



ORDINARY MEETING OF COUNCIL

HELD IN THE COUNCIL CHAMBERS,
953 SOUTH COAST HIGHWAY, DENMARK ON
TUESDAY, 8 SEPTEMBER 2015.

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Ordinary Council Meeting

8 September 2015

DISCLAIMER

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1. DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS

4.00pm – *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 (*from 4.02pm*)
- Cr Belinda Rowland

STAFF:

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

APOLOGIES:

Nil

ON APPROVED LEAVE(S) OF ABSENCE:

Cr Roger Seeney (pursuant to Council Resolution No. 010615)

ABSENT:

Nil

VISITORS:

Members of the public in attendance at the commencement of the meeting: 10

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

DECLARATIONS OF INTEREST:

Name	Item No	Interest	Nature
Mr Gregg Harwood	8.2.3	Impartiality	Mr Harwood holds a Gold Membership at the Denmark Recreation Centre and the applicant is one of the employees in his Directorate.

3. ANNOUNCEMENTS BY THE PERSON PRESIDING

Nil

4. PUBLIC QUESTION TIME

4.1 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

4.2.1 Cr Lewis – Aquatic Facility

At the meeting held on Tuesday, 18 August 2015, Cr Lewis stated that she would like the following questions taken on notice. The Chief Executive Officer has provided the following responses in writing to Cr Lewis.

Thank you for your questions taken on notice at the Council Meeting held on Tuesday, 18 August 2015.

My responses follow and these, together with your questions, will be included in the Agenda for the Council Meeting of 8 September 2015.

Question 1 - CEO, at the Public Information Forum on Tuesday 11th August you stated that our Manager of Recreation and Youth Services has been alongside this project all the way. Can you please explain precisely the input our expert on sport and recreation has had in developing the twin pool option?

Response:

I cannot recall whether I used the term that 'he was alongside' this project all of the way necessarily, but if I did then so be it. Suffice to say that the Council's expertise in Recreation Services, including management of Aquatic Facilities, lies within a number of persons including myself, the Director of Community & Regulatory Services and the Manager of Recreation and Youth Services. Indeed of the three persons mentioned, the Chief Executive Officer has directly been responsible for managing Aquatic Facilities and the Director involved in monitoring Aquatic Facilities.

The Twin Pool, or Learn to Swim and Hydrotherapy Pool Concept option, has been developed in conjunction with Councillors by the three staff mentioned and the Manager has been consulted and involved in much of its facets. At the end of the day the project is still a 'concept' however.

*Question 2 - CEO Under the comment/conclusion section of your officer report which went to Council on 7th July, can you please confirm that the figures given regarding confidence levels – 'Sample size 1053 (15%)' and 'Sample size 1756 (25%)' relate in face to the **response rate** not the proposed **sample size**?*

Response:

From the Report;

"The following confidence levels would relate with the estimated survey size and indicative responses (example only) of 15% and 25% return.

Population 7025, Sample Size 1053 (15%)

- Confidence Level 99%, Margin of Error 4%*
- Confidence Level 95%, Margin of Error 3%*
- Confidence Level 90%, Margin of Error 3%*

Population 7025, Sample Size 1756 (25%)

- Confidence Level 99%, Margin of Error 3%*
- Confidence Level 95%, Margin of Error 3%*
- Confidence Level 90%, Margin of Error 2%".*

The data has been extracted from the following site:
<http://www.surveysystem.com/sscalc.htm>

The Sample Size Calculator, on the site, is presented “as a public service of Creative Research Systems [survey software](#). You can use it to determine how many people you need to interview in order to get results that reflect the target population as precisely as needed.”

Thus, if one had a target population of say 7,025 people, and you wanted a confidence of 99% (in the result) with a margin of error, for example, of plus or minus 3%, then you would need a response rate (to your survey) of 1,756 people (25%).

Question 3 - CEO – part of your officer recommendation which went to Council on 7th July dealt with the survey question and **included the words**, “and it is acknowledged that such a facility, whilst able to be staged to be part of a larger Indoor heated facility, would probably delay the next stage (laps lanes and leisure water) until the Council and Community were in a position to fund that.” Can you please explain why these words were included in your officer recommendation?

Response:

Because as Chief Executive Officer, and the Report Author, I held and hold the view that that this would be the case.

Question 4 - Shire President – it is not clear from the “Reasons for Change” section why the above words where [sic] omitted from COUNCIL RESOLUTION 8.5.2 – can you please explain why this sentence was removed?

Response:

This question has been answered by the CEO on behalf of the Shire President. You would have to ask individual Councillors, and/or the mover or the seconder of the motion, the answer to that question – however the words that Council accepted (as the reasons for change) in the adoption of the Minutes for the meeting was that “Council wished to note the reasons why it was considering a smaller option to what was proposed by the Denmark Aquatic Centre Committee and removed words from the survey question relating to acknowledging that building a smaller facility could delay the building of a larger facility.”

Question 5 - I have had several community members voice their disquiet that the final COUNCIL RESOLUTION 8.5.2 differed dramatically from the published officer recommendation. Their concern is that they were denied the opportunity to comment / question the proposed resolution. Can the CEO please explain the rules around changing officer recommendations?

Response:

Councillors are at liberty (at law) to move motions totally different to the Officer Recommendation (on the same subject matter), however Council Policy gives guidance and states as follows;

"P040104 OFFICER RECOMMENDATIONS TO COUNCIL OR COMMITTEE MEETINGS

Officer recommendations can be:

- a) adopted as they are
- b) not adopted
- c) adopted with amendment
- d) referred to a Committee for further consideration, stating the issues to be addressed by the Committee and whether the ultimate decision is to be made by the Committee or by full Council
- e) substantially altered or an alternative motion proposed
- f) deferred until the following ordinary Council meeting or to a Special meeting of Council, stating the reasons for such deferment.

Wherever possible, a Member should give notice of his/her intention to move a motion pursuant to (b), (d), (e) and (f) or to move an amendment pursuant to (c), by providing it to the CEO by 4pm on the Thursday prior to the next Ordinary Council meeting. Reasons for the change to be included within the notice, to be recorded in the minutes on the adoption of an amended or changed officer recommendation."

In addition, the Local Government Act 1995, Local Government (Administration) Regulations 1995, Regulation 11 (da) states in relation to the recording of minutes of Council Meetings;

"written reasons for each decision made at the meeting that is significantly different from the relevant written recommendation of a committee or an employee as defined in section 5.70 (but not a decision to only note the matter or to return the recommendation for further consideration);"

Question 6

COUNCIL RESOLUTION 8.5.2 states; in 5.b) **"Request the CEO to prepare information for the Forum, Displays in the Shire Administration Office and Library and online and for the Survey Questionnaire, and to advertise the information and Forum widely in local newspapers and media; and in 5.e) 'Send the Survey, to recipients, not before the 11 August 2015 and by the 13 August with a return date by the 4 September (allowing a minimum of 21 days)'** There does not appear to be any information in either the Admin Office of the Library no anything I could find online, and the survey should have gone out last week. Two questions: -

- a) Why has this part of the Council resolution not been implemented?
- b) Is the CEO confident that those answering the survey will have made a thoroughly informed decision?

Response:

Surveys were provided to Australia Post on 13 August 2015, with some people reporting that they had received the survey on the 14 August. It is noted however that others may not have received them until early in the next week depending upon their location and Australia Post's distribution and delivery methodology.

As to whether I am confident that people have sufficient time and/or information to make an informed decision, I would suggest that those that felt that they were informed enough would have voted and those that did not may

not have. The Council website had all of the information relating to the decision and the FAQ's etc online and available by the 13 August, with the exception of the FAQ answers to the Information Night of the 11 August, which did not get placed on the web until the afternoon of the 17 August.

This notwithstanding, the Aquatic Centre issue has been one that has been well publicised and documented in the community and Council for many years. I am confident therefore, that those that wished to be informed, could have been.

I trust this answers your questions satisfactorily and should you require further information or advice on this matter please contact the undersigned on telephone (08) 9848 0300 or email enquiries@denmark.wa.gov.au."

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

4.02pm – Cr Pedro entered the room.

4.2.1 Ms Amber Jeeves – Item 8.2.3 (Personal Training Sessions in Council Reserves)

Ms Jeeves noted that prior to her request Council had not had a policy on the matter and enquired as to whether the Council had policed these activities in the past. Ms Jeeves asked whether the policy was supposed apply to anyone utilising Council Reserves, such as yoga and canoeing, and suggested that if it was then perhaps the name of the Policy could be amended to reflect this. Ms Jeeves asked whether Council would consider reducing the annual fee from \$50 to \$20 and asked whether the proposed new draft policy would be advertised for public comment. Ms Jeeves also asked whether the Policy could list all of Council's parks and reserves.

The Chief Executive Officer advised that it was not the Officer's Recommendation that the draft amended policy be readvertised however Council could resolve to do so if they wished. Mr Stewart noted that whilst it was a legal requirement for Council to advertise any new or amended fees or charges there was no such requirement to advertise the Council policy again as the Officer is of the view that it need not be advertised again as it has responded to the submissions received.

Mr Stewart stated that there were already penalties under the Council Local Laws and Mr Harwood noted that he did not believe that any infringement had ever been issued.

Mr Stewart advised that he could provide Ms Jeeves with a list of all of Council's owned or managed parks and reserves and that it would be at Council's discretion whether they adjusted the annual permit fee.

4.2.2 Mr Geoff Bowley – Denmark Riverside Club Inc.

Mr Bowley, on behalf of the Denmark Riverside Club Inc., provided an update on the progress of the Riverside Club's development.

4.2.3 Ms Denise Jenkins – Item 8.2.2 (Draft Caravanning or Camping on Privately Held Land Policy)

Ms Jenkins expressed concerns relating to the proposal particularly in relation to the length of time that some people camp on private properties. Ms Jenkins asked noted that there was also no criteria which determined where people could or couldn't have people staying.

The Chief Executive Officer responded stating that each application would be assessed based on the conditions within the authorisation.

Ms Jenkins added that she believed that each application should be assessed by Council to give due consideration to the possible impacts on nearby residents.

The Shire President stated that the conditions stated that the maximum length of stay that an Officer could permit would be 14 days and if it was for any longer then the application would be brought to Council. Cr Thornton also noted that one of the conditions was in relation to the applicant ensuring that the activity did not create unruly conduct as to cause a nuisance.

4.2.4 Ms Karen Cussons – Item 8.2.2 (Draft Caravanning or Camping on Privately Held Land Policy)

Ms Cussons advised that she had sent in a submission regarding the proposed policy and spoke against the proposed authorisations noting that a lot of residents enjoyed the quiet and serenity of Denmark and she also had concerns relating to fire risk and water use.

4.2.5 Dr Cyril Edwards – Item 4.1.2 (Cr Lewis – Aquatic Facility)

Dr Edwards commented on and asked a number of questions in relation to Item 4.1.2 which were as follows;

Question 3 from Cr Lewis - CEO

Part of your officer recommendation which went to Council on 7th July dealt with the survey question and **included the words**, "and it is acknowledged that such a facility, whilst able to be staged to be part of a larger Indoor heated facility, would probably delay the next stage (laps lanes and leisure water) until the Council and Community were in a position to fund that." Can you please explain why these words were included in your officer recommendation?

Response:

Because as Chief Executive Officer, and the Report Author, I held and hold the view that that this would be the case.

Comment from CE

The CEO's response to Q3 reveals that his recommendation to Council reflected his view at the time (i.e. that the smaller pool would probably delay the larger) and it is a view that he adheres to. Quite right!

Question 4 from Cr Lewis - Shire President

It is not clear from the "Reasons for Change" section why the above words were [sic] omitted from COUNCIL RESOLUTION 8.5.2 – can you please explain why this sentence was removed?

Response:

This question has been answered by the CEO on behalf of the Shire President. You would have to ask individual Councillors, and/or the mover or the seconder of the motion, the answer to that question – however the words that Council accepted (as the reasons for change) in the adoption of the Minutes for the meeting was that "Council wished to note the reasons why it was considering a smaller option to what was proposed by the Denmark Aquatic Centre Committee and removed words from the survey question relating to acknowledging that building a smaller facility could delay the building of a larger facility."

Comment

The CEO's response to Q4 correctly points to the *record* of the words that were used but he cannot explain *why they were accepted* by Council. Right again!

But if Council had a reason for removing the words shouldn't it give an explanation?

So my First Question on Notice is addressed to the Mover (Cr Sampson) and Secunder (Cr Osborne) and the remaining three Councillors that supported them ...

"Why did you press to remove the reference to possible delays as per the Officer's Report?"

Question 5 from Cr Lewis –

I have had several community members voice their disquiet that the final COUNCIL RESOLUTION 8.5.2 differed dramatically from the published officer recommendation. Their concern is that they were denied the opportunity to comment / question the proposed resolution. Can the CEO please explain the rules around changing officer recommendations? I have had several community members voice their disquiet that the final COUNCIL RESOLUTION 8.5.2 differed dramatically from the published officer recommendation. Their concern is that they were denied the opportunity to comment / question the proposed resolution. Can the CEO please explain the rules around changing officer recommendations? The CEO's answer detailed and coherent – and it seems that Clause (e) is directly relevant since the Officer's Report was "*substantially altered ...*"

The CEO continues ...

Wherever possible, a Member should give notice of his/her intention to move a motion pursuant to (b), (d), (e) and (f) or to move an amendment pursuant to (c), by providing it to the CEO by 4pm on the Thursday prior to the next Ordinary Council meeting. Reasons for the change to be included within the notice, to be recorded in the minutes on the adoption of an amended or changed officer recommendation."

In addition, the Local Government Act 1995, Local Government (Administration) Regulations 1995, Regulation 11 (da) states in relation to the recording of minutes of Council Meetings; “written reasons for each decision made at the meeting that is significantly different from the relevant written recommendation of a committee or an employee as defined in section 5.70 (but not a decision to only note the matter or to return the recommendation for further consideration);”

Comment

The issue here is that Parts 1 and 2 of the Resolution are not supported by anything in the Officer’s Report. They came literally out of the blue. There was no opportunity whatsoever for any member of the public to question or challenge them.

The message that they convey is one of impatience and determination ... determination to see an end to the Denmark Aquatic Facility and DACCI for the indefinite future. A prejudice that has previously been only been mumbled in the background is now clearly claimed as a quantitative reality.

So my Second Question on Notice – to the Councillors concerned (not the CEO)

“Will you please provide the community with a carefully documented case to support your conclusions?”

The Shire President noted that the questions would be taken on notice and responded to in writing.

4.2.6 Ms Beverley Ford – Item 8.2.2 (Draft Caravanning or Camping on Privately Held Land Policy)

Ms Ford, President of the Denmark Chamber of Commerce, stated that the policy was a retrograde step and referred to the list of conditions and asked who was going to assess them, and whether a Council Officer would be making on site visits for every application.

The Shire President stated that the applications would be assessed by Council Officers and would include on-site visits by the Director of Community & Regulatory Services and the Principal Environmental Health Officer who were qualified to do so. The Director of Community & Regulatory Services added that people would be required to go through the application process and that in most cases the property would be inspected.

Ms Ford noted advice that the legislation regarding camping on private land was changing and asked why Council was putting through a policy now rather than waiting.

The Chief Executive Officer responded that he considered it as being proactive.

Ms Ford referred to a recent meeting she had been present at with Tourism WA who had advised that one of the biggest complaints around tourism in the region was the perception of sub-standard, low quality accommodation. Ms Ford stated that she believed that it was these types of policies which only enhanced that perception.

Ms Jenkins asked the Shire President whether she could raise a question relating to Item 8.2.2. Cr Thornton noted that members of the public were not permitted to speak on the same matter twice however he would allow a brief question from Ms Jenkins on the matter.

4.2.7 Ms Denise Jenkins – Item 8.2.2 (Draft Caravanning or Camping on Privately Held Land Policy)

Ms Jenkins asked whether changes to the legislation would mean that there would still be a fee involved and whether there was any need for a policy.

The Chief Executive Officer responded stating that he believed that the same practice would apply with or without a policy and if the legislation conflicts with an adopted policy of Council then the policy could be amended accordingly.

4.2.8 Ms Janine Phillips – Item 8.2.2 (Draft Caravanning or Camping on Privately Held Land Policy)

Ms Phillips referred to the proposed delegated powers and asked the following questions;

- Would people be able to apply for more than five people and charge?
- Would it only be during peak or overflow periods?
- Would the proposed authorisations be going out to public comment?
- With pending changes to State legislation, should Council not defer consideration?

The Chief Executive Officer responded stating that people could apply for more than five people, they would not be permitted to charge a fee, applications could be made and considered at any time and the Officer had not recommended any further public consultation. Mr Stewart stated that he did not believe that the matter needed to be deferred because if changes were made to State legislation, the authorisation could be amended if required.

Ms Phillips, as the owner of Peaceful Bay Caravan Park, advised that she was aware that people were already camping on private land for longer than three days however the Council were not infringing anyone.

The Chief Executive Officer stated that it was a matter of resources however, should the Council ask him to thoroughly police the matter throughout the entire Shire then he would need to employ additional rangers to do so.

4.2.9 Ms Liz Jack – Item 8.2.1 (McLean Park Overflow Camping Policy & Management Plan)

Ms Jack, Chief Executive Officer of the Denmark Chamber of Commerce, questioned the summary of their submission, in the Officer's report, advising that the Chamber did not question whether the town needed extra economic stimulus. Ms Jack requested that her words be recorded to this effect.

Ms Jack stated that generally local businesses were at capacity during peak periods and questioned why Council would be advocating for bringing in more people at those times rather than stimulating tourism during the shoulder periods, which is when local businesses needed it.

4.2.10 Mr Noel Phillips – Item 8.2.1 (McLean Park Overflow Camping Policy & Management Plan)

Mr Phillips, owner of the Denmark Rivermouth Caravan Park, referred to problems relating to digital TV transmission and the Chief Executive Officer read out an email which Mr Phillips had previously forwarded which read as follows;

“The Rivermouth Caravan Park currently loses on average 4 passing off season caravan bookings a week a result of not having digital television coverage and the figures for other frontline tourist parks would be similar.

These people ask if we have coverage and when we advise them that we do not have it they drive through to Albany.

At its 17 January & 7 February 2012 meetings Council considered whether or not to upgrade its Peaceful Bay and Weedon Hill analogue TV retransmission towers to digital and made a decision not to proceed by moving the following motion:

“That with respect to the request from the Department for Broadband, Communications and the Digital Economy for Council to advise whether it intends to continue retransmission of television services from the Weedon Hill and Peaceful Bay retransmission sites, Council;

1. Advise the Department that it does not intend to provide retransmission of the digital services to local households and businesses in the Peaceful Bay area allowing owners of these properties to access the Satellite Subsidy Scheme to receive the VAST service.
2. Advise the Department that it does not intend to provide retransmission of the digital services to local households and businesses in the Denmark area at this point in time, however reserves the right to change this decision as further information regarding costs, black spot areas and other factors become better known.
3. Refer the matter to the Western Australian Local Government Association Great Southern Zone for discussion and comment.”

The 17 January & 7 February 2012 meeting officer reports did not consider the effect that such a decision would have on the tourism industry and in hindsight should have.

At the time report was the most visitors to the Rivermouth Caravan Park were still able to receive a patchy transmission but the around 18 months this ceased altogether and vans visiting our park can no longer get a signal.

Retransmission equipment is now more readily available and we have obtained quotes that it would cost in the region of \$28,000 to service our own park and \$100,000 to service a 9km radius of Weedon Hill.

A wider coverage would be of benefit to many tourism operators and it would be a waste of resources if the Rivermouth Caravan Park invested \$28,000 to service our own park and for other parks to do the same when Council install a system that would the wider tourism industry’s needs for a similar order of costs.

The 17 January & 7 February 2012 meeting officer reports mentioned Royalties for Regions funding as an option. While we understand that this has now been limited to larger by the state government to larger projects and

tourism facilitation and be harder to obtain would Council be prepared given the new information that has been presented today to commence dialogue with caravan parks regarding digital TV retransmission.”

The Shire President noted that the questions would be taken on notice and responded to in writing.

4.2.11 Mr Noel Phillips – Item 8.2.2 (Draft Caravanning or Camping on Privately Held Land Policy)

Mr Phillips referred to Caravan Association spending money on obtaining legal advice from Knott Gunning on the matter and stated that he hoped that by Council proceeding it would not mean that Ratepayers would be paying for legal ramifications in the future.

4.2.12 Mrs Fiona Ross – Regional Price Preference

Mrs Ross referred to Item 8.5.2 from the previous Council meeting in relation to a review of Council’s Regional Price Preference and asked whether a date had been set for a workshop.

The Director of Finance & Administration advised that he had met with a representative from the Chamber of Commerce last week and was awaiting their advice on suitable dates.

Mrs Ross referred to the current policy and asked whether it was likely that Albany and Walpole would get the same price preference as Denmark.

The Shire President responded stating that it was subject to the review and noted that the City of Albany’s Price Preference Policy included Denmark as a ‘local’ supplier.

4.2.13 Mrs Tracey Whooley – Ocean Beach Road Project

Mrs Whooley referred to the Ocean Beach Road development project of approximately \$1m and asked whether it would be put out for public consultation.

The Chief Executive Officer stated that he was not aware of the details of the construction but believed it to be reconstruction and footpath, similar to the Scotsdale Road project. Mr Stewart stated that it was not intended to go out for public consultation at this stage.

The Shire President added that the project was not to build a new road but rather resheet an existing one.

4.3 QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN

Nil

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 Meeting dealing with 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.

Nil.

5. APPLICATIONS FOR FUTURE LEAVE OF ABSENCE

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

6. CONFIRMATION OF MINUTES

6.1 ORDINARY COUNCIL MEETING

COUNCIL RESOLUTION & OFFICER RECOMMENDATION	ITEM 6.1
MOVED: CR SAMPSON	SECONDED: CR MORRELL
That the minutes of the Ordinary Meeting of Council held on the 18 August 2015 be confirmed as a true and correct record of the proceedings.	
CARRIED UNANIMOUSLY: 8/0	Res: 010915

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 SCHEME AMENDMENT 133 – REZONING NO. 1597 (LOT 1) VALLEY OF THE GIANTS ROAD, BOW BRIDGE FROM ‘RURAL’ TO ‘TOURIST’ & ‘PARKS AND RECREATION

File Ref:	TPS3/SA133 (A247)
Applicant / Proponent:	Denmark Survey & Mapping on behalf of R & M Henderson
Subject Land / Locality:	No. 1597 (Lot 1) Valley of the Giants Road, Bow Bridge
Disclosure of Officer Interest:	Nil
Date:	20 August 2015
Author:	Annette Harbron, Director of Planning & Sustainability
Authorising Officer:	Annette Harbron, Director of Planning & Sustainability
Attachments:	8.1.1 a – Advertised Scheme Text Provisions, Zoning Map and Tourist Development Guide Plan 8.1.1b – EPA Advice & Recommendations 8.1.1c – Schedule of Submissions

Summary:

In March 2015 Council resolved to initiate Scheme Amendment No. 133 to rezone No. 1597 (Lot 1) Valley of the Giants Road, Bow Bridge from “Rural” to part “Tourist (T12)” zone and part “Parks and Recreation” local scheme reserve to facilitate a range of tourist accommodation and attractors on-site.

Scheme Amendment No. 133 was advertised for public comment, with six (6) submissions received.

It is recommended that Council grant final approval with modifications to Scheme Amendment No. 133 and refer the document to the Western Australian Planning Commission (WAPC)/Minister for Planning for final approval.

Background:

At its meeting of 3 March 2015, Council considered a request to initiate Scheme Amendment No. 133 to Town Planning Scheme No. 3 (TPS No. 3) wherein they resolved the following (Res No: 030315):

“That with respect to the request to initiate a Scheme Amendment to rezone No. 1597 (Lot 1) Valley of the Giants Road, Bow Bridge from “Rural” to “Tourist” & “Parks and Recreation”, Council:

1. Pursuant to Section 75 of the Planning and Development Act 2005 initiate Town Planning Scheme No. 3 Amendment No. 133 by:
 - a) Rezoning No. 1597 (Lot 1) Valley of the Giants Road, Bow Bridge from the “Rural” zone to part “Tourist (T12)” zone and part “Parks and Recreation” local scheme reserve and amending the Scheme Maps accordingly.
 - b) Inserting Tourist T12 provisions in Appendix XIII – Schedule of Tourist Zones as follows:
 - Column 1 – Particulars of the Land
T12
No. 1597 (Lot 1) Valley of the Giants Road, Bow Bridge
 - Column 2 – Tourist Use
Notwithstanding any other provisions of the scheme, the following land uses are the only permitted (P) land uses: Single House, Boarding House (Lodge), Gallery/Restaurant, Holiday Accommodation (Chalets), Managers Residence, Microbrewery.
 - Column 3 – Condition of Tourist Use
 1. The development shall generally be in accordance with the Tourist Development Guide Plan Ref 1515-05A, or any minor variation to that plan approved by Council.
 2. Development shall be connected to Alternative Treatment Units approved by Council in accordance with the Health Department of WA regulations and guidelines.
 3. Building Materials:
 - All building materials and finishes are to be of natural earth, vegetation or earth brown colours.
 - Zinalume and off white colours and finishes will not be permitted.
 - All water tanks and carports (if any) are to be constructed in the same colours as mentioned above and are to be screened from Valley of the Giants Road.
 4. Provision of potable water shall be the responsibility of the landowner at the time of development. The following minimum water storage requirements shall be applicable for each land use:
 - Single House – 92kL
 - Boarding House – 150kL
 - Gallery/Restaurant – 150kL
 - Holiday Accommodation (Chalets) – 92kL per chalet
 - Managers Residence – 92kL
 - Microbrewery – 3 x 100kL
 5. Fire Management:
 - Suitable fire control measures being implemented to the satisfaction of Council and being in accordance with the approved Fire Management Plan; and
 - All buildings shall be constructed in accordance with the requirements of AS3959-2009 Construction of Buildings in Bushfire Prone Areas (as amended).
 6. Access and egress is to be from the single point shown on the Tourist Development Guide Plan, excepting any additional access requirements for fire management.

7. *The land shown as foreshore reserve under the approved Tourist Development Guide Plan to be ceded free of cost to the Department of Water as a condition of planning approval or subdivision approval.*
8. *Within those areas delineated as 'Tree Preservation Area' on the Tourist Development Guide Plan no further clearing shall occur, except for:*
 - *Trees that are dead, diseased or dangerous;*
 - *To comply with the Fire Management Plan requirements for the site.*
9. *Clearing of vegetation throughout the site shall only be permitted pursuant to the Environmental Protection Act 1986 and the Environmental Protection (Clearing of Native Vegetation) Regulations 1994 where:*
 - *To facilitate development in accordance with the Tourist Development Guide Plan;*
 - *To remove trees that are dead, diseased or dangerous;*
 - *To comply with the requirements of the Fire Management Plan.*
10. *With the area depicted as 'Development Exclusion Zone' on the Tourist Development Guide Plan, no further development or on-site effluent disposal is to occur, with the exception of:*
 - *Those areas indicated for the construction of roads or tracks; and*
 - *The development of the 'Ceremony Platform' and 'Hardstand and Turnaround for Fire Vehicle'.*
11. *All new development shall be setback a minimum of:*
 - *20 m from the front boundary; and*
 - *20m from all other boundaries.*
12. *The following requirements will apply to the strata titling of the development:*
 - *A person is not to occupy a chalet/s or a room/s within the boarding house for longer than three (3) months in any twelve (12) month period.*
 - *An agreement between the applicant and Council to ensure a management system is in place to ensure accommodation is made available for rent to the general public when not in use by the owners.*
 - *Prior to the sale of strata lots, common property and shared facilities are to be completed to the satisfaction of Council.*
 - *In the event of the staged development and strata titling of the property, Council may permit the development of common property in stages.*
 - *Fencing of strata lots is not permitted.*
 - *The external form of development to be of uniform complementary architectural theme, character, colours and materials.*
2. *Refer Town Planning Scheme No. 3 Scheme Amendment No. 133 to the Environmental Protection Authority in accordance with Section 81 of the Planning and Development Act 2005.*
3. *Determine that Town Planning Scheme No. 3 Amendment No. 133 is consistent with the criteria listed under Section 25(2) of the Town Planning Regulations 1967 and resolve to proceed to advertising of the amendment for public inspection after consideration by the Environmental Protection Authority."*

In line with Council's resolution the documentation was updated by the proponent, with referral of the Scheme Amendment No. 133 documentation to the Environmental Protection Authority (EPA) in accordance with Section 81 of the *Planning and Development Act 2005* occurring on 19 March 2015.

The EPA considered the proposal and determined that the proposed scheme amendment should not be assessed under Part IV Division 3 of the *Environmental Protection Act 1986* but nevertheless provides advice and recommendations. Advice of this determination was provided to Planning Services via letter dated 20 April 2015 (refer Attachment 8.1.1b).

Consultation:

Public advertising of Scheme Amendment No. 133 (refer Attachment 8.1.1a for the proposed Scheme Text provisions, Zoning Map and Tourist Development Guide Plan – noting that due to the size of the document, a copy of the Scheme Amendment report documentation is available for Councillors via Dropbox or USB, with a printed version available for Councillors upon request) commenced on 13 May 2015 and closed on 3 July 2015 (being 52 days, statutory requirement is minimum 42 days). During the advertising period the following consultation took place:

- Advertising notice in the Walpole Weekly on 13 May 2015 and Denmark Bulletin on 14 May 2015 inviting public comment;
- Referral of the Scheme Amendment documentation to the following government departments/servicing authorities inviting comment:
 - Department of Aboriginal Affairs
 - Department of Agriculture and Food WA
 - Department of Fire & Emergency Services
 - Department of Health
 - Department of Parks and Wildlife
 - Department of Planning
 - Department of Water
 - Tourism Western Australia
- Referral to nine (9) landowners generally within 1km radius of the subject lot inviting comment;
- Sign on-site inviting public comment; and
- Scheme Amendment documentation was available for viewing at the Shire Administration Office and on the Shire's website.

At the close of the advertising period, a total of six (6) submissions were received – one (1) from the public and five (5) from government departments/servicing authorities. Attached as Attachment 8.1.1c is the Schedule of Submissions – with all submissions received being entered into the schedule as verbatim. Column 4 of the Schedule of Submissions represents Planning Services comments/response to the submissions and any modifications recommended as a result.

Statutory Obligations:

- *Planning and Development Act 2005* – TPS No. 3 is an operative Local Planning Scheme under the Act;
- *Town Planning Regulations 1967* – The Regulations set the procedure for amending a town planning scheme; and
- Town Planning Scheme No. 3 – the land is currently zoned 'Rural'.

Policy Implications:

The following policies have been given due consideration in relation to this proposal:

- State Planning Policy No. 1: State Planning Framework Policy
- State Planning Policy No. 2.5: Land Use Planning in Rural Areas
- State Planning Policy No. 2.9: Water Resources
- State Planning Policy No. 3.4: Natural Hazards and Disasters and Draft State Planning Policy 3.7: Planning for Bushfire Risk Management
- Planning Bulletin 83/2013: Planning for Tourism
- Draft Country Sewerage Policy
- Town Planning Scheme Policy No. 5: Minimum Setbacks
- Town Planning Scheme Policy No. 7: Second Dwellings/Additional House and Chalet Development on Rural Zoned Lots

- Town Planning Scheme Policy No. 29: Rural Settlement Strategy
- Shire of Denmark Tourism Planning Strategy – Stage 1
- Council Policy P130201: Tourism

Budget / Financial Implications:

Fees associated with the amendment have been paid as per Council's operative Fees and Charges Schedule applicable at the time of lodging the formal request to amend TPS No. 3.

As per Council's operative Fees & Charges Schedule, Planning Services are recording officer time associated with this Scheme Amendment on the basis that if the costs exceed \$4,000.00 (being the amount paid upfront by the proponent) then additional costs will apply and an invoice will be issued to the proponent's accordingly.

Strategic Implications:

The site is designated in the adopted Local Planning Strategy as 'General Agriculture' with an indicative rural nodal settlement 'dot' over the subject lot and surrounds. Due regard has been given to the relevant Local Planning Strategy provisions within Scheme Amendment 133.

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

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

Social Goal: Lifestyle – that the Shire of Denmark endeavour to maintain and improve the standards and style of living, together with the creative and vibrant culture, that residents and visitors have come to expect.

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.

Environment Goal: Waterways – that the Shire of Denmark acknowledge the importance of rivers, inlets and coastline to residents, visitors and the local economy, and implements and advocates for policies with other relevant authorities and organisations to maintain these to a high standard of health and amenity.

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:**

All processes associated with Amendment 133 have been actioned as per the requirements of the Town Planning Regulations 1967.

➤ **Environmental:**

There are no known significant environmental considerations relating to the report or officer recommendation, noting that the proposed Scheme provisions address the relevant environmental related matters for the development of the site (e.g. identification of building envelope areas, development exclusion zones, tree preservation areas, effluent disposal arrangements, fire protection measures, ceding of foreshore reserve etc).

➤ **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 the WAPC/ Minister for Planning do not support the Amendment proposal	Unlikely (2)	Insignificant (1)	Low (1-4)	Inadequate Engagement - Community / Stakeholders / Crs	Manage by liaison with Department of Planning staff as the amendment progresses.

Comment/Conclusion:

Having regard to the submissions received and a review of the Scheme Amendment documentation by Planning Services, the following modifications to the Subdivision Guide Plan, the Scheme Amendment report and/or the associated Scheme Amendment provisions are recommended:

- a) Modify the foreshore reserve boundary on the Tourist Development Guide Plan to reflect the foreshore reserve boundary as recommended by the Department of Water in their submission on Amendment 133.
- b) Modify the indicative strata lot sizes inset on the Tourist Development Guide Plan such that the shared effluent disposal system is relocated to the northern side of the vehicle accessway given the advice that an area larger than the 1507m² proposed is likely to be required for the purposes of shared effluent disposal system requirements as referenced by the Department of Health in their submission on Amendment 133.

- c) Amend Condition 2 to reference approval required by Department of Health as well as Council.
- d) Amend Condition 7 to modify the reference of ceding the foreshore reserve to “Department of Water” to “the Crown”.
- e) New Condition 13 to require the preparation, and subsequent implementation of a Weed Management Plan to the satisfaction of Council either as a condition of planning approval or subdivision approval.
- f) Amend Condition 1 to modify the reference of “Tourist Development Guide Plan 1515-05A” to “Tourist Development Guide Plan 1515-06A” on the basis that amendments are recommended to be undertaken to the Tourist Development Guide Plan that was advertised (being Version 1515-05A); thus a new version (being 1515-06A) will be compiled as a result of the recommended modifications.

From a Planning Services perspective it is considered that subject to the above modifications being incorporated, Amendment 133 and the associated Subdivision Guide Plan will provide for an appropriate development form for the site.

Voting Requirements:

Simple majority.

COUNCIL RESOLUTION & OFFICER RECOMMENDATION	ITEM 8.1.1
MOVED: CR GILLIES	SECONDED: CR PEDRO
That with respect to Scheme Amendment 133 to rezone No. 1597 (Lot 1) Valley of the Giants Road, Bow Bridge from “Rural” to “Tourist” & “Parks & Recreation”, Council:	
<ol style="list-style-type: none"> 1. Notes the submissions received. 2. Require the following modifications be undertaken to the Tourist Development Guide Plan and/or the associated Scheme Amendment No. 133 report documentation: <ul style="list-style-type: none"> a) Modify the foreshore reserve boundary on the Tourist Development Guide Plan to reflect the foreshore reserve boundary as recommended by the Department of Water in their submission on Amendment 133. b) Modify the indicative strata lots inset on the Tourist Development Guide Plan such that the shared effluent disposal system is relocated to the northern side of the vehicle accessway given the advice that an area larger than the 1507m² proposed is likely to be required for the purposes of shared effluent disposal system requirements as referenced by the Department of Health in their submission on Amendment 133. c) New Tourist Development Guide Plan 1515-06A being prepared which incorporates the referenced modifications in 2a) and 2b). 3. Adopts Scheme Amendment No. 133 for final approval with modifications by: <ul style="list-style-type: none"> a) Rezoning No. 1597 (Lot 1) Valley of the Giants Road, Bow Bridge from the “Rural” zone to part “Tourist (T12)” zone and part “Parks and Recreation” local scheme reserve and amending the Scheme Maps accordingly. b) Inserting Tourist T12 provisions in Appendix XIII – Schedule of Tourist Zones as follows: <ul style="list-style-type: none"> • Column 1 – Particulars of the Land T12 No. 1597 (Lot 1) Valley of the Giants Road, Bow Bridge • Column 2 – Tourist Use Notwithstanding any other provisions of the scheme, the following land uses are the only permitted (P) land uses: Single House, Boarding House (Lodge), Gallery/Restaurant, Holiday Accommodation (Chalets), Managers Residence, Microbrewery. • Column 3 – Condition of Tourist Use <ol style="list-style-type: none"> 1. The development shall generally be in accordance with the Tourist Development Guide Plan Ref 1515-06A, or any minor variation to that plan approved by Council. 	

2. Development shall be connected to Alternative Treatment Units approved by Council and the Department of Health.
3. Building Materials:
 - All building materials and finishes are to be of natural earth, vegetation or earth brown colours.
 - Zincalume and off white colours and finishes will not be permitted.
 - All water tanks and carports (if any) are to be constructed in the same colours as mentioned above and are to be screened from Valley of the Giants Road.
4. Provision of potable water shall be the responsibility of the landowner at the time of development. The following minimum water storage requirements shall be applicable for each land use:
 - Single House – 92kL
 - Boarding House – 150kL
 - Gallery/Restaurant – 150kL
 - Holiday Accommodation (Chalets) – 92kL per chalet
 - Managers Residence – 92kL
 - Microbrewery – 3 x 100kL
5. Fire Management:
 - Suitable fire control measures being implemented to the satisfaction of Council and being in accordance with the approved Fire Management Plan; and
 - All buildings shall be constructed in accordance with the requirements of AS3959-2009 Construction of Buildings in Bushfire Prone Areas (as amended).
6. Access and egress is to be from the single point shown on the Tourist Development Guide Plan, excepting any additional access requirements for fire management.
7. The land shown as foreshore reserve under the approved Tourist Development Guide Plan to be ceded free of cost to the Crown as a condition of planning approval or subdivision approval.
8. Within those areas delineated as 'Tree Preservation Area' on the Tourist Development Guide Plan no further clearing shall occur, except for:
 - Trees that are dead, diseased or dangerous;
 - To comply with the Fire Management Plan requirements for the site.
9. Clearing of vegetation throughout the site shall only be permitted pursuant to the Environmental Protection Act 1986 and the Environmental Protection (Clearing of Native Vegetation) Regulations 1994 where:
 - To facilitate development in accordance with the Tourist Development Guide Plan;
 - To remove trees that are dead, diseased or dangerous;
 - To comply with the requirements of the Fire Management Plan.
10. Within the area depicted as 'Development Exclusion Zone' on the Tourist Development Guide Plan, no further development or on-site effluent disposal is to occur, with the exception of:
 - Those areas indicated for the construction of roads or tracks; and
 - The development of the 'Ceremony Platform' and 'Hardstand and Turnaround for Fire Vehicle'.
11. All new development shall be setback a minimum of:
 - 20 m from the front boundary; and
 - 20m from all other boundaries.
12. The following requirements will apply to the strata titling of the development:
 - A person is not to occupy a chalet/s or a room/s within the boarding house for longer than three (3) months in any twelve (12) month period.
 - An agreement between the applicant and Council to ensure a management system is in place to ensure accommodation is made available for rent to the general public when not in use by the owners.

- Prior to the sale of strata lots, common property and shared facilities are to be completed to the satisfaction of Council.
 - In the event of the staged development and strata titling of the property, Council may permit the development of common property in stages.
 - Fencing of strata lots is not permitted.
 - The external form of development to be of uniform complementary architectural theme, character, colours and materials.
13. A Weed Management Plan for the site is to be prepared, approved and subsequently implemented to the satisfaction of Council as a condition of development approval or subdivision approval.
4. Authorises the Shire President and Chief Executive Officer to execute the documentation for forwarding to the Western Australian Planning Commission seeking final approval by the Minister for Planning.
5. Advises the submitters of Council's resolution.

CARRIED UNANIMOUSLY: 8/0

Res: 020915

8.2 Director of Community & Regulatory Services

8.2.1 MCLEAN PARK OVERFLOW CAMPING POLICY & MANAGEMENT PLAN

File Ref:	HLT.1
Applicant / Proponent:	Nil
Subject Land / Locality:	Shire of Denmark
Disclosure of Officer Interest:	Nil.
Date:	8 August 2015
Author:	Gregg Harwood, Director of Community & Regulatory Services
Authorising Officer:	Gregg Harwood, Director of Community & Regulatory Services
Attachments:	8.2.1a – Public Submissions 8.2.1b – Extract from Council Minutes – 14 April 2015 8.2.1c – Amended draft Policy P130206 8.2.1d – McLean Oval Overflow Camping and Emergency Evacuation Accommodation Management Plan, August 2015

Summary:

This report discusses the responses that were received as a result of Council's 14 April 2015 decision to advertise seeking public and industry comments for a period of 60 days on the draft McLean Oval Overflow Camping Plan.

Having considered these submissions the Officer recommends that Council amend the proposed overflow camping ground policy and management plan to include reference to a Working Group consisting of a Councillor, two shire staff and two caravan industry representatives to provide guidance to the Director of Community & Regulatory Services as to when and if the facility should be opened and the fees that will be charged for each site classification.

Background:

Having decided to accept a Tourism WA grant for the construction of an overflow camping facility at the McLean Oval Complex, Council, at its meeting held on 14 April 2015, resolved to proceed with the construction of the facility and go to community and industry consultation regarding its management plan with the following motion (Resolution No. 050415):

“That with respect to the Tourism WA grant offer of \$248,234 (ex GST) for the purposes of establishing a 68 site peak season overflow camping at McLean Park, Council:

1. *Accept the grant and commence construction of the facility.*
2. *Make an in kind contribution up to the value of \$10,800 in accordance with the conditions of the grant.*
3. *Allocate \$26,787 out of the current 2014/2015 budget surplus of \$52,696 as a capital contribution towards the project in accordance with the conditions of the grant resulting in a reduced predicted surplus position as at 30 June 2015 of \$25,909.*
4. *Advertise the proposed draft McLean Park Overflow Accommodation Management Plan (as per Attachment 8.2.3k) for public comment for a period of 60 days prior to its referral back to Council for consideration and adoption.*
5. *Advertise the proposed draft “Overflow Camping, McLean Overflow Camping Area Opening and Fee Setting Policy” (as per Attachment 8.2.3l with the following words added, “The Director of Community & Regulatory Services, after consultation with all caravan parks in the Shire, will ensure that the combined total of caravan and camping facilities within the Shire of Denmark are at 90% or greater capacity of all available bays (including overflow) prior to considering opening of the McLean Park Overflow Camping facility.”) for public comment for a period of 60 days prior to its referral back to Council for consideration and adoption.”*

The 60 day public and industry consultation period closed on the 31 July 2015 and this item has been referred to Council so that the proposed policy can be considered in the light of those comments and, where considered appropriate by Council, amended accordingly.

The proposed draft policy is attached (refer Attachment 8.2.1c).

Consultation:

The Officer has considered the requirement for consultation and/or engagement with persons or organisations that may be unduly affected by the proposal and considered Council's Community Engagement Policy P040123 and the associated Framework and believes that no additional external/internal engagement or consultation is required following the 60 day public/ industry comment period, which has yielded 12 submissions from a diversity of stakeholders.

In considering these comments it should be noted that Council resolved to proceed with construction of the facility at its 14 April 2015 meeting and resolved to advertise seeking comments in regard to the draft policy and management plan for operating the facility only, not whether the facility should be developed.

Bearing this delineation, while comments objecting to the development of the facility have been noted below they have not been included in consideration of this report or the proposed amendments to the management plan as they are not relevant to the matter that Council sought feedback on.

The submissions can be summarised as follows:

- Supporting draft McLean Oval Overflow Camping Policy as advertised.
- Seeking amendments to the advertised draft McLean Oval Overflow Camping Policy.
- Seeking amendments to the advertised draft McLean Oval Overflow Camping Policy in regards to bookings.
- From local caravan park operators seeking changes to the specific occupancy rates at which the overflow facility would open or specific charging tariffs for the sites.
- From local caravan park operators commenting regarding the occupancy rates at which the overflow facility would open.
- Commenting that Denmark is already too busy during the peak season for the local businesses and infrastructure to cope with the extra people that an overflow facility will bring.
- Expressing concern that Council is undertaking the project just to get improved facilities at McLean Oval.
- From nearby property occupiers regarding the risk of noise and antisocial behaviour from the venue.
- Objecting to the development of the facility in that it will mean that sporting clubs cannot use the facility during the Easter and Christmas – New Year breaks.
- Expressing concern that camping on McLean Oval will result in left over broken glass and tent pegs that will be a hazard to users.
- Recommending the formation of an industry/Council committee to make recommendations to Council's CEO regarding the seasonal opening of the facility.

The Denmark Chamber Commerce submission comments that the town's businesses are at peak capacity during this period and questions whether the town needs the extra economic stimulus that an overflow camping area will provide during this peak period.

In addition to written submissions, an industry stake holder meeting was convened by Tourism WA which was attended by the CEO and the Director of Community & Regulatory Services and held at the Shire Reception Room on the 12 May 2015.

During this meeting Council's CEO agreed to present to Council the model of forming a Working Group that included caravan industry representatives to provide guidance to Council's CEO and relevant Director as to if and when the facility should be opened and the fees that will be charged for each site classification.

This scenario, and a 90% occupancy rate prior to opening, was supported by all of the industry representatives that were present at the meeting and has been recorded in the following excerpt that has been taken from an email from Derryn Belford of Tourism WA on the 17 May 2015 that communicated the outcomes of that meeting;

"Tourism WA supports the following that we discussed:

- 1. A committee that includes Shire and industry representatives would monitor the occupancy levels within the caravan parks, and make the decision on when to activate overflow facilities. Industry agrees to share its occupancy data to enable such a decision to be made. (The Shire has subsequently suggested a committee structure as follows: two industry representatives, two Shire staff and a Councillor – do provide your feedback on this as discussed above).*
- 2. When regularly licenced bays have reached 90% occupancy levels (details within the management plan), the privately owned overflow facilities would first be opened. We recognise that this is a simplification of the process, and it might be that through regular monitoring the committee can estimate a date at which it expects 90% occupancy to be reached and then sets a date at which overflow can be used within your parks. This would be a more proactive rather than reactive approach.*
- 3. Once the privately owned overflow facilities are at 90% (or at a date they are projected to be such), McLean Oval's overflow facility would be opened. Again the committee would decide this.*
- 4. The committee would work together to determine the 'moving on' and 'close down' policies for the McLean Oval overflow facility.*

We understand that it is not the Shire's intention that McLean Oval house event attendees or groups in preference to existing caravan parks. However having the facility available may be of benefit in exceptional and possibly unforeseen circumstances; it would make sense for the committee to have some say in the use of the Oval in this way, and again I would suggest providing your formal feedback on this issue.

There was discussion of the committee inputting into the pricing policy for McLean Oval overflow sites. While the committee can make recommendations, it was acknowledged that the Council must make the final decisions on all Shire fees and charges due to legislative requirements."

Statutory Obligations:

Caravan Parks & Camping Grounds are required to comply with the requirements of both the Caravan Parks and Camping Grounds Act 1996 and the Caravan Parks and Camping Grounds Regulations 1997.

In addition to this there is an expectation under National Competition Policy doctrine that Council should ensure that site fees for its overflow camping facility do not compete unfairly with nearby parks. This is important because the McLean Oval Overflow Facility will have a far lower cost base.

The amended policy takes this into account by requiring the establishment of a Working Group that includes caravan industry representatives to provide guidance to Council's Director of Community & Regulatory Services on the pricing structure of the McLean Oval Overflow Facility and the periods that it will be open for on a season by season basis.

Policy Implications:

The Officer's Recommendation proposes a new Council Policy.

Budget / Financial Implications:

There are no major financial implications upon either the Council's current Budget or Long Term Financial Plan in as much that the development of the overflow camping facility will require a one off Council contribution of \$26,787 in cash, which has been allocated in the 2015-2016 Budget.

The facility should provide Council with a low annual surplus once it has been established and all costs are accommodated for including the increased maintenance of the facilities at McLean Park.

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.

Lifestyle: ...endeavour to maintain and improve the standards and style of living, together with the creative and vibrant culture, that residents and visitors have come to expect.

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.

Recreation: ...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 wellbeing.

Sustainability Implications:**➤ Governance:**

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

➤ Environmental:

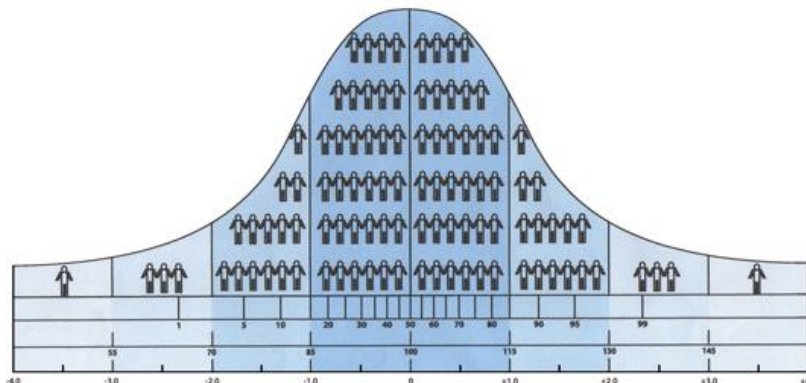
There are known significant environmental implications relating to the report in that the provision of an overflow camping area should reduce the incidence of illegal camping and the potential pollution and fire risks that come with it. A clearing permit may be required for parkland clearing of approximately 200m² of vegetation surrounding the cricket training facility.

➤ Economic:

There are significant economic implications relating to the report or officer recommendation in that the successful implementation of an overflow facility will assist the Shire in further developing its tourism and hospitality sectors through incrementally creating increased park capacity in the following ways.

The tourism market in Denmark and most developing coastal tourist towns is best represented by a "bell curve" with the centre and highest part of the curve being the seasonal peaks of the summer school holidays, Easter and the various summer long weekends.

During these periods every caravan park and tourist service and general retail business is running at peak capacity and making a profit but progressively struggling to make ends meet or are even making a loss as the curve drops down to its outer edges.



The critical trade that makes local caravan parks and tourism related businesses viable is the strength and the duration of the flanks that are either side of the bell curve peak. If these are strong, businesses can retain good staff and managers during the off season and plan ahead to grow and improve their business but if the flanks are weak their businesses gradually get run down.

The best way to strengthen flanks of the bell curve is take the top of the bell higher by bringing overflow camping on line during peak periods. The advantage local government owned overflow camping areas have is that they do not have to return a profit to an investor and can be closed when a new caravan park is opened and then brought back on line when that facility is clearly going to be full.

This ability to open and close a facility on the basis of need, as opposed to return, means that the McLean Park Over Flow Facility will provide a ready business case and client pool for anyone wanting to open a new commercial park in the future.

Local Caravan Park operators and their industry body the Caravan Industry Association Western Australia (CIAWA) however have correctly pointed out that that these benefits will not be realised if the facility which is superior in location, facility and amenity to some caravan parks is opened prematurely or if the pricing of the facility is set too high or too low. Tourism WA also supports this and at the industry stakeholder meeting on the 12 May 2015 Council's CEO agreed to present to Council the model forming a Working Group that includes caravan industry representatives to provide guidance to the Director of Community & Regulatory Services regarding these matters.

The Denmark Chamber Commerce submissions comments that the town's businesses are at peak capacity during this period and questions whether the town needs the extra economic stimulus that an overflow camping area will provide during this peak period.

➤ **Social:**

There are social considerations relating to the report or officer recommendation that have been raised as a result of the public comment period that should be discussed.

The Denmark Junior Soccer Club, who had been previously consulted via the project's referral to the McLean Oval User Group, have made a submission objecting to the activity on the basis that it will mean that McLean Oval may not be available for sporting purposes during Christmas / New Year and summer long weekends.

This however should not be an issue as organised sports are rarely run at these times and the High School Oval is available as an alternative.

One Brazier St resident expressed concern regarding the noise and antisocial behaviour at the venue. While this concern is noted, providing the facility is actively managed noise and antisocial behaviour should not be an issue for nearby residents for the following reasons:

- 1) The camping activity will be taking place 10 – 15m below their house’s floor level meaning the earth wall of the oval bank will act as a noise buffer.
- 2) The camping activity will be taking place at least 100m from their residences. Many caravan parks in other towns have distances as low as 10m without experiencing noise complaints.
- 3) The number of persons camping is relatively small and is likely to have less impact than the current night time operations of the Recreation Centre, main Football and Soccer rounds, Skate Park and Youth Facility that are currently located in the same location.

➤ **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 overflow facility will fail to meet market expectations	Possible (3)	Minor (2)	Moderate (5-9)	Not Meeting Community expectations	Control through assembly of a detailed proposal and quality fit out and construction
That the overflow facility will either be priced too low or too high.	Possible (3)	Moderate (3)	Moderate (5-9)	Inadequate Financial, Accounting or Business Acumen	Control through ongoing dialogue with facility operators
That the overflow facility will be inadequately managed.	Possible (3)	Moderate (3)	Moderate (5-9)	Ineffective Management of Facilities and Events	Control through camp rules, Ranger patrols & management as required.
That the overflow facility will take bookings away from underdeveloped and poorly located parks	Unlikely (2)	Insignificant (1)	Low (1-4)	Not Meeting Community expectations	Accept Risk as this is normal and nearby upgraded parks have a far greater impact.
That the usage of the overflow facility will leave items in the playing surface that are a hazard to users	Possible (3)	Minor (2)	Moderate (5-9)	Not Meeting Community expectations	Manage by communication with clubs via McLean Oval User Group, active management of the facility when it is open and detailed inspection of the playing surface after camping has taken place.

Comment/Conclusion:

Given that the call for public comments was in regards to the management arrangements for the over flow facility and not whether the facility should be developed, in the Officer’s opinion, there are really only four points that need to be discussed and considered by Council.

These points are as follows:

- 1) The potential for noise and anti-social behaviour to affect nearby properties.

This will be effectively managed by the relatively low number of campers, the low density of the camping, the topography and the separation distances that are involved.

- 2) That the operation of the overflow facility will exclude local sporting groups from using McLean Oval.

This has been discussed at length under the heading “Social” but events are not normally scheduled during these periods and the High School Oval would be available if such an event was organised.

- 3) That the operation of the overflow facility may result in broken glass and tent pegs being left behind that would be a hazard to players.

This comment is noted and Clause 4.13(b) specifically addresses this by requiring that the playing surface be checked in detail at the end of a camping event.

- 4) The need for the draft Management Plan to incorporate the Council’s CEO agreement to present to Council the model of forming an Working Group that includes caravan industry representatives to provide guidance to Council’s Director of Community & Regulatory Services as to when and if and when the facility should be opened and the fees that will be charged for each site classification.

This has been achieved by modifying Clauses 3.4 & 3.6 of the plan to create the “McLean Oval Overflow Camping Ground Working Group” and to give guidance as to its role and the Officer Recommendation includes the amendment of Council Policy to also acknowledge the existence and role of that group.

The attached “McLean Oval Overflow Camping and Emergency Evacuation Accommodation Management Plan, August 2015” and “P130206 Overflow Camping & Mclean Park Overflow Camping Area Opening and Fee Setting Policy” have been amended to incorporate these changes and are recommended to Council for adoption.

Voting Requirements:

Simple majority.

COUNCIL RESOLUTION & OFFICER RECOMMENDATION	ITEM 8.2.1
MOVED: CR MORRELL	SECONDED: CR THORNTON
That with respect to the proposed McLean Park Overflow Camping area, Council;	
1. Adopt the proposed Policy P130206, as detailed in Attachment 8.2.1c; and	
2. Note the proposed McLean Oval Overflow Camping and Emergency Evacuation Accommodation Management Plan that relates to the management of the facility, as detailed in Attachment 8.2.1d, which can be amended from time to time by the Director of Community & Regulatory Services in liaison with the McLean Oval Overflow Camping Ground Working Group.	
CARRIED UNANIMOUSLY: 8/0	Res: 030915

8.2.2 DRAFT CARAVANNING OR CAMPING ON PRIVATELY HELD LAND POLICY

File Ref:	HLT.1
Applicant / Proponent:	Nil
Subject Land / Locality:	Shire of Denmark
Disclosure of Officer Interest:	Nil
Date:	8 August 2015
Author:	Gregg Harwood, Director of Community & Regulatory Services
Authorising Officer:	Dale Stewart, Chief Executive Officer
Attachments:	8.2.2 – Public Submissions

Summary:

This report discusses the responses that were received as a result of Council's decision at the meeting held on 14 April 2015 to seek public and industry comments for a period of 60 days on the creation of a policy that proposed to enable owners and long term rental occupiers of properties within the Shire of Denmark, to accommodate one caravan or 6 persons camping in tents per 1,000m² of property area (or part thereof), up to a maximum of 4 caravans or immediate family tent clusters or 24 persons, whichever is greater, providing no charge is made for the accommodation and the owner or long term rental occupier is present for the majority of the time that the camping takes place.

Having considered these submissions the Officer Recommendation is that Council not proceed with the draft policy and authorise the Chief Executive Officer and the Director of Community & Regulatory Services the authority to consider on their merits written applications for permission to camp on private land pursuant to Section 11 (2) of the Caravan Parks & Camping Grounds Regulations 1997.

Background:

Regulations 11 & 12 of the Caravan Parks and Camping Ground Regulations 1997 stipulates that a person can only camp on a property which they have permission to occupy for a maximum of 3 days in any 28 day consecutive period, unless a longer period is granted by either the local government or the Minister for Local Government.

Being a tourist town some Denmark residents have friends and relatives that camp in their yards during peak periods and other times, and the purpose of the draft policy was to enable them to stay there legally for up to seven days, without the need to seek specific Council approval (subject to complying with certain parameters) as such a period is more reflective of the length of time that these guests stay for.

Consideration of this need resulted Council resolving as follows at its 14 April 2015 meeting to advertise the below policy (Resolution No. 020415):

“That Council advertise the attached draft Camping on Privately Held Land Policy, subject to the inclusion of reference to Regulation 13 of the Caravan Park & Camping Grounds Regulations 1997, for a 60 day public and industry comment period and consider in the 2015/2016 Budget a fee of \$100 (plus GST) to assess an application, on a standard form, for variation to the Policy, should the Policy subsequently be adopted.”

The advertised draft policy read as follows:

“P130205 Caravanning or Camping on Privately Held Land

Objectives

To enable owners and long term rental occupiers of properties within the Shire to accommodate

limited numbers of friends and relatives for short term periods in a manner that does not compete unfairly with licensed Caravan Parks and therefore detract from their viability, whilst not creating any environmental, public health or other nuisances nor detracting from the amenity of neighbourhoods.

To provide consistency and certainty about enforcement of Regulations 11 & 12 of the Caravan Parks and Camping Ground Regulations 1997 to both Licensees of Caravan Parks operating within the Shire and Council's Law Enforcement Officers.

Policy

In accordance with its powers under Regulations 11 & 12 of the Caravan Parks and Camping Ground Regulations 1997, the Shire of Denmark grants permission to land owners and, with the approval of the land owner, long term rental occupiers of properties within the Shire of Denmark, to accommodate one occupied caravan or 6 persons camping in tents per 1000m² of property area (or part thereof for smaller than this allotment size) up to a maximum of 4 occupied caravans or immediate family tent clusters or 24 persons, whichever is greater, for a maximum of 7 days in any period of 28 consecutive days, providing:

- 1. No charge is made for the accommodation or associated services.*
- 2. The area used for camping is not to be sign posted or advertised in any way.*
- 3. The owners or long term rental occupiers of the property are present for the majority of the time that the camping takes place.*
- 4. The activity is not to create noise or unruly conduct as to cause a nuisance to adjoining property occupiers.*
- 5. Toilet, ablution facilities and effluent treatment and disposal systems exist on the property.*
- 6. The land having suitable facilities for the level of camping that is taking place as is required under Regulation 13 of the Caravan Parks and Camping Grounds Regulations 1997.*

Persons seeking approval for numbers of persons, caravans, tents or days in excess of these restrictions or intending to charge for occupation of a caravan or tent on their property should apply in writing for Council's consideration at least 60 days prior to the intended activity or occupation together with the appropriate fee (\$100 is proposed in the 2015/16 Schedule of Fees).

NB: This Policy should be read in conjunction with Policy P130301 (Guidelines for Temporary Accommodation).

Responsible Officer

The Director of Community and Regulatory Services is the responsible officer for implementing this policy."

Consultation:

The Officer has considered the requirement for consultation and/or engagement with persons or organisations that may be unduly affected by the proposal and considered Council's Community Engagement Policy P040123 and the associated Framework and believes that no additional external/internal engagement or consultation is required because the 60 day public comment period has yielded 23 submissions from a diversity of stake holders.

These submissions can be summarised as follows:

- In support of the proposed Camping on Private Policy 4
- Against the proposed Camping on Private Policy 19

As be seen from the numbers the majority of the submissions did not support the policy and they can be broadly classified into the following groups:

2 submissions from private property owners supporting the supporting the proposed policy.

A submission from the Denmark Chamber of Commerce supporting the proposed policy subject to the removal of a reference to being able to seek permission to charge a fee.

10 submissions from private property owners objecting to the proposed policy expressing concern over loss of amenity, privacy and an increased risk of anti-social behaviour.

5 submissions from caravan park operators objecting to the policy citing competition, safety, social, planning and environmental issues.

A submission from the Caravan Motorhome Club of Australia (CMCA), which boasts 66,000 members, also made a submission in support of the proposed policy and asked Council to consider providing free or low cost (up to \$10 per night) 24 - 48 hours CBD camping for self-contained caravan vans and motor homes under it RV Friendly Towns program. Details on this program can be found in the attachments and at the below link.

<http://www.cmca.net.au/services/rv-friendly>

Submission from both the Department of Local Government and Communities and Knott Gunning Solicitors, on behalf of the Caravan Association, objecting to the proposed policy and questioning Council's legal capacity to issue an across the board, as of right, seven day camping approval as opposed to issuing site specific written approvals on a case by case basis.

A submission from Tourism WA indicating that they do not support the policy.

Statutory Obligations:

There are statutory implications obligations under the Caravan Parks and Camping Ground Act 1995 and the Caravan Parks and Camping Ground Regulations 1997 that relate.

The relevant sections of the Regulations state;

"10. Where a person may camp

A person may camp only —

- a) at a site in a caravan park or camping ground, as appropriate, licensed under the Act; or*
- b) in accordance with regulation 11.*

11. Camping other than at a caravan park or camping ground

(1) A person may camp —

- (a) for up to 3 nights in any period of 28 consecutive days on land which he or she owns or has a legal right to occupy, and may camp for longer than 3 nights on such land if he or she has written approval under subregulation (2) and is complying with that approval;*
- (b) for up to 24 consecutive hours in a caravan or other vehicle on a road side rest area;*
- (c) for up to 24 consecutive hours in a caravan or other vehicle on a road reserve in an emergency, unless to do so would cause a hazard to other road users or contravene any other written law with respect to the use of the road reserve;*
- (d) on any land which is —*
 - (i) held by a State instrumentality in freehold or leasehold; or*

- (ii) *dedicated, reserved, or set apart under the Land Administration Act 1997 or any other written law, and placed under the care, control or management of a State instrumentality,*
in accordance with the permission of that instrumentality; or
 - (e) *on any unallocated Crown land or unmanaged reserve, in accordance with the permission of the Minister within the meaning of the Land Administration Act 1997, or a person authorised by the Minister to give permission under this paragraph.*
- (2) *Written approval may be given for a person to camp on land referred to in subregulation (1)(a) for a period specified in the approval which is longer than 3 nights —*
- (a) *by the local government of the district where the land is situated, if such approval will not result in the land being camped on for longer than 3 months in any period of 12 months;*
 - (b) *by the Minister, if such approval will result in the land being camped on for longer than 3 months in any period of 12 months; or*
 - (c) *despite paragraph (b), by the local government of the district where the land is situated —*
 - (i) *if such approval will not result in the land being camped on for longer than 12 consecutive months; and*
 - (ii) *if the person owns or has a legal right to occupy the land and is to camp in a caravan on the land while a permit has effect in relation to the land.*

12. *Number of caravans on lot*

- (1) *A person who owns or has a legal right to occupy a lot, as defined in the Planning and Development Act 2005 section 4(1), is to ensure that —*
- (a) *not more than one caravan is being used to camp on the lot at any one time; or*
 - (b) *where more than one caravan is being used to camp on the lot at any one time, he or she has written approval under subregulation (2) and is complying with that approval.*
- (2) *Written approval may be given to a person for more than one caravan, as specified in the approval, to be used to camp on a lot for a period of time specified in the approval —*
- (a) *by the local government of the district where the lot is situated, if the period of time does not exceed 3 months; or*
 - (b) *by the Minister, if the period of time exceeds 3 months.*

13. *Suitability of land for camping to be considered before approval under r. 11(2) or 12(2) given*

Before giving approval under regulation 11(2) or 12(2), the local government or the Minister is to be satisfied that the land is a suitable place for camping especially with respect to —

- (a) *safety and health; and*
- (b) *access to services.*

Section 6.16 of the Local Government Act 1995 relates with respect to setting of fees and charges.

It should also be noted that Caravan Parks also require approval under Council's Town Planning Scheme.

Upcoming Legislative Review:

In considering these comments Councillors should also note that the Department of Local Government and Communities have initiated a review of the Caravan Parks and Camping Ground Act 1995 and the Caravan Parks and Camping Ground Regulations 1997. The Department welcomes written comments, queries and submissions on all or part of the consultation paper which can be found on their website at <http://dlg.wa.gov.au/Content/Legislation/UnderReview/CaravanCampingLegislation/ConsultationPaper2.aspx>. Submissions close 30 November 2015.

This review will provide Council with an opportunity to put forward a case for the ability to approve across the board 7 day camping on privately held land within its boundaries if it chooses to do so. This course of action however is not recommended due to the lack of demonstrable community support for the longer 7 day period.

Policy Implications:

Council Policy 130301 (Guidelines for Temporary Accommodation) authorises the CEO to approve applications for people seeking permission of Council to occupy a caravan whilst constructing their residence, pursuant to Regulation 11 (2) (c) of the Caravan Parks & Camping Grounds Regulations 1997.

There is no current approved Council authorisation, policy or guidelines for people seeking permission to camp on private land for longer than three (3) nights, pursuant to Regulation 11 (2) (a) of the Caravan Parks & Camping Grounds Regulations 1997.

The Officer recommends that Council convert (repeal) Policy P130301 (Guidelines for Temporary Accommodation) and create two new Authorisations for the Council's Delegations, Authorisations and Appointments Register as follows;

Draft Authorisation 'D130205 – Camping on Privately Held Land for Longer than Three Days' would read as follows;

- DELEGATION NUMBER* - *D130205*
- LEGISLATIVE POWER* - *Caravan Parks & Camping Grounds Regulations 1997 (Regulation 11 (2) (a))*
- AUTHORISED PERSONS* - *Chief Executive Officer*
- *Director of Community & Regulatory Services*
- ACTIVITY* - *Tourism & Area Promotion*

Pursuant to Regulation 6 of the Caravan Parks & Camping Grounds Regulations 1997, Council may appoint authorised persons to perform its functions.

Pursuant to Regulation 11 (2) (a) of the Caravan Parks & Camping Grounds Regulations 1997, a local government may approve an application for a person to camp for longer than 3 nights on land which they own or have a legal right to occupy, if such approval will not result in the land being camped on for longer than 3 months in any period of 12 months.

Pursuant to Regulation 13 of the Caravan Parks & Camping Grounds Regulations 1997, before giving approval under Regulations 11 (2), the Council, or authorised person, is to be satisfied that the land is a suitable place for camping especially with respect to –

- a) Safety and health; and
- b) Access to services.

Conditions for Approval of Temporary Accommodation

1. The request must be in writing and accompanied by a basic management plan.
2. There being no more than one (1) caravans or camp sites.
3. It not involve more than five (5) persons in total, not including the residents of the house.
4. The approval being valid for a maximum of fourteen (14) days.
5. No charge is made for the accommodation or associated services by the person who owns or has a legal right to occupy the site.
6. The area used for camping is not to be sign posted or advertised in any way.
7. The owners or long term rental occupiers of the property are present for the majority of the time that the camping takes place.
8. The activity is not to create noise or unruly conduct as to cause a nuisance to adjoining property occupiers who are to be consulted.
9. The caravan or camp is to be maintained in such a condition that it is not a hazard to safety or health.
10. The caravan is to be mobile and able to be moved under its own power or by being towed.
11. The place must be suitable and have access to potable water and adequate ablution facilities.
12. Council reserves the right to revoke temporary accommodation approval if it is at any time it is satisfied that the general terms or conditions of the temporary accommodation approval have not been complied with.
13. Application fees will be as prescribed by Council's adopted Fees & Charges Schedule or legislation.
14. Written approval of the landowner must be obtained.

CURRENT AUTHORISED PERSONS

Council appoints the following authorised persons for the purposes of issuing, amending or revoking approvals under Regulations 11 (2) (a) and 13 of the Caravan Parks & Camping Grounds Regulations 1997.

- Chief Executive Officer
- Director of Community & Regulatory Services

Draft Authorisation 'D130313 - Camping on Privately Held Land with a Building Permit' would read as follows;

DELEGATION NUMBER	-	D130313
LEGISLATIVE POWER	-	Caravan Parks & Camping Grounds Regulations 1997 (Regulation 11 (2) (c))
AUTHORISED PERSONS	-	Chief Executive Officer
	-	Director of Community & Regulatory Services
ACTIVITY	-	Building Control

Pursuant to Regulation 6 of the Caravan Parks & Camping Grounds Regulations 1997, Council may appoint authorised persons to perform its functions.

Pursuant to Regulation 11 (2) (c) of the Caravan Parks & Camping Grounds Regulations 1997, a local government may approve an application for a person to camp for longer than 3 nights on land which they own or have a legal right to occupy, while a permit has effect in relation to the land and if such approval will not result in the land being camped on for longer than 12 consecutive months.

Pursuant to Regulation 13 of the Caravan Parks & Camping Grounds Regulations 1997, before giving approval under Regulations 11 (2), the Council, or authorised person, is to be satisfied that the land is a suitable place for camping especially with respect to –

- c) Safety and health; and*
- d) Access to services.*

Conditions for Approval of Temporary Accommodation

- 1. The period of temporary accommodation shall not exceed twelve (12) months with approval periods being not more than six (6) months to enable the Officer to review progress of building development.*
- 2. Building plans for a Class 1 Dwelling are to be submitted and approved before temporary accommodation will be granted.*
- 3. Applications for temporary accommodation are to be accompanied by a Building Permit Number and a statement of progress expected to be achieved during the period of temporary accommodation and a basic management plan.*
- 4. Temporary accommodation approval shall not be granted for any persons other than those who are to occupy the house when completed.*
- 5. Toilet and ablution facilities and effluent treatment and disposal systems are to be installed to a standard as prescribed by the Health Act of WA and approved by a qualified Environmental Health Officer.*
- 6. Temporary accommodation approval involves permission to inhabit a caravan, in accordance with Regulation 11(2) (c) of the Caravan Parks and Camping Grounds Regulations 1997, of reasonable habitable standard or any other building that reasonably complies with the requirements of the Building Codes of Australia and the Health Act, but does not constitute a Class 1 Dwelling.*
- 7. Temporary accommodation approval shall not be granted if reasonable alternative accommodation is available to the applicant.*
- 8. The activity is not to create noise or unruly conduct as to cause a nuisance to adjoining property occupiers who are to be consulted.*
- 9. Council reserves the right to revoke temporary accommodation approval if it is at any time dissatisfied with the state of progress towards the construction of a Class 1 Dwelling or if any general terms or conditions of the temporary accommodation approval have not been complied with.*
- 10. Temporary accommodation approval is required until sanitary, ablution and laundry facilities have been installed in the proposed dwelling to the requirements of the Health Act 1911 (as amended) and the dwelling is completed to a weather proof lock-up standard.*
- 11. Application and renewal fees will be as prescribed by Council's adopted Fees & Charges Schedule or legislation.*
- 12. Temporary Accommodation approval will only be considered for those applicants whose building application can reasonably be expected to be completed within 24 months.*
- 13. Council may approve Temporary accommodation in Rural and Special Rural, Special Residential and Landscape Protection Zones, and may exercise its discretion to permit temporary accommodation in Residential areas, where the proponent can demonstrate that the amenity of the locality will not be adversely affected by the temporary facilities e.g.*

- external colour and cladding of outbuilding, proximity to adjoining buildings, screening, length of occupation of temporary accommodation.*
14. *The proponent will be required to down-grade the temporary accommodation to a "Non-Habitable Class 10-Outbuilding" upon expiry of the approved period of occupation.*

CURRENT AUTHORISED PERSONS

Council appoints the following authorised persons for the purposes of issuing, amending or revoking approvals under Regulations 11 (2) (c) and 13 of the Caravan Parks & Camping Grounds Regulations 1997.

- *Chief Executive Officer*
- *Director of Community & Regulatory Services*

The Officer has not included authority for any Council Officers to approve more than one caravan on any property. Any requests to have more than one caravan or park home on a property at any one time would be referred to Council for consideration on a case by case basis.

Budget / Financial Implications:

Council's adopted Fees & Charges includes the following;

With respect to Regulation 11 (2) (a);

Application for Temporary Accommodation *\$110.00 (incl. GST)*

With respect to Regulation 11 (2) (c);

<i>Application for Temporary Accommodation</i>	<i>\$110.00 (incl. GST)</i>
<i>Permit for Temporary Accommodation (6 months)</i>	<i>\$310.00 (incl. GST)</i>
<i>Renewal of Permit for Temporary Accommodation (6 months)</i>	<i>\$155.00 (incl. GST)</i>

The Officer has recommended that the Application Fee for Temporary Accommodation, pursuant to Regulation 11 (2) (c), be deleted and the terminology for the existing fee entitled "Permit for Temporary Accommodation" be amended to read "Application for Temporary Accommodation including Approval or Refusal", with the same \$310.00 fee.

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.

Lifestyle: ...endeavour to maintain and improve the standards and style of living, together with the creative and vibrant culture, that residents and visitors have come to expect.

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.

Recreation: ...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 wellbeing.

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 providing the campers are using toilets that are connected to deep sewerage or approved septic systems.

➤ **Economic:**

There are minor economic implications relating to the report or officer recommendation in that the commercial caravan and camping industry in Denmark would expect that the Council police the Caravan & Camping Regulations as to not do so may have the effect of decreasing their viability.

➤ **Social:**

As has been evidenced with the past discussions that have occurred within both Council and the community regarding the complaints that Council receives and or the perception of complaints that Council receives regarding Home Holiday Accommodation – the same concerns could emanate from lack of enforcement of ‘illegal’ accommodation in caravans on peoples’ property.

Condition 8, of the proposed authorisation relating to camping for up to three (3) months (D130205), states that the activity is not to create noise or unruly conduct as to cause a nuisance to adjoining property occupiers. Both proposed authorisation provide a condition that the Council or authorised person may amend or revoke an approval if they are satisfied that any general terms or conditions of the permit are not being complied with.

➤ **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 people camping will stay longer than 3 days will create compliance problems	Possible (3)	Minor (2)	Moderate (5-9)	Failure to meet Statutory, Regulatory or Compliance Requirements	Accept Risk and monitor
That the camping will result in neighbourhood noise complaints	Possible (3)	Minor (2)	Low (1-4)	Not Meeting Community expectations	Accept Risk and Monitor
That the people camping will stay longer than 3 days will undermine the viability of caravan parks	Possible (3)	Moderate (3)	Moderate (5-9)	Not Meeting Community expectations	Accept Risk and Monitor
That health risks will result from camping in areas without proper services	Possible (3)	Moderate (3)	Moderate (5-9)	Inadequate Natural Environment Management Practices	Accept Risk and Monitor

Comment/Conclusion:

Notwithstanding the submission by the Caravan Motorhome Club of Australia (CMCA) (66,000 membership) there is very little support for the proposed policy and it is the officer’s recommendation that Council not proceed with the draft policy, retain the status quo where Council’s CEO considers written applications, on a case by case the basis, for permission to camp on private land under section 11 of the Caravan Parks & Camping Grounds Regulations for the following reasons:

- 1) There has been very little communicated local support for the proposed 'across the board' policy.
- 2) Local caravan park operators do not support the proposed policy.
- 3) Tourism WA have communicated that they do not support the policy.
- 4) Both the Department of Local Government and Communities and Knott Gunning Solicitors on behalf of the Caravan Industry Association Western Australia (CIAWA) have written to Council questioning its legal capacity to issue an across the board as of right seven day camping approval, as opposed to issuing site specific written approvals on a case by case basis.

Given these factors, the most appropriate recommendation is that Council not adopt the proposed policy and instead issue an authorisation for the Chief Executive Officer or the Director of Community & Regulatory Services to consider requests for individual caravans or camping on their merits.

The Officer Recommendation introduces an authorisation to the Chief Executive Officer and/or the Director of Community & Regulatory Services to consider on their merits applications for occupying a single caravan or camp on someone's land (with the landowners permission). The absence of this authorisation would require such applications to be referred to Council each and every time. The Council's Fees & Charges Schedule for the 2015/16 financial year already includes an assessment fee of \$110.00 (incl. GST), which is non-refundable. Applications for greater than one caravan or camp will need to be referred to Council for individual assessment. It is acknowledged that the very nature of having a \$110.00 application fee will deter most persons from applying however, there is an underlying cost associated with assessment, which, in the opinion of the Officer, should not be borne by ratepayers at large. This could also be seen as a deterrent that might, conversely, encourage the intended application to seek accommodation at an existing caravan park.

A further issue that has been raised as a result of the proposed policy's community consultation process is that Council has been asked by the Caravan Motorhome Club of Australia (CMCA) to re consider providing free/low cost overnight, 48 hour CBD camping for self-contained caravans and motor homes under its RV Friendly Towns program and provided the attached submission on this matter.

While this is a quality submission it does not, in the officer's opinion, change the rationale of Council's decision at their meeting held on 7 July 2015 to support local caravan parks by providing long vehicle day parking via CIAWA's "RV Welcome" program as opposed the CMCA's RV Friendly Towns free/low cost CBD overnight, 48 hour camping program and it is recommended that Council resolve to advise the CMCA accordingly.

Voting Requirements:

An Absolute Majority is required pursuant to Section 6.16 of the Local Government Act 1995 should Council change a fee or a charge set pursuant to the Local Government Act 1995.

COUNCIL RESOLUTION & OFFICER RECOMMENDATION	ITEM 8.2.2
MOVED: CR OSBORNE	SECONDED: CR SAMPSON
<p>That with respect to camping on privately held land Council:</p> <ol style="list-style-type: none"> 1. Not proceed with the draft policy titled P130205 Caravanning or Camping on Privately Held Land; 2. Convert Policy P130301 (Guidelines for Temporary Accommodation) to an Authorisation (D130313) which provides conditions on approvals and authorises the Chief Executive Officer and/or the Director of Community & Regulatory Services to approve, amend or revoke permits, pursuant to Regulations 11 (2) (c) and 13 of the Caravan Parks & Camping Grounds Regulations 1997. 3. Adopt a new Authorisation (D130205) which provides conditions on approvals and authorises approvals and authorises the Chief Executive Officer and/or the Director of Community & Regulatory Services to approve, amend or revoke permits, pursuant to Regulations 11 (2) (a) and 13 of the Caravan Parks & Camping Grounds Regulations 1997. 4. Advise the Caravan Motorhome Club of Australia (CMCA) that it has considered its submission and that it reiterates its resolution made at its meeting held on 7 July 2015 (Resolution No. 060715) to adopt the CIAWA's "RV Welcome" long vehicle day parking designation as opposed the CMCA's RV Friendly Towns program as it does not support the concept of providing free or low cost overnight camping for self-contained caravans and vehicles on public lands and roads within its boundaries. 5. Amend its 2015/16 Fees & Charges Schedule, following advertising, as follows; <ol style="list-style-type: none"> a) Deleting reference to the Application for Temporary Accommodation Fee (Regulation 11 (2) (c)); and b) Amending reference to the Permit for Temporary Accommodation (6 months) to read "Application for Temporary Accommodation including Approval or Refusal". 	
LOST: 2/6	Res: 040915

COUNCIL RESOLUTION & OFFICER RECOMMENDATION	ITEM 8.2.2
MOVED: CR LEWIS	SECONDED: CR ROWLAND
<p>That the Council make submission to the review into the Caravan Parks & Camping Grounds Regulations following a workshop on the matter at the next Council Briefing Forum.</p>	
CARRIED UNANIMOUSLY: 8/0	Res: 050915

With respect to Item 8.2.3, the Director of Community & Regulatory Services declares an impartiality interest as he has a gold membership at the Denmark Recreation Centre, is the Director of Denmark Recreation Centre employees and the applicant and as a consequence there may be a perception that his impartiality on this matter may be affected. Mr Harwood declares that he will consider this matter on its merits and advise Council accordingly.

The applicant is also an employee of the Recreation Centre which is part of Mr Harwood's Directorate.

8.2.3 PERSONAL TRAINING SESSIONS IN COUNCIL RESERVES	
File Ref:	A3035
Applicant / Proponent:	Amber Jeeves
Subject Land / Locality:	Various Parks & Reserves in the Shire
Disclosure of Officer Interest:	The Author declares an impartiality interest on the basis that he holds a Gold Membership at the Denmark Recreation Centre and the applicant is one of the employees in his Directorate.
Date:	26 August 2015
Author:	Gregg Harwood, Director of Community & Regulatory Services
Authorising Officer:	Gregg Harwood, Director of Community & Regulatory Services
Attachments:	8.2.3 – Submissions received

Summary:

The Officer Report considers comments that have received in regards to Council's recently advertised draft policy titled "Personal Training Sessions in Council Reserves" and recommends that Council adopt a slightly amended policy to that which was advertised as a result of consideration of the submissions.

Background:

In November 2014 Council adopted Policy P070404 (Principles Supporting the Shire of Denmark Activities on Thoroughfares & Trading in Thoroughfares & Public Places Local Law) following a period of public consultation.

The intent of this Policy is to give guidance to the Chief Executive Officer and staff in handling and issuing permits to trade in public places and while it has been of value in determining food vending and equipment hire proposals, which typically involve long periods of time at one site, a recent personal training request has indicated, and submitted, that the fee structure under this Policy is not fair and reasonable for this activity.

Personal training typically involves groups of less than 25 people (usually 3 – 10) for sessions that are usually less than 2 hours. The Officer Report that was presented to the 16 June 2015 Council meeting proposed a new policy that prescribed a \$200 per annum licence fee with conditions that operators must have appropriate qualifications, personal liability cover and not conduct their business in such a manner that become a nuisance to other park users.

Councillors present considered this and resolved to advertise the draft policy for 30 days public comment with the following resolution:

"That with respect to the request from Amber Jeeves to undertake person training sessions in the Council's various parks and reserves, Council;

- 1. Authorise the CEO authority to allow Amber Jeeves to undertake personal training sessions in the Council's various parks and reserves for a four month trial period while a draft policy is advertised with a fee of \$50 (\$200 per annum pro rata) being payable with the conditions contained in the draft policy.*

2. *Include a \$200 fee for personal training sessions in the Council's various parks and reserves in its 2015-2016 schedule of fees and charges.*
3. *That the words "and other licences to trade in public places" be added to the second line of D070402 and the words "and other relevant regulations and standards" to the fourth line.*
4. *Advertise the draft policy titled "Personal Training Sessions and Services in Council Reserves" for a 30 days public comment period, subject to part 11, dot point 5 being re-worded to read "To minimise the likelihood of injuries during fitness classes, the licensee must hold at least a Certificate 4 or an equivalent qualification in personal training, and should have fitness industry experience", prior to its referral back to Council for reconsideration and adoption in the light of any comments that are received."*

Res: 090615

The 30 day comment period closed on the 21 August 2015 and the advertised policy can be found in the "Policy" section of this report.

Consultation:

The Officer has considered the requirement for consultation and/or engagement with persons or organisations that may be unduly affected by the proposal and considered Council's Community Engagement Policy P040123 and is of the opinion that the objectives of this policy have been satisfied in the following ways:

- 1) The draft policy was advertised for a 30 days public comment period which closed on the 21 August 2015.
- 2) The two submissions that were received during this period are attached and have been considered in the preparation of this report.

These submissions are summarised as follows:

The first submission was an objection to the proposed policy from a member of the community who attends boot camp classes because they provide him with fitness opportunities beyond those that are supplied by the Recreation Centre Gym. He is of the opinion that the operators of fitness classes should not be controlled, charged or limited as this will in his opinion increase the cost of classes and limits their availability leading to reduced levels of health and fitness in the community.

The second submission is from the proponent who is also objecting to the proposed policy and makes the following comments that are relevant to its consideration:

- 1) That any charges and/or annual fees should be excluded from the policy and if they must be charged they should only be \$10.00 or \$20.00 per annum.
- 2) That the policy should be broadened to include all professional/qualified exercise instructors that wish to trade in outdoor public places/on Council Parks and Reserves (E.g. Tai Chi Instructors, Yoga Instructors, Pilates Instructors, and Sports Coaches, SUP Board Instructors etc.). Or alternatively, have several different policies that have specific guidelines conditional to the type of exercise activity being instructed.
- 3) That the instructors of all fee paying physical fitness and activity classes should have a current First Aid and CPR certification.
- 4) Suggestions regarding the enforcement of the policy.

Statutory Obligations:

Council has the power to control and issue Trader's Permits to use its land under the Local Government Act 1995 and the Shire of Denmark Activities on Thoroughfares and Trading in Thoroughfares and Public Places and Property Local Laws 2001.

The Chief Executive Officer is delegated authority under D070402 to issue and renew Itinerant Food Vendors licenses, subject to compliance of all vehicles and equipment to be used by the applicant with all relevant requirements of the Health Act 1911 and the Food Act 2008, but this Delegation only deals with food vending. The officer recommendation takes account of this and seeks to add the words "and other licences to trade in public places" to the second line of D070402 and the words "and other relevant regulations and standards" to the fourth line.

The Chief Executive Officer in exercising authority under Section 5.44 of the Local Government Act 1995 has delegated this power/duty to the Principal Environmental Health Officer.

Extracts from the Shire of Denmark Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2001 that relate include;

6.3 Trader's permit

- (1) *A person shall not carry on trading unless that person is –*
 - a) *the holder of a valid trader's permit; or*
 - b) *an assistant specified in a valid trader's permit.*
- (2) *Every application for a trader's permit shall –*
 - a) *state the full name and address of the applicant;*
 - b) *specify the proposed number of assistants, if any, to be engaged by the applicant in trading,*
 - c) *as well as their names and addresses if already engaged;*
 - d) *specify the location or locations in which the applicant proposes to trade;*
 - e) *specify the period of time for which the permit is sought, together with the proposed days and hours of trading;*
 - f) *specify the proposed goods or services which will be traded; and*
 - g) *be accompanied by an accurate plan and description of any proposed structure or vehicle which may be used by the applicant in trading.*
- (3) *The conditions subject to which the local government may approve an application for a trader's permit include that the permit holder is permitted to remain at a particular location for as long as there is a customer making a purchase, but if there is no customer making a purchase the permit holder must move on from that location within a reasonable time of the last purchase having been made.*

6.8 Conduct of stallholders and traders

- (1) *A stallholder while conducting a stall or a trader while trading shall –*
 - a) *display her or his permit to do so in a conspicuous place on the stall, vehicle or temporary structure or if there is no stall, vehicle or temporary structure, carry the permit with her or him while conducting a stall or trading;*
 - b) *not display a permit unless it is a valid permit; and*
 - c) *when selling goods by weight, carry and use for that purpose, scales tested and certified in accordance with the provisions of the Weights and Measures Act 1915.*
- (2) *A stallholder or trader shall not –*

- a) attempt to conduct a business within a distance of 300m of any shop or permanent place of business that is open for business and has for sale any goods or services of the kind being offered for sale by the stallholder or trader;
- b) deposit or store any box or basket containing goods on any part of a thoroughfare so as to obstruct the movement of pedestrians or vehicles;
- c) act in an offensive manner;
- d) use or cause to be used any apparatus or device including any flap or shelf, whereby the dimensions of a stall, vehicle or structure are increased beyond those specified in the permit; or
- e) in the case of a trader, carry on trading from a public place, unless there is adequate parking for customers' vehicles reasonably close to the place of trading.

Policy Implications:

Council's Delegation D070402 and Policy P070404 gives guidance to the Chief Executive Officer and staff in handling in issuing permits to trade in public places.

The limitation of Policy P070404 and the fees and charges that are currently associated with it is that they are primarily concerned with the use of fixed sites for the hire of items for recreational use or the supply of foods and other items that usually involve the vendor being in one place for an extended period of time.

Personal training typically involves groups of less than 25 people (usually 3 – 10) for sessions that are usually less than 2 hours and is something that already occurs at many of Council's parks and reserves without complaint or incident.

The main reason for the proposed policy is to provide a means of managing Council's risk exposure by ensuring that fitness class operators have personal liability cover and do not conduct their business in such a manner that become a nuisance to other park users.

The advertised draft Policy reads as follows:

"PERSONAL TRAINING SESSIONS IN COUNCIL RESERVES

Objective

To provide both residents and visitors to the Shire of Denmark with a variety of Fitness and Personal Training options that are safe and do not detract from the quiet enjoyment of Council's parks and reserves.

Policy

In accordance with its powers under Local Government Act 1995 and the Shire of Denmark Activities on Thoroughfares and Trading in Thoroughfares and Public Places and Property Local Laws 2001:

Given the many unique forms of personal training and the many parks and reserves within the Shire of Denmark that could be proposed, all applications for a Trading Licence are to be lodged and will be assessed in conjunction with the Shire of Denmark Activities on Thoroughfares & Trading in Thoroughfares & Public Places Local Law. In addition to this, the application will be assessed on their individual merits and the information supplied in the application, in line with but not limited to the following:

1. *Licences will be limited to a period of no more than one (1) year which, subject to performance may be renewed.*

2. *The Shire will assess applications for Licences for personal training in Council's parks and reserves with reference to the Local Law and the criteria set out in this Policy.*
3. *The Shire of Denmark will assess the suitability of proposed personal training activities utilising local government owned or management land. This assessment will consider the consistency of the proposed activity with the land use and vesting of the parcel of land or any management order that is attached to the parcel of land.*
4. *A personal trainer must not attempt to conduct a session within a distance of 50m of another personal trainer's class.*
5. *Personal training sessions are not precedence over other park uses.*
6. *All personal training sessions are to be conducted in such a manner that they do not create an annoyance or conflict with other park users or personal training classes.*
7. *Where a time restriction will be specified, the Trainer must be removed from the prescribed locations within 15 minutes of closure.*
8. *At the conclusion of a session the surrounding area must be left in a clean and litter free condition.*
9. *Traders must comply with any lawful direction given by a Shire of Denmark Authorised Officer.*
10. *All signage and banners are to be portable in nature and limited to maximum size of two 1800 x 600mm signs or banners that are displayed no more than 30 minutes before a session and removed within 15 minutes afterwards.*
11. *All personal training Licence applications and renewals will be considered by the Shire of Denmark in accordance with, but not limited to, the following -*
 - *The use of Shire of Denmark road reserves will not be permitted for trading unless it can be shown not to adversely impact on traffic movement.*
 - *The licensee will be responsible for any damage to Shire property from the training activity or customers of the training activity.*
 - *Personal training must not impede traffic flow or cause a traffic hazard or pose a danger to the safety of the general public.*
 - *Personal trainers must obtain their own public liability insurance to the minimum value of \$10,000,000 and indemnifying the Council.*
 - *The licensee must hold at least a certificate 4 in personal training or an equivalent level qualification and fitness industry experience so that they are far less likely to have injuries occur in their fitness classes.*
 - *Personal training must not connect to or utilise any Shire of Denmark utilities without prior approval and an additional charge.*

Should the application be considered unsuitable by the officers of the Shire of Denmark in accordance with legislation and the above conditions, or any other condition applicable to the application, the application will be referred to Council for their consideration as to the suitability of the activity in the community.

All applicants for Licences are to be advised of their right to object to a decision of Local Government in accordance with section 9.4 of the Local Government Act 1995, such a person may object to a decision of local government and lodge an appeal to the decision by lodging an objection within 28 days of the decision."

Responsible Officer

The Director of Community and Regulatory Services is the responsible officer for implementing this policy."

The proposed amendment to Delegation D070402 is shown below as the words which are underlined.

ITINERANT FOOD & OTHER MOBILE VENDORS

- DELEGATION NUMBER* - **D070402**
- LEGISLATIVE POWERS* - *Local Government Act 1995 (Section 5.42)*
- DELEGATE* - *Chief Executive Officer*
- ACTIVITY* - *Preventative Services - Health Administration*

The Chief Executive Officer is delegated authority to issue and renew Itinerant Food Vendors licenses and other licences to trade in public places subject to compliance of all vehicles and equipment to be used by the applicant with all relevant requirements of the Health Act 1911 & the Food Act 2008 and other relevant regulations and standards. Council will establish an annual licence fee when it prepares its annual budget and the Chief Executive Officer is to apply that fee and a pro-rata fee for any licences issued for a period less than 12 months.

The Chief Executive Officer in exercising authority under Section 5.44 of the Local Government Act 1995 has delegated this power/duty to the Principal Environmental Health Officer.

The officer recommendation will, if adopted by Council, lead to the creation of a Council Policy titled “PERSONAL TRAINING SESSIONS IN COUNCIL RESERVES” and an amendment to Delegation D070402.

Budget / Financial Implications:

There are no known financial implications upon either the Council’s current Budget or Long Term Financial Plan.

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 GOALS

Population: ...closely monitors its population growth over the next two decades, to put into place advocacy, policies and infrastructure that reflect the needs of a diverse age range and which will be attractive to both present and new residents.

Lifestyle: ...endeavour to maintain and improve the standards and style of living, together with the creative and vibrant culture, that residents and visitors have come to expect.

Recreation: ...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.

ECONOMIC GOAL

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 proposed Policy would provide guidance to Council Officers on preferred locations when considering applications for outdoor personal training on Council’s parks and reserves.

➤ **Environmental:**

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

➤ **Economic:**

Tourism is an important local industry and the presence of outdoor personal training in Council's parks and reserves will contribute to the facilities in Denmark that are available for tourists and residents.

However it should be noted that these classes also have the potential to impact negatively on fixed fitness premises such as Roydon's Gym and Denmark Recreation Centre because their cost base is much lower.

➤ **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 personal trainers in parks will compete unfairly with local fixed premises that have higher overheads.	Likely (4)	Insignificant (1)	Low (1-4)	Not Meeting Community expectations	Accept Risk
That competition between personal trainers will lead to disputes between vendors	Unlikely (2)	Minor (2)	Low (1-4)	Not Meeting Community expectations	Manage by policy settings
That personal trainers in parks may detract from the quiet enjoyment of those parks.	Unlikely (2)	Insignificant (1)	Low (1-4)	Not Meeting Community expectations	Manage by policy settings
That personal trainers in parks may result in a claim against Council by those being trained.	Unlikely (2)	Minor (2)	Low (1-4)	Inadequate Employee, Visitor or Public Safety & Security	Manage by policy settings

Comment/Conclusion:

The key points that have been made in the submissions and the officer responses to them are below:

- 1) *That policy is not needed as it will reduce the availability of personal training services.*

Some form of policy is required to manage the following factors in regards to fitness classes in Council's reserves and controlled lands for the following reasons:

- a) To reduce the likelihood of conflict with other reserve users.
- b) To manage the risk of environmental and grass surface damage in parks.
- c) To manage the possibility of conflict between competing operators.
- d) To reduce the risk of Council being enjoined as a park owner to an injury claim that occurs in one of the classes.

- 2) *That any charges and/or annual fees should be excluded from the policy and if they must be charged they should only be \$10.00 or \$20.00 per annum.*

The initial reason for the draft policy's referral to Council was that the Director of Community and Regulatory Services was of the opinion that the \$360 trading in public places fee in Council's schedule of fees and charges or paying regularly on a per day basis was excessive for a small scale personal training operation.

There are considerable community health and wellbeing outcomes that will flow from the stimulation of a robust and diverse outdoor training sector in Denmark and a waived or reduced annual licence fee would be a step towards facilitating this. It could however also be argued that investment in well setup outdoor exercise areas and out gym equipment would be equally effective.

The converse argument however is that a relatively high fee favours established operators because it tends to deter opportunistic short term operators.

If Councillors are inclined to reduce the advertised \$200 fee then a decision needs to be made as to whether the fee is waived totally and no fee is paid or alternatively a \$50 fee or similar is charged which is below the cost of considering and issuing a permit.

- 3) *That the policy unfairly targets personal trainers and should be made broader so that it picks up all for profit fitness and personal activity classes on Council controlled lands.*

While the policy was drafted with the intent of being able to include other types of fitness and activity classes it is noted that its terms could be wider in their catchment and this has been added to revision of the policy which is below.

The reason why the policy appears to target personal trainers is that one of its primary goals is to provide them a fee discount for trading in a public place.

- 4) *That all for profit fitness and personal activity classes on Council controlled lands should have public liability cover.*

This already occurs and is a standard requirement on all Shire of Denmark Trading in Public Places permits.

- 5) *All outdoor fitness trainers that intend on obtaining the proposed permit to train paying customers in Council Parks and Reserves should need to hold the highest level of certification in their chosen field of expertise.*

While this is a well-intended comment it is not practical when considered with reflection. The highest levels of qualifications in personal training area are in fact degrees and post graduate courses in Sports Science and Human Movement but it is not realistic to expect a local personal trainer or for profit fitness operator to hold such a qualification.

During discussions with the Manager Recreation and Youth Services he has advised that in his opinion a "technician level" Certificate 4 or an equivalent level of qualification and/or significant experience in a particular field is sufficient for conducting fitness classes.

The wording of this section of the policy is purposely broad to allow staff scope to make common sense assessments of varying types of qualifications.

- 6) *That all permit holders should obtain Basic First Aid and CPR certification.*

The officer supports this suggestions and a requirement for permit holders to have current senior first aid certificates has been added to the policy.

These submission could be largely addressed if the annual fee was reduced to \$50 and the below version of the policy with an amended scope was adopted.

“PERSONAL TRAINING SESSIONS & FOR PROFIT FITNESS ACTIVITIES IN COUNCIL RESERVES

Objective

To provide both residents and visitors to the Shire of Denmark with a variety Fitness and Personal Training options that are safe and do not detract from the quiet enjoyment of Council's parks and reserves.

Policy

In accordance with its powers under Local Government Act 1995 and the Shire of Denmark Activities on Thoroughfares and Trading in Thoroughfares and Public Places and Property Local Laws 2001:

Given the many unique forms of personal training and **for profit** fitness activities and the many parks and reserves within the Shire of Denmark that could be proposed, all applications for a Trading Licence are to be lodged and will be assessed in conjunction with the Shire of Denmark Activities on Thoroughfares & Trading in Thoroughfares & Public Places Local Law. In addition to this, the application will be assessed on their individual merits and the information supplied in the application, in line with but not limited to the following:

- 1) Licences will be limited to a period of no more than one (1) year which, subject to performance may be renewed.
- 2) The Shire will assess applications for Licences for personal training in Council's parks and reserves with reference to the Local Law and the criteria set out in this Policy.
- 3) The Shire of Denmark will assess the suitability of proposed personal training activities utilising local government owned or management land. This assessment will consider the consistency of the proposed activity with the land use and vesting of the parcel of land or any management order that is attached to the parcel of land.
- 4) A **personal** trainer must not attempt to conduct a session within a distance of 50m of another personal trainer's class.
- 5) Personal training **and for profit fitness** sessions are not to have precedence over other park uses.
- 6) All personal training **and for profit fitness** sessions are to be conducted in such a manner that they do not create an annoyance or conflict with other park users or personal training classes.
- 7) Where a time restriction will be specified, the **Trainer and equipment** must be removed from the prescribed locations within 15 minutes of closure.
- 8) At the conclusion of a session the surrounding area must be left in a clean and litter free condition.
- 9) **Trainers** must comply with any lawful direction given by a Shire of Denmark Authorised Officer.
- 10) All signage and banners are to be portable in nature and limited to maximum size of two 1800 x 600mm signs or banners that are displayed no more than 30 minutes before a session and removed within 15 minutes afterwards.
- 11) All personal training **and for profit fitness session** Licence applications and renewals will be considered by the Shire of Denmark in accordance with, but not limited to, the following -
 - The use of Shire of Denmark road reserves will not be permitted for trading unless it can be shown not to adversely impact on traffic movement.

- *The licensee will be responsible for any damage to Shire property from the training activity or customers of the training activity.*
- *Personal training must not impede traffic flow or cause a traffic hazard or pose a danger to the safety of the general public.*
- *Personal trainers **and for profit fitness session operators** must obtain their own public liability insurance to the minimum value of \$10,000,000 and indemnifying the Council.*
- *The licensee must hold at least a certificate 4 in personal training or an equivalent level qualification and/ **or** relevant fitness industry experience so that they are far less likely to have injuries occur in their fitness classes.*
- ***The licensee must hold a current Senior First Aid Certificate.***
- *Personal training and **for profit** fitness activities must not connect to or utilise any Shire of Denmark utilities without prior approval and an additional charge.*

Should the application be considered unsuitable by the officers of the Shire of Denmark in accordance with legislation and the above conditions, or any other condition applicable to the application, the application will be referred to Council for their consideration as to the suitability of the activity in the community.

All applicants for Licences are to be advised of their right to object to a decision of Local Government in accordance with section 9.4 of the Local Government Act 1995, such a person may object to a decision of local government and lodge an appeal to the decision by lodging an objection within 28 days of the decision.”

Responsible Officer

The Director of Community and Regulatory Services is the responsible officer for implementing this policy.”

Adoption of the amended policy and reduction of the annual fee to \$50 is recommended by the officer.

Voting Requirements:

Absolute majority.

OFFICER RECOMMENDATION

ITEM 8.2.3

That with respect to person training sessions being held in the Council’s various parks and reserves, Council;

1. Adopt the amended draft policy titled “Personal Training Sessions in Council Reserves”, as detailed in the Officer Report under Policy Implications;
2. Reduce the \$200 fee for personal training sessions in the Council’s various parks and reserves in its 2015-2016 Schedule of Fees and Charges to \$50 and the change be advertised, as required by the Local Government Act 1995, prior to coming into effect from the date of advertisement.
3. That the words “and other licences to trade in public places” be added to the second line of Delegation D070402 (Itinerant Food Vendors) and the words “and other relevant regulations and standards” to the fourth line.

COUNCIL RESOLUTION

ITEM 8.2.3

MOVED: CR SAMPSON

SECONDED: CR OSBORNE

That with respect to person training sessions being held in the Council's various parks and reserves, Council;

1. Adopt the amended draft policy titled "Personal Training Sessions in Council Reserves", as detailed in the Officer Report under Policy Implications;
2. Reduce the \$200 fee for personal training sessions in the Council's various parks and reserves in its 2015-2016 Schedule of Fees and Charges to \$20 and the change be advertised, as required by the Local Government Act 1995, prior to coming into effect from the date of advertisement.
3. That the words "and other licences to trade in public places" be added to the second line of Delegation D070402 (Itinerant Food Vendors) and the words "and other relevant regulations and standards" to the fourth line.

AMENDMENT

MOVED: CR MORRELL

SECONDED: CR GILLIES

That the charge in Part 2 be amended from \$20 to \$50.

CARRIED: 5/3

Res: 060915

AMENDED MOTION & OFFICER RECOMMENDATION

That with respect to person training sessions being held in the Council's various parks and reserves, Council;

1. Adopt the amended draft policy titled "Personal Training Sessions in Council Reserves", as detailed in the Officer Report under Policy Implications;
2. Reduce the \$200 fee for personal training sessions in the Council's various parks and reserves in its 2015-2016 Schedule of Fees and Charges to \$50 and the change be advertised, as required by the Local Government Act 1995, prior to coming into effect from the date of advertisement.
3. That the words "and other licences to trade in public places" be added to the second line of Delegation D070402 (Itinerant Food Vendors) and the words "and other relevant regulations and standards" to the fourth line.

THE AMENDED MOTION BECAME THE SUBSTANTIVE MOTION WHICH WAS PUT & CARRIED UNANIMOUSLY & BY AN ABSOLUTE MAJORITY: 8/0

Res: 070915

6.03pm - Public Question Time

The Shire President stated that the second public question time would begin & called for questions from members of the public.

Mr Rob Whooley

Mr Whooley referred to a question that his wife had asked previously during public question time and stated that the Ocean Beach Road was a full reconstruction and seal. Mr Whooley stated that being a \$1m project it was important that the design was done properly and that the money was spent well. Mr Whooley asked whether it would be going out to community consultation. In addition, Mr Whooley asked whether Council would be putting the design/scope of works out for public consultation.

The Shire President advised that the questions would be taken on notice and responded to in writing.

Mr Shane Smith

Mr Smith referred to the Wilson Inlet Opening Protocol noting that it made no reference to the fishing industry. Mr Smith advised that he was on site when the sandbar was breached last Tuesday. Mr Smith stated that he was annoyed at the position of the opening and that he didn't believe that the water level had been high enough at the time that they breached it. Mr Smith stated that he and his

family had been fishing in Denmark for over 100 years and had asked to address the meeting when the opening had been discussed however he had not been permitted to attend.

Mr Smith provided some fishing industry statistics for Councillors information highlighting Denmark based annual catches over the years.

Mr Smith advised that, on the morning the bar was opened, he went through the Council’s barrier, which excluded people from driving on the beach at Ocean Beach, and that he went to the bar the evening prior to the opening and thought about using the Excavator, that was on site, to open up the bar himself that evening with a master key for the Excavator, that he stated that he had access to, and that the next time the bar was to be opened, he may well do it himself at the location that he preferred.

Cr Morrell requested that Mr Smith’s comments regarding breaking through the barriers on the day the sandbar was opened to access the beach; his threat to open the sandbar himself next year and his threat to break into machinery at the site and that he had a master key to the machinery, be recorded in the Minutes.

8.3 Director of Infrastructure Services

Nil

8.4 Director of Finance & Administration

8.4.1 FINANCIAL STATEMENT FOR THE MONTH ENDING 31 JULY 2015

File Ref:	FIN.1
Applicant / Proponent:	Not applicable
Subject Land / Locality:	Denmark
Disclosure of Officer Interest:	Nil
Date:	25 August 2015
Author:	Steve Broad, Accountant
Authorising Officer:	Kim Dolzadelli, Director of Finance And Administration
Attachments:	8.4.1 – July 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)
Not meeting Statutory Compliance	Rare (1)	Moderate (3)	Low (1-4)	Failure to meet Statutory, Regulatory or Compliance Requirements	Accept Officer Recommendation
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 \$169,542 have been invested for 92 days with the National Bank, maturing 19 September 2015 at the quoted rate of 2.75%.

Reserve Funds totalling \$4,136,174 have been placed on investment for 30 days with the National Bank, maturing 6 August 2015 at the quoted rate of 2.30%.

Municipal Funds totalling \$757,183 have been invested with the National Bank, maturing on various dates up to the 4 August 2015 at an average rate of 2.25% (refer note 4 for detail).

Key Financial Indicators at a Glance

As the 2015/165 Municipal Budget was only adopted on 27 July 2015 there is very little activity available for comparison purposes.

Depreciation of non-current assets has not been calculated for the reporting period as the Annual Financial Audit for the year ended 30 June 2015 has not been concluded at the time of producing this report.

Budget Amendments and Variances (Note 5 and 5a)

As detailed in Note 5a.

Voting Requirements:

Simple majority.

COUNCIL RESOLUTION & OFFICER RECOMMENDATION		ITEM 8.4.1
MOVED: CR ROWLAND		SECONDED: CR SAMPSON
That with respect to Financial Statements for the month ending July 2015, Council;		
1. Receive the Financial Reports, incorporating the Statement of Financial Activity and other supporting documentation.		
2. Endorse the Accounts for Payment for July 2015 as listed.		
CARRIED UNANIMOUSLY: 8/0		Res: 080915

8.4.2 WESTERN AUSTRALIAN LOCAL GOVERNMENT ASSOCIATION - FINANCIAL ASSISTANCE GRANTS
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File Ref:	GOV.32
Applicant / Proponent:	Not applicable
Subject Land / Locality:	Not applicable
Disclosure of Officer Interest:	Nil
Date:	26 August 2015
Author:	Kim Dolzadelli, Director of Finance & Administration
Authorising Officer:	Dale Stewart, Chief Executive Officer
Attachments:	8.4.2 – Western Australian Local Government Association - letter

Summary:

To consider a request from the Western Australian Local Government Association (WALGA) with respect to Federal Funding through the Financial Assistance Grants program (FAG's).

Background:

FAG's are a vital part of revenue base of all Councils, and this year Councils will receive a total of \$2.3 billion from the Australian Federal Government under this important program.

The Federal Governments decision in the 2014 Federal Budget to freeze the indexation of FAG's for three years beginning in 2014/2015 will unfortunately cost Councils across Australia an estimated \$925 million by 2017/2018.

Consultation:

The Officer has considered the requirement for consultation and/or engagement with persons or organisations that may be unduly affected by the proposal and considered Council's Community Engagement Policy P040123 and the associated Framework and believes that no additional external/internal engagement or consultation is required.

Statutory Obligations:

Nil

Policy Implications:

The Officer has recommended that Council adopt a Policy in relation to acknowledgement of any funding received through the Financial Assistance Grants Program which would read as follows;

"The Shire of Denmark will ensure that funding through the Financial Assistance Grants program and other funding provided by the Federal Government under relevant grant programs are clearly and primarily identified and promoted as Commonwealth grant funding in Council publications, including Annual Reports".

Budget / Financial Implications:

There are no financial implications upon the Council's current Budget; however a freeze on Financial Assistance grants will impact on the Council's Long Term Financial Plan. WALGA has advised that freezing FAG's at their current level until 2017-2018 will result in a permanent reduction of the FAG's base by 13%.

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.

Funding: ...be fiscally responsible and seek to develop both safe income generating assets and the maximisation of external funding that will benefit the community and assist in meeting its aims and obligations.

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)
That Council does not support WALGA with respect to its campaign to highlight the importance of Financial Assistance grants to Local Government.	Unlikely (2)	Minor (2)	Low (1-4)	Inadequate Financial, Accounting or Business Acumen	Accept Officer Recommendation

Comment/Conclusion:

The Australian Local Government Association and State Local Government associations are seeking the support of Council for advocacy to have the Federal Government reverse the decision to freeze the indexation of FAG's. While the FAG's are paid through each States Local Government Grants Commission, the funding originates with the Commonwealth and it is important it is recognised as such. The Shire of Denmark and every other Council in Australia have been asked to pass a resolution acknowledging the importance of the Commonwealth's Financial Assistance Grants program in assisting Councils to provide important community infrastructure.

Council is also being asked to acknowledge the receipt of Financial Assistance grants from the Commonwealth in media releases and Council publications including its Annual Report and to highlight to the media a Council project costing similar size to the FAG's received by Council such that the importance and impact of the grants can be more broadly appreciated.

The Officer is in full support of the request from ALGA and WALGA.

Voting Requirements:

Simple majority.

COUNCIL RESOLUTION & OFFICER RECOMMENDATION

ITEM 8.4.2

MOVED: CR MORRELL

SECONDED: CR SAMPSON

That Council with respect to Federal funding through the Financial Assistance Grants program:

1. Acknowledges the importance of this funding for the continued delivery of Councils services and infrastructure,
2. Acknowledges the receipt of \$1,044,564 with respect to 2014/2015 Financial Year Grants, and
3. Adopt the following Policy:

“The Shire of Denmark will ensure that funding through the Financial Assistance Grants program and other funding provided by the Federal Government under relevant grant programs are clearly and primarily identified and promoted as Commonwealth grant funding in Council publications, including Annual Reports”.

CARRIED UNANIMOUSLY: 8/0

Res: 090915

8.5 Chief Executive Officer

8.5.1 COMMERCIAL LEASES ON LOT 300 (FORMER RESERVE 27101) – DENMARK HAULAGE, DENMARK EARTHMOVING AND SOIL SOLUTIONS

File Ref:	A1077, A2228, A3123 & A5561
Applicant / Proponent:	Not applicable
Subject Land / Locality:	Lot 300, Denmark-Mount Barker Rd, Denmark
Disclosure of Officer Interest:	Nil
Date:	27 August 2015
Author:	Dale Stewart, Chief Executive Officer
Authorising Officer:	Dale Stewart, Chief Executive Officer
Attachments:	No

Summary:

This report discusses the potential extension of lease on behalf of two of the lessees occupying portion of Lot 300, Denmark-Mount Barker Rd, Denmark, to tie in with the rights of the third lessee who leases a third portion of the lot.

Background:

Vancouver Waste Services, trading as Soil Solutions, has a lease expiring on 31 December 2015, with an option to extend the lease for a further two year term (at the Lessors discretion) to 31 December 2017.

Their lease comprises 9,804 sqm with an annual rental of \$35,000 plus GST, reviewable on renewal for the purposes landscape supplies, truck and earthmoving storage and greenwaste.

Acecoast Pty Ltd, trading as Denmark Earthmoving, has a lease expiring on 31 December 2015, with no option to renew or extend (it was the balance of a 21 year lease).

Their lease comprises 8,100 sqm with an annual rental of \$17,997 plus GST, for the purposes of earthmoving, storage and operations including transport.

Their current lease has a standard sub-let clause that allows the lessee to sub-let, but requires lessor permission (clause 9.6).

Acecoast have written to Council requesting;

- An extension for a further five years;
- A change to the permitted use to include “concrete batching” and “hydraulic hose repairs”; and
- Option to sub-lease at their discretion.

Avalon Pty Ltd, trading as Denmark Haulage, has a lease expiring on 31 December 2015, with no option to renew or extend (it was the balance of a 21 year lease).

Their lease comprises 3,600 sqm with an annual rental of \$13,230 plus GST, for the purposes of Truck Maintenance/Transport.

With respect to Denmark Haulage, Council at its meeting of 25 March 2014 (Resolution No. 190314), resolved as follows;

“That with respect to Denmark Haulage’s request to extend their lease, Council agree to a lease extension pursuant to Clause 2 of the Lease to the 31 December 2015 noting that Council, at its absolute discretion, may permit a further extension not later than 30 June 2018, subject to the Lessee agreeing to meet the cost of valuation and paying the resultant lease fee.”

Consultation:

The Officer has considered the requirement for consultation and/or engagement with persons or organisations that may be unduly affected by the proposal and considered Council's Community Engagement Policy P040123 and the associated Framework and believes that apart from statutory advertising, referred to under the heading 'Statutory Obligations', no additional external/internal engagement or consultation is required.

Statutory Obligations:

Pursuant to the Local Government Act 1995, Section 3.58 is required to be adhered to where a local government proposes to lease land not covered by an existing as of right lease entitlement (renewal right) as is the case relating to the requests by Denmark Earthmoving and Denmark Haulage;

9. Disposing of property*(1) In this section —*

dispose includes to sell, lease, or otherwise dispose of, whether absolutely or not; property includes the whole or any part of the interest of a local government in property, but does not include money.

(2) Except as stated in this section, a local government can only dispose of property to —

- a) the highest bidder at public auction; or*
- b) the person who at public tender called by the local government makes what is, in the opinion of the local government, the most acceptable tender, whether or not it is the highest tender.*

(3) A local government can dispose of property other than under subsection (2) if, before agreeing to dispose of the property —

- a) it gives local public notice of the proposed disposition —*
 - (i) describing the property concerned; and*
 - (ii) giving details of the proposed disposition; and*
 - (iii) inviting submissions to be made to the local government before a date to be specified in the notice, being a date not less than 2 weeks after the notice is first given;*

and

- b) it considers any submissions made to it before the date specified in the notice and, if its decision is made by the council or a committee, the decision and the reasons for it are recorded in the minutes of the meeting at which the decision was made.*

(4) The details of a proposed disposition that are required by subsection (3)(a)(ii) include —

- a) the names of all other parties concerned; and*
- b) the consideration to be received by the local government for the disposition; and*
- c) the market value of the disposition —*
 - (i) as ascertained by a valuation carried out not more than 6 months before the proposed disposition; or*
 - (ii) as declared by a resolution of the local government on the basis of a valuation carried out more than 6 months before the proposed disposition that the local government believes to be a true indication of the value at the time of the proposed disposition.*

(5) *This section does not apply to —*

- a) *a disposition of an interest in land under the Land Administration Act 1997 section 189 or 190; or*
- b) *a disposition of property in the course of carrying on a trading undertaking as defined in section 3.59; or*
- c) *anything that the local government provides to a particular person, for a fee or otherwise, in the performance of a function that it has under any written law; or*
- d) *any other disposition that is excluded by regulations from the application of this section.*

Policy Implications:

There are no policy implications.

Budget / Financial Implications:

The extension of the leases to Denmark Haulage, Denmark Earthmoving and Soil Solutions cases should collectively provide annual revenue of \$66,227, however this would be subject to a new valuation with respect to each lease being obtained (at the cost of the lessees). The Council's 2015/16 Financial Year Budget is premised on receipt of this predicted revenue for the full year (to 30 June 2016).

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.

Employment: ...identify the key economic drivers in the region and develop, implement and advocate for policies that will provide and assist viable and acceptable employment opportunities for residents and ratepayers.

Funding: ...be fiscally responsible and seek to develop both safe income generating assets and the maximisation of external funding, that will benefit the community and assist in meeting its aims and obligations.

Provision of another two year term, as proposed by the Officer, will enable the businesses to continue to operate from their current sites with certainty whilst the Council's Industrial Area planned for McIntosh Road is developed. The development of this precinct is still at least two years away and is subject to rezoning and obtaining grants.

There would appear to be no real commercial value in 'tendering' the sites to potential and unknown 'higher' or 'better' bidders for a two year term when existing businesses have been occupying the sites for many years (up to 21 years), and indeed it could simply serve to undermine the viability of existing long serving lessees and local businesses, employing a number of local persons.

Agreeing to a term greater than two years might undermine the viability of the Industrial Area, with the core tenants proposed to be the existing lessees of the 'service park' site. If the Industrial Area is not ready in two years' time then there would be nothing to stop the Council agreeing to another extension on a case by case basis.

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:**

Providing certainty to three businesses that employee several local person will provide continued local employment and economic activity associated with their operations. As there is currently no suitable land for the businesses, other than the existing ‘service park’ site, a continuation of their operation is recommended for at least another two years, until the proposed Industrial Area (and lots therein) is available for subdivision / acquisition.

➤ **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 the Council agrees to an extension without advertising.	Rare (1)	Moderate (3)	Low (1-4)	Failure to meet Statutory, Regulatory or Compliance Requirements	Accept Officer Recommendation
That the Council does not agree to an extension of lease.	Possible (3)	Minor (2)	Moderate (5-9)	Not Meeting Community expectations	Accept Officer Recommendation

Comment/Conclusion:

The Officer has recommended a two (2) year lease extension with respect to each of the leases due for expiry on 31 December 2015.

The lessees would prefer longer – and Denmark Earthmoving have requested a five (5) Year extension.

Denmark Earthmoving (and or its proposed sub-lessee Denmark Concrete Pty Ltd) have also requested consideration of approving the ‘use’ or ‘purposes’ of lease being amended to include ‘Concrete Batching Plant’ and ‘Hydraulic Hose Repairs’. Indeed they have already lodged a development application with Planning Services for the former to occur.

The concrete batching will need to be referred to the Department of Environment Regulation, as it requires a works approval from that Department.

The permission of Council as the landowner for the development application to be lodged, is required and is recommended by the officer. The application will be independently assessed, but dependent upon the granting of the lease extension and subject to planning approval being obtained, which, will no doubt, have conditions associated, if approved. This will be emphasised to the applicant.

Voting Requirements:

Simple majority.

COUNCIL RESOLUTION & OFFICER RECOMMENDATION	ITEM 8.5.1
MOVED: CR OSBORNE	SECONDED: CR MORRELL
<p>That with respect to the two commercial leases due to expire on 31 December 2015 on portion of lot 300, Denmark-Mount Barker Road, Denmark, Council;</p> <ol style="list-style-type: none"> 1. Authorise the Chief Executive Officer to exercise an extension of the lease to Soil Solutions for a further two year term to 31 December 2017, should they request it; 2. Honour the principles of its previous commitment to Denmark Haulage pursuant to resolution number 190314, to extend their lease under the same terms and conditions at present, until 31 December 2017, subject to advertising the proposed private treaty arrangement, considering submissions, and seeking a new valuation at the expense of the lessee; and 3. Agree to the principle of a new lease to Denmark Earthmoving, under the same general terms and conditions at present, inclusive of the existing sublet clause, until 31 December 2017, subject to advertising the proposed private treaty arrangement, considering submissions, and seeking a new valuation at the expense of the lessee; and 4. Authorise the Chief Executive Officer, as the landowners representative, to sign the development application by Denmark Earthmoving and or its proposed sub-lessee for the application for planning consent for the proposed 'Concrete Batching Plant' to be assessed. 5. Agree in principle with the Denmark Earthmoving sub-lease subject to planning approval being obtained. 	
CARRIED UNANIMOUSLY: 8/0	Res: 100915

9. COMMITTEE REPORTS & RECOMMENDATIONS

Nil

10. MATTERS BEHIND CLOSED DOORS

Nil

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

Nil

12. CLOSURE OF MEETING

6.22pm – *There being no further business to discuss the Shire President, Cr Thornton, declared the meeting closed.*

<p>The Chief Executive Officer recommends the endorsement of these minutes at the next meeting.</p> <p>Signed: _____ <i>Dale Stewart – Chief Executive Officer</i></p> <p>Date: _____</p> <p>These minutes were confirmed at the meeting of the _____</p> <p>Signed: _____ <i>(Presiding Person at the meeting at which the minutes were confirmed.)</i></p>
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