrangement is appropriate, and if so whether any protective bollards are required to minimise vehicles damaging the infrastructure given the proposed driveway configuration.
- During construction a temporary clubhouse is proposed to be established on-site utilising the existing shed that is located on the southern side of the existing clubhouse – refer Attachment 8.1.5a for details.

From a Planning Services perspective it is entirely appropriate that a temporary clubhouse be established on-site whilst the new facilities are under construction. The issue for Council's consideration is whether the location on the South Coast Highway boundary is appropriate and/or whether additional visual amenity screening measures are required given the temporary facilities are likely to be on-site for a period of approximately eighteen (18) months and the fact that the development site is on the entry approach to Denmark townsite.

From a Planning Services perspective, it is considered that visual amenity screening measures will be required to address the visual amenity of the 'shed' – in particular the elevation to South Coast Highway. In this regard it is considered that the best way to address this requirement is for the building to be located in position, with discussions to occur with the Shire's Director of Planning & Sustainability to determine appropriate visual amenity screening measures at that point in time.

Although the above issues can be addressed as part of the planning application consideration process, it is considered that if Council have firm views on any of these issues at this point in time that as the landowner they can seek to ensure that any proposal addresses such requirements upfront.

Request to Waiver Shire Application Fees

Based on a development value of \$2.23 million, the relevant Shire application fees associated with this project are as follows:

Fee Description - \$2.23 million	Amount
Planning Application Fee	\$6,146.10
Certified Building Permit Application Fee	\$2,007.00
Demolition Application Fee	\$92.00
Effluent Disposal System Application Fee	\$236.00
TOTAL	\$8,481.10

It should be noted that additional fees will apply to this application that are not Shire application fees, being:

- Building Permit Levy - \$2,007.00
- CTF Levy - \$4,460.00
- Certificate of Design Compliance Fee – relevant Certifier's fees apply (noting the Shire of Denmark cannot be the certifier for this project).

As per Council Policy P100606, all statutory charges levied by the State Government are to be paid in full by the applicant and not subject to the provisions of the Policy; nor are the costs associated with obtaining a certificate of design compliance.

In considering this request to waiver the Shire application fees, noting that Council Policy P100606 provides for fees to be waived for development proposals up to \$999,999, it is considered appropriate that Council consider reducing the extent of the Shire application fees by waiving the fees that would relate to a proposal with a development cost of \$999,999 – with the applicant/owner to pay the balance.

In this regard, the applicable Shire application fees for a project with a development value of \$999,999 are as follows:

Fee Description - \$999,999	Amount
Planning Application Fee	\$2,985.00
Certified Building Permit Application Fee	\$900.00
Demolition Application Fee	\$92.00
Effluent Disposal System Application Fee	\$236.00
TOTAL	\$4,213.00

Thus the balance amount pertaining to the Shire application fees would be \$4,268.10 (total).

Extent of Community Consultation

As referenced in the 'Consultation' section of this report, regardless of the consultation that the Denmark Riverside Club have undertaken over the last few years regarding the project, there are minimum statutory requirements for consultation to be undertaken given the Bowling Club is listed as a 'Place of Heritage Value' in TPS No. 3. – which in this instance it is considered the appropriate advertising mechanisms would be:

- A notice in the Denmark Bulletin inviting comment; and
- Referral of the proposal to the Denmark Historical Society.

In addition to the above, it should be noted that the planning application would also be referred to the Department of Water, Department of Aboriginal Affairs and Western Power for comment.

The issue for Council's consideration is whether the above advertising mechanisms are appropriate as pertaining to the reference of 'comprehensive community consultation' in Council Resolution No. 151112.

From an officer perspective having regard to the requirements of TPS No. 3, draft Council Policy P040123: Community Engagement Policy and the consultation that the Denmark Riverside Club have undertaken to date, it is considered that the above advertising mechanisms pertaining to this planning application are appropriate.

Cost Sharing Pertaining to Removal of Existing Building

A request from Denmark Riverside Club Inc. for Council to meet the costs of recovering and retaining the existing Bowling Club's building materials has recently been received – refer Attachment 8.1.5c.

Upon receipt of the correspondence, the Director of Planning & Sustainability spoke to Mr Alan Davis from the Denmark Riverside Club to ascertain what the actual reference in Point 10 of the letter was seeking in terms of work and/or costs. From this discussion it was determined that the Denmark Riverside Club are seeking formal direction from Council as to what aspects of the building are required to be retained (noting that other than a discussion on-site back in July 2013 there is no formal resolution pertaining to this specific matter) and that depending on what is required to be retained that the costs in doing so should be met by Council (noting that at this stage such costs are unknown for there is no detail on what building materials are to be retained).

In this regard, Council may wish to provide some direction on the building materials to be retained when the existing building on-site is demolished or they could await the outcome of the public advertising process to provide such direction. From a Planning Services perspective it is considered that Council should at least await the outcomes of the advertising period for providing details of such building materials to be retained at this stage is predicated on the outcome. That said, it is acknowledged that the building has been substantially altered (as referenced in the Municipal Heritage Inventory (2011) Place Record Form – refer Attachment 8.1.5d) and that Council needs to be realistic as to what building materials are appropriate to be retained and re-used accordingly. The building materials that Denmark Riverside Club Inc. have recommended are appropriate for retention are the:

- Ridge capping;
- Rafters;
- Under purlins; and
- Floor bearers.

In terms of costs associated with recovering the materials, until such time as the details of building materials to be retained is known, the cost of the associated demolition process as opposed to conventional demolition processes (being where building materials are not being

retained) are not known. It is acknowledged that there will be additional costs associated, however it is the officer's opinion that these are development costs associated with a project of this nature (that is a request for demolish a building that is a 'Place of Heritage Value') and therefore Council should not be providing additional funds over and above what Council has already agreed to commit to the project.

That said, the costs of relocating the building materials to the Shire depot for adequate storage until such time as re-building works commence at the Denmark Historical Railway Station Precinct are appropriate to be borne by Council – noting that removal/transportation works will likely be undertaken by Shire staff.

Voting Requirements:

Simple majority.

OFFICER RECOMMENDATION

ITEM 8.1.5

That with respect to the development related matters pertaining to the development of new Club Premises for Denmark Riverside Club at No. 3 (Lot 1110) Morgan Road, Denmark, Council:

1. Consents to the proposal as required under Clause 3.4a) of the lease between the Shire of Denmark and Denmark Riverside Club Inc.;
2. Consents to the proposal as the landowner as required for the Application for Planning Consent and future Building Permits (as required should Planning Approval be forthcoming) subject to the proposal providing for the following:
 - a) The car parking areas on-site and associated crossovers being constructed and sealed (asphalt, concrete or brick paved) to Shire specifications, with all costs associated with this requirement to be borne by the developer;
 - b) A minimum of three (3) long vehicle parking bays being provided on-site;
 - c) The two car parking areas to provide for vehicle connectivity on-site; and
 - d) Visual amenity screening measures on the South Coast Highway frontage of the site may be required to be provided associated with the temporary clubhouse arrangement on-site – noting that once the building is located in position, consultation should occur with the Shire's Director of Planning & Sustainability to ascertain the actual requirements.
3. Advise the applicant and Denmark Riverside Club Inc. that the total fees of \$4,268.10 are required to be paid associated with the development proposals – noting that the fees have been reduced by \$4,213.00 to account for the provisions of Council Policy P100606: Payment of Planning & Building Fees By Not For Profit Community Organisations whereby the Shire waives 100% of the Shire application fees for developments up to the value of \$999,999.
4. Advise the applicant and Denmark Riverside Club Inc. that all statutory charges levied by the State Government and costs associated with obtaining a Certificate of Design Compliance (required for the Building Permit process) are to be borne by the developer.
5. Advise the applicant and Denmark Riverside Club Inc. that there are statutory advertising requirements that the Shire of Denmark is required to meet with this proposal, thus the request for public advertising to be waived is not able to be supported.
6. Advise the applicant and Denmark Riverside Club Inc. that in relation to the demolition component of the development:
 - a) the extent of building materials to be retained from the existing Clubhouse on-site will be determined as part of the planning application process;
 - b) All costs associated with the demolition of the existing Clubhouse on-site and retention of building materials as required via any condition of planning approval are to be borne by the developer; and
 - c) The Shire of Denmark will relocate the retained building materials from the site to the Shire's Depot, where they will be adequately stored until such time as re-building works commence at the Denmark Historical Railway Station Precinct.
7. Should there be no objections to the planning application, the Chief Executive Officer be authorised to issue the Planning Approval with appropriate conditions.

COUNCIL RESOLUTION

ITEM 8.1.5

MOVED: CR OSBORNE

SECONDED: CR SAMPSON

That with respect to the development related matters pertaining to the development of new Club Premises for Denmark Riverside Club at No. 3 (Lot 1110) Morgan Road, Denmark, Council:

1. Consents to the proposal as required under Clause 3.4a) of the lease between the Shire of Denmark and Denmark Riverside Club Inc.;
2. Consents to the proposal as the landowner as required for the Application for Planning Consent and future Building Permits (as required should Planning Approval be forthcoming) subject to the proposal providing for the following:
 - a) The car parking areas on-site and associated crossovers being constructed of gravel, asphalt, concrete or brick paving to Shire specifications, with all costs associated with this requirement to be borne by the developer;
 - b) A minimum of three (3) long vehicle parking bays being provided on-site;
 - c) The two car parking areas to provide for pedestrian connectivity on-site; and
 - d) Visual amenity screening measures on the South Coast Highway frontage of the site may be required to be provided associated with the temporary clubhouse arrangement on-site – noting that once the building is located in position, consultation should occur with the Shire's Director of Planning & Sustainability to ascertain the actual requirements.
3. Waive all Shire Application Fees (total \$8,481.10) and journal the sum to Account 1410082 (Administration - Members of Council) - noting that the current expenditure for this account is \$3,942 of a 2014/15 Budget Allocation of \$18,650.
4. Advise the applicant and Denmark Riverside Club Inc. that all statutory charges levied by the State Government and costs associated with obtaining a Certificate of Design Compliance (required for the Building Permit process) are to be borne by the developer.
5. Advise the applicant and Denmark Riverside Club Inc. that there are statutory advertising requirements that the Shire of Denmark is required to meet with this proposal, thus the request for public advertising to be waived is not able to be supported.
6. Advise the applicant and Denmark Riverside Club Inc. that in relation to the demolition component of the development:
 - a) The extent of building materials to be retained from the existing Clubhouse on-site will be determined as part of the planning application process;
 - b) Costs predominately associated with the demolition of the existing Clubhouse on-site and retention of building materials as required via any condition of planning approval are to be borne by the developer; and
 - c) The Shire of Denmark will relocate the retained building materials from the site to the Shire's Depot, where they will be adequately stored until such time as re-building works commence at the Denmark Historical Railway Station Precinct.
7. Should there be no objections to the planning application, the Chief Executive Officer be authorised to issue the Planning Approval with appropriate conditions.

CARRIED: 7/1

Res: 121214

REASONS FOR CHANGE

Council wished to remove reference to sealing the entire carpark and provide an option of gravel as a suitable material for portion of the carpark. Waiving of the application fees was also included and removal of the word 'all' from part 6) to provide some flexibility. In doing so, the Council wished to alleviate the Denmark Riverside Club of these additional, potentially onerous costs and requirements.

8.2 Director of Community & Regulatory Services

Nil

8.3 Director of Infrastructure Services

Nil

8.4 Director of Finance & Administration**8.4.1 FINANCIAL STATEMENT FOR THE MONTH ENDING 31 OCTOBER 2014**

File Ref:	FIN.1
Applicant / Proponent:	Not applicable
Subject Land / Locality:	Denmark
Disclosure of Officer Interest:	Nil
Date:	18 November 2014
Author:	Steve Broad, Accountant
Authorising Officer:	Kim Dolzadelli, Director of Finance And Administration
Attachments:	8.4.1 – October Monthly Financial Report

Summary:

It is a requirement of the Local Government Act 1995 that monthly and quarterly financial statements are presented to Council, in order to allow for proper control of the Shire's finances. In addition, Council is required to review the Municipal Budget on a six monthly basis to ensure that income and expenditure is in keeping with budget forecasts. It should be noted that the budget is monitored on a monthly basis in addition to the requirement for a six monthly review.

The attached financial statements and supporting information are presented for the consideration of Elected Members. Council staff welcome enquiries in regard to the information contained within these reports.

Background:

In order to prepare the attached financial statements, the following reconciliations and financial procedures have been completed and verified;

- Reconciliation of all bank accounts.
- Reconciliation of the Rates Book, including outstanding debtors and the raising of interim rates.
- Reconciliation of all assets and liabilities, including payroll, taxation and postal services.
- Reconciliation of the Sundry Debtors and Creditors Ledger.
- Reconciliation of the Stock Ledger.
- Completion of all Works Costing transactions, including allocation of costs from the Ledger to the various works chart of accounts.

Consultation:

Nil

Statutory Obligations:

Local Government Act 1995 Section 5.25 (1)

Local Government (Financial Management) Regulations 1996

The attached statements are prepared in accordance with the requirements of the Local Government Act 1995.

Policy Implications:

Policy P040222 - Material Variances in Budget and Actual Expenditure, relates:

For the purposes of Local Government (Financial Management) Regulation 34 regarding levels of variances for financial reporting, Council adopt a variance of 10% or greater of the annual

budget for each program area in the budget, as a level that requires an explanation or report, with a minimum dollar variance of \$10,000.

The material variance is calculated by comparing budget estimates to the end of month actual amounts of expenditure, revenue and income to the end of the month to which the financial statement relates.

This same figure is also to be used in the Annual Budget Review to be undertaken after the first six months of the financial year to assess how the budget has progressed and to estimate the end of the financial year position.

A second tier reporting approach shall be a variance of 10% or greater of the annual budget estimates to the end of the month to which the report refers for each General Ledger/Job Account in the budget, as a level that requires an explanation, with a minimum dollar variance of \$10,000.

Budget / Financial Implications:

There are no significant trends or issues to be reported.

Strategic Implications:

The report and officer recommendation is consistent with Council’s adopted Mission and Vision and assists achieve the following specific adopted Strategic Objectives and Goals.

Governance Objective: The Shire of Denmark provides renowned leadership in sustainability, is effective with both its consultation with its people and its management of its assets, and provides transparent and fiscally responsible decision making.

Sustainability Implications:

➤ **Governance:**

There are no known significant governance considerations relating to the report or officer recommendation.

➤ **Environmental:**

There are no known significant environmental implications relating to the report or officer recommendation.

➤ **Economic:**

There are no known significant economic implications relating to the report or officer recommendation.

➤ **Social:**

There are no known significant social considerations relating to the report or officer recommendation.

➤ **Risk:**

Risk	Risk Likelihood (based on history and with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
Financial mismanagement and/or Budget overruns.	Rare (1)	Moderate (3)	Low (1-4)	Inadequate Financial, Accounting or Business Acumen	Control through robust systems with internal controls and appropriate reporting mechanisms

Comment/Conclusion:

Shire Trust Funds of \$155,029 have been invested for 91 days with the National Bank, maturing 19 December 2014 at the quoted rate of 3.40%.

Reserve Funds totalling \$4,072,001 have only been placed on investment for 6 months with the National Bank, maturing 8 April 2015 at the quoted rate of 3.55%.

Municipal Funds totalling \$3,968,093 have been invested with the National Bank, maturing on various dates up to the 19 December 2014 at an average rate of 3.15% (refer note 4 for detail).

Key Financial Indicators at a Glance

The following comments and/or statements provide a brief summary of major financial/budget indicators and are included to assist in the interpretation and understanding of the attached Financial Statements..

- Taking into consideration the adopted Municipal Budget and subsequent amendment identified, the estimated 30 June 2015 end of year position is estimated to be \$1,491, as per budget projections (Note 5).
- Operating revenue and expenditure is slightly higher than that predicted for 31 October 2014 (Statement of Financial Activity).
- Rates Collection percentage of 71.21% is in keeping with historical collection rates (Note 6).
- The 2014/15 Capital Works Program is 9.06% complete as at 31 October 2014 (Note 12).
- Various transfers to and from Reserve Funds have not yet been made for 2014/15 and are generally undertaken in the latter half of the financial year, depending on specific projects to which these transfers relate.
- Salaries and Wages expenditure is in keeping with budget estimates (not reported specifically in Financial Statement).

Budget Amendments and Variances (Note 5 and 5a)

As detailed in Note 5a.

Voting Requirements:

Simple majority.

9.28pm – *The Director of Planning & Sustainability left the room.*

COUNCIL RESOLUTION & OFFICER RECOMMENDATION		ITEM 8.4.1
MOVED: CR MORRELL		SECONDED: CR OSBORNE
That with respect to Financial Statements for the month ending 31 October 2014, Council;		
1. Receive the Financial Reports, incorporating the Statement of Financial Activity and other supporting documentation.		
2. Endorse the Accounts for Payment for October 2014 as listed.		
CARRIED UNANIMOUSLY: 8/0		Res: 131214

8.5 Chief Executive Officer

8.5.1 ORDINARY COUNCIL MEETING DATES FOR 2015

File Ref:	CR.2
Applicant / Proponent:	Not applicable
Subject Land / Locality:	Not applicable
Disclosure of Officer Interest:	Nil
Date:	30 October 2014
Author:	Claire Thompson, Executive Assistant
Authorising Officer:	Dale Stewart, Chief Executive Officer
Attachments:	8.5.1 – Draft Meeting Schedule

Summary:

This report recommends that Council set its Ordinary Meeting Scheduled for 2015, repeal Council Policy P040102 and amend Council Policy P040103.

Background:

At the Special Meeting of Council held on Tuesday, 22 October 2013, after the last ordinary election, Council resolved as follows (Resolution No. 141013);

“That pursuant to Clause 2.1 of the Shire of Denmark Standing Orders Local Law 2000, the Council determines that the Council will ordinary meet as follows;

- a) Every third Tuesday commencing 22 October 2013; and*
- b) Commencing at 4pm; and*
- c) At the Council Chambers, 953 South Coast Highway, Denmark; and*
- d) Determine, by resolution, the meeting schedule for 2014 at its meeting scheduled for 12 November 2013.”*

Council at its meeting of 12 November 2013 resolved a meeting schedule that was consistent with this resolution.

Consultation:

Nil

Statutory Obligations:

The following legislation relates to Council meeting dates;

Section 5.3 & 5.4 of the Local Government Act 1995 states;

5.3. Ordinary and special council meetings

- 1) A council is to hold ordinary meetings and may hold special meetings.*
- 2) Ordinary meetings are to be held not more than 3 months apart.*
- 3) If a council fails to meet as required by subsection (2) the CEO is to notify the Minister of that failure.*

5.4. Calling council meetings

An ordinary or a special meeting of a council is to be held —

- a) if called for by either —*
 - i. the mayor or president; or*
 - ii. at least 1/3 of the councillors, in a notice to the CEO setting out the date and purpose of the proposed meeting; or*
- b) if so decided by the council.*

Clause 2.1 of the Shire of Denmark Standing Orders Local Law relates;

“The Council shall decide at the first meeting held after each ordinary elections day –

- a) The day or days in each month when an ordinary meeting is to be held;*
- b) The hours during which an ordinary meeting is to be held; and*

c) *The place at which each ordinary meeting is to be held.*"

Section 12 (1) of the Local Government (Administration) Regulations relates to a local government's requirement to give local public notice of the dates on which and the time and place at which the ordinary council meetings are to be held in the next 12 months.

Policy Implications:

Council Policies P040101, P040102 & P040103 relate and read as follows.

"P040101 ORDINARY COUNCIL MEETINGS

The Council shall meet every three (3) weeks on a Tuesday with a Briefing Session beginning at 10.00am and the Ordinary Council meeting commencing at 4.00pm, and/or as determined by the Chief Executive Officer in conjunction with the Shire President."

"P040102 MEETINGS OF COUNCIL - LOCATION (MARCH)

The location of Council's first meeting in March will be alternated every year between the Tingledale Hall and the Nornalup Hall and it will be widely advertised prior to the meetings."

"P040103 LOCALITY (KENT/NORNALUP WARD) MEETINGS

Council will host a meeting of citizens and community organisations at least once a year in at least 2 of the communities of Tingledale, Nornalup and Peaceful Bay and it will be widely advertised prior to the meetings."

Should Council support the Officer Recommendation to repeal Policy P040102 and amend Policy P040103, the change will be reflected in Council's Policy Manual.

Budget / Financial Implications:

The cost of advertising the Council meeting dates can be accommodated within Council's existing general administration advertising budget.

Strategic Implications:

The report and officer recommendation is consistent with Council's adopted Mission and Vision and assists achieve the following specific adopted Strategic Objectives and Goals.

Sustainability Implications:

➤ **Governance:**

Frequency of meeting provides for continuity of decision making for the community and quicker turnaround times on Council decisions, particularly relating to applications and the like.

➤ **Environmental:**

There are no known significant environmental considerations relating to the report or officer recommendation.

➤ **Economic:**

There are no known significant economic considerations relating to the report or officer recommendation.

➤ **Social:**

There are no known significant social considerations relating to the report or officer recommendation.

➤ **Risk:**

Risk	Risk Likelihood (based on history and with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That Council not determine a meeting schedule for Ordinary Council Meetings in 2015 at this meeting.	Rare (1)	Minor (2)	Low (1-4)	Failure to meet Statutory, Regulatory or Compliance Requirements	Accept Officer Recommendation

Comment/Conclusion:

As determined in Resolution No. 141013, Council usually meets every three weeks on a Tuesday. The Officer supports the retention of this meeting cycle and frequency. If the Council is inclined it could revert to one meeting per month, it is preferable to be held on the third Tuesday of each month, due to not conflicting with other meetings.

For information, the Shire of Plantagenet meets every four weeks on a Tuesday, commencing at 3.00pm and the City of Albany meets every fourth Tuesday, commencing at 6.00pm.

Attached is a proposed meeting schedule which indicates meeting dates, public holidays, officer report deadlines and distribution of Agenda dates. A table with just the proposed meeting dates is below (17 meetings in total).

DATE	LOCATION
20 January	Council Chambers, 953 South Coast Highway, Denmark
10 February	Council Chambers, 953 South Coast Highway, Denmark
3 March	Council Chambers, 953 South Coast Highway, Denmark
24 March	Council Chambers, 953 South Coast Highway, Denmark
14 April	Council Chambers, 953 South Coast Highway, Denmark
5 May	Council Chambers, 953 South Coast Highway, Denmark
26 May	Council Chambers, 953 South Coast Highway, Denmark
16 June	Council Chambers, 953 South Coast Highway, Denmark
7 July	Council Chambers, 953 South Coast Highway, Denmark
28 July	Council Chambers, 953 South Coast Highway, Denmark
18 August	Council Chambers, 953 South Coast Highway, Denmark
8 September	Council Chambers, 953 South Coast Highway, Denmark
29 September	Council Chambers, 953 South Coast Highway, Denmark
20 October	Council Chambers, 953 South Coast Highway, Denmark
10 November	Council Chambers, 953 South Coast Highway, Denmark
1 December	Council Chambers, 953 South Coast Highway, Denmark
22 December	Council Chambers, 953 South Coast Highway, Denmark

The Officer recommends that the first meeting date for 2015 be Tuesday, 20 January. This allows officers sufficient time to prepare reports and the Agenda for distribution to Councillors one week prior to the meeting date (noting that the office will be closed from 25 December to 2 January 2015, pursuant to Council Resolution No. 140914).

Council Policy P040102 states that the location of Council’s first meeting in March will be alternated every year between the Tingle Dale Hall and the Nornalup Hall.

In 2014 Council resolved (Resolution No. 071114) to “hold the 4 March 2014 meeting in Denmark as usual”, this was because the Council felt that the increasing use of technology (accessing of Council’s server for property records and GIS mapping for example), ‘live’ recording of minutes on the digital projector and volume of files and materials required to be

transported for a Council meeting, made it increasingly difficult to hold them at venues other than in the Shire's Council Chambers in Denmark.

Council Policy P040103 states that Council will also host two (2) locality (Kent/Nornalup Ward) meetings each year in at least two of the communities of Peaceful Bay, Nornalup and Tingledale. In 2014 Council held locality meetings in Tingledale & Peaceful Bay.

The Officer Recommendation proposes that Policy P040102 be repealed and Policy 040103 be amended to read as follows;

P040103 LOCALITY (KENT/NORNALUP WARD) MEETINGS

Council will host a meeting of citizens and community organisations at least once a year in Peaceful Bay and will alternate an additional meeting each year between the localities of Nornalup and Tingledale and it will be widely advertised prior to the meetings.

Voting Requirements:

Simple majority.

9.29pm – *The Director of Planning & Sustainability returned to the room.*

9.29pm – *The Director of Finance & Administration left the room.*

OFFICER RECOMMENDATION

ITEM 8.5.1a

That Council repeal Council Policy P040102 and amend Policy P040103 to read as follows;

Council will host a meeting of citizens and community organisations at least once a year in Peaceful Bay and will alternate an additional meeting each year between the localities of Nornalup and Tingledale and it will be widely advertised prior to the meetings.

OFFICER RECOMMENDATION

ITEM 8.5.1b

That with respect to the Meetings of Council to be held in 2015, Council;

1. Endorse the dates for Ordinary Council meetings in 2015, as shown in the table within the report, to commence on Tuesday, 20 January 2015;
2. Host two Kent/Nornalup Ward meetings for the interest of residents, ratepayers and community organisations with one being held at the Peaceful Bay Progress Association Hall and one at the Nornalup Hall in 2015 at times and dates to be determined by the CEO in conjunction with the Shire President and Progress Associations and widely advertise those times and dates prior to the meeting.
3. Convene confidential Strategic Briefing Forums generally commencing at 10.00am on Ordinary Council Meeting Days; and
4. Advertise in the Denmark Bulletin, Walpole Weekly, on Council's website and on Council's Notice Boards the dates and locations in parts 1 & 2.

COUNCIL RESOLUTION

ITEM 8.5.1b

MOVED: CR SAMPSON

SECONDED: CR GILLIES

1. That Council repeal Council Policy P040102 and amend Policy P040103 to read as follows;

Council will host a meeting of citizens and community organisations at least once a year in Peaceful Bay and will alternate an additional meeting each year between the localities of Nornalup and Tingledale and it will be widely advertised prior to the meetings.

2. That with respect to the Meetings of Council to be held in 2015, Council;
 - a) Endorse the dates for Ordinary Council meetings in 2015, as shown in the table within the report, to commence on Tuesday, 20 January 2015;
 - b) Host two Kent/Nornalup Ward meetings for the interest of residents, ratepayers and community organisations with one being held at the Peaceful Bay Progress Association Hall and one at the Nornalup Hall in 2015 at times and dates to be determined by the CEO in conjunction with the Shire President and Progress Associations and widely advertise those times and dates prior to the meeting.
 - c) Convene confidential Strategic Briefing Forums generally commencing at 10.00am on Ordinary Council Meeting Days; and
 - d) Advertise in the Denmark Bulletin, Walpole Weekly, on Council's website and on Council's Notice Boards the dates and locations in parts a) & b).

CARRIED: 7/1

Res: 141214

REASONS FOR CHANGE

Council wished to combine the Officer's Recommendation 8.5.1a & 8.5.1b for expediency.

8.5.2 WOODTURNERS OF DENMARK 2015 EXHIBITION – REQUEST FOR SPONSORSHIP

File Ref:	A3032
Applicant / Proponent:	Woodturners of Denmark Inc.
Subject Land / Locality:	Shire of Denmark Council Chambers, 953 South Coast Highway, Denmark
Disclosure of Officer Interest:	Nil
Date:	20 November 2014
Author:	Claire Thompson, Executive Assistant
Authorising Officer:	Dale Stewart, Chief Executive Officer
Attachments:	8.5.2 – Letter from the Woodturners of Denmark Inc.

Summary:

The Woodturners of Denmark have booked the Council Chambers & Reception Area for their 2015 “Excellence in Woodcraft” Exhibition and are seeking Council’s sponsorship by way of waiving the bond and donating the cost of the hire fee.

Background:

The Woodturners of Denmark’s annual woodcraft exhibition has been held in the Council Chambers since 2002. Sometimes the Woodturners have paid for the use of the venue (this was prior to Council increasing the hire fee substantially in 2011/12) and some years the hire fee was waived (by the Chief Executive Officer) under Delegated Authority (Donations).

In the 2011/12 financial year, Council’s hire fee for the Council Chambers and Reception Area rose from \$85 per day to \$500 per day, this was one done predominately with the view that the Council was not in the venue hire business, nor did it want to be with respect to the Council Chambers and Reception Area, and to discourage the use by others so that Council could use its own facilities for its meetings, functions and the like.

In 2012, 2013 and 2014 Council considered similar requests from the Woodturners and the following three Resolutions relate.

Council Meeting held on the 28 February 2012 - Resolution No. 310212;

“That with respect to the Woodturners of Denmark’s request to use the Council Chamber / Reception area from 3 April 2012 to 10 April 2012, Council;

1. *Waive the \$220 bond;*
2. *Advise the Woodturners of Denmark that it is prepared to subsidise the hire fee to a maximum of \$3,125, in support of the 2012 Excellence in Woodcraft Exhibition, subject to appropriate public acknowledgement of Council’s contribution to the event;*
3. *Authorise the transfer of \$2,500 from Account 1410602 (Donated Use of Council Facilities) to Account 14101030 (Council Reception Room Hire); and*
4. *Authorise the transfer of \$625 from Account 1410082 (Donations, Gifts & Gratuities) to Account 1410103 (Council Reception Room Hire).”*

Council Meeting held on 22 January 2013 – Resolution No. 130113;

“That with respect to the Woodturners of Denmark’s request to use the Council Chamber / Reception area from 27 March 2012 to 2 April 2013, Council;

1. *Waive the \$440 bond;*
2. *Advise the Woodturners of Denmark Inc. that it is prepared to donate the hire fee to a maximum of \$3,100, as sponsorship of their 2013 Excellence in Woodcraft Exhibition, subject to appropriate public acknowledgement of Council’s contribution to the event; and*
3. *Journal \$3,100 from Account 1410602 (Donated Use of Council Facilities) to Account 14101030 (Council Reception Room Hire).”*

Council Meeting held on 4 March 2014 – Resolution No. 070314;

“That with respect to the Woodturners of Denmark’s request to use the Council Chamber / Reception area from 16 April 2014 to 22 April 2014, Council;

1. *Waive the \$220 bond;*
2. *Provide sponsorship towards the event to the value of \$3,300.00 in return for the Shire of Denmark being acknowledged at the event and on any promotional material.*
3. *Journal the sum of \$3,300 from Account 1410602 (Donated Use of Council Facilities) to Account 14101030 (Council Reception Room Hire).”*

Consultation:

Nil

Statutory Obligations:

There are no known statutory obligations.

Policy Implications:

Given the fact that the event has now been in the Chambers and Reception Area continuously since 2002, the Officer questions whether the Council would consider adopting a new Policy that provides for the use ‘as a given’ inclusive of the annual waiver in exchange for sponsorship rights. The Officer is of the opinion that no alternate venues are readily identifiable or suitable, which is why the Chambers and Reception Area have typically been preferred by the Woodturners. Future options such as the completed Morgan Richards Community Centre or the redeveloped Riverside Club would probably not be suitable during Easter periods and/or available.

The only other potential available option includes the Denmark Visitor Centre which probably precludes the opportunity for the Woodturners to charge an entry donation and/or requires agreement of the Lessee of that building.

Notwithstanding the above, the Officer Recommendation includes reference to a new Policy which authorises use of the Council Chambers and the Reception Room by the Woodturners on an ongoing basis, unless reviewed by the Council.

Budget / Financial Implications:

Should Council wish to once again sponsor the Woodcraft Exhibition by way of waiving the bond and donating the hire fee, there are funds available in the Donated Use of Council Facilities Account (No. 1410602). The total Budget allocation for 2014/2015 is \$7,500.00. An amount of \$6,506.00 is unspent and unallocated as at November 2014.

Strategic Implications:

The report and officer recommendation is consistent with Council’s adopted Mission and Vision and assists achieve the following specific adopted Strategic Objectives and Goals.

SOCIAL OBJECTIVE - Denmark’s communities, people and places are connected and creative, vibrant and dynamic, healthy and safe.

Sustainability Implications:

➤ **Governance:**

There are no known significant governance considerations relating to the report or officer recommendation.

➤ **Environmental:**

There are no known significant environmental implications relating to the report or officer recommendation.

➤ **Economic:**

This event brings visitors to Denmark who could potentially be assisting the local economy via meals, refreshments, accommodation and/or other tourist activities visited.

➤ **Social:**

The Woodturners Exhibition is an annual event which has been on the Denmark calendar of events for 12 years. It provides an opportunity to showcase local & regional woodcraft and attracts some 3,000 residents and visitors to the event each year.

➤ **Risk:**

Risk	Risk Likelihood (based on history and with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That Council not support the activity or request.	Unlikely (2)	Minor (2)	Low (1-4)	Not Meeting Community expectations	Accept Officer Recommendation

Comment/Conclusion:

The Woodturners are keen to keep this popular, annual exhibition in the Council Chambers and Reception Area due to its location, lighting and internal timber features and have tentatively booked the venue from 1 April 2015 to 7 April 2015 (over the Easter long weekend). The cost of hire, including a \$220, bond will be \$3,520.

The annual Woodcraft Exhibition (competition) attracted approximately 3,000 residents and visitors last year, including people from all over the State. Entry is by a gold coin donation and any money raised is donated back to a local charity. The Woodturners have donated approximately \$23,000 to local charities in the 13 years it has been running the event.

The Woodturners of Denmark currently have 31 members and this event provides a unique opportunity for wood crafts people (entrants) from Denmark, Esperance, Walpole, Manjimup to Kojonup to display their craftsmanship and draws attention to the high calibre of local wood craftspeople, highlighting an industry which is iconic to Denmark.

The organisation usually sources additional sponsorship from other local businesses which funds the prizes for the competition and assists with administration costs such as printing, promotion and stationery. Any overheads which aren't covered by a sponsor are generally paid for by the members themselves.

At previous exhibitions the Woodturners have gone to great lengths to acknowledge their sponsors and Council's support has been acknowledged by displaying Council's banners throughout the event, inviting the Shire President, Councillors and Senior Staff to the opening and verbally acknowledging the support and appreciation during any speeches. In addition, Council's logo has been placed on the exhibitors list which is handed out to everyone who visits the exhibition.

As an additional thank you and in appreciation for Council's previous support, in 2014 the Woodturners refurbished the Council Chamber tables and made complimentary wooden coasters. This has assisted with preserving the finish of the tables and the work was undertaken and provided at no cost or inconvenience to Council.

The Officer recommends that Council waive the bond and donate the hire fee (as sponsorship) for the following reasons;

- The Woodturners of Denmark Inc. are a not-for-profit local organisation made up of 31 full members who share a common interest and the group provides for an important social connection between its members and others who share similar interests.
- Whilst some items at the exhibition are for sale by the individual craftspeople, the event itself is facilitated by the Woodturners for no profit to the organisation.

- The event is used as a means to fundraise for a local charitable organisation.
- The event is a regular, annual event on the Denmark calendar.
- Draws participants & visitors from across the region from Esperance to Walpole to Kojonup.
- The exhibition judge is generally a well-known international or interstate professional which draws attention to the exhibition throughout the industry (via publications and the like), which highlights Denmark to people who may not have visited our town or region.

Council Officers have had no concerns with their use of the venue in the past and the Woodturners have always been extremely diligent in ensuring that they do not impede on Council's day to day business.

Alternatively, Council could choose not to sponsor the event and the Woodturners would be asked to pay the total hire cost for the venue being \$3,520, including \$220.00 bond.

Voting Requirements:

Simple majority.

COUNCIL RESOLUTION & OFFICER RECOMMENDATION	ITEM 8.5.2
MOVED: CR MORRELL	SECONDED: CR SEENEY
That with respect to the Woodturners of Denmark's request to use the Council Chambers and Reception Area from 8.00am, 1 April 2015 to 12.00pm, 7 April 2015, Council;	
1. Waive the \$220 bond;	
2. Provide sponsorship towards the event to the value of \$3,300.00 in return for the Shire of Denmark being acknowledged at the event and on any promotional material.	
3. Journal the sum of \$3,300 from Account 1410602 (Donated Use of Council Facilities) to Account 14101030 (Council Reception Room Hire).	
4. Adopt a Policy relating to future requests to read as follows;	
<i>P110711 WOODTURNERS OF DENMARK ANNUAL EXHIBITION</i>	
<i>Council authorises the Woodturners of Denmark Inc. to hold their annual Excellence in Woodcraft Exhibition in the Council Chambers & the Reception Area free of charge in exchange for sponsorship rights to the event, subject to the event not conflicting with Council meeting days or times.</i>	
CARRIED UNANIMOUSLY: 8/0	Res: 151214

8.5.3 RETURNED & SERVICES LEAGUE OF AUSTRALIA HALL

File Ref:	A3097
Applicant / Proponent:	Denmark Branch of the Returned & Services League (RSL)
Subject Land / Locality:	Reserve 23631
Disclosure of Officer Interest:	Nil
Date:	19 September 2013
Author:	Dale Stewart, Chief Executive Officer
Authorising Officer:	Dale Stewart, Chief Executive Officer
Attachments:	8.5.3 – Draft Lease (incorporating adopted Precinct Plan)

Summary:

A request has been received from the Denmark Branch of the Returned & Services League (RSL) to lease the RSL Hall and land (Reserve) for a period of up to 21 years. This report recommends that the Building and Reserve be leased to the group for a period of five years.

Background:

As far as can be ascertained this particular reserve was vested in Council in 1974 for the purpose of "Hall site". Prior to that date, the reserve vesting was "Hall site (RSL)". Given the historical use of this building, following the departure of the Visitor Centre from the site, the RSL was given first option to lease it from the Council.

Accordingly, in July 2005 (resolution 201/05) Council resolved to lease the RSL Hall to the Denmark Branch of the RSL for a period of 10 years with Council authorising the CEO at the time to negotiate the lease (resolution 202/05).

This lease was however subsequently not commenced until 1 November 2007, and for a period of only 5 years, expiring on 31 October 2012. The lease renewal has been subsequently held up by the conclusion of the Plane Tree Precinct Plan, which the Council adopted at its meeting of 30 September 2014.

At that Meeting, the following relevant resolutions were passed;

Resolution Number 090914;

"That Council with respect to the Plane Tree Precinct Development Concept Plan:

1. *Note the submissions received.*
2. *Adopt Attachment 8.1.1c as the final Concept Plan.*
3. *Advise the submitters of Council's decision.*
4. *Authorise the Chief Executive Officer to negotiate a draft new lease with the Denmark Cottage Crafts for the current Cottage Craft Building based on Council's standard community group lease and a five year term.*
5. *Request the Chief Executive Officer to undertake a review of;*
 - a) *Bent Street in terms of traffic flow conflict / congestion issues, investigate options such as the conversion to one-way, road widening and the provision of car parking in the road reserve.*
 - b) *Mitchell Street in terms of traffic flow conflict / congestion issues, investigate options such as the conversion to one-way, road widening and the provision of car parking in the road reserve."*

Resolution Number 100914;

"That Council with respect to the proposed Denmark RSL Hall Renovation/Improvement Project, request the Chief Executive Officer convene a meeting between Denmark RSL representatives and the Shire (Councillors, Chief Executive Officer and relevant Shire staff) to discuss the following matters:

1. *The proposed new lease provisions relative to the current building form, the proposed building form and the land parcel; and*

2. *The planning application and building permit processes and statutory requirements accordingly (in particular the disabled access requirements)."*

Resolution Number 150914;

"That with respect to the Denmark RSL Sub-Branch request for funding towards their proposed Hall renovation/improvement project, Council:

1. *Approve in principle a Council contribution up to the amount of \$20,000 plus GST, subject to:*
 - a) *the successful grant funding application,*
 - b) *the project scope is in keeping with what is currently proposed.*
2. *Support the Denmark RSL Sub-branch in any grant funding application to external funding agencies with respect to this project; and*
3. *Advise the Denmark RSL Sub-branch that any proposed works will require Planning Approval, a Building Permit, compliance with the Building Code of Australia and be in keeping with the outcomes of the Shire of Denmark's Disability Access & Inclusion Plan and the principles of the Plane Tree Precinct Development Concept Plan."*

Consultation:

The Councillors, CEO and several Senior Staff, met with the RSL on the 21 October 2014 regarding the proposed lease inclusions where the desires of the RSL to lease the land and building for a desired term of 21 years was strongly expressed.

This notwithstanding the Officer has recommended a lease with a five year term as was the case with the previous lease and which is consistent with the majority of Council's community group leases. It should be noted however that Council does have several community halls that have twenty one year leases however, in this instance, the importance of the building and land within the Denmark CBD, combined with potential questions over the sustainability of the membership of the local branch, tends to indicate that a shorter term lease is appropriate.

Statutory Obligations:

In accordance with the management order Council can dispose of the property by lease for a term of up to 21 years.

The RSL is exempt from requirements under the Local Government Act 1995 for disposal of property (Section 3.58 and the Local Government (Functions & General Regulations 1996).

Policy Implications:

The RSL Memorial Hall is listed in the Shire's adopted Municipal Heritage Inventory (2011) and is also listed as a Place of Heritage Value in TPS No. 3.

Policy P110102 Leasing of Land and/or Buildings to Community Groups relates and reads as follows;

"With respect to community groups exclusively occupying, or seeking to exclusively occupy, Council property or buildings;

- a. *There be a signed lease based on Councils standard 'not for profit' lease prior to occupation or upon renewal;*
- b. *Council desires lessees to be incorporated (with the exception of Volunteer Bush Fire brigades which are covered under the Bush Fires Act);*
- c. *Contribution by Council towards legal costs (if required) by Council 100%;*
- d. *Have differing rentals discounted to market valuation depending upon the following factors;*
 - i. *To what degree the property is utilised for charitable, not for profit or sporting purposes;*
 - ii. *The ability of the lessee to derive income from use of the property including sub-leases, rental hire and the presence of a liquor license;*
 - iii. *The strategic value of the land in the short term to Council;*
 - iv. *To what degree if any that the use is competing with commercial enterprise;*
- e. *Where the applied rental is lower than a valuation or real estate rental appraisal, Council indicate that contra difference in its annual budget, for that property;*

- f. Offer local authority rate exemption rebate donation (rather than exemption contra);
- g. Offer Council insurance of the buildings and Council owned property / contents without recoup of the annual premium and to encourage repairs and reinstatement through insurance claims, Council will meet all bar the first \$500 of any insurance excess on claims;
- h. All outgoings and consumable costs to be met by the lessee including but not limited to water, sewer, gas, telephone, ESL, refuse charges, etc;
- i. Lessees to meet all ongoing internal and external building and grounds maintenance other than structural building repairs;
- j. Leases require endorsement of Council prior to signing;
- k. Have differing tenure and renewal rights and terms depending upon the strategic future requirements for that land and or building(s) but based on a maximum of 21 years including any right of renewal (subject to the prevailing management order if applicable);
- l. The use of the property is consistent with the zoning and/or management order and power to lease exists (if required).
- m. Reflecting the non 'exclusive club' usage and fact that they perform a valuable Council service for wide community benefit Council annually (subject to annual budget deliberation) contributes to the maintenance of the following leased Halls;
 - i. Parryville Hall \$2,000;
 - ii. Tingledale Hall \$2,000;
 - iii. Scotsdale Hall \$2,000 (nb: Hall is owned by Scotsdale Progress Association on Association vested land);
 - iv. Kentdale Hall \$2,000;
 - v. RSL Hall \$3,000;
 - vi. Museum Building maintenance is 100% Council responsibility;
 - vii. Nornalup Hall \$2,000; and
 - viii. Peaceful Bay Hall (& Les Carpenter Shed) \$2,000.
- n. Council's Principal Building Surveyor at least on an annual basis inspect all leased buildings and land to ascertain their state of maintenance pursuant to the lease and priority for future and long term maintenance in conjunction with the lessee.
- o. The definition of 'exclusive occupation' does not include reference to yearly licenses to occupy storage space within a building such as at the Denmark Recreation Centre."

Budget / Financial Implications:

A contribution of \$3,000 is paid to the RSL every year towards maintenance of the Hall in recognition of the not for profit nature of the Association together with the non-exclusive usage and the wider usage of the Hall for Community activities.

Large capital "repairs" remain the responsibility of Council as the owner of the building (and land) but are usually subject to individual request and budget considerations.

It is Council's practise to provide a maintenance subsidy for community halls that are available for community use in accordance with the above Policy.

The only other known financial implication upon the Council's Long Term Financial Plan is the need to consider implementation of the development of the Plane Tree Precinct as noted at the Council Meeting of 30 September 2014 and a \$20,000 contribution to the pending Hall Redevelopment project referred to below.

Strategic Implications:

The report and officer recommendation is consistent with Council's adopted Mission and Vision and assists achieve the following specific adopted Strategic Objectives and Goals;

Recreation: That the Shire of Denmark monitor all forms of recreational and cultural facilities and services, and take careful account of the level of community support for those in determining the improvements or new facilities to be supported together with their relative contribution to personal and community well-being.

Sustainability Implications:

➤ **Governance:**

There are no known significant governance considerations relating to the report or officer recommendation.

➤ **Environmental:**

There are no known significant environmental implications relating to the report or officer recommendation.

➤ **Economic:**

There are no known significant economic implications relating to the report or officer recommendation.

➤ **Social:**

The RSL Building is a regularly used Building in the Denmark CBD that has a significant ‘street appeal’. The adjoining lands are included in the adopted Plane Tree Precinct Plan and are intended to form a vibrant ‘soft’ social hub and gathering place for the community.

➤ **Risk:**

Risks	Risk Likelihood (based on history and with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That the lease includes the adjoining land and the lessee prevents development of the land in accordance with the adopted Precinct Plan	Possible (3)	Moderate (3)	Moderate (5-9)	Not Meeting Community expectations	Control through including in the lease adequate provisions that permit the lessor to undertake development in accordance with the adopted Precinct Plan.
That the lease excludes the adjoining land and the RSL and wider community do not accept the reasons for that decision.	Possible (3)	Moderate (3)	Moderate (5-9)	Not Meeting Community expectations	Control through communicating to the RSL and wider community the benefits of the adopted Precinct Plan.

Comment/Conclusion:

The only real question for consideration by Council in the opinion of the officer, is that of the lease of the building versus the adjoining entire reserve.

Reserve 23631 comprises 1,023 square metres and is managed by Council for the purposes of “hall site”. As can be seen from either the Precinct Plan (Appendixed to the Lease) or the below aerial picture, the current building occupies approximately one third of the available land area. The balance of the land is utilised by the RSL as entrance steps, carpark or adjoining open space. The RSL does however have active plans for the redevelopment of the site to include the relocated ‘gun’ and also an expanded meeting room / toilets. This is a current pending grant application with Lotterywest, to which the Council has supported the application with an agreed cash contribution, if successful, of \$20,000.



On balance the officer believes that the additional maintenance costs and potentially liability risks associated with the 'direct' control of the steps, gardens, paths and car parking, as opposed to 'externalising' those risks through a lease and a requirement for the lessee to maintain and insure for public risk, is an acceptable outcome that both satisfies the desires of the RSL and does not unduly constrain or curtail the wishes of the Council in seeking to implement the outcomes of the Precinct Plan.

In either case, the lessee is bound to only undertake development, after first obtaining the written permission of the lessor and the planning and building authorities (in all cases the Council). Conversely the draft lease includes a clause expressly permitting the lessor (as landowner) to undertake development in accordance with the adopted Precinct Plan by provisions of a minimum of 90 days' notice to the lessee (refer Special Conditions 6 of the lease).

The other advantage of incorporating the entire land area within the lease is that it avoids doing small or minor consequential amendments to the lease relating to the pending building additions.

It should be noted that the lease in its current form has been sent to the RSL however agreement has not yet been reached. For that reason, permission is sought from the Council to authorise the CEO and Shire President to negotiate the lease within certain minimum parameters.

Voting Requirements:
Simple majority.

OFFICER RECOMMENDATION

ITEM 8.5.3

That Council with respect to the proposed lease of Reserve 23631 to The Returned & Services League of Australia WA Branch Incorporated, authorise the Shire President and Chief Executive Officer to negotiate a draft new lease on condition that it is;

1. Consistent with the principles contained within the draft attached to this report and;
2. Based on Council's standard community group lease and;
3. Includes a provision expressly permitting the Council to undertake development of the land in accordance with the principles contained in the adopted Plane Tree Precinct Plan and;

4. For a maximum five year term and;
5. Subject to in principle approval of the Minister for Lands pursuant to Section 18(2) of the Land Administration Act 1997.

9.40pm – *The Director of Finance & Administration returned to the room.*

COUNCIL RESOLUTION

ITEM 8.5.3

MOVED: CR THORNTON

SECONDED: CR OSBORNE

That Council with respect to the proposed lease of Reserve 23631 to The Returned & Services League of Australia WA Branch Incorporated, authorise the Shire President and Chief Executive Officer to negotiate a draft new lease on condition that it is;

1. Consistent with the principles contained within the draft attached to this report and;
2. Based on Council's standard community group lease and;
3. Includes a provision expressly permitting the Council to undertake development of the land in accordance with the principles contained in the adopted Plane Tree Precinct Plan and;
4. For a five year term with an option of a further five year term; and
5. Subject to in principle approval of the Minister for Lands pursuant to Section 18(2) of the Land Administration Act 1997.

CARRIED UNANIMOUSLY: 8/0

Res: 161214

REASONS FOR CHANGE

Council increased the term of lease from five years to ten years.

Prior to consideration of Item 8.5.4 the Chief Executive Officer, through the Presiding Person, brought to the attention of the meeting the following disclosure(s) of interest:

Cr Thornton is the Council Delegate to the Denmark Tourism Inc. Board and as a consequence there may be a perception that his impartiality on this matter may be affected. Cr Thornton declares that he will consider this matter on its merits and vote accordingly.

8.5.4 DENMARK TOURISM INC. RENEWAL OF LEASE

File Ref:	A3186
Applicant / Proponent:	Denmark Tourism Inc.
Subject Land / Locality:	No. 73 (Lot 501), Reserve 48198, South Coast Highway, Denmark
Disclosure of Officer Interest:	Nil
Date:	3 November 2014
Author:	Dale Stewart, Chief Executive Officer
Authorising Officer:	Dale Stewart, Chief Executive Officer
Attachments:	8.5.1 – Draft Lease

Summary:

Denmark Tourism Inc. (DTI) are requesting Council's approval to either extend their current Lease with respect to the Denmark Visitor Centre or to be provided with a new Lease to accommodate the need to provide surety to a sub-lease they are currently negotiating (with Dark Side Chocolates).

DTI seek ideally a minimum of five (5) years from 1 May 2017 to 30 April 2022, which will allow a 7 year term to be negotiated with the proposed sub-lessee (over two leases).

Background:

DTI's current lease with the Shire of Denmark expires in 2017 and, to ensure security of tenure for the Sub-Lessee, Council resolved at its Meeting of 11 November 2014 as follows (two resolutions);

"That with respect to the current Lease between Denmark Tourism Inc. and the Shire of Denmark, expiring on 30 April 2017, Council authorise the Chief Executive Officer and the Shire President to negotiate a draft new Lease with Denmark Tourism Inc. to commence from 1 May 2017 to 30 April 2022 with the final lease to be considered by Council at its meeting of Tuesday, 2 December 2014."

and

"That, subject to authorising a new Lease between the Shire of Denmark and Denmark Tourism Inc. for a period of five (5) years from 1 May 2017 to 30 April 2022, Council approve Denmark Tourism Inc.'s request to Sub-Lease 48sqm of the Denmark Visitor Centre building to Dark Side Chocolates for a four (4) plus three (3) year term with the following replacement Item 7 to read, "Council may wish to relocate Dark Side Chocolates to an alternative location within the Denmark Visitor Centre within the term of the lease and if so, Council would meet all relocation costs."

The whole of Reserve 48198, is the subject of a management order to the Shire of Denmark for the purpose of "Community Purposes", and has been leased to DTI since 1 May 2007, with the lease due to expire on 30 April 2017.

In June 2011, DTI exercised their option to renew their Lease (pursuant to Clause 8.3 of their Lease) which was due to terminate on 30 April 2012 and Council approved a further five (5) year term. Their current Lease termination date is 30 April 2017.

DTI currently have one other Sub-Lease which is with the Woodturners of Denmark Inc.

It should be noted that the proposed new lease has no reference to the continuation of the Denmark Woodturners as a continuing lessee (after 30 April 2017) and clause 5.1 of the current lease states;

“The Lessee shall not without first obtaining the written consent of the Lessor carry on or permit to be carried on upon the Leased Premises any activity, business, trade, occupation or calling other than the Lessee’s Business and that of the Woodturners of Denmark.”

The Lessor acknowledges the Sub Lease of a portion of the Leased Premises to the Denmark Woodturners by the Denmark Tourism Incorporated and the construction of a storage facility (shed) for the sub lessee. It is also acknowledged that on the expiry of the Lease this storage facility (shed) becomes an asset of the Lessor. It is further acknowledged that the sub lease arrangement will conclude at the expiry of this lease expiry of extensions of this Lease or where Denmark Tourism Incorporated is no longer the Lessee.”

Consultation:

DTI have been asked to provide comment on the proposed lease and feedback is expected prior to the Council Meeting day. The lease is based on Council’s previous lease with DTI, with removal of reference to the Barometer and inclusion of a Service Agreement (to replace the existing separate Service Agreement) and the demised premises being restricted to Denmark Visitor Centre (inclusive of the Woodturners portion and Woodturners shed) rather than the whole Reserve as is in the current lease.

No recent formal consultation about the lease has occurred with the Denmark Woodturners, although their members are aware that the Council has been proposing to consolidate activities such as the Woodturners at the Heritage Rail Precinct, possibly in a joint venture or collocation opportunity with the Denmark Machinery Restoration Group Inc. (DMRG), that may enable greater coordination and ‘Men’s Shed’ activities to occur, furthering opportunities for grants in the medium to long term. The lease allows for continuation of the Woodturners with support of the lessee and the lessor (Council) if, by 2017, no other ‘higher’ uses presents, which may make the DVC and / or DTI operations more sustainable and vibrant.

Statutory Obligations:

In accordance with the management order and Land Administration Act 1997, Council can dispose of the property by lease for a term of up to 21 years.

The DTI is exempt from requirements under the Local Government Act 1995 for disposal of property (Section 3.58 and the Local Government (Functions & General Regulations 1996).

Policy Implications:

Council Policy P110102 – Leasing of Land and/or Buildings to Community Groups relates with respect to the proposed new Lease between Council and DTI as follows;

“With respect to community groups exclusively occupying, or seeking to exclusively occupy, Council property or buildings;

- a. There be a signed lease based on Councils standard ‘not for profit’ lease prior to occupation or upon renewal;*
- b. Council desires lessees to be incorporated (with the exception of Volunteer Bush Fire brigades which are covered under the Bush Fires Act);*
- c. Contribution by Council towards legal costs (if required) by Council 100%;*
- d. Have differing rentals discounted to market valuation depending upon the following factors;*
 - v. To what degree the property is utilised for charitable, not for profit or sporting purposes;*
 - vi. The ability of the lessee to derive income from use of the property including sub-leases, rental hire and the presence of a liquor license;*
 - vii. The strategic value of the land in the short term to Council;*
 - viii. To what degree if any that the use is competing with commercial enterprise;*
- e. Where the applied rental is lower than a valuation or real estate rental appraisal, Council indicate that contra difference in its annual budget, for that property;*

- f. Offer local authority rate exemption rebate donation (rather than exemption contra);
- g. Offer Council insurance of the buildings and Council owned property / contents without recoup of the annual premium and to encourage repairs and reinstatement through insurance claims, Council will meet all bar the first \$500 of any insurance excess on claims;
- h. All outgoings and consumable costs to be met by the lessee including but not limited to water, sewer, gas, telephone, ESL, refuse charges, etc;
- i. Lessees to meet all ongoing internal and external building and grounds maintenance other than structural building repairs;
- j. Leases require endorsement of Council prior to signing;
- k. Have differing tenure and renewal rights and terms depending upon the strategic future requirements for that land and or building(s) but based on a maximum of 21 years including any right of renewal (subject to the prevailing management order if applicable);
- l. The use of the property is consistent with the zoning and/or management order and power to lease exists (if required).
- m. Reflecting the non 'exclusive club' usage and fact that they perform a valuable Council service for wide community benefit Council annually (subject to annual budget deliberation) contributes to the maintenance of the following leased Halls;
 - i. Parryville Hall \$2,000;
 - ii. Tingledale Hall \$2,000;
 - iii. Scotsdale Hall \$2,000 (nb: Hall is owned by Scotsdale Progress Association on Association vested land);
 - iv. Kentdale Hall \$2,000;
 - v. RSL Hall \$3,000;
 - vi. Museum Building maintenance is 100% Council responsibility;
 - vii. Nornalup Hall \$2,000;
 - viii. Peaceful Bay Hall (& Les Carpenter Shed) \$2,000; and
- n. Council's Principal Building Surveyor at least on an annual basis inspect all leased buildings and land to ascertain their state of maintenance pursuant to the lease and priority for future and long term maintenance in conjunction with the lessee.
- o. The definition of 'exclusive occupation' does not include reference to yearly licenses to occupy storage space within a building such as at the Denmark Recreation Centre."

Budget / Financial Implications:

The more sustainable the operations of DTI, allows the Council to be in a position of being able (if desired) to reduce its contribution to the net operating shortfall of the visitor servicing activities (Denmark Visitor Centre), currently at \$85,000 per annum.

Pursuant to Council Resolution No. 130914, the Minister for Local Government has been requested to grant DTI exemption from being levied a local government rating charge.

Strategic Implications:

The report and officer recommendation is consistent with Council's adopted Mission and Vision and assists achieve the following specific adopted Strategic Objectives and Goals.

Economic Objective - Denmark's economy is diverse and vibrant - its primary industries of tourism and agriculture rely on and enjoy natural and other assets that are sensibly managed and promoted.

GOALS

Tourism: ...acknowledge the importance of tourism to the region, and, by innovative policies, practices and partnerships, facilitates and encourages the greater year-round sustainability of tourism, whilst monitoring and managing its impacts.

Sustainability Implications:

➤ **Governance:**

The continuation of DTI as sustainable tourism entity in its current form with discussion around sub-regional local tourism organisations (LTO’s) is a question that may evolve, however if that issue presents, then the Council will need to address the matter of visitor servicing either as an ‘in-house’ service, or find another entity to undertake the principles and outcomes of the Service Agreement.

➤ **Environmental:**

There are no known environmental implications relating to the report or officer recommendation.

➤ **Economic:**

Tourism is generally considered to be the main economic driver for the Shire of Denmark and the Lease and Service Agreement between the Shire of Denmark and DTI underpin these activities within the Shire.

➤ **Social:**

The removal of specific reference to the Woodturners (in the new lease), if they cannot secure a new sub-lease from 2017, will present both a medium term problem and / or opportunity to that organisation, and the Council, as to how that group can be adequately accommodated at other suitable existing or new buildings or locations. It is the officer’s view that collocation with the DMRG and Denmark Lions, at the Heritage Rail Precinct, will provide more advantages than disadvantages in the medium to long term.

➤ **Risk:**

Risk	Risk Likelihood (based on history and with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That Council not approve a new Lease between DTI for a term equal to or beyond that of the proposed Sub-Lease term.	Rare (1)	Moderate (3)	Low (1-4)	Business Disruption	Accept Officer Recommendation

Comment/Conclusion:

The new and former leases both have sub-lease clauses that state, “The Lessee will not assign, sub-let, mortgage, charge or encumber the Leased Premises or any part of the Leased Premises or otherwise part with the possession of the Leased Premises or any part of the leased Premises without the prior written consent of the Lessor. Such consent would not be unreasonably withheld by the Lessor”.

This provision restricts Council’s ability to withhold such approval if the purpose is consistent and Council would need to have strong reasons to do so.

In order for DTI to enter into a Sub-Lease for a term beyond 2017, as proposed, Council is requested to authorise the CEO, in conjunction with the Shire President, to negotiate the final lease with DTI for a five (5) term, which would be a term from 1 May 2017 to 30 April 2022.

Voting Requirements:

Simple majority.

COUNCIL RESOLUTION & OFFICER RECOMMENDATION

ITEM 8.5.4

MOVED: CR MORRELL

SECONDED: CR GILLIES

That Council with respect to the proposed lease of the Denmark Visitor Centre, being portion of Reserve 23631, to Denmark Tourism Inc., authorise the Shire President and Chief Executive Officer to negotiate a draft new lease and service agreement on condition that it is;

1. Consistent with the principles contained within the draft attached to this report and;
2. Based on Council's standard community group lease and;
3. Retains reference to words to the effect that the lessee will use its best endeavours to maintaining level 1 tourism accreditation status and;
4. For a maximum five year term expiring no later than 30 April 2022.
5. Subject to in principle approval of the Minister for Lands pursuant to Section 18(2) of the Land Administration Act 1997.

CARRIED UNANIMOUSLY: 8/0

Res: 171214

9. COMMITTEE REPORTS & RECOMMENDATIONS

Nil

10. MATTERS BEHIND CLOSED DOORS**COUNCIL RESOLUTION & OFFICER RECOMMENDATION**

ITEM 10

MOVED: CR GILLIES

SECONDED: CR SEENEY

That pursuant to Section 5.23 (2) (b) of the Local Government Act 1995 and Clause 3.7 of the Shire of Denmark Standing Orders Local Law, Council move behind closed doors for the consideration of Item 10.1 & Item 10.2 to allow the successful applicants names to remain confidential to Council until the official announcement at the Council's 2015 Australia Day Function on 26 January 2015.

CARRIED UNANIMOUSLY: 8/0

Res: 181214

9.47pm – The Director of Finance & Administration, the Director of Community & Regulatory Services and the Director of Planning & Sustainability left the room and did not return. There were no members of the public in the public gallery.

Prior to consideration of Item 10.2 the Chief Executive Officer, through the Presiding Person, brought to the attention of the meeting the following disclosure(s) of interest:

Cr Osborne was the one of the Nominators and Cr Seeney supported one of the Nominations and as a consequence there may be a perception that their impartiality on this matter may be affected. Cr Osborne & Cr Seeney declare that they will consider this matter on its merits and vote accordingly.

10.1 2015 CITIZEN & COMMUNITY GROUP OR EVENT OF THE YEAR AWARDS

File Ref:	PBR.1
Applicant / Proponent:	Various
Subject Land / Locality:	Not applicable
Disclosure of Officer Interest:	Nil
Date:	20 November 2014
Author:	Claire Thompson, Executive Assistant
Authorising Officer:	Dale Stewart, Chief Executive Officer
Attachments:	10.1a – Honour Board of Previous Winners 10.1b – Nominations (under separate cover & confidential to Councillors)

Summary:

Council is asked to consider the Nominations received for the Shire of Denmark’s annual Citizen & Community Group Awards and select winners for each category.

Background:

The Citizen & Community Group of Event of the Year Awards are annual Council awards which are provided pursuant to Policy P040113 and are presented at the Council’s Australia Day Function on the 26 January of each year.

Consultation:

Marketing & promotion for these awards commenced on 10 September 2014 and included the following;

Marketing & Promotion	Date
Council’s website	10 September 2014
Council’s Notice Boards (x 2)	10 September 2014
Denmark Recreation Centre – flyer	10 September 2014
Denmark Library – flyer	10 September 2014
Denmark Youth Centre – flyer	10 September 2014
Letter to every known local Community Group	11 September 2014
Denmark Bulletin	25 September 2014
Walpole Weekly	1 October 2014
Emails to Councillors & Council Employees	10 September 2014
Specific Email to Manager of Recreation & Youth Services requesting assistance in promotion	10 September 2014
Specific Email to Senior Librarian requesting assistance in promotion	10 September 2014
Reminder email to Councillors & Council Employees	27 October 2014
Reminder in Council Conversations (Denmark Bulletin)	6 November 2014
Reminder email to Community Organisations (which have a known email address)	20 November 2014

Statutory Obligations:

There are no statutory obligations.

Policy Implications:

Part A of Council Policy P040113 – Citizen & Sportspersons of the Year relates and reads as follows;

"A. PREMIER'S AUSTRALIA DAY ACTIVE CITIZENSHIP AWARDS

The Citizenship Awards be advertised in September, inviting community groups and private citizens to submit nominations for awards in the following categories:

- a person of 25 years or older;*
- a person under 25 years;*
- a community group or event.*

Nominations to close the last week in November.

A person may only be nominated for one category on a Nomination Form. A person may be nominated more than once on separate Nomination Forms.

Winners to be chosen at a meeting of the Council, and the results kept strictly confidential until presentation.

Presentation to be at a local function celebrating Australia Day (January 26th).

Eligibility

For person(s) of 25 years or older and person(s) under 25 years, the nomination:

- must be made of person(s) who ordinarily reside in the Shire of Denmark; and*
- must demonstrate that person(s) citizenship activities which occur within the Shire of Denmark however, external additional citizenship activities may be taken into consideration during the selection process.*

For a Community Group or Event, the nomination can only be made for a Group or Event which is based, operated and held within the Shire of Denmark however, additional activities or events operated or based outside of the Shire may be taken into consideration during the selection process."

The Officer believes that the above Policy provides appropriate and sufficient guidance to Council, employees and the members of the public.

Budget / Financial Implications:

Council has included provision in the 2014/2015 Budget for these Awards which will fund certificates, plaques for each winner and updating of the Honour Board.

Strategic Implications:

The report and officer recommendation is consistent with Council's adopted Mission and Vision and assists achieve the following specific adopted Strategic Objectives and Goals.

SOCIAL OBJECTIVE - Denmark's communities, people and places are connected and creative, vibrant and dynamic, healthy and safe.

Sustainability Implications:

➤ Governance:

There are no known significant governance considerations relating to the report or officer recommendation.

➤ Environmental:

There are no known significant environmental implications relating to the report or officer recommendation.

➤ **Economic:**

There are no known significant economic implications relating to the report or officer recommendation.

➤ **Social:**

These Awards provide a way for Council & the Community to recognise and acknowledge local individuals and community groups (or events) who have contributed positively to the Denmark Community.

➤ **Risk:**

Risk	Risk Likelihood (based on history and with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That Council not award the 2015 Citizen & Community Group or Event of the Year.	Rare (1)	Minor (2)	Low (1-4)	Not Meeting Community expectations	Accept Officer Recommendation

Comment/Conclusion:

The closing date for nominations was Friday, 28 November 2014 and as such the nominations were copied to Councillors after 4.00pm Friday and prior to the Council meeting.

Ten nominations were received and were as follows;

CATEGORY: CITIZEN OF THE YEAR

- Reg COPEMAN
- Lez BAINES

CATEGORY: YOUNG CITIZEN OF THE YEAR (under 25 years of age)

- Oshana JENNINGS
- Kaylan-Bree JONES
- William (Will) MILLER

CATEGORY: COMMUNITY GROUP OR EVENT

- Woodturners of Denmark Inc.
- Woodturners of Denmark Inc.
- Woodturners of Denmark Inc.
- Denmark Surf Life Saving Club – 2014 SunSmart Country Carnival
- Denmark Walpole Football Club

A table of previous recipients is attached.

Voting Requirements:

Simple majority.

COUNCIL RESOLUTION & OFFICER RECOMMENDATION

ITEM 10.1

MOVED: CR GILLIES

SECONDED: CR PEDRO

With respect to the Shire of Denmark Citizen & Community Group or Event of the Year Awards for 2015, the following recipients be awarded in the respective categories and those names remain confidential to Councillors, Senior Officers of Council and the Council's Executive Assistant and those names also remain embargoed until the Awards Ceremony on 26 January 2015;

- a) 2015 Citizen of the Year to Lez Baines;
- b) 2015 Young Citizen of the Year to William Miller; and
- c) 2015 Community or Event of the Year to Denmark Surf Life Saving Club – 2014 SunSmart Country Carnival.

CARRIED UNANIMOUSLY: 8/0

Res: 191214

Prior to consideration of Item 10.2 the Chief Executive Officer, through the Presiding Person, brought to the attention of the meeting the following disclosure(s) of interest:

10.02pm – Cr Lewis' daughter is one of the nominees and as a consequence there may be a perception that her impartiality on this matter may be affected. Cr Lewis left the room and did not participate in debate or vote on the matter.

10.2 SPORTSPERSON OF THE YEAR AWARDS 2014

File Ref:	PBR.1
Applicant / Proponent:	Various
Subject Land / Locality:	Not applicable
Disclosure of Officer Interest:	Nil
Date:	3 November 2014
Author:	Damian Schwarzbach, Manager of Recreation & Youth Services
Authorising Officer:	Gregg Harwood, Director of Community & Regulatory Services
Attachments:	10.2a – Honour Board of Previous Winners 10.2b – Nominations (under separate cover & confidential to Councillors)

Summary:

Council is asked to consider the Nominations received for the Shire of Denmark's annual Sportsperson of the Year Awards for 2014 and select winners for each category (where there are nominations for such).

Background:

The Sportsperson of the Year Awards are annual Council awards which are provided pursuant to Policy P040113 and are normally presented at the Shire of Denmark's Australia Day Function on the 26 January of each year, pursuant to Council Policy.

Consultation:

Marketing & promotion for these awards commenced on 10 September 2014 and included the following;

- Letters to every known local Community Group;
- Council's website;
- Council's Notice Board;
- Denmark Recreation Centre;
- Denmark Library;
- Denmark Youth Centre;
- Denmark Bulletin – September 2014; and
- Emails to Councillors & Staff.

Statutory Obligations:

There are no statutory obligations.

Policy Implications:

Part B of Council Policy P040113 – Citizen & Sportspersons of the Year relates and reads as follows;

"B. SPORTSPERSONS OF THE YEAR

The Sportspersons of the Year Awards are to be advertised commencing in September, inviting sporting organisations, community groups & organisations, schools and individuals to submit nominations for awards for the year ending 30 September, in the following categories;

- *Junior Sportsperson of the Year (under 18 years of age)*
- *Senior Sportsperson of the Year*

- *Service to Sport Award*

Nominations to close the last week in November.

A person may only be nominated for one category on a Nomination Form. A person may be nominated more than once on separate Nomination Forms.

Winners are to be chosen at a meeting of the Council and be kept strictly confidential until the presentation.

Winners are to receive a suitable gift at a value determined annually by Council during the budget process (GL1160752) and a grant of \$100.00 will be awarded for the winner's club or a local club nominated by the winner (should the winner not be a member of a club).

Presentation of the Awards to be at a function held no later than February. Sporting organisations are to be given the opportunity to facilitate the function with the assistance of Council or in the absence of interest from sporting organisations to do so, Council will organise the function which will include a small attendance fee to cover costs.

Eligibility

Nominations for a person who resides out of the Shire but participates in sport in the Shire of Denmark will be accepted however the nominee will only be judged on their achievements within the Shire of Denmark."

Budget / Financial Implications:

Council has included provision in the 2014/15 Budget for these Awards which will fund certificates, plaques for each winner and updating of the Honour Board.

Strategic Implications:

The report and officer recommendation is consistent with Council's adopted Mission and Vision and assists achieve the following specific adopted Strategic Objectives and Goals.

SOCIAL OBJECTIVE - Denmark's communities, people and places are connected and creative, vibrant and dynamic, healthy and safe.

Sustainability Implications:

➤ **Governance:**

There are no known significant governance considerations relating to the report or officer recommendation.

➤ **Environmental:**

There are no known significant environmental implications relating to the report or officer recommendation.

➤ **Economic:**

There are no known significant economic implications relating to the report or officer recommendation.

➤ **Social:**

These Awards provide a way for Council & the Community to recognise and acknowledge local individuals and community groups (or events) who have contributed positively to the Denmark Community.

➤ **Risk:**

Risk	Risk Likelihood (based on history and with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That no nominations are received for a particular category.	Possible (3)	Insignificant (1)	Low (1-4)	Not Meeting Community expectations	Accept Risk

Comment/Conclusion:

The closing date for nominations was Friday, 28 November 2014 and as such the nominations were copied to Councillors after 4.00pm Friday and prior to the Council meeting.

Thirteen nominations were received and were as follows;

CATEGORY: JUNIOR SPORTSPERSON OF THE YEAR (Under 18 years of age)

- Maya LAUNAY
- Joshua WIMPENNY
- Fynn UNDERWOOD
- Sophie BACON-LEWIS
- Jasmyne JONES
- Summer STIRLING
- Ebony THORPE

CATEGORY: SENIOR SPORTSPERSON OF THE YEAR

- Michael REDDIN
- Bodhi HOLMES
- Isaac DEVITT-BOYD
- Kelly FLETT

CATEGORY: SERVICE TO SPORT

- Kelly SCHROETER
- Glen BURTON

A table of previous recipients is attached.

Voting Requirements:

Simple majority.

COUNCIL RESOLUTION & OFFICER RECOMMENDATION	ITEM 10.2
MOVED: CR GILLIES	SECONDED: CR MORRELL
<p>With respect to the Shire of Denmark 2014 Sportsperson Awards the following recipients be awarded in the respective categories and those names remain confidential to Councillors, Senior Officers of Council, Council’s Executive Assistant and Council’s Manager of Recreation & Youth Services and in addition those names also be embargoed until the Awards Ceremony on 26 January 2015;</p>	
<ol style="list-style-type: none"> 1. 2014 Senior Sportsperson of the Year to Michael Reddin; 2. 2014 Junior Sportsperson of the Year to Ebony Thorpe; and 3. 2014 Service to Sport Award to Glen Burton; 	
CARRIED UNANIMOUSLY: 7/0	Res: 201214

11. NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF THE MEETING

Nil

12. CLOSURE OF MEETING

10.05pm – *There being no further business to discuss the Shire President, Cr Thornton, declared the meeting closed.*

The Chief Executive Officer recommends the endorsement of these minutes at the next meeting.

Signed: _____

Dale Stewart – Chief Executive Officer

Date: _____

These minutes were confirmed at the meeting of the _____

Signed: _____

(Presiding Person at the meeting at which the minutes were confirmed.)