

# Shire of Denmark Minutes



## ORDINARY (DECISION MAKING) MEETING OF COUNCIL

HELD IN THE COUNCIL CHAMBERS,  
953 SOUTH COAST HIGHWAY, DENMARK,  
ON TUESDAY, 21 DECEMBER 2010.

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# Ordinary Council Meeting

21 December 2010

## 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 PRESENT:

- Cr Ross Thornton (Shire President)
- Cr Ken Richardson-Newton (Deputy Shire President)
- Cr Phil Barnes
- Cr Kim Barrow
- Cr Adrian Hinds
- Cr Robert Laing
- Cr Dawn Pedro
- Cr Richard Phair
- Cr John Sampson
- Cr Alex Syme
- Cr John Wakka

STAFF:

- Mr Dale Stewart (Chief Executive Officer)
- Mr Garry Bird (Director of Finance & Administration)
- Mr Gregg Harwood (Director of Community & Regulatory Services) (from 4.08pm)
- Mr Duncan Ross (Acting Director of Planning & Sustainability)
- Mr Rob Whooley (Director of Infrastructure Services)
- Ms Claire Thompson (Executive Assistant)

APOLOGIES:

- Cr George Ebbett

ON LEAVE OF ABSENCE:

Nil

ABSENT:

VISITORS:

- Members of the public in attendance at the commencement of the meeting: 15
- Members of the press in attendance at the commencement of the meeting: 2

DECLARATIONS OF INTEREST:

Name	Item No	Interest	Nature
Mr Dale Stewart	8.5.4	Financial & Impartiality	The officer declares an impartiality and financial interest as the reports has the potential to affect the officer's remuneration package and conditions of employment.
Mr Garry Bird	8.5.4	Financial	Mr Bird is a Senior Employee of Council employed via a contract.
Mr Duncan Ross	8.5.4	Financial	Mr Ross is employed as a Contracted Senior Officer.
Mr Gregg Harwood	8.5.4	Financial	Mr Harwood is a Senior Employee of Council employed via a contract.

Mr Rob Whooley	8.5.4	Financial	Mr Whooley is a Senior Employee of Council employed via a contract.
Cr Rob Laing	8.1.2	Proximity	Cr Laing owns property which adjoins the proponent.
Cr Ross Thornton	8.3.4	Proximity	Cr Thornton owns property in Strickland Street.
Cr Kim Barrow	8.3.4	Proximity	Cr Barrow leases property in Strickland Street.
Cr Kim Barrow	8.5.1	Impartiality	Cr Barrow is a member of Denmark Tourism Inc.
Cr Ken Richardson-Newton	8.5.1	Impartiality	Cr Richardson-Newton is a member of Denmark Tourism Inc.

**3. ANNOUNCEMENTS BY THE PERSON PRESIDING**

Nil

**4. PUBLIC QUESTION TIME**

**4.1 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

**4.1.1 Mr Brian Humphries – Minutes of 25 March 2008 – Re Wentworth Rd dam**

At the meeting held on the 16 November 2010, Mr Humphries made statements and asked questions of Council as follows;

“I refer to the Minutes of Council of March 25 2008 Item 9.4.1 Planning Consents for Tree Felling and/or Dam Construction.

The date of that Council Minute is very significant – it is positive confirmation that in the very early days of construction and more likely during pre-construction of the Wentworth Rd dam, Council was well aware that (a) there was no policy re dams and (b) under the TPS, dams require approval.

1. When you first became aware (circa late 2007) that there was no policy re dams and that dams required DA approval, why did you not immediately advice Council to initiate a retrospective DA?
2. When the Planner verbally approved the construction of the dam without a DA, did he also approve of the landowner modifying the mandatory minimum TPS boundary offsets?
3. You have advised me by recent email that “the Shire has no legal remedy to subsequently seek a DA?”. Can you please explain why you believe the Shire has no legal remedy to not NOW seek a DA for the following precipitating reasons:
  - For the development breaching the TPS with respect to significantly contravening the mandatory scheme boundary offsets that otherwise requires the specific approval of Council which, I understand, has not been sought nor given;
  - For the material fact that the dam as constructed is not a “farm dam” as inferred by the Shire’s presumption (circa 2007) of it not requiring a DA if the development was for “farm dam” as might otherwise fall within the ambit of “normal rural activities”. (It is noted that the dam as constructed is not a “farm dam” and is estimated to be about 40 times larger than what Council considers a “farm dam” to be).

- For the landowner having failed to deliver a structural certification as requested by Council.”

The Shire President stated that Mr Humphries' questions would be taken on notice and responded to in writing.

The Chief Executive Officer is still researching the answers to the questions submitted by Mr Humphries. As soon as practicable a response will be included in the first available Agenda.

#### **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 back of the front cover of this Agenda.

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, no later than 6.00pm.

##### Questions from the Public

#### **4.2.1 Mr Jim King - Item 8.1.4 (Town Planning Scheme Policy 'Denmark Airfield and Airpark' and the 'Denmark Airfield Land Use Strategy')**

Mr King stated that on behalf of the Denmark Airport Association (DAA) he extended his thanks to Council Officers and Council for their assistance with the Strategy and in particular Mr Garry Bird, Mr Duncan Ross and Mr Gregg Harwood. Mr King noted that he would soon no longer be the President of the DAA however he hoped that the good relationship between Council and the DAA would continue into the future.

#### **4.2.2 Ms Delma Baesjou – Item 8.1.4 (Town Planning Scheme Policy 'Denmark Airfield and Airpark' and the 'Denmark Airfield Land Use Strategy')**

Ms Baesjou spoke on behalf of one of the proponents of a hangar accommodation development application stating that they generally supported the Officer Recommendation however they disagreed with the Environmental Protection Authority's comments in relation to hangar accommodation being classified as a sensitive use. Ms Baesjou also noted that Paxillus Way would be a shared access road which would remain under Council control.

*4.08pm – the Director of Community & Regulatory Services entered the meeting.*

#### **4.2.3 Mr David Rule – Wentworth Road Dam**

Mr Rule spoke as the owner of a property which adjoins Wentworth Road stating that he wanted Council to realise that he and the other nearby landowners weren't trying to be vexatious by questioning the integrity of the dam. Mr Rule stated that nearby landowners were generally concerned about the safety of the structure and were seeking absolute certification that the dam was structurally safe.

*The Shire President noted that in his opinion there were no Councillors that held the view that the Rules or other neighbours of the dam were being vexatious.*

**4.2.4 Mr David Evans – Item 8.1.1 (Review of Condition No. 2 & 3 of Planning Scheme Consent 2010/137 at No. 16 (Lot 8) Privett Road)**

Mr Evans spoke as the applicant and spoke specifically in relation to the height variations. Mr Evans referred to State Planning Policy 3.1, Residential Design Codes, conveying reasons for the height variation and stated that should Council not ratify the height variations it would cause a significant cost to his family. Mr Evans acknowledged that they had done the wrong thing at the beginning however they had done everything that they could to rectify the situation and comply with Council's requests and conditions. Mr Evans gave the Shire President a copy of section 6.7 of the State Planning Policy 3.1 for information.

**4.2.5 Mr Brian Humphries – Question on Notice from 16 November 2010**

Mr Humphries asked the CEO why he couldn't provide an answer to his Question on Notice to this meeting.

*The CEO advised that he was still investigating the answers to the questions raised by Mr Humphries and would provide a response as soon as practicable.*

**4.2.6 Mr Brian Humphries – Wentworth Road Dam**

Mr Humphries stated that site works were continuing on the property, noting that the works had interfered with the dam's emergency spillway, and asked the CEO whether the current site works, including the building of a shed and an access road, had Council's approval of a development application. Mr Humphries added that if there was approval, when was it approved and did that approval also consider and approve changes to the emergency spillway.

*The CEO advised that he would take Mr Humphries questions on notice and response to them in writing.*

Mr Humphries referred to the letter from the Hon. John Day in relation to the dam noting that Council only had three weeks to respond which meant by the 28 December 2010.

*The Shire President advised that the Minister would be responded to by the 28 December 2010 and that Council had had a briefing session on the matter to determine their response which would be considered formally by Council at their January 2011 meetings.*

Mr Humphries asked why Council had had a private meeting to discuss the matter.

*The Shire President replied that it hadn't been a meeting but instead a briefing session which had not been open to members of the public as legal opinions had been discussed.*

**4.2.7 Ms Vicky Evans - Item 8.1.1 (Review of Condition No. 2 & 3 of Planning Scheme Consent 2010/137 at No. 16 (Lot 8) Privett Road)**

Mrs Evans raised concerns relating to planning considerations that were stated in the report and conveyed that the main purpose behind the extension was to care for their aged parents as there were no aged care facilities in town. Mrs Evans added that this type of situation was supported by the Town Planning Scheme No. 3 and requested Council to look favourably on their situation.

**4.2.8 Mr Chris Grain – Council Meetings**

Mr Grain referred to Mr Humphries' comments earlier in the meeting relating to Council meeting behind closed doors and asked what set this

matter apart in that Council needed to keep their discussions out of the public arena.

*The Shire President replied that Council had discussed the matter at a briefing session, which are always closed to the public, but also because legal opinions had been discussed.*

**4.2.9 Mr Silas Misah – Hamilton Road**

Mr Misah, owner and operator of a restaurant on Hamilton Road, expressed concern about the safety and speed limit on the gravel road and in particular the frequent movement of trucks. Mr Misah stated that he believed that the trucks moved at a very high speed which was a danger to his family and patrons as well as creating a lot of dust which made its way into the restaurant, meaning that customers had to deal with dust in their wine and their food. Mr Misah asked Council what the speed limit along Hamilton Road was and urged Council to consider putting speed limited, speed humps or bitumising a section to reduce the dust.

Cr Syme asked the Director of Infrastructure Services whether the trucks belonged to an operator of quarry and if so whether that quarry was licensed.

The Director of Infrastructure Services replied that the quarry was licensed however the license did not allude to public road use or the speed and that the speed limited for Hamilton Road was 110km/h.

The CEO clarified the comment nothing that Hamilton Road was not a speed gazetted road and therefore there was no speed signs however, legislation stated that the road user needed to “drive to suit the conditions” and not exceed 110km/h on such roads.

**4.3 QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN**

Nil

**4.4 PRESENTATIONS, DEPUTATIONS & PETITIONS**

Nil

**5. APPLICATIONS FOR LEAVE OF ABSENCE**

Nil

**6. CONFIRMATION OF MINUTES**

**6.1 ORDINARY COUNCIL MEETING**

<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>	<b>ITEM 6.1</b>
MOVED: CR LAING	SECONDED: CR PEDRO
That the minutes of the Ordinary Meeting of Council held on the 14 December 2010 be confirmed as a true and correct record of the proceedings, subject to the following amendments;	
1. Page 6 – third paragraph in Item 3.2.7, replace the word “an air” with the word “also a commercial”.	
CARRIED: 11/0	Res: 041210

**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 REVIEW OF CONDITION NO. 2 AND 3 OF PLANNING SCHEME CONSENT 2010/137 AT NO. 16 (LOT 8) PRIVETT ROAD

<b>File Ref:</b>	A2689
<b>Applicant / Proponent:</b>	David Evans
<b>Subject Land / Locality:</b>	No. 16 (Lot 8) Privett Road, Denmark
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	24 November 2010
<b>Author:</b>	Duncan Ross, Acting Director of Planning and Sustainability
<b>Authorising Officer:</b>	Duncan Ross, Acting Director of Planning and Sustainability
<b>Attachments:</b>	Yes

#### **Summary:**

Council has been asked by the State Administrative Tribunal (SAT) whether they are prepared to reconsider a previous refusal by Council planning staff to amend planning scheme consent conditions. This is in relation to an oversized outbuilding at Lot 8 Privett Road.

Conditions 2 and 3 of Planning Scheme Consent 2010/137 stated as follows:

- 2) *The outbuilding shall have a maximum wall height not exceeding 3.5m and a maximum cumulative total floor area not exceeding 150m<sup>2</sup>.*
- 3) *Any part of the outbuilding exceeding 3.5m in height shall be for the structural support of the roof only. A mezzanine floor is not permitted in the outbuilding.*

This is consistent with the policy requirements relating to Special Rural zones. The outbuilding has subsequently been measured by Mr Graham Blackmore and varies between 4.4m and 4.0m, with an average wall height of 4.2m. The outbuilding is compliant with the floor area requirements; however the upper level has a floor and is currently accessible, effectively resulting in the outbuilding being two-storey.

#### **Background:**

The outbuilding was not initially constructed in accordance with the plans that were approved by Council under planning scheme consent 2009/82. The applicant then proceeded to live in the outbuilding at which point it was brought to Councils attention where it was resolved in February 2010 (RES100210) that:

*That with respect to the illegally constructed outbuilding on No. 16 (Lot 8) Privett Road, Denmark, Council resolve to undertake the following action:*

1. *Enforce the applicant to cease habitation of the outbuilding within 15 days of the date of written advice;*
2. *Require the applicant to provide amended plans for retrospective planning assessment and building licence based on the erected building on site within 30 days of the date of written advice.*

The applicant subsequently supplied amended plans that were approved subject to numerous conditions, including conditions 2 and 3 above. The applicant requested a reconsideration which was refused by Councils planning staff, and subsequently the applicant appealed to SAT.



**Comment:**

One of the first parts of any SAT proceedings is to mediate. Mediation was held between Mr Peter McNabb (Member of SAT), the Acting Director of Planning and Sustainability, the Shire's Building Surveyor and the applicant.

It was agreed that a report would be written to Council seeking a determination from Council on whether there was any support to reconsider the conditions. This was subject to accurate plans being drawn up (attachment 1), a Statutory Declaration being provided (attachment 2) and a building licence being assessed to incorporate internal modifications to the building so that the upper level can only be accessed and used for storage purposes.

The accurate plans have been provided, the statutory declaration has been signed and returned to the Shire, and the building licence is pending issue, dependant on this resolution.

Should Council support the reconsideration and amendment to the above conditions, all SAT proceedings will effectively cease. Should Council not support the request a Directions Hearing has been scheduled for the 21<sup>st</sup> of January 2011.

A directions hearing is as follows:

*A directions hearing is held before a member of the SAT and all parties are expected to attend. The Tribunal member tries to identify the issues in dispute and plans how the application will proceed. In some circumstances, the Tribunal might also consider whether the application should be considered on the documents, without the need for a final hearing.*

It is expected SAT will not proceed with a final hearing and a decision will be made on the on the 21<sup>st</sup> of January.

There are several issues to consider for Council:

- The increase wall height represents a 20% increase above what is permissible under the Shire's policy;
- Approving the application may result in other applications being submitted for increased shed heights in the rural zone and undermines the effectiveness of the policy;
- Approving the request could be seen as Council sending a message to the community that if you build a non-compliant shed without the necessary compliance with Council requirements then eventually the Council will support it at a later date;
- Council runs the risk of SAT approving the outbuilding if we don't support a review, losing any ability to influence the outcome.

In relation to the above it is acknowledged that modifying the building to be compliant is possible, however is likely to be at significant cost to the applicant. This is not an issue for Council as the applicant failed to adhere to advice from Council at early stages of development and this is a risk the applicant has taken. It is unknown however if SAT would support this approach however is the one way in which to ensure the outbuilding remains compliant into the future.

Whilst the application is not overly visible from either South Coast Highway or Privett Road, it is unlikely planning staff would have approved this application if due process was followed initially.

It is noted that the leech drains/septic system on the attached plans are located outside of the approved building envelope and the applicant is advised that these are required to be located within the approved Building Envelope. If supported by

Council, the applicant is to provide an amended site plan demonstrating compliance. This will effectively limit any further development on the site, as the irregular building envelope that has resulted will not result in any additional buildings being able to be constructed, therefore the site is deemed to be fully maximised.

Should Council not support the Officer Recommendation an alternative recommendation is provided below;

*That Council refuses the request to reconsider conditions 2 and 3 of planning scheme consent 2010/137.*

**Consultation:**

No consultation has arisen as a result of this report request.

**Statutory Obligations:**

The *State Administrative Tribunal Act 2004* give the SAT the jurisdiction to review decisions, consider disciplinary matters or make original decisions. Section 31 of the above act allows SAT to invite the original decision maker (Council) to reconsider the decision that is subject to the review proceedings at any time.

In accordance with the above there are three course of action Council can take:

- Affirm the original decision;
- Vary the original decision (as sought in this instance);
- Set aside the original decision and substitute a new decision.

In addition to the above the Shire's Town Planning Scheme No. 3 specifies the pertinent development considerations for the Council to consider.

**Policy Implications:**

The conditions if approved will result in an outbuilding with a wall height beyond the 3.5m maximum limit for the Special Rural Zone as specified in Policy No. 13.3 – Outbuildings.

**Budget / Financial Implications:**

There are no known financial implications upon the Councils current Budget or Plan for the Future.

**Strategic Implications:**

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

**Sustainability Implications:**

➤ **Environmental:**

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

➤ **Economic:**

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

➤ **Social:**

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

**Voting Requirements:**

Simple majority.

**OFFICER RECOMMENDATION**

ITEM 8.1.1

That Council is being asked by the State Administrative Tribunal whether it is prepared to reconsider conditions 2 and 3 of Planning Consent 2010/137 and advise that it is supportive of the request and amend the conditions as follows:

2. *The outbuilding shall have a maximum wall height not exceeding 4.4m and a maximum cumulative total floor area not exceeding 150m<sup>2</sup>.*
3. *Any part of the outbuilding exceeding 3.5m in height shall be for storage purposes only and no further modifications to the internal configuration of the outbuilding are permitted from that shown on the plans dated 18 November 2010.*

**Advice Note**

- i) The applicant is advised that the leach drains are required to be located within the approved Building Envelope and a modified plan is required demonstrating compliance.

4.47pm – Cr Hinds left the meeting.

<b>COUNCIL RESOLUTION</b>	ITEM 8.1.1
MOVED: CR RICHARDSON-NEWTON	SECONDED: CR BARROW
<p>That Council is being asked by the State Administrative Tribunal whether it is prepared to reconsider conditions 2 and 3 of Planning Consent 2010/137 and advise that it is supportive of the request and amend the conditions as follows:</p> <ol style="list-style-type: none"> <li>2. <i>The outbuilding shall have a maximum wall height not exceeding 4.4m and a maximum cumulative total floor area not exceeding 150m<sup>2</sup>.</i></li> <li>3. <i>Any part of the outbuilding exceeding 3.5m in height shall be for storage purposes only and no further modifications to the internal configuration of the outbuilding are permitted from that shown on the plans dated 18 November 2010.</i></li> </ol>	
CARRIED: 10/0	Res: 051210

4.50pm – Cr Hinds returned to the meeting.

<b>COUNCIL RESOLUTION</b>	ITEM 8.1.1
MOVED: CR RICHARDSON-NEWTON	SECONDED: CR BARROW
<p>That with respect to 16 (Lot 8) Privett Road that the Council approve a modified Building Envelope to incorporate the existing constructed developments (including the leach drains) subject to it comprising a maximum area of 1,000sqm.</p>	
CARRIED: 11/0	Res: 061210

**REASONS FOR CHANGE**

Council wished to deal with the matter of a modified Building Envelope to incorporate the existing constructed developments.

The CEO advised that, with respect to Item 8.1.2, the applicant had withdrawn their planning consent application and therefore the item was not discussed or dealt with by Council.

<b>8.1.2 ANCILLARY ACCOMMODATION AT No. 986 HAZELVALE ROAD, DENMARK</b>
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<b>File Ref:</b>	A5122
<b>Applicant / Proponent:</b>	Denmark Survey and Mapping on behalf of K & B and N & C Hexter.
<b>Subject Land / Locality:</b>	No. 986 (Lot 40) Hazelvale Road, Denmark WA 6333
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	10 November 2010
<b>Author:</b>	Duncan Ross, Acting Director of Planning and Sustainability
<b>Authorising Officer:</b>	Duncan Ross, Acting Director of Planning and Sustainability
<b>Attachments:</b>	Yes

**Summary:**

The applicant has sought planning scheme consent (*attachment 1*) to construct an additional dwelling on site, with the intention of downgrading one of the two existing dwellings into an ancillary accommodation unit to remain consistent with the requirements of the Shire's Policy No. 7 – Second Dwellings/Additional Houses and Chalet Developments on Rural Zoned Lots.

The proposed ancillary accommodation unit will have a floor area of 73.5m<sup>2</sup>. The unit will be the third habitable building on the property which has an underlying rural zone. Ancillary accommodation is a 'use not listed' in the Shire's Town Planning Scheme No. 3 (TPS) in rural zoned areas, in a sense that it is not expressively provided for, nor excluded in the scheme text.

The TPS states as follows:

*If the use of land for a particular purpose is not specifically mentioned in the Zoning Table and cannot reasonably be determined as falling within the interpretation of one of the use categories the Council may:*

- a) *determine that the use is not consistent with the purpose and intent of the particular zone and is therefore not permitted; or*
- b) *determine by absolute majority that the proposed use may be consistent with the purpose and intent of the zone and thereafter follow the procedure set out in Clause 6.4 in considering an application for planning consent.*

It is recommended Council refuse the application planning scheme consent as the proposed use is not deemed consistent with the purpose and intent of the rural zone as discussed later in this report.

**Background:**

The subject building was originally an outbuilding, before being upgraded to a Class 1A dwelling. Policy No. 7 (*attachment 2*) allows for two dwellings on a property in excess of 10ha as a permitted use. Additional houses (and/or chalets) require a discretionary decision of Council.

For the purposes of this application, the construction of the new dwelling has not been assessed as part of this application as the critical issue requiring Council consideration is as follows:

- Is ancillary accommodation a use consistent and intended within the rural zone?

If deemed 'yes', Council should approve the application as the ancillary accommodation unit is generally consistent with the design expectations of such a use, in that it will be used by dependant family members and is generally of a size consistent with Council requirements (generally being no more than 60m<sup>2</sup>).

**Comment:**

Council has various options available to it as follows:

1. The first is whether the existing dwelling is required to be downgraded at all or whether Council is prepared to approve outright the application as a third dwelling without requiring any structural modifications. Policy No.7 provides the following guidance:
  - 1) *Any additional houses will need upon application to Council to substantiate that the dwelling is needed for management purposes of an existing rural enterprise.*
  - 2) *In consideration of a proposed venture, Council will require that substantial progress has been taken to bring the venture into operation.*
  - 3) *Requirements of a water source, road contribution(s), siting, effluent disposal and building materials will be as determined by Council.*

In regards to the above it is not deemed a third dwelling meets the above criteria and cannot therefore be approved outright by Council as the property has no intensive farming venture associated with it that would allow a third dwelling to meet the above policy requirements.

2. The second issue Council therefore needs to consider is the appropriateness of ancillary accommodation within a rural setting and whether this use is intended. Ancillary accommodation is not defined in the TPS, however the following definition is provided in the Residential Design Codes of WA as follows:

*Ancillary Accommodation – Self contained living accommodation on the same lot as a single house that may be attached or detached from the single house occupied by members of the same family as the occupiers of the main dwelling.*

This tends to indicate that ancillary accommodation is a use associated with the residential zone. The TPS states the Rural Zone is 'for the range of normal rural activities conducted in the Shire and to protect such land from inappropriate uses'.

The Shire's TPS notes in terms of ancillary accommodation:

5.3.6 *Ancillary Accommodation*

- a) *Where ancillary accommodation is added to an existing building, direct internal access shall be provided from the newly added part of the building to the original part of the building.*
- b) *Where ancillary accommodation is not itself added to an existing building Council may request there be constructed between the added accommodation and the existing building a fully covered connection.*
- c) *The total area of ancillary accommodation shall not exceed 60 square metres, exclusive of any fully covered connection unless approved by Council.*
- d) *An application for planning consent for ancillary accommodation shall provide the Council with a completed statutory declaration in the form of Appendix 15, signed by the owner of the building and each relative, aged or dependant person of the owner for whose occupation the ancillary accommodation is intended, stating that the ancillary accommodation is intended for use by that relative, aged or dependant persons, as the case may be and for no other purpose.*

Each of the above TPS requirements is addressed below:

In relation to (a) and (b) the proposed ancillary unit is not connected to an existing dwelling and given the separation distances between buildings it is not considered appropriate to request a connection should approval be granted by Council.

It must be noted that Councils practice in the past in other areas where ancillary accommodation also not provided (such as the Special Rural or Special Residential Zones) is to ensure the ancillary unit is connected by either a common wall or roof. This allows the application to be assessed as a single dwelling (in accordance with Building Code requirements) with effectively a self contained unit under the same roof.

In regards to (c) the application is inconsistent with the 60m<sup>2</sup> floor area requirement however in rural areas this size deviation (an extra 13.5m<sup>2</sup>) is not expected to be of concern and Council has the ability to vary this requirement.

The applicant has stated the ancillary accommodation is to be used for dependant family members and in this regard the proposal is consistent with the above clause in the TPS. A statutory declaration has been provided and therefore (d) is consistent with scheme requirements (*attachment 3*).

The application was advertised and the following submissions were received (*attachment 4*).

<b>Submission Details</b>	<b>Officer Comment</b>
<p>Adjoining landowner</p> <p><b>OPPOSES THE PROPOSAL</b></p> <p>The inaccuracy of the plans that have been provided and suggest that measuring the buildings to clarify the dimensions shown is required prior to Council consideration.</p> <p>The provision of what will effectively be a third dwelling on site, which is not in accordance with the requirements of Policy No. 7 (attached) – which generally only permits third dwellings where they are considered to be required for a farming or business enterprises.</p> <p>The closing off of the area shown as ‘storage’ will be in time utilised for the unit and will not be able to be effectively policed by Council from a compliance perspective.</p> <p>The TPS is silent on the use of the building for ‘ancillary’ accommodation purposes and not intended for rural zones, as this use relates to residential zones only in the Shire’s TPS.</p>	<p>Submission Upheld.</p> <p>A site inspection confirms the building dimensions as shown on the application plans are accurate.</p> <p>The applicant has correctly interpreted the Councils policy and notes ancillary accommodation is not a land use permitted within the rural zone. As the property is not used for intensive agricultural purposes, the ancillary unit cannot be approved as a manager’s residence or similar.</p> <p>Council, if approving the application will have no meaningful ability to prevent the landowners from in time incorporating the area shown as storage into part of the unit other than to respond to a complaint or continue to monitor the property from time to time which is not recommended.</p> <p>As previously stated ancillary accommodation is not provided for, nor excluded within the rural zone however in ancillary accommodation is a use traditionally provided for in the</p>

	residential zone. It is deemed that within the rural zone Policy No. 7 allows for multiple housing options, and this application is inconsistent with the requirements of the policy. The application will effectively result in a third habitable building which in the past would only be approved where required for management purposes
Adjoining landowner  DOES NOT OBJECT TO THE PROPOSAL  No further detailed comments provided.	Submission Noted.    No comment required.

**Officer Summary:**

In essence the Council is therefore asked to determine whether ancillary accommodation is a use permissible in the rural zone, or whether the Councils policy adequately provides for the intended housing of multiple families on a single rural lot. It would appear that ancillary accommodation is not a use provided for in the rural zone and that this particular application is inconsistent with the intended use of rural zoned land. This application seeks to utilise a loophole in the TPS to establish additional housing on the subject lot that is exempt from consideration under the policy. It is not considered that this application is consistent with the expectation or intent of the rural zone.

Policy No. 7 adequately provides for landowners with multiple housing options in the rural zone, and ancillary accommodation, particularly in the form shown in this application is not consistent with these requirements. The landholders have currently maximised the development potential (in terms of dwellings) for the property.

Should Council not support the Officer Recommendation a suggested alternative motion is provided below;

*That with respect to the reclassification of an existing house to ancillary accommodation on No. 986 (Lot 40) Hazelvale Road, Denmark, that Council approve Planning Consent for the ancillary accommodation unit in accordance with the following conditions:*

1. *The development to be in accordance with the attached stamped approved plans and where marked in red dated 04 October 2010.*
2. *The maximum floor area of the ancillary accommodation unit shall not exceed 73.5m<sup>2</sup>.*
3. *The building shall only be resided in by family members listed on the Statutory Declaration dated 20 August 2010.*

**Consultation:**

The proposal was advertised for public comment in accordance with clause 6.4 of the TPS3 for a period of 21 days (*attachment 5*) as follows:

1. An advertisement was placed in the Denmark Bulletin on the 7/05/10; and
2. The application was referred to neighbours for comment.

At the end of the submission period, two submissions were received as detailed above.

**Statutory Obligations:**

Town Planning Scheme No. 3 specifies the pertinent development requirements for the site.

**Policy Implications:**

Policy No. 7 is relevant to this proposal, as the applicants are seeking effectively a third dwelling under the guise of ancillary accommodation, which is not provided for in the TPS in rural zones.

It is noted similar applications are awaiting the outcome of this application in terms of whether to proceed with an ancillary accommodation proposal on rural land.

**Budget / Financial Implications:**

There are no known financial implications upon the Councils current Budget or Plan for the Future.

**Strategic Implications:**

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

**Sustainability Implications:****➤ Environmental:**

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

**➤ Economic:**

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

**➤ Social:**

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

**Voting Requirements:**

Simple majority.

**OFFICER RECOMMENDATION****ITEM 8.1.2**

That with respect to reclassification of an existing dwelling to ancillary accommodation on No. 986 (Lot 40) Hazelvale Road, Denmark, that Council refuse Planning Consent for the ancillary accommodation unit for the following reasons:

1. The development is inconsistent with the requirements of Policy No. 7 which adequately provides for landowners with multiple housing options in the rural zone, and ancillary accommodation, particularly in the form shown in this application is not consistent with these requirements.
2. Ancillary accommodation is a use provided for in the residential zone.
3. Council is concerned that approval may lead to a subsequent approval for subdivision which could be an unplanned breakdown of rural land.
4. The distance between the three buildings proposed for residential accommodation and / or classed as ancillary accommodation cannot meet any ordinary acceptable definition for that use class.



### 8.1.3 LAKE MUIR DENBARKER COMMUNITY FERAL PIG ERADICATION GROUP – SHIRE REPRESENTATIVE ON GROUP

<b>File Ref:</b>	REM.2
<b>Applicant / Proponent:</b>	Lake Muir Denbarker Community Feral Pig Eradication Group
<b>Subject Land / Locality:</b>	Shire of Denmark and surrounds
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	7 December 2010
<b>Author:</b>	Yvette Caruso, Natural Resource Management Officer
<b>Authorising Officer:</b>	Duncan Ross, Acting Director of Planning and Sustainability.
<b>Attachments:</b>	No

#### **Summary:**

Council is asked to appoint a Shire staff member or alternatively a Councillor to act as Shire of Denmark representative on the Lake Muir Denbarker Community Feral Pig Eradication Group (the Group).

#### **Background:**

The Shire of Denmark has received an invitation from the Secretary of the Group for Yvette Caruso (NRM Officer) to act as the Shire representative. The Shire has been a partner in this collaborative project since its inception in 2001 and makes an annual financial contribution towards the activities of the Group.

#### **Comment:**

The group (including the committee, trappers and meeting minutes distributors) consists of 24 individuals, includes 10 government agencies or partner organisational representatives, with the remaining being local residents and farmers. There are currently no representatives from the contributing Shire's however biannual reports are provided. The Group meets quarterly in Rocky Gully and their last meeting was held 10 December 2010.

#### Committee Members

- Mark Muir, Chairman
- Tony Fox, Deputy Chairman
- Brad Barton, Dept. Of Environment & Conservation
- Jason Dearle, Dept. Of Agriculture & Food
- Bob Edwards, Gunns
- Mark Foster, Sporting Shooters Association
- Louis Gravestock, Elders Forestry Ltd
- Lynn Heppell, Wilson Inlet Catchment Committee
- Matt Kennewell, South Coast NRM Inc.
- Ted Knight, Dept. of Agriculture & Food
- Ashley Muir
- Jerry Roberts
- John Rodgers
- David Squire
- Chris Stewart, Dept. of Environment & Conservation
- Brett Ward, Dept. Of Water
- Ian Wilson, Department of Environment & Conservation

The Group aims to facilitate the involvement of all landholders in the Lake Muir and Denbarker areas in contributing to the maintenance of low pig densities, and its objectives are to:

- Minimise the effects feral pigs have on the likelihood of the spread of exotic diseases, the quality of the natural environment, water quality in catchment areas and private property adjoining forest areas
- Enable an immediate response to complaints from landholders who have pigs emanating from neighbouring land
- Augment Department of Environment and Conservation trapping and poisoning programs
- Collect relevant statistics on feral pig distribution and support research efforts into feral pigs
- To advise and assist the establishment of similar working groups in other areas of the state.

The Group produces a bi-annual report which outlines successful outcomes of the co-operative project on feral pig control in the Lake Muir and Denbarker areas of the south coast of Western Australia. *“Over the past 8 years the Group has significantly halted the advance of pig populations, reduced densities and continues to aim for total eradication within the Lake Muir-Denbarker area. The success of the Group is ensured by the continued support from a wide range of project partners...”* (Lake Muir and Denbarker Community Feral Pig Eradication Group; A Co-operative Project on Feral Pig Control on the South Coast of WA Bi-Annual Report 2007-2008).

#### **Consultation:**

The Lake Muir Denbarker Community Feral Pig Eradication Group has invited a Shire staff member to act as the Shire representative, and it has been determined that Council should appoint the representative. It is recommended that this is either the Shires NRM Officer at an operational level or alternatively a Councillor.

#### **Statutory Obligations:**

There are no statutory obligations.

*“Feral pigs are declared animals under the Agriculture and Related Resources Protection Act 1976. It is an offence... to liberate declared animals or to fail to prevent them being at large.”* Lake Muir and Denbarker Community Feral Pig Eradication Group; A Co-operative Project on Feral Pig Control on the South Coast of WA Bi-Annual Report 2007-2008 (p.3).

#### **Policy Implications:**

There are no policy implications.

#### **Budget / Financial Implications:**

There are no known financial implications upon the Councils current Budget or Plan for the Future. The Group has stated that they are not asking for a commitment towards additional resources from Council and are grateful for the current contribution from Council to the program.

#### **Strategic Implications:**

It would be beneficial to have a Shire staff member acting on this committee as staff are responsible for the on-ground feral animal management program across the Shire.

#### **Sustainability Implications:**

##### ➤ **Environmental:**

Involvement in the Group's activities and attendance at quarterly meetings can enable benefits to the Shire in both encouraging networking with invasive species advocates across the broader community, as well as providing an opportunity to both gain further information as well as disseminate information about pigs and other feral animals within the Shire.

Feral pigs impact on native bushland areas by affecting their method of foraging for

food by rooting of soil which causes physical damage, erosion, and affects soil fauna. Rooting reduces the ground cover, sometimes changes the composition of plant communities and can encourage invasion by weeds. Feeding on native plants is directly destructive, and they also compete for resources such as habitat and food with native wildlife. Pigs also affect the quality of water in catchment areas, and can spread exotic diseases including *Phytophthora cinnamomi*, the pathogen responsible for dieback.

➤ **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.

**Voting Requirements:**

Simple majority.

OFFICER RECOMMENDATION

ITEM 8.1.3

That Council appoint Shire Natural Resource Management Officer Yvette Caruso as the Shire of Denmark’s representative on the Lake Muir Denbarker Community Feral Pig Eradication Group.

CEO comment

The CEO’s view is that unless the Charter precludes it and/or the Group specifically seeks a delegate with technical background, wherever practical the Council delegate nominated should be from its Elected Members.

<b>COUNCIL RESOLUTION &amp; CR HINDS’ &amp; OFFICER ALTERNATE RECOMMENDATION</b>	ITEM 8.1.3
MOVED: CR HINDS	SECONDED: CR LAING
That Council appoint Cr Hinds as the Shire of Denmark's representative to the Lake Muir Denbarker Community Feral Pig Eradication Group.	
CARRIED: 8/3	Res: 071210

Cr Hinds’ comments

- Council representatives should be elected/appointed from Councillors.
- Attendance at the Eradication Group by an Officer from the administration will cost Council much more than sending a Councillor. The costs of staff accrue as follows. Salary costs while travelling to and from Eradication Group meetings as well as while attending such meetings, and the costs of travel itself. The attendance at such a meeting will take a large slice of time out of a part-time job, and the Officer could be better employed on other important matters.
- Cr Hinds can attend the meetings at no additional cost to Council, including no claims for travel costs.
- The Eradication Group is a longstanding organisation which has acquired considerable expertise, and is about to acquire greater resources to deal with the feral pig problem.
- Cr Hinds can report to Council on its activities.

### 8.1.4 TOWN PLANNING SCHEME POLICY 'DENMARK AIRFIELD AND AIRPARK' AND THE 'DENMARK AIRFIELD LAND USE STRATEGY'

<b>File Ref:</b>	A3209 and A3316
<b>Applicant / Proponent:</b>	Ayton Baesjou Planning/Shire of Denmark
<b>Subject Land / Locality:</b>	Lot 8027 (Reserve 41390) Wrightson Road and Loc 8154 Wrightson Road, Denmark
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	17 November 2010
<b>Author:</b>	Duncan Ross, Acting Director of Planning and Sustainability
<b>Authorising Officer:</b>	Duncan Ross, Acting Director of Planning and Sustainability
<b>Attachments:</b>	Yes

#### Summary:

The statutory public notice period for the above policy amendment and strategy has now been completed. A total of 25 submissions were received.

It is recommended that Council consider the submissions in accordance with the attached Schedule of Submissions and adopt both the amended Town Planning Scheme Policy No. 25.1 'Denmark Airfield and Airpark' (the Policy) and the 'Denmark Airfield Land Use Strategy' (the Strategy) subject to modifications.

#### Background:

Council at its 22 June 2010 meeting resolved as follows:

*"That with respect to the draft 'Denmark Airfield Land Use Strategy' and associated amendment to Town Planning Scheme Policy No. 25 'Denmark Airport Hangar Lots', Council:*

1. *Concurrently advertise the two documents in a local newspaper(s) for two consecutive publications for a total period of 42 days for public inspection and comment.*
2. *Obtain confirmation from the Environmental Protection Authority (EPA) that the proposed residential hangar accommodation will not jeopardise the future Light Industrial Area resultant from the buffers shown in the Land Use Strategy.*
3. *Further consider the Land Use Strategy and Policy, taking into consideration any comments made pursuant to parts 1 and 2."*

The application was subsequently advertised as required by 1 above, comment was sought and obtained from the EPA (2) and this report further considers the advertised documents.

#### Comment:

There are several fundamental issues requiring Council consideration in terms of whether to adopt the Strategy and associated Policy. These have arisen both from the EPA's comments and submitters comments both supporting and opposing the proposal.

#### 1. BUFFER DISTANCES BETWEEN PROPOSED HANGER ACCOMMODATION AND FUTURE LIGHT INDUSTRIAL AREA.

The EPA advice confirms that hangar accommodation will be considered a sensitive land use and therefore requires a minimum buffer of 100m dependant on the type of land use being provided for. Having viewed some potential land uses that are likely to establish within the LIA as defined in the EPA's *Guidance for the Assessment of Environmental Factors – June 2005*, it is expected a buffer of approximately 300m would need to be provided from the proposed LIA (until such times as detailed investigations of the proposed LIA uses and locations are undertaken) to provide some short term certainty that the LIA and the airfield would be compatible. The current separation distance between the proposed LIA and the following airfield land uses are:

- Lot 8154 to the LIA – 250m (closest point); and

- Lot 8027 and the future leasehold lots to the LIA – 150m (directly across the runway).

The areas of proposed hangar accommodation as shown on the *Conceptual Land Use Strategy Map* including some of the freehold lots cannot be provided in the shown location without limiting the future development potential of the LIA. The current positioning of the hangar accommodation (with the exception of the hangars shown to the far west) result in the LIA needing to provide (generally) an additional 150m buffer on the LIA land to provide certainty that no implications will arise. Some land uses expected to locate within the LIA and their associated buffers (from sensitive uses) are as follows:

- Automotive Spray Painting – 200m
- Bakeries – 100m\*
- Boat Building and Maintenance – 200m\*
- Cement product manufacturing works – 300m\*
- Chemical Fertilisers – 1000m\*
- Glass or glass fibre works – 500m
- Joinery and wood working premises – 100m\*
- Metal coating (industrial spray painting) – 200m
- Metal Fabrication – 500m\*

*\* Additional buffer required dependant on size.*

The LIA would need to be designed to accommodate those industries that require reduced separation distances along its northern boundary. The above demonstrates, with appropriate design and possible future statutory controls that the airfield could be developed with minimal (if any) effects on the LIA, however this will be subject to more detailed design at a later date.

Whilst not specifically provided for in any specific legislation, buffers should ideally be contained on the site on which they occur, therefore not impacting upon adjoining properties. In this instance it is acceptable the buffer extends over the reserve as this is vested in the Shire. The freehold lots not owned/vested by the Shire should not be restricted by the proposed LIA. As such and given the configuration of the existing subdivision arrangement the LIA will need to be designed to provide (at minimum) a 50m buffer on the LIA land being acquired. The only way in which to avoid the LIA being affected by the increased buffer distances (assuming the more common 300m buffer is applied) is to remove the ability of the entire land subject to the strategy and policy to provide for any hangar accommodation at this time until the LIA land uses have been identified and more detailed investigation & site design has been undertaken.

**Recommendation:** *Amend the strategy text to refer to hangar accommodation as being a sensitive land use. Remove reference on the Conceptual Land Use Strategy Map to Hangar Accommodation/Airpark (future stage) on leasehold land until such time as the LIA land uses are established and appropriate buffer distances can be determined. Support hangar accommodation on the freehold lots accessed via Paxillus Way and shown on the Conceptual Land Use Strategy Map as Hangar Accommodation/Airpark.*

## 2. VESTING OF THE RESERVE AND ITS PURPOSE.

The reserve is vested with the Shire by the Minister for Lands as Reserve 41390 for the purposes of an 'Aerial Landing Ground'. In general, the reserve is able to be used by the Shire as it sees fit, with any uses needing to be generally in accordance with or ancillary to the purpose of the management order. The Minister for Lands will need to approve any future lease agreements and future land uses proposed for the leasehold lots, and this is the appropriate check-and-balance. The freehold lots will not be restricted in their potential use, and will be able to be developed in accordance with the amended Policy No. 25.1 – Denmark Airfield and Airpark.

Despite the above, it is deemed that some of the existing land uses are not suitable, and these have been removed from the potential land uses in Section 2.0 of the policy. Any proposed use not specifically listed will be treated as a 'use not listed' as defined in the Shires Town Planning Scheme No. 3 and will be referred to relevant organisations for comment.

**Recommendation:** *Amend the strategy and policy text to remove reference to the following land uses classes as these are not deemed to be in accordance with the reserve vesting: Cultural Use, Home and Cottage Industry.*

*Add or clarify the following land use classes: Chemical Spray Facility, Terminal Building, Emergency Services Facilities, Helicopter facility/landing pad, Holiday Accommodation.*

### 3. APPROPRIATENESS OF INCREASED ACTIVITY AT THE AIRFIELD.

The vesting of the reserve does not limit the Shire's ability to develop further the airfield as stated above. In considering this, Section 2.0 Land Uses of the policy has been amended to remove reference to some land uses, however in general those activities complementary to the airfield can be undertaken subject to various lease agreements between the Shire, State Lands and any future leaseholder.

The airfield is considered to be significantly underdeveloped in accordance with what could be provided on the reserve and can change to allow for additional uses that are not currently provided but can be under the existing reserve vesting.

**Recommendation:** *As per the above, clarify an increase scope of possible land use activities within the Policy and Strategy.*

### 4. USE OF RATEPAYER FUNDED FACILITY FOR THE PERCEIVED BENEFIT OF A FEW

In general the majority of the future developments detailed in the documents will occur on leasehold reserve land. It is noted that whilst proponents will not be able to purchase the leasehold lots, will be subject to an annual lease fee and also subject to the Shire's annual rates and this money would provide the Shire with a return on investment. It is stated in the Shires existing lease agreements that:

*7.4 The Lessee acknowledges that the leased premises are to be considered rateable land by the Shire of Denmark and will be responsible for the payment of all municipal rates as adopted annually by the Shire.*

*7.7 Council reserves the right to review the rent applicable if additional facilities are constructed on Reserve 41390 that will directly benefit the lessee. Such review will be done in consultation with the lessees at the time of the development and will be conducted in accordance with the principles of Clause 3 Rent Review.*

In addition, costs associated with developing the lease agreement are borne by the lessee, not the Council as stipulated in the lease agreement. Available funds may be made available via grant applications, including Royalties for Regions.

In addition the Strategy notes that Council receives the right to introduce aerial landing and take-off fees in the future.

**Recommendation:** *No changes recommended.*

### 5. NOISE:

In time more planes will result in more noise associated with the airfield. Noise is permissible to be up to 45db during daylight hours and 35db at all other times. A recent inspection by the Shire's Health Officer confirms noise readings at the adjacent Special Rural No. 11 – Airport Estate returned a reading at takeoff of 40db. This was for a conventional plane commonly associated with the airfield. Any

complaints associated with noise generated by planes are dealt with by the Police or CASA.

In relation to the airfield and associated airpark activities (as long as they are given approval by Council) noise associated with their use will be subject to compliance with the *Environmental Protection (Noise) Regulations 1997*.

**Recommendation:** *Amend the strategy and policy to refer to allow the provision of an acoustic report prepared by a suitably qualified expert where any proposed land use activity may generate noise beyond the relevant legislation.*

*Amend the strategy to ensure that future freehold or leasehold lots contain a notice on title or clause in any future lease agreement stating (or words to this effect):*

*“The leaseholder/landowner of the lot accepts all reasonable noise emitting from the Denmark Airfield, in relation to current levels and any future increase levels as intended by the Denmark Airfield and Airpark Strategy and any possible noise emitting from the proposed Light Industrial Area adjoining the reserve”.*

#### 6. FLIGHT PATHS:

The Operation and Circuits Plan as shown in the proposed Strategy depicts the runways and typical circuit dimensions for most aircraft landing at Denmark. The plan indicates the circuit or airfield traffic pattern as well as the departure climb corridors normally used. Beyond this, aircraft are required to remain 500 feet minimum above ground level in open areas, and 1000 feet above ground level in “built up” areas. Compliance with the above height limits is consistent with CASA regulations.

**Recommendation:** *No changes recommended.*

#### 7. PROXIMITY TO TOWN AND RESIDENTIAL DEVELOPMENTS.

In general most comments relate to the airfield being situated too close to residential properties and to the town itself. In a planning context this can be argued both ways, in a sense that nearby residents feel they have to live with the added noise associated with an airfield so close to their homes. Conversely, having the airfield located close to town makes the facility more attractive to those wishing to visit the Shire and also from a safety perspective (associated with the RFDS for example) may allow planes to be closer to the population base should emergency services be required, thus reducing time and distances travelled.

Plan No. 2 “Rural Districts” of draft 2005 Denmark Local Planning Strategy (DLPS) identifies the Denmark Airfield, immediate surrounds and the area below the climb out paths to the east and west as a proposed Special Control Area (SCA). The extent of the SCA is based on the Airspace Protection Plan prepared by the Perth Airport Corporation in 2004. This strategy incorporates the intent and boundary of the SCA nominated in the DLPS. The DLPS, is currently being reviewed with the intention of being finalised in 2011, shows the SCA as continuing as an ‘Airport Buffer’ area.

**Recommendation:** *No changes recommended.*

#### 8. SAFETY

Safety has also been raised as an issue. In general each leasehold lot is required to have Public Liability Insurance as stated in the current lease agreements as follows:

*To effect and keep effected in respect of the leased Premise adequate public risk insurance in the names of the Lessor and the Lessee for their respective rights and interests in any amount not less than \$10,000,000 in respect of any one claim with an insurance company approved by the Lessor.*

Safety is also an issue in terms of the desire to provide for a flight school (as generally the people flying have lower experience levels) and secondly as the number of the visiting planes is expected to be home/custom built there it appears (based on information contained within submission No. 24) that these planes are more prone to accidents.

**Recommendation:** Council is asked to determine whether a flight school is an appropriate land use activity at the airfield.

Other changes proposed:

- Amend the strategy maps and text to remove reference to any hanger accommodation component within 300m of the LIA northern most boundary.
- shall be ancillary to the provision of a hangar and no Clause 2.5 amended to state:  
*“2.5 Hangar accommodation shall be provided in a manner that prevents or restricts the storage of a single light aircraft. No hangar accommodation shall be provided without a fully constructed and operational hangar”.*
- Clause 5.3 being amended to state:  
*“5.3 Any reserved or emergency parking areas for either for vehicles (ambulance etc.) or planes (water bomber etc.) are to be kept clear at all times and are to be utilised for their intended purpose only. Emergency services planes shall have priority usage of the airfield facilities as/when the need arises”.*
- Clause 5.4 being reworded to refer to 21 days and not 14 days.
- Remove reference to a maximum of 40 flights per day from both the strategy and policy documents.

**Consultation:**

The amendment was advertised for a period of 42 days for submissions to be received. The notice given included:

- Notice of proposal advertised in newspaper for two consecutive publications.
- Notice of proposal placed on Council Notice Board.
- Notice of proposal placed on Council website.
- Referral of strategy and policy documents to the Environmental Protection Authority.

A total of 25 submissions were received. Additional late submissions have been received but have not been considered as part of this item.

**Statutory Obligations:**

- Town Planning Scheme No. 3 sets out the procedures for Council to develop, or amend, a Town Planning Scheme policy.
- Reserve 41390 is vested to the Shire for the purpose of ‘Aerial Landing Ground’ with power to lease for any term not exceeding 21 years subject to the consent of the Minister for Lands and any lease is subject to the covenants and powers implied under the *Land Administration Act 1997* and the *Transfer of Land Act 1893* (as amended).

**Policy Implications:**

Policy No. 25 ‘Airport Hangar Lots’ will be replaced with the new policy, No. 25.1 ‘Denmark Airfield and Airpark’.

Policy P100602 – Consultation Privacy Policy relates.

**Budget / Financial Implications:**

The following cost implications may arise as a result of this proposal in relation to the Councils current budget or plan for the future:



- Costs developing community infrastructure borne by the Shire;
- Leasehold lots borne by the developer;
- Council may in the future charge landing fees (as now stated within the policy).

**Strategic Implications:**

There are no known significant strategic implications relating to the report or the officer recommendation, however should the Council not proceed with the development of the current airfield, a new site will most likely be required in the future. If so, Council should seek to identify a site as soon as possible.

**Sustainability Implications:****➤ Environmental:**

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

**➤ Economic:**

There are no significant economic considerations relating to the report or officer recommendation. In addition it, the current leasehold lots are leased at a rate of \$1 per square metre, and are also subject to the Shire's annual rates and this money currently provides the Shire with a return on investment. Any future lots will be subject to an annual lease fee and annual rates, reducing the perception that ratepayers are funding the development and maintenance of the airfield alone, rather than this being reduced through user contributions ongoing rental income.

In addition, the increased exposure and visitor numbers to the Shire, although considered to be low is expected to bring increased tourist dollars to some businesses within the Shire, generating a positive exchange.

**➤ Social:**

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

**Voting Requirements:**

Simple majority.

At the meeting held on the 14 December 2010, Cr Syme requested confirmation that the lines on the map relating to the proposed Light Industrial Area (LIA) were correct and that there is nothing misleading.

The Acting Director of Planning and Sustainability stated he would investigate and present a new map for this meeting if one had been developed, as the proposed LIA is still to be surveyed and acquired by Council. The boundary line on the map was deemed to, at this point, reasonably reflect the intended LIA area and does not fundamentally change any of the recommendations within the proposed Strategy and Policy.

At the meeting held on the 14 December 2010, Cr Hinds requested that clause 3.9 of the proposed policy amended to refer to who was responsible for providing the acoustic report. The Acting Director of Planning and Sustainability stated he would amend the policy for next week.

**OFFICER RECOMMENDATION**

ITEM 8.1.4

That Council note the submissions and adopt both the amended Town Planning Scheme Policy No. 25.1 'Denmark Airfield and Airpark' and the modified 'Denmark Airfield Land Use Strategy' subject to the following changes:

1. Endorse the recommendations/modifications as detailed in the attached Schedule of Submissions.

2. Remove reference on the Conceptual Land Use Strategy Map to Hangar Accommodation/Airpark (future stage) on leasehold land within 300m of the proposed Light Industrial Area until such time as the Light Industrial Area land uses are identified and/or established and appropriate buffer distances can be determined.
3. Modify the Conceptual Land Use Strategy Map as follows:
  - 2.1 Remove any reference of Hangar Accommodation/Airpark where it is shown on land vested in the Minister for Education;
  - 2.2 Remove reference to any proposed staging of Hangar Accommodation/Airpark developments.
4. Modify the Land Use Buffers Map to accurately reflect the land sought to be acquired for Light Industrial Area purposes and alter relevant buffers accordingly.
5. Support hangar accommodation on the freehold lots accessed via Paxillus Way and shown on the Conceptual Land Use Strategy Map as Hangar Accommodation/Airpark subject to a Traffic Management Plan being prepared and that use of the public road is suitable for both vehicles and aircraft movement and complies with all relevant standards and legislation to the satisfaction of the Council’s Director, Infrastructure Services.
6. Endorse a ‘flight school’ as an appropriate land use activity at the airfield.
7. Format the strategy document into the Council strategy document template.

<b>COUNCIL RESOLUTION</b>	<b>ITEM 8.1.4</b>
MOVED: CR RICHARDSON-NEWTON	SECONDED: CR SAMPSON
<p>That Council note the submissions and adopt both the amended Town Planning Scheme Policy No. 25.1 ‘Denmark Airfield and Airpark’ and the modified ‘Denmark Airfield Land Use Strategy’ subject to the following changes:</p> <ol style="list-style-type: none"> <li>1. Endorse the recommendations/modifications as detailed in the attached Schedule of Submissions.</li> <li>2. Remove reference on the Conceptual Land Use Strategy Map to Hangar Accommodation/Airpark (future stage) on leasehold land within 300m of the proposed Light Industrial Area until such time as the Light Industrial Area land uses are identified and/or established and appropriate buffer distances can be determined.</li> <li>3. Modify the Conceptual Land Use Strategy Map as follows:                     <ol style="list-style-type: none"> <li>2.3 Remove any reference of Hangar Accommodation/Airpark where it is shown on land vested in the Minister for Education;</li> <li>2.4 Remove reference to any proposed staging of Hangar Accommodation/Airpark developments.</li> </ol> </li> <li>4. Modify the Land Use Buffers Map to accurately reflect the land sought to be acquired for Light Industrial Area purposes and alter relevant buffers accordingly.</li> <li>5. Support hangar accommodation on the freehold lots accessed via Paxillus Way and shown on the Conceptual Land Use Strategy Map as Hangar Accommodation/Airpark subject to a Traffic Management Plan being prepared and that use of the public road is suitable for both vehicles and aircraft movement and complies with all relevant standards and legislation to the satisfaction of the Council’s Director of Infrastructure Services.</li> <li>6. Format the strategy document into the Council strategy document template.</li> <li>7. Subject to amending the Local Planning Policy 25.1, clause 4.9 to read as follows; “Should the development of hangar lots fronting Paxillus Way require aircraft movement via this access, the proponent shall demonstrate that this can be legally and safely accommodated to the satisfaction of the Council’s Director of Infrastructure Services”.</li> </ol>	
CARRIED: 11/0	Res: 081210

**REASONS FOR CHANGE**

Council removed part 6 of the Officer Recommendation and added part 7 to amend clause 4.9 of the Local Planning Policy 25.1.

**8.2 Director of Community & Regulatory Services**

Nil

5.14pm – Cr Richardson-Newton left the meeting.

**8.3 Director of Infrastructure Services****8.3.1 REQUEST FOR ROAD CLOSURE AND AMALGAMATION**

<b>File Ref:</b>	R30132
<b>Applicant / Proponent:</b>	Mr Greg Townley
<b>Subject Land / Locality:</b>	Settlers Boundary Road, Denmark
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	8 December 2010
<b>Author:</b>	Rob Whooley, Director of Infrastructure Services
<b>Authorising Officer:</b>	Rob Whooley, Director of Infrastructure Services
<b>Attachments:</b>	Yes

**Summary:**

The Applicant requests the closure of a portion of Settlers Boundary Road abutting Lot 1716. This item recommends Council support the application subject to community comment and certain conditions.

**Background:**

The Applicant states various reasons why they feel road reserve should be closed.

The Applicant has indicated in a letter from a planning consultant that he intends to negotiate the purchase of the land if the closure is supported.

The process for the road closure involves an item being presented to Council with a recommendation for the closure. Following Council's consent the proposed closure will be advertised and based on the outcome of submissions the item will be presented to Department of Regional Development and Lands with an endorsement for road closure. Following closure the land comprising the road reserve is acquired from the Crown by the adjoining owner, with an acquisition cost established by a licensed valuer.

Council has previously supported closure of the adjoining road reserve which used to abut Lot 1717 (see attached map).

This matter was deferred by Council at its meeting held on the 28 September 2010 by the following resolution;

*"That the item be deferred subject to confirmation of the status of the road reserve or former road reserve adjacent to Lot 1717."*

This matter was deferred by Council at its meeting held on the 26 October 2010 by the following resolution;

*"That the item be deferred subject to clarification from the current landowner that they support the proposed road closure."*

Officer's have provided further comment and attached letters confirming ownership and support from neighbours in relation to Councillors concerns.

**Comment:**

The primary consideration relating to this request is the future use of the road reserve and any current use by the wider community.

In this instance the road reserve serves no immediate Council purpose and it will not be required in the future.

Advertising the closure will assist in determining any community interest in that portion of the road.

A copy of the title confirming the road closure for Lot 1717 is attached.

Council's Community Emergency Services Manager provides the following comments;

"Having examined the road and the adjacent property Lot 1716 and its location to surrounding bush land, especially the large DEC Reserve A2587 to the north, I would recommend that the Road not be closed due to its use for vehicular access for fire appliances. This is supported by the Planning for Bush Fire Protection Guidelines that state cul-de-sacs are generally not encouraged in bush fire prone areas. However should one be formed that it does not exceed a maximum length of 200m (unless emergency access is provided between cul-de-sacs, in which case the length can be increased). Bush Road appears to be the next closest east west running access from the DEC Reserve, with the next road through road actually running through the Reserve A2587."

**CEO Comment:**

It is noted however that the road already terminates with a cul-de-sac by virtue of a Council decision to previously support closure of the unmade road abutting Lot 1717.

**Consultation:**

A period of advertising will be required.

No wider consultation by Council has been undertaken to date as a result of this application. Ferraro Planning and Development Consultancy is acting on behalf of the Applicant.

**Statutory Obligations:**

- Local Government Act 1995 – Section 3.5 Road Closures
- Land Administration Act 1995 – Section 58 (2) & (3)
- Land Administration Act 1995 – Section 129BA.

**Policy Implications:**

There are no policy implications.

**Budget / Financial Implications:**

There are no financial implications for the road closure.

It is noted that all costs associated with the acquisition of the road reserve will be expected to be borne by the applicant.

**Strategic Implications:**

There are no known significant strategic implications relating to the report or the officer recommendation. The road reserve serves no current or future Council purpose and terminates at the Applicants northern boundary.

**Sustainability Implications:**

➤ **Environmental:**

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

➤ **Economic:**

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

➤ **Social:**

At this stage, pending the result of advertising, there are no known significant social considerations relating to the report or officer recommendation.

**Voting Requirements:**

Simple majority.

At the meeting held on the 14 December 2010, Cr Syme queried why there had been no additional information supplied as requested by Council in the deferral motion of 26 October 2010.

The CEO advised that the attachment in the Agenda was incorrect and provided the correct attachment with this Agenda & Minutes.

5.15pm – The Acting Director of Planning & Sustainability left the meeting.

<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>	<b>ITEM 8.3.1</b>
MOVED: CR BARROW	SECONDED: CR WAKKA
That Council support the closure and subsequent amalgamation of the road reserve of Settlers Boundary Road to one or both adjoining landowners in accordance with State Land Services requirements subject to:	
<ol style="list-style-type: none"> <li>1. It being that portion of the road which abuts Lot 1716;</li> <li>2. All costs associated with the closure including advertising being met by the Applicant;</li> <li>3. Advertising and notifying the closure in accordance with relevant statutory requirements;</li> <li>4. At the conclusion of advertising there being no objections, the Director of Infrastructure Services be authorised to write to the Department of Regional Development and Lands based upon the outcome of any submissions received during the advertising period;</li> <li>5. Appropriate infrastructure such as gates, cul-de-sac turning area, road signage etc being installed to the satisfaction of the Director of Infrastructure;</li> <li>6. Lots 1716 &amp; 1717 retaining legal road access;</li> <li>7. The prospective landowner agreeing to install and maintain annually a strategic firebreak on Lot 1716 between and linking Lots 1712 through to 1722; and;</li> <li>8. There being no objections from the current landowners of Lot 1716 or Lot 34.</li> </ol>	
CARRIED: 10/0	Res: 091210

5.16pm – The Director of Finance & Administration left the meeting.

<b>8.3.2 GREENWASTE PILOT STUDY</b>	
<b>File Ref:</b>	WST.8
<b>Applicant / Proponent:</b>	Shire of Denmark
<b>Subject Land / Locality:</b>	Not applicable
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	3 December 2010
<b>Author:</b>	Rob Whooley, Director of Infrastructure Services
<b>Authorising Officer:</b>	Rob Whooley, Director of Infrastructure Services
<b>Attachments:</b>	No

**Summary:**

Council at its ordinary meeting on the 28 September 2010 resolved that ‘Council staff devise and carry out a small pilot study of supplying a Green Waste removal service to selected urban streets on a temporary seasonal cycle.’

**Background:**

An item was referred to the Waste Management Advisory Committee Meeting on the 27<sup>th</sup> July regarding the burning of greenwaste with a request for this matter to be addressed by a resident. Included in these discussions was the option of a kerbside greenwaste collection. A kerbside collection was not supported at that time by the Committee.

An item by Cr Hinds resulted in Council supporting the green waste trial.

**Comment:**

The area in Ocean Beach bounded by Minsterly Road and Ocean Beach Road has been chosen as the Pilot Study Area.

It is proposed to carry out the collection in May – June. The trial will be advertised in Council “conversations” 6 weeks beforehand.

**Consultation:**

Nil.

**Statutory Obligations:**

There are no statutory obligations.

**Policy Implications:**

There are no policy implications.

**Budget / Financial Implications:**

No funds have been allocated for a Greenwaste Pilot Study in the 2010/11 Budget. Council will need to approve unbudgeted expenditure of \$5,000.

**Strategic Implications:**

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

**Sustainability Implications:****➤ Environmental:**

The burning of green waste does create and add to airbourne pollutants.

There is the added risk that small garden fires could trigger larger more threatening events, which would have severe economic and social implications.

**➤ Economic:**

See above.

**➤ Social:**

See above.

**Voting Requirements:**

Absolute majority.

*5.16pm – The Director of Finance & Administration returned to the meeting.*

*5.17pm – Cr Richardson-Newton returned to the meeting.*

*5.17pm – The Acting Director of Planning & Sustainability returned to the meeting.*

<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>	ITEM 8.3.2
MOVED: CR HINDS	SECONDED: CR BARROW
That Council approve out of budget expenditure of \$5,000 to conduct a Greenwaste Pilot Study in the Ocean Beach area as bounded by Minsterly Road and Ocean Beach Road with savings to be identified at the Budget Review scheduled for February 2011.	
CARRIED BY AN ABSOLUTE MAJORITY: 7/4	Res: 101210

*Cr Syme requested that his vote against be recorded in the Minutes and that the reason being was that the resolution conflicted with the intent of Council's resolution of 28 September 2010.*

**8.3.3 SPRINGDALE BEACH WASTE COLLECTION SERVICE**

<b>File Ref:</b>	WAPC 132310
<b>Applicant / Proponent:</b>	Shire of Denmark
<b>Subject Land / Locality:</b>	Springdale Beach Subdivision
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	25 November 2010
<b>Author:</b>	Rob Whooley, Director of Infrastructure Services
<b>Authorising Officer:</b>	Rob Whooley, Director of Infrastructure Services
<b>Attachments:</b>	Yes

**Summary:**

This item recommends that a compulsory waste collection service be introduced at Springdale Beach.

**Background:**

With a small number of houses being constructed at Springdale Beach, there have been enquiries from residents about whether a waste collection service will be provided.

**Comment:**

There are currently 45 lots in the subdivision, 16 of which are privately owned, the remainder are still owned by LWP.

There are potentially 3-4 more stages to this subdivision with over 150 lots planned in total.

Whilst some residents may deal with their rubbish it is not foreseeable that the majority of residents - upon full development of this subdivision - will support a "rural" arrangement in dealing with domestic waste.

**Consultation:**

A period of notification for existing landowners is suggested. It is proposed that collection commence 1 March 2011.

**Statutory Obligations:**

- The Local Government Act 1995
- The Health Act (1911).

In order to comply with the Health Act the area will need to be gazetted. The service will be compulsory for the whole area.

A map is attached showing the affected area. Residents will not have the option to avoid paying an annual fee by choosing to dispose of their waste at the Refuse Disposal Site.

**Policy Implications:**

There are no policy implications.

**Budget / Financial Implications:**

Current Fees and Charges will apply as per the 2010/11 Budget.

Waste Collection and sanitation services are calculated to be cost neutral. Any current discrepancy in the cost recovery for waste services is being addressed with incremental increases over the next few budgets.

**Strategic Implications:**

There is a need to manage sanitation and waste collection in a manner that has the least significant impact on the environment.

The sandy geology at Springdale Beach is not conducive to domestic waste pits.

**Sustainability Implications:**

➤ **Environmental:**

There are obvious environmental considerations relating to somewhat uncontrolled waste disposal in a reasonably built-up area.

➤ **Economic:**

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

➤ **Social:**

There are social considerations relating to potential vermin and smell affecting neighbours if a rural-style waste management system is adopted, as opposed to a compulsory urban-style waste collection system for this subdivision.

**Voting Requirements:**

Simple majority.

<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>		<b>ITEM 8.3.3</b>
MOVED: CR BARROW		SECONDED: CR HINDS
That Council approve the introduction of a compulsory waste collection service for the Springdale Beach Subdivision area, as shown on the attached map, effective from 1 March 2011 subject to advance notice of the intention to those affected and gazettal of the new area.		
CARRIED: 9/1		Res: 111210

5.30pm – Cr Laing left the meeting.

5.31pm - Cr Thornton declared a proximity interest in Item 8.3.4 in that he owns property in Strickland Street. Cr Thornton left the room and did not participate in discussion or vote on the matter.

5.31pm - Cr Barrow declared a proximity interest in Item 8.3.4 in that he leases property in Strickland Street. Cr Barrow left the room and did not participate in discussion or vote on the matter.

Cr Thornton requested the Deputy Shire President, Cr Richardson-Newton to assume the role of Chair.

Cr Richardson-Newton accepted and assumed the Chair as the Presiding Person.

5.32pm – Cr Laing returned to the meeting.



### 8.3.4 CBD PARKING - STRICKLAND STREET

<b>File Ref:</b>	Strickland Street
<b>Applicant / Proponent:</b>	Shire of Denmark
<b>Subject Land / Locality:</b>	Strickland Street
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	6 December 2010
<b>Author:</b>	Rob Whooley, Director of Infrastructure Services
<b>Authorising Officer:</b>	Rob Whooley, Director of Infrastructure Services
<b>Attachments:</b>	Yes

#### Summary:

This item recommends Council amends the Parking & Parking Facilities Local Law Deemed Parking Stations as gazetted Tuesday 29<sup>th</sup> May 2001 and amended Government Gazette of Friday 14<sup>th</sup> November 2008.

#### Background:

In June 2006 Plan-E Landscape Consultants were engaged to produce a redevelopment plan for Strickland Street.

The aim of the redevelopment plan was to upgrade the living and working environment for residents and visitors by improving pedestrian comfort, amenity and safety, encouraging shopping, but deterring through traffic and prioritising pedestrian movements freely from side to side.

#### Comment:

The Council approved adopted Plan-E layout showed a configuration of 50 car parking bays, 6 disability bays (2 of which were side by side), 5 loading zones and 1 bus bay.

The now constructed parking facilities comprise a total of 58 car parking bays, 5 disability bays and 4 loading zones (see attached plan).

It is proposed that:

- the angle parking bays have a 2hr limit, 8am-5:30pm Monday-Friday and a 2hr limit 8am-12 noon Saturday,
- the loading zones apply 7am-5:30pm Monday-Friday,
- and that a short term, high turnover 15min angle parking bay be located immediately south of the raised platform in the southbound direction. The 15min limit being applicable 8am-5:30pm Monday-Friday.

#### Consultation:

Consultation with all stakeholders and public advertising was carried out prior to Council adopting the concept plans in May 2007.

#### Statutory Obligations:

- Local Government Act 1995
- Shire of Denmark Parking and Parking Facilities Local Law as gazetted Friday 14<sup>th</sup> November 2008
- Council will need to ratify the parking arrangements before Council's Ranger Services will be able to enforce parking limitations.

Clause 2.1 of the Shire of Denmark's Parking & Parking Facilities Local Law states;

#### 2.1 Determination of parking stalls and parking stations

The local government may by resolution constitute, determine and vary and also indicate by signs -

- (a) parking stalls;
- (b) parking stations;
- (c) permitted time and conditions of parking in parking stalls and parking stations
- (d) which may vary with the locality;
- (e) permitted classes of vehicles which may park in parking stalls and parking
- (f) stations;
- (g) permitted classes of persons who may park in specified parking stalls or parking
- (h) stations; and
- (i) the manner of parking in parking stalls and parking stations.

**Policy Implications:**

- Town Planning Scheme Policy No. 26.1 – South Coast Highway Commercial Developments objectives.

**Budget / Financial Implications:**

In conjunction with current CBD works.

**Strategic Implications:**

Given the huge demands made upon parking at peak tourist season, it is critical to local businesses that parking be available for shoppers, as opposed to business owners, staff or long-term users.

**Sustainability Implications:****➤ Environmental:**

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

**➤ Economic:**

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

**➤ Social:**

The functioning of the CBD area, particularly Strickland Street, will be severely hampered if parking limitations are not enforced. Most of the Strickland Street parking is subject to time limited parking, which will ensure that there is a turnover of vehicles. The effective management of time limits is critical during peak holiday periods when the available parking is in high demand.

**Voting Requirements:**

Absolute majority.

At the meeting held on the 14 December 2010, Cr Barnes stated that the proposal had not been considered by the CBD Streetscape Working Group and Cr Sampson raised some concerns in relation to car parking bays in Strickland Street, in particular the lack of loading bays.

Cr Barnes had advised that he would refer the matters to the CBD Streetscape Working Group who were meeting the next day.

**OFFICER RECOMMENDATION****ITEM 8.3.4**

That pursuant to clause 2.1 of the Shire of Denmark's Parking & Parking Facilities Local Law, with respect to parking within the CBD, Council endorse the proposed parking arrangements as shown on attached plan ES-CBD-01.

**CEO comment**

The CEO provides the following Alternate Officer Recommendation to include reference to appropriate consultation with the CBD Streetscape Working Group and the Denmark Chamber of Commerce.

**ALTERNATE OFFICER RECOMMENDATION**

**ITEM 8.3.4**

That prior to considering the proposed parking arrangements as shown on attached plan ES-CBD-01 Council refer this plan, together with all parking plans associated with the Denmark CBD, to the CBD Streetscape Working Group and request their input and consultation with the Denmark Chamber of Commerce.

**COUNCIL RESOLUTION & CR HINDS' RECOMMENDATION**

**ITEM 8.3.4**

**MOVED: CR BARNES**

**SECONDED: CR HINDS**

That this item be referred to the CBD Streetscape Committee for consideration to be referred back to Council for the January 2011 meetings.

**AMENDMENT**

**MOVED: CR SYME**

**SECONDED: CR PEDRO**

After the word "consideration" the following words be added, "including all parking plans associated with the CBD and".

**CARRIED: 7/2**

**Res: 121210**

**AMENDED MOTION**

That this item be referred to the CBD Streetscape Committee for consideration including all parking plans associated with the CBD and to be referred back to Council for the January 2011 meetings.

**THE AMENDED MOTION THEN BECAME THE SUBSTANTIVE MOTION WHICH WAS PUT & CARRIED: 8/1**

**Res: 131210**

Cr Hinds' comments

While the parking arrangements for Strickland St have been agreed at the "planning on paper" stage of the CBD reconstruction, there has been considerable evolution of the ability to park in Strickland St during the construction phase. This has led to confusion in the public perception of what the final result will be.

Also, it is easier for myself, and perhaps the non-expert others, to understand the implications of these matters when seen "on the ground".

There will be delay, but the public has been sorting itself out during the construction phase and will continue to do so.

*5.49pm – Cr Thornton & Cr Barrow returned to the meeting. Cr Thornton resumed the Chair as the Presiding Person.*

*5.49pm – Cr Hinds left the meeting.*

The Shire President advised that the Director of Infrastructure Services wished to withdraw Items 8.3.5, 8.3.6 & 8.3.7 and re-present them to the January 2011 Council meetings.

**8.3.5 TENDER 2 – 2010/11 – SUPPLY AND DELIVERY OF LOADER**

**File Ref:** TEN2 10/11  
**Applicant / Proponent:** Shire of Denmark  
**Subject Land / Locality:** Not applicable  
**Disclosure of Officer Interest:** Nil  
**Date:** December 2010  
**Author:** Rob Whooley, Director of Infrastructure Services  
**Authorising Officer:** Rob Whooley, Director of Infrastructure Services  
**Attachments:** Yes

**Summary:**

This item recommends Council purchase a new \_\_\_\_\_ from \_\_\_\_\_.

A recommendation will be provided for the meeting to be held on the 21 December 2010.

**Background:**

In accordance with the Local Government Act 1995 tenders were called for the Supply & Delivery of a new Wheel Loader

The Tender period closed at 4.00pm on Friday 29<sup>th</sup> October 2010. Nine different machines, from different internationally recognised machinery suppliers, are offered for Councils consideration.

The offers, as presented, are reflected in Attachment 8.3.5.

**Comment:**

Evaluation Criteria:

Tenders were also let on the basis that an evaluation criterion would apply. Evaluation of this tender was carried out in accordance with Section 7.3 (Selection Criteria of Tenders), General Conditions of Tendering. As stated in the tender documents, the evaluation criteria can be found in Attachment 9.3.1

Example of derivation of weighted Evaluation Criteria Score  
 Criteria D: Local Content (Score 10%)

Tenderer	1	2	3	4	5	6
Score max 10%	10	6	4	3.5	2	0

Score:

- 10– Meets / exceeds requirement (Locally made, Supplied and Serviced)
- 8 – Meets requirement (Locally supplied and serviced)
- 6 – Meets some but not all requirements (Significant Branch Regionally located)
- 3 – Meets some but not most requirements (Field servicing within local region)
- 2 – Below minimum requirements (Minimal technical and parts support in WA )
- 0 – Does not meet requirements (No technical or servicing support within the State)

Tenderer:

- Tenderer 1: CJD Equipment P/L
- Tenderer 2: GCM Agencies P/L
- Tenderer 3: JCB Construction
- Tenderer 4: McIntosh & Son WA

- Tenderer 5: Westrac P/L
- Tenderer 6: Hitachi Construction
- Tenderer 7: Komatsu Australia P/L
- Tenderer 8: BT Equipment P/L
- Tenderer 9: CJD Equipment P/L

Attachment 8.3.4 interprets the following:

- CJD Equipment submitted the lowest conforming Tender.
- GCM Agencies P/L and JCB Construction Equipment Australia submitted the next lowest conforming tenders respectively.
- Supply and delivery dates are approximately 2-4 weeks.
- Of the three conforming tenders, the best warranty is provided by JCB Construction Equipment Australia of 3 years or 6000 hours, whichever comes first.
- Council currently owns a CASE loader. The performance, parts and service backup over the years has been sound.

Table 2- Comparison of vehicle price vs weighted price:

Machine	Vehicle Price	Weighted Price
SDSLG 938L	\$109,637	\$109,637
Lonking CDM835	\$124,700	\$139,348
Case 621E	\$193,403	\$201,561
Caterpillar 924H	\$198,785	\$213,911
JCB 426HT Series II	\$191,400	\$223,579
Komatsu WA250PZ-6	\$205,691	\$226,389
John Deere	\$203,500	\$242,296
Kawasaki 70 zv	\$225,500	\$298,534
Volvo L70F	\$245,118	\$286,408
John Deere	\$203,500	\$242,296

NOTE: The assessments and consequent weightings are subjective and relative observations based upon documents submitted. All tenders have been treated fairly, impartially and with due diligence.

**Consultation:**

Nil

**Statutory Obligations:**

This tender was called in accordance with the Local Government Act 1995.

**Policy Implications:**

Local procurement preference applies and adhered to.

**Financial Implications:**

Budgeted Expenditure: \$195,000 (ex GST) has been budgeted as expenditure.

Income: Expected income for the old loader was \$33,000 (ex GST).

Effective Budget: \$162,000 (ex GST).

**Strategic Implications:**

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

**Sustainability Implications:**

➤ **Environmental:**

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

➤ **Economic:**

There are no significant environmental differences in any of the tendered machines.

➤ **Social:**

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

**Voting Requirements:**

Simple majority.

OFFICER RECOMMENDATION

ITEM 8.3.5

That Council purchase a \_\_\_\_\_ from \_\_\_\_\_ in accordance with the received tender documentation and the tender specifications.

CEO comment

The alternate Officer Recommendation reflects the need to identify the equipment purchased, the equipment traded (or sold outright) and the net financial effect so as to readily evaluate against the adopted Budget (which is always premised on GST exclusive figures).

ALTERNATE OFFICER RECOMMENDATION

ITEM 8.3.5

That Council accept the tender from \_\_\_\_\_ for the purchase of a \_\_\_\_\_ at a gross cost of \$ \_\_\_\_\_ (excluding GST) and accept the trade tender from \_\_\_\_\_ for the sale of a Case Loader at the trade price of \$ \_\_\_\_\_ (excluding GST) with the net changeover being \$ \_\_\_\_\_ (excluding GST).

**8.3.6 TENDER 4 – 2010/11 – SUPPLY AND DELIVERY OF GRADER**

<b>File Ref:</b>	TEN4 10/11
<b>Applicant / Proponent:</b>	Shire of Denmark
<b>Subject Land / Locality:</b>	Not applicable
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	December 2010
<b>Author:</b>	Rob Whooley, Director of Infrastructure Services
<b>Authorising Officer:</b>	Rob Whooley, Director of Infrastructure Services
<b>Attachments:</b>	Yes

**Summary:**

This item recommends Council purchase a new \_\_\_\_\_.

A recommendation will be provided for the meeting to be held on the 21 December 2010.

**Background:**

In accordance with the Local Government Act 1995 tenders were called for the Supply & Delivery of a new Motor Grader.

The Tender period closed at 4.00pm on Friday 29<sup>th</sup> October 2010. 5 different machines, from different internationally recognised machinery suppliers, are offered for Councils consideration.

The offers, as presented, are reflected in Attachment 8.3.6.

**Comment:**

Evaluation Criteria:

Tenders were also let on the basis that an evaluation criterion would apply. Evaluation of this tender was carried out in accordance with Section 7.3 (Selection Criteria of Tenders), General Conditions of Tendering. As stated in the tender documents, the evaluation criteria can be found in Attachment 9.3.1

Example of derivation of weighted Evaluation Criteria Score  
Criteria D: Local Content (Score 10%)

Tenderer	1	2	3	4	5	6
Score max 10%	10	6	4	3.5	2	0

Score:

- 10– Meets / exceeds requirement (Locally made, Supplied and Serviced)
- 8 – Meets requirement (Locally supplied and serviced )
- 6 – Meets some but not all requirements (Significant Branch Regionally located)
- 3 – Meets some but not most requirements (Field servicing within local region)
- 2 – Below minimum requirements (Minimal technical and parts support in WA )
- 0 – Does not meet requirements (No technical or servicing support within the State)

Tenderer:

- Tenderer 1: HITACHI CONST. MACHINERY AUST.
- Tenderer 2: WESTRAC P/L
- Tenderer 3: CJD EQUIPMENT P/L
- Tenderer 4: KOMATSU AUST P/L
- Tenderer 5: HITACHI CONST. MACHINERY AUST.

Attachment 8.3.6 interprets the following:

- Hitachi Construction Machinery Aust. Submitted the lowest conforming Tender.
- Westrac P/L and CJD Equipment P/L submitted the next lowest conforming tenders respectively.
- Supply and delivery dates are approximately 4 – 6 weeks.
- Of the three conforming tenders, the best warranty is provided by Westrac P/L of 3 years or 6000 hours, whichever comes first.
- Council owns a Cat 120H, a Cat12G and a Komatsu GD555, the performance, parts and service backup over the last ten years has been sound.

Table 2- Comparison of vehicle price vs weighted price:

Machine	Vehicle Price	Weighted Price
John Deere 670G	\$272,800	\$272,800
CAT 120M	\$280,845	\$265,161
CAT 12M	\$312,965	\$309,716
Volvo G930	\$286,368	\$312,678
Komatsu GD555-5	\$287,275	\$274,963
John Deere 670GP	\$297,000	\$308,278

NOTE: The assessments and consequent weightings are subjective and relative observations based upon documents submitted. All tenders have been treated fairly, impartially and with due diligence.

**Consultation:**

Nil

**Statutory Obligations:**

This tender was called in accordance with the Local Government Act 1995.

**Policy Implications:**

Local procurement preference applies and adhered to.

**Financial Implications:**

Budgeted Expenditure: \$330,000 (ex GST) has been budgeted as expenditure.

Income: Expected income for the old grader was \$65,000 (ex GST).

Effective Budget: \$265,000 (ex GST).

**Sustainability Implications:**

➤ **Environmental:**

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

➤ **Economic:**

There are no significant environmental differences in any of the tendered machines.

➤ **Social:**

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

**Voting Requirements:**

Simple majority.

The Director of Infrastructure Services has provided an amended attachment which now includes the CAT 12M Grader.

OFFICER RECOMMENDATION

ITEM 8.3.6

That Council purchase a \_\_\_\_\_ from \_\_\_\_\_ in accordance with the received tender documentation and the tender specifications.

CEO comment

The alternate Officer Recommendation reflects the need to identify the equipment purchased, the equipment traded (or sold outright) and the net financial effect so as to readily evaluate against the adopted Budget (which is always premised on GST exclusive figures).

ALTERNATE OFFICER RECOMMENDATION

ITEM 8.3.6

That Council accept the tender from \_\_\_\_\_ for the purchase of a \_\_\_\_\_ at a gross cost of \$ \_\_\_\_\_ (excluding GST) and accept the trade tender from \_\_\_\_\_ for the sale of a Cat 12 Series Grader at the trade price of \$ \_\_\_\_\_ (excluding GST) with the net changeover being \$ \_\_\_\_\_ (excluding GST).



**8.3.7 TENDER 3 – 2010/11 – SUPPLY AND DELIVERY OF ROLLER**

**File Ref:** TEN3 10/11  
**Applicant / Proponent:** Shire of Denmark  
**Subject Land / Locality:** NA  
**Disclosure of Officer Interest:** Nil  
**Date:** December 2010  
**Author:** Rob Whooley, Director of Infrastructure Services  
**Authorising Officer:** Rob Whooley, Director of Infrastructure Services  
**Attachments:** Yes

**Summary:**

This item recommends Council purchase a new \_\_\_\_\_.

A recommendation will be provided for the meeting to be held on the 21 December 2010.

**Background:**

In accordance with the Local Government Act 1995 tenders were called for the Supply & Delivery of a new Vibrating Roller

The Tender period closed at 4.00pm on Friday 29<sup>th</sup> October 2010. Ten different machines, from different internationally recognised machinery suppliers, are offered for Councils consideration.

The offers, as presented, are reflected in Attachment 8.3.7.

**Comment:**

Evaluation Criteria:

Tenders were also let on the basis that an evaluation criterion would apply. Evaluation of this tender was carried out in accordance with Section 7.3 (Selection Criteria of Tenders), General Conditions of Tendering. As stated in the tender documents, the evaluation criteria can be found in Attachment 9.3.1

Example of derivation of weighted Evaluation Criteria Score  
 Criteria D: Local Content (Score 10%)

Tenderer	1	2	3	4	5	6
Score max 10%	10	6	4	3.5	2	0

Score:

- 10– Meets / exceeds requirement (Locally made, Supplied and Serviced)
- 8 – Meets requirement (Locally supplied and serviced )
- 6 – Meets some but not all requirements (Significant Branch Regionally located)
- 3 – Meets some but not most requirements (Field servicing within local region)
- 2 – Below minimum requirements (Minimal technical and parts support in WA )
- 0 – Does not meet requirements (No technical or servicing support within the State)

Tenderer:

- Tenderer 1: WIRTGEN
- Tenderer 2: ATLAS COPCO CONSTRUCTION
- Tenderer 3: CONPLANT P/L
- Tenderer 4: BT EQUIPMENT P/L (2)

- Tenderer 5: ATLAS COPCO CONSTRUCTION
- Tenderer 6: CJD EQUIPMENT P/L
- Tenderer 7: JCB CONSTRUCTION (2)
- Tenderer 8: WESTRAC
- Tenderer 9: BT EQUIPMENT P/L
- Tenderer 10: JCB CONSTRUCTION

Attachment 8.3.7 interprets the following:

- Wirtgen Australia submitted the lowest conforming Tender.
- Atlas Copco Construction and Conplant P/L submitted the next lowest conforming tenders respectively.
- Supply and delivery dates are approximately 2-4 weeks.
- Of the three conforming tenders, the best warranty is provided by Atlas Copco Construction of 3 years or 4500 hours, whichever comes first.
- Council currently owns a Vibromax Roller, the performance, parts and service backup over the last ten years has been sound.

Table 2- Comparison of vehicle price vs weighted price:

Machine	Vehicle Price	Weighted Price
Hamm 3412	\$122,650	\$122,650
Dynapac CA252H	\$133,890	\$141,129
Ammann ASC 110D	\$135,852	\$135,671
Bomag BW216D-5	\$137,500	\$148,544
Dynapac CA302D	\$142,800	\$154,920
Volvo SD160DX	\$145,568	\$139,495
JCB Vibromax VM115D	\$147,400	\$154,146
Caterpillar CS56	\$156,452	\$155,811
Bomag BW216D-4	\$165,000	\$182,783
JCB Vibromax VM146D	\$172,510	\$175,735

NOTE: The assessments and consequent weightings are subjective and relative observations based upon documents submitted. All tenders have been treated fairly, impartially and with due diligence.

**Consultation:**

Nil

**Statutory Obligations:**

This tender was called in accordance with the Local Government Act 1995.

**Policy Implications:**

Local procurement preference applies and adhered to.

**Financial Implications:**

Budgeted Expenditure: \$205,600 (ex GST) has been budgeted as expenditure.  
 Income: Expected income for the old roller was \$10,500 (ex GST).  
 Effective Budget: \$195,100 (ex GST).

**Sustainability Implications:**

➤ **Environmental:**

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

➤ **Economic:**

There are no significant environmental differences in any of the tendered machines.

➤ **Social:**

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

**Voting Requirements:**

Simple majority.

OFFICER RECOMMENDATION

ITEM 8.3.7

That Council purchase a \_\_\_\_\_ from \_\_\_\_\_ in accordance with the received tender documentation and the tender specifications.

CEO comment

The alternate Officer Recommendation reflects the need to identify the equipment purchased, the equipment traded (or sold outright) and the net financial effect so as to readily evaluate against the adopted Budget (which is always premised on GST exclusive figures).

ALTERNATE OFFICER RECOMMENDATION

ITEM 8.3.7

That Council accept the tender from \_\_\_\_\_ for the purchase of a \_\_\_\_\_ at a gross cost of \$\_\_\_\_\_ (excluding GST) and accept the trade tender from \_\_\_\_\_ for the sale of a Vibromax Roller at the trade price of \$\_\_\_\_\_ (excluding GST) with the net changeover being \$\_\_\_\_\_ (excluding GST).

**8.4 Director of Finance & Administration**

**8.4.1 FINANCIAL STATEMENT FOR THE MONTH ENDING 30 NOVEMBER 2010**

<b>File Ref:</b>	FIN 1
<b>Applicant / Proponent:</b>	Not Applicable
<b>Subject Land / Locality:</b>	Denmark
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	6 December 2010
<b>Author:</b>	Garry Bird, Director of Finance and Administration
<b>Authorising Officer:</b>	Garry Bird, Director of Finance And Administration
<b>Attachments:</b>	Yes

**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 and Council staff welcome enquiries in regards 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.

**Comment:**

Trust and Restricted Funds have been invested for thirty days with the National Bank, maturing 28 December 2010 at the quoted rate of 4.90%

Reserve Funds have been invested with Members Equity Bank, with \$1,000,000 placed in a 30 day term deposit at the rate of 5.70% and the balance of funds (\$1,293,745) placed in an on call cash account at the rate of 5.60%.

Surplus municipal funds have similarly been invested in the Members Equity on call cash account; to take advantage of the excellent rate on offer and the high liquidity aspect to this transaction (i.e. funds are available immediately if so required).

**Key Financial Indicators at a Glance**

The following comments and/or statements are provided to provide a brief summary and/or assist in the interpretation and understanding of the attached Financial Statement.

- Based on financial commitments made since the adoption of the Budget, the 30 June 2011 end of year position is estimated to be a small deficit of \$19,000 (Note 5).
- Both operating income and expenditure are slightly higher than that estimated for the year to date budget estimates (Statement of Financial Activity).
- The 2010/11 Capital Works Program is proceeding well, with 20.96% of expenditure completed, significantly higher than previous years (Statement of Financial Activity).
- Rates Collection percentage of 76.86% is in keeping with historical collection rates (Note 6).
- Transfers to and From Reserve are yet to be effected for the 2010/11 year, with this task generally being undertaken in the second half of the year (Note 9).
- Salaries and Wages expenditure are proceeding as per budget estimates (not reported in Financial Statement).

**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 relates as follows;

P040222      MATERIAL VARIANCES IN BUDGET AND ACTUAL EXPENDITURE

*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 \$5,000.*

*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.*

Upon completion of the above reconciliations and procedures, various matters have been identified as requiring the attention of Council, in accordance with the following Resolution of Council, adopted at the Special Meeting held 28 July 2009. These matters are addressed in the Budget vs Actual Variance Report included within the Statement of Financial Activity.

**Budget / Financial Implications:**

Other than the matters identified in the Budget verses Actual Variance Report, income and expenditure is proceeding as per budget forecasts and the end of year position should be as per that projected in the revised 2009/10 Municipal Budget end of year position, assuming all projects proceed and are completed in this timeframe.

**Strategic Implications:**

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

**Sustainability Implications:**

➤ **Environmental:**

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

➤ **Economic:**

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

➤ **Social:**

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

**Voting Requirements:**

Simple Majority.

<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>	<b>ITEM 8.4.1</b>
MOVED: CR SAMPSON	SECONDED: CR PEDRO
That with respect to Financial Statements for the month ending 30 November 2010, Council;	
1. Receive the financial report, incorporating the Statement of Financial Activity and Budget verses Actual Variance Report.	
2. Endorse the Accounts for Payment as listed.	
CARRIED: 10/0	Res: 141210

**8.4.2 SHIRE OF DENMARK 2009/10 ANNUAL REPORT AND ELECTORS MEETING**

<b>File Ref:</b>	FIN31
<b>Applicant / Proponent:</b>	Shire of Denmark
<b>Subject Land / Locality:</b>	Nil
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	6 December 2010
<b>Author:</b>	Garry Bird, Director of Finance & Administration
<b>Authorising Officer:</b>	Dale Stewart, Chief Executive Officer
<b>Attachments:</b>	Yes

**Summary:**

The Draft 2009/10 Annual Report, incorporating the Annual Financial Statement, is hereby attached for the consideration by Elected Members.

Once adopted, the date for the Annual Meeting of Electors can then be set and advertised in accordance with the provisions of the Local Government Act.

**Comment:**

Comment on the financial position of the Shire and operational and strategic activities is contained within the draft Annual Report for consideration.

The audit report for the 2009/10 financial year was received Monday 6 December 2010.

**Consultation:**

Nil

**Statutory Obligations:**

Local Government Act 1995 Subdivision 4 Electors Meetings Sections 5.26 to 5.33  
 Local Government Act 1995 Division 5 Annual Reports and Planning Sections 5.53 to 5.55  
 Local Government (Financial Management) Regulations 1996

In summary, the Act requires the Annual Report to contain the following information;

- A report from the Shire President.
- A report from the Chief Executive Officer.
- The 2009/10 Annual Financial Report.
- The 2009/10 Auditors Report.
- Information in relation to employees salaries, and
- Other miscellaneous information including Disability Services update, Record Keeping Plan updates and improvements.

Given the timing of the adoption of the Annual Report and the requirement of Section 5.29 of the Local Government Act to provide at least fourteen days public notice of the Annual Electors Meeting, it is critical that the date for the timing of the Annual Electors Meeting be set to allow for sufficient time to publicise the Meeting.

Discussions with the Chief Executive Officer indicate that holding the Electors Meeting after the 25 January 2011 Ordinary Meeting, commencing at 7.30pm, would be a convenient date and allow opportunity for Electors to attend after work commitments. In addition, most residents would have returned from Christmas annual leave, maximising attendance at the Meeting.

In addition it is a requirement of the Act that the Shire of Denmark meet annually with the Auditor, a responsibility that Council has transferred to the Audit Committee via the Adopted Charter. It is recommended that the Audit Committee be held at 2.00pm

on 22 December 2010 to meet with the Auditors and discuss the contents of the Auditors Report, Annual Financial Statement and any other relevant matters.

**Policy Implications:**

Nil

**Budget / Financial Implications:**

The 2009/10 Annual report is printed and collated in-house by shire staff, the costs of which are included in operating budgets for the 2010/11 financial year.

**Strategic Implications:**

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

**Sustainability Implications:**

➤ **Environmental:**

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

➤ **Economic:**

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

➤ **Social:**

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

**Voting Requirements:**

Absolute majority.

The Audit Committee met on the 14 December 2010 and made the following recommendation to Council.

COMMITTEE RECOMMENDATION

ITEM 8.4.2

That the Shire of Denmark Audit Committee recommend to Council the adoption of the Annual Financial Statement and Auditors Report.

<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>	ITEM 8.4.2
MOVED: CR WAKKA	SECONDED: CR SAMPSON
That Council:	
1. Adopt the Annual Report, incorporating the Annual Financial Statement, subject to endorsement by the Shire of Denmark Audit Committee; and	
2. Confirm the Annual Meeting of Electors is to be held on Tuesday, 25 January 2011, commencing at 7.30pm in the Shire of Denmark Council Chamber.	
CARRIED BY AN ABSOLUTE MAJORITY: 10/0	Res: 151210

5.52pm – The Director of Infrastructure Services left the meeting

### 8.4.3 ACQUISITION OF RESERVE 27101 – CORNER OF SOUTH COAST HIGHWAY AND DENMARK MOUNT BARKER RD

<b>File Ref:</b>	A3123
<b>Applicant / Proponent:</b>	Shire of Denmark
<b>Subject Land / Locality:</b>	Denmark
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	6 December 2010
<b>Author:</b>	Garry Bird, Director of Finance and Administration
<b>Authorising Officer:</b>	Dale Stewart, Chief Executive Officer
<b>Attachments:</b>	Yes

#### **Summary:**

At the Councillor Briefing Forum held 16 November 2010, a Discussion Paper was considered by Council in regards to the acquisition of Reserve 27101, located on the corner of South Coast Highway and the Denmark Mt Barker Rd.

The following outcome was recorded from the Briefing Forum;

*That Councillors request the CEO to prepare a Report for the first available Meeting of Council to recommend freehold acquisition of the Reserve, assuming the site retains its existing commercial use in the Draft Local Planning Strategy, based on a loan being undertaken for the full purchase cost of \$491,000 (est).*

In accordance with this Outcome, the following Report and Business Plan is presented for the formal consideration of Council.

#### **Background:**

The land is currently vested with the Shire of Denmark and leased from State Land Services (SLS) for the annual lease fee of \$22,000.

This lease expires in 2016 at which point Council will be required to determine whether it would like to enter into a new lease, if available.

This matter has previously been considered by Council in October 2008 with it subsequently being resolved as follows;

*(Resolution No. 181008)*

*“That Council not proceed with the purchase but advise the Department for Planning & Infrastructure that a change of use for Reserve 27101 for Cemetery purposes (as per adjoining Reserve 11655) would be sought at the expiry of the present leases (2016).”*

Given the site has been designated as “commercial” in preliminary discussions (subject to final Council endorsement and Western Australian Planning Commission approval) regarding the proposed new Local Planning Strategy, it was considered timely to review the earlier decision, assuming it is Council’s intention to not potentially use it as a Cemetery as per the intent of Resolution 181008.

Approximately 35% of the lot is covered by natural vegetation and has around 2.2 ha either currently leased (through to 2016) or being offered for lease (3 year term). The remaining cleared area of approximately 1.5 ha accommodates usable cattle pens and two vehicle access ways from the Denmark/Mt Barker Road.

An Environmental Impact Assessment has been prepared by Ms Yvette Caruso, Council’s Natural Resource Management Officer which is attached to this report for information of Elected Members.



Reserve 27101 was originally leased to Council by the Department for Planning and Infrastructure for a period of 21 years (expiring 2016). Council pays a lease rental and from \$1,000pa in 1995, the annual lease payments (reviewed each 3 years) have risen to the current amount of \$22,000pa with the next rental review due in January 2010.

In return, Council receives from its sub lessees \$30,600pa, with a potential of a further \$17,000pa should the pig pen area now being offered, be subsequently leased.

Based on valuation, revenue or earnings from the site would equate to \$47,600pa which represents 9.69% of the capital purchase costs, with potential for further revenue growth.

The property is considered to be of strategic importance as it has the potential to serve as an entry statement to the town and make an important first impression on visitors, although this significance will decrease over time if further development occurs along the Denmark Mount Barker Rd.

No fixed timing for any acquisition has not yet been determined and will be subject to further negotiation with State Land Services.

**Comment:**

It is the view of the Chief Executive Officer and Director of Finance and Administration that the preferred long term use of the land is the critical factor for Council in determining whether to acquire the site.

If the land remains zoned Reserve (whether that be for a Cemetery of some other civic/recreational use) there is no advantage to acquiring the land and would only utilise funds that can be used for some other purpose.

If this was the case, Council should also instruct staff to remove the reference in the Draft LPS to the site being Commercial.

If the land is to continue with the current commercial uses and is reflected as such in future planning documents, there would be significant advantage to acquiring the land and controlling future development at the site and to generate a small stream of revenue for the future, once all debts have been retired.

The location of the site has many advantages from a commercial perspective, not the least of which is the high traffic movements on South Coast Highway and the potentially highly visible nature of the site.

**Consultation:**

Shire of Denmark Briefing Forum 16 November 2010.

Discussions with representatives from State Land Services occurred.

No consultation has been undertaken with the commercial operators leasing the sites from Council.

**Statutory Obligations:**

Local Government Act 1995

Land Act 1933

Local Government (Financial Management) Regulations 1996

Local Government (Administration) Regulations 1996

The Local Government Act 1995 relates as follows;

**Acquisition of land**

*A local government can only take land under Part 9 of the Land Administration Act 1997 if it is in, or is to be regarded as being included in, its own district.*

**Commercial enterprises by local governments**

**major land transaction** means a land transaction other than an exempt land transaction if the total value of —

- (a) *the consideration under the transaction; and*
- (b) *anything done by the local government for achieving the purpose of the transaction,*  
*is more, or is worth more, than the amount prescribed for the purposes of this definition;*

*The business plan is to include an overall assessment of the major trading undertaking or major land transaction and is to include details of —*

- (a) *its expected effect on the provision of facilities and services by the local government;*
- (b) *its expected effect on other persons providing facilities and services in the district;*
- (c) *its expected financial effect on the local government;*
- (d) *its expected effect on matters referred to in the local government's current plan prepared under section 5.56;*
- (e) *the ability of the local government to manage the undertaking or the performance of the transaction; and*
- (f) *any other matter prescribed for the purposes of this subsection.*

(4) *The local government is to —*

- (a) *give Statewide public notice stating that —*
  - (i) *the local government proposes to commence the major trading undertaking or enter into the major land transaction described in the notice or into a land transaction that is preparatory to that major land transaction;*
  - (ii) *a copy of the business plan may be inspected or obtained at any place specified in the notice; and*
  - (iii) *submissions about the proposed undertaking or transaction may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given;*
- and*
- (b) *make a copy of the business plan available for public inspection in accordance with the notice.*

(5) *After the last day for submissions, the local government is to consider any submissions made and may decide\* to proceed with the undertaking or transaction as proposed or so that it is not significantly different from what was proposed.*

*\* Absolute majority required.*

(5a) *A notice under subsection (4) is also to be published and exhibited as if it were a local public notice.*

(6) *If the local government wishes to commence an undertaking or transaction that is significantly different from what was proposed it can only do so after it has complied with this section in respect of its new proposal.*

**6.20. Power to borrow**

- (1) *Subject to this Act, a local government may —*
  - (a) *borrow or re-borrow money;*
  - (b) *obtain credit; or*
  - (c) *arrange for financial accommodation to be extended to the local government in ways additional to or other than borrowing money or obtaining credit,*

*to enable the local government to perform the functions and exercise the powers conferred on it under this Act or any other written law.*

- (2) *Where, in any financial year, a local government proposes to exercise a power under subsection (1) (**power to borrow**) and details of that proposal have not been included in the annual budget for that financial year —*

- (a) *unless the proposal is of a prescribed kind, the local government must give one month's local public notice of the proposal; and*
- (b) *the resolution to exercise that power is to be by absolute majority.*

The Local Government Act (Administration) Regulations 1996 relates as follows;

**6.21 Minimum value of major land transaction**

*For a land transaction to be a major land transaction the total value of —*

- (a) *the consideration under the transaction; and*
- (b) *anything done by the local government for achieving the purpose of the transaction,*

*has to be more, or worth more, than either \$1 000 000 or 10% of the operating expenditure incurred by the local government from its municipal fund in the last completed financial year.*

In the 2009/09 financial year Councils total operating expenditure was \$9,951,362, with ten percent of this total being \$995, 136, significantly more than the proposed total purchase price of \$491,000.

From the above, it is evident that the acquisition does not meet the requirement to be Major Land Transaction although the provisions relating to unbudgeted loans will need to be satisfied in order to complete the transaction.

In order to demonstrate due diligence and financial prudence, a Business Plan has been prepared for the proposed acquisition, which is attached to this Report for the benefit of Elected Members and electors and residents of the Shire. It is proposed that the availability of the Plan will be advertised in conjunction with the intention to undertake an unbudgeted loan.

**Policy Implications:**

There are no policy implications arising from the Officers Report or Recommendation.

**Budget / Financial Implications:**

As detailed in the attached Business Plan, Budget/Financial Implications relates as follows;

The major costs for the acquisition of the site are estimated as follows;

Land Purchase	Purchase Cost \$475,000
Settlement Fee	\$2,000
Survey Cost	\$4,000
Contingency	\$10,000
<b>TOTAL</b>	<b>\$491,000</b>

Note the purchase price of \$475,000 is based on verbal discussions with SLS representatives and represents a 5% increase on the previous valuation of \$450,000 received in 2008.

As there are no specific funds set aside for the purchase of this land, Reserve, Loans or some other source of funding would need to be identified to finance the purchase.

Generally grant funds are not available for the purchase of land.

The Shire of Denmark Land and Buildings Reserve has a current balance of \$1,040,580.20 (as at 31 November 2010) although these funds have been earmarked for future use to develop the McIntosh Rd Industrial Estate (including relocation of the Shire Depot) and the possible acquisition of the Peaceful Bay Leasehold properties (as per Resolution 191008).

A saving in the annual lease fee paid to State Land Services (currently \$22,000 per annum) will arise if Council does acquire the Reserve and this saving could be used to finance a loan of approximately \$250,000 over a twenty year period.

If the vacant site was to be leased a further \$17,000 could be available to service any loan. This amount would equate to a further loan principal of \$175,000 leaving a shortfall of \$66,000 to finance the principal.

The balance of funds that would be required to purchase the land (\$290,000 or \$66,000 if the vacant lot is leased) could be funded from a variety of sources including;

1. Subdividing the site and selling land to finance shortfall.  
By acquiring the lot, Council could subdivide the land and sell sufficient title/s to raise the funding shortfall.
2. Borrowing additional funds.  
A loan could be undertaken for the shortfall in funding. Council currently has surplus capacity to raise additional loans if so needed.
3. Transferring from Land and Buildings Reserve  
Transferring the shortfall from the Reserve would save interest payments. It would be possible to in effect borrow these funds from the Reserve and repay on a similar basis to a loan from a third party.

The proposed commercial zoning of the land would also attract a higher rate of rental income, which depending on future lease arrangements may allow Council the opportunity to expedite loan repayments or fund other works and services.

**Strategic Implications:**

The land has the potential to be significant strategic site for Council, with the capacity to return a significant investment return to Council.

**Sustainability Implications:**

➤ **Environmental:**

The site has approximately 35% natural vegetation on site and it is proposed that the protection of this vegetation will be addressed in a future Development Plan for the site (closer to the expiry of the existing lease arrangements).

➤ **Economic:**

The site has the potential to be a long term investment for Council and to contribute to commercial development within the Shire, creating business and employment opportunities for electors and residents.

➤ **Social:**

There are no significant social implications arising from the proposed acquisition of this land.

**Voting Requirements:**

Absolute majority.

Pursuant to Regulation 10 of the Local Government (Administration) Regulations 1996, prior to the Presiding Person accepting the suggested revocation motion, that person must obtain an indication of support from at least two other Councillors in addition to the Mover & the Seconder prior to it being debated.

<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>	ITEM 8.4.3 (a)
MOVED: CR SYME	SECONDED: CR SAMPSON

*The Shire President sought and received support from two other Councillors, in addition to the Mover & the Seconder, prior to allowing debate on the motion.*

<p>That Council revoke its resolution of 28 October 2008 (resolution no. 181008) to “not proceed with the purchase but advise the Department for Planning &amp; Infrastructure that a change of use for Reserve 27101 for Cemetery purposes (as per adjoining Reserve 11655) would be sought at the expiry of the present leases (2016).”</p> <p>CARRIED BY AN ABSOLUTE MAJORITY: 10/0</p>	<p>Res: 161210</p>
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<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>	ITEM 8.4.3 (b)
MOVED: CR SAMPSON	SECONDED: CR PEDRO

<p>That Council agree to the acquisition of Reserve 27101, to be funded by an unbudgeted loan, subject to the following conditions;</p> <ul style="list-style-type: none"> <li>a) A valuation from State Land Services confirming their estimated valuation of approximately \$475,000.</li> <li>b) The total loan amount not to exceed \$500,000.</li> <li>c) Public advertising of the unbudgeted loan in accordance with the Local Government Act 1995 and no adverse comment being received at the close of the specified advertising period.</li> </ul> <p>CARRIED BY AN ABSOLUTE MAJORITY: 10/0</p>	<p>Res: 171210</p>
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<b>8.4.4 REQUEST FOR FINANCIAL CONTRIBUTION – PEACEFUL BAY WAR MEMORIAL</b>
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<b>File Ref:</b>	ORG17B
<b>Applicant / Proponent:</b>	Peaceful Bay Returned Services League
<b>Subject Land / Locality:</b>	Peaceful Bay
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	7 December 2010
<b>Author:</b>	Garry Bird, Director of Finance & Administration
<b>Authorising Officer:</b>	Dale Stewart, Chief Executive Officer
<b>Attachments:</b>	No

**Summary:**

Correspondence has been received from the Peaceful Bay Returned Services League requesting Council to prepare and submit a grant application for “Saluting Their Service” commemorations program. The application was submitted to the Department of Veterans Affairs on 20 July 2010. Council has received correspondence on 3 November 2010 to advise success of grant of \$4,000 for the

upgrade of the Peaceful Bay War Memorial and Council is now required to consider contributing funds of \$6,945 as per the application. Note this allocation in unbudgeted expenditure.

**Background:**

The existing Peaceful Bay War Memorial is fronted by an unsightly gravel hardstand area which becomes waterlogged in winter.

In summary, the proposed work as discussed with the members of the Returned Services League is to seal and landscape the area, starting with grading of the hardstand area and removing of excess gravel and the sealing with bitumen of 336m<sup>2</sup> and finishing of the upgrade with the landscaping of the gardens.

The works proposed and associated funding requested from Council is summarised as follows;

• Prepare & Grade hardstand area	\$555.00
• Sealing; bitumen	\$9,290.50
• Landscaping; plants/soil	\$1,100.00
<b>TOTAL</b>	<b><u>\$10,945.00</u></b>

**Comment:**

It is recommended by staff that the contributing funds be supported given the importance of the site and the large aged population in Peaceful Bay and the increased popularity of such service amongst other residents.

**Statutory Obligations:**

Local Government Act 1995.

Local Government (Financial Management) Regulations 1996.

**Policy Implications:**

Nil

**Budget / Financial Implications:**

The 2010/11 Municipal Budget contains no specific allocation for this purpose and as such a budget amendment is required to fund the project to be allocated.

The additional funding of \$6,945 could be funded from a combination of road maintenance (based on road grading savings and in-kind construction cost) and the Donations, Gifts and Gratuities Account #1410082.

**Strategic Implications:**

Nil.

**Sustainability Implications:**

➤ **Environmental:**

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

➤ **Economic:**

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

➤ **Social:**

In recent years, Australia has displayed an increasing awareness and deference to Anzac Day and such respect indicates high level of community spirit. The Peaceful

Bay War Memorial is the focus of Anzac Day commemorations in Peaceful Bay, which has experienced increased attendances in recent times.

**Voting Requirements:**

Absolute majority.

At the meeting held on the 14 December 2010, Cr Richardson-Newton asked what the Peaceful Bay RSL was contributing to the project and who designed the original memorial. Cr Sampson asked how many members there was of the Peaceful Bay RSL.

The Director of Finance & Administration advises that the Peaceful Bay RSL have 30 members and the design was from the Peaceful Bay RSL Committee.

<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>		ITEM 8.4.4
MOVED: CR PHAIR		SECONDED: CR LAING
That Council agree to contribute \$6,945 towards the upgrade of the War Memorial at Peaceful Bay with such funding to be provided from the following Budget Amendment;		
a) Road Maintenance (Salary and Wages) Account #1228002		\$555.00
b) Road Maintenance (Materials) Account #1228002		\$6,000.00
c) Donations Account #1410082		\$390.00
CARRIED BY AN ABSOLUTE MAJORITY: 10/0		

**5.57pm - Public Question Time**

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

**Ms Janice Marshall – Recycling Station within the CBD**

Ms Marshall stated that she was pleased to see that the Budget contained provision for a recycling transfer station within the Denmark CBD, noting that the Denmark Environment Centre was often asked by people where they could leave their recycling.

The CEO noted that although there was provision for a recycling transfer station within the CBD the detail including location was still being investigated by the Infrastructure Services Directorate and/or CBD Streetscape Working Group.

*5.58pm – Cr Hinds returned to the meeting.*

## 8.5 Chief Executive Officer

*Prior to any consideration of Item 8.5.1 Cr Barrow made the following declaration:*

*“I am a member of the Denmark Tourism Inc. and as a consequence there may be a perception that my impartiality on this matter may be affected. I declare that I will consider this matter on its merits and vote accordingly.”*

*Prior to any consideration of Item 8.5.1 Cr Richardson-Newton made the following declaration:*

*“I am a member of the Denmark Tourism Inc. and as a consequence there may be a perception that my impartiality on this matter may be affected. I declare that I will consider this matter on its merits and vote accordingly.”*

<b>8.5.1 BERT BOLLE BAROMETER</b>
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<b>File Ref:</b>	A3106 / Agreements File
<b>Applicant / Proponent:</b>	Mr Bert Bolle
<b>Subject Land / Locality:</b>	Not applicable
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	3 December 2010
<b>Author:</b>	Dale Stewart, Chief Executive Officer
<b>Authorising Officer:</b>	Dale Stewart, Chief Executive Officer
<b>Attachments:</b>	Yes

### Summary:

This report details a request from Mr Bert Bolle to agree to return the Bert Bolle Barometer and the meteorological instruments from the Denmark Visitors Centre due to a break down in his relationship with the Denmark Tourism Inc. (DTI) Board and the Denmark Visitor Centre management and the failure of Council to agree to his conditions dated 11 November 2010.

### Background:

Mr Bolle initially wrote to Council on the 11 November 2010 and the following is extracted from that correspondence;

*“I know that the Shire has no direct control over the DTI Board and the DVC management, but if money is the only language DTI Board and DVC management prefer to listen to, I think it is time someone makes these people clear that it is the Denmark Shire where substantial subsidies come from. So far the Denmark Shire has spent far over \$700,000 to the new DVC and I doubt if ratepayers and councillors will be happy when I stop my involvement and remove all our antiques and other objects given on loan after 12 December”.*

The Conditions that Mr Bolle sought were;

- “1) One of the DVC staff members will be dedicated to spend an average of eight spread hours per week to actively promote the barometer and the Barometer Tower by contacting the media like newspapers, magazines, radio, TV, travel book editors etc., by following these contacts through and also by spreading the barometer brochures according to my earlier suggestions from 2009. All these activities should happen in close collaboration with me. This person, chosen in consultation with me, could also be my sounding board I happen to miss at the moment.*
- 2) The barometer and the Barometer Tower should be clearly signposted outside near the DVC doorway and inside in the main hall.*
- 3) There should be no discussion about the fact that the barometer and the Barometer Tower should be announced in an appropriate way and in a suitable location, e.g. on the introduction page of the Holiday Guide.”*

The Bert Bolle Barometer was donated to the community by Mr Bolle and its incorporation into the Denmark Visitor Centre design was approved by Council on the 28 March 2006.



**Comment:**

Mr and Mrs Bolle met on several occasions with the author in attempting to mediate or arrive at a compromise on the request eventually sought. Mr Bolle in meetings with the author noted that the requested 8 hours per week (average) is half what he originally believed was acceptable and therefore was not prepared to further negotiate this or any of the requested conditions. In responding to Mr Bolle regarding these conditions, the author replied on 23 November 2010 with the following (extracts);

*"I advise that in discussing your requests with all of the Shire of Denmark Councillors and thereafter with the Chair of DTI and the CEO of the DVC, that I confirm that both the Council and DTI are only willing to enter into discussions with you on the 3 conditions on the following basis;*

*Part 1 – That Council is more than prepared to ask that the Board consider appropriate marketing and promotion of the Bert Bolle Barometer within its overall marketing and promotion of the various attributes and characteristics of the Shire, but that Council is not prepared to dictate the quantum or detail as you have suggested. To do so would question the independent nature of Denmark Tourism Inc and the Denmark Visitor Centre. The Chair of the DTI Board and DVC CEO concur with the Council's position on this request. Council has no doubt that the Bert Bolle Barometer is an extremely important tourist asset of the Shire and should be promoted in context with other iconic assets of the Shire including but not limited to, the Valley of the Giants Tree Top Walk, Greens Pool, the Walpole Wilderness, Wilson Inlet and the Denmark River.*

*Part 2 – Council concurs with your desire for prominent sign posting promoting the presence of the Bert Bolle Barometer both outside the main DVC doorway and again inside the doorway. The Chair of the Board and DVC CEO concur with the Council's position on this request. I and the Chair of the DTI and or CEO of the DVC are able to meet with you to further this request.*

*Part 3 – As you would be aware the nature of the annual Denmark Holiday Guide is that it is predominantly financed from advertisers featuring within the Guide. Accordingly prominent pages such as the back cover, inside cover and the like, are very valuable to businesses advertising their products. The view of the DTI has been therefore that such prominent positions were too valuable in meeting production costs, to insert 'editorial' or free content on those pages. This notwithstanding, the Board has inserted a half page article and photograph of the Bert Bolle Barometer on page 18 of the Guide in the 'Tours and Attractions' section. Council and the Board hope that this satisfies the intent of your request. The Guide is in the final days of editing and the Council is of the view that it was not prepared to override the intentions of the Board in its editorial control of the Guide.*

*I understand that you will be disappointed with the fact that Council was not prepared to fully meet your requests, particularly in not requesting a dedicated person to promote the Bert Bolle Barometer for an average 8 hours per week.*

*Councillors, the Council, nor I, have ever considered it appropriate to seek to advise Denmark Tourism Inc., or its Visitor Centre Management, on how it runs its business and markets and promotes the Shire to the extent that we would seek to instruct the Board that we expect certain attractions to be specifically marketed in a certain way. As a Council and as CEO, we have entrusted this to an experienced Board who then employ experienced professionals to adequately and appropriately promote tourism within the Shire, which in turn hopefully meets the expectations of the Council and Community as a whole.*

*Denmark Tourism Inc. is an 'arms length' entity, that we contribute financially to every year, to service and attract visitors to the Shire and the level of the contribution that the Council makes towards underwriting its operations and financing additional promotional activities is annually assessed based on a number of factors.*

*In closing, Council and I believe the above approach to your three requests is a reasonable outcome and also one which the Chair of DTI and CEO of the DVC support.*

*I sincerely hope that you will see the positives in the above and with goodwill and the mutual desire of all parties; we can continue to work together towards furthering promotion of the Bert Bolle Barometer and tourist visitation in Denmark. In this way the incredible gift that yourself and Ethne have provided to the community of Denmark will continue to be one that can be enjoyed and celebrated by us for many generations to come."*

The Deed of Gift and Memorandum of Understanding (MOU) were adopted by Council at their meeting held on the 23 January 2007 and subsequently signed by the then CEO and Mr Bolle on 16 February 2007.

Copies of the Deed of Gift and the MOU are attached however the following is an extract from the Memorandum of Understanding.

*"2. On-going Obligations of the Shire*

*The Shire must:*

- (b) Insure the Barometer against loss and damage with a reputable insurer;*
- (c) Service and maintain the Barometer;*
- (d) Display a plaque acknowledging the donation of the Barometer by Bolle and referring to the Barometer by the name "the Bert Bolle Barometer"; and*
- (e) Use the name "the Bert Bolle Barometer" in all promotional material relating to the Barometer;*
- (f) Ensure that the Tower is used exclusively to house and display the Barometer and associated meteorological objects for as long as the Premises continues to be used as a visitor centre by the Shire; and*
- (g) Permit Bolle to have access at all times to the pump house associated with the Tower for the purpose of servicing and maintaining the Barometer."*

*"3. Lease of Premises*

*If the Premises are leased by the Shire then the Shire must ensure that its obligations under clause 2, with the exception of 2(a) and 2(b), are assumed by any lessee, sub-lessee or assignee."*

*"4. Understandings*

*(1) The parties wish to record that the Shire intends to:*

- (a) Display the Barometer for tourism purposes and to promote an understanding of the Barometer;*
- (b) Use its best endeavours to use the name "the Bert Bolle Barometer" in relation to the Barometer, as long as the Barometer is displayed;*
- (c) Consult with Bolle concerning all interpretative material relating to the Barometer and other meteorological objects in the Tower;*
- (d) Consult with Bolle about the display of other items in the Tower constructed by the Shire for the display of the Barometer;*
- (e) Seek advice from Bolle concerning the promotion of the Barometer;*
- (f) Consult with Bolle where the Shire considers that mechanical expertise is needed in relations to the Barometer; and*
- (g) Generally to use its best endeavours to involve Bolle in connection with all activities relating to publicising the Barometer and meteorological information, including taking photographs, designing web-sites and preparing technical and promotional material relating to the Barometer."*

Mr Bolle responded to the Council's correspondence of 23 November 2010 on Thursday 2 December 2010 as follows;

*“Seen [sic] what you told me during our meeting yesterday morning and having read your letter, it is clear to me that council is not prepared to sacrifice or interfere with the running of the DTI.*

*As you stated during our meeting, you, Council, DTI Board, DVC management and I mismatch in regards to the barometer in terms of being an important drawcard that should be advertised and headlined far more actively than it has happened so far.*

*Seen [sic] my dissatisfaction as stipulated before and because of my conditions NOT being met, I am prepared to take the barometer back. I am NOT prepared to be muzzled in any way as the basic right of freedom of speech still exists and cannot be altered, amended, or diluted in any form by any CEO, Shire or DTI Board etc.*

*I stress that I would like to resolve the matter in a friendly manner and therefore it seems in the best interest of all concerned that the barometer could be returned to me, which would be a win, win situation for all.”*

In essence it would appear that Mr Bolle has come to the conclusion that his expectation compared to the Council's and / or that of the Board and Management of Denmark Tourism Inc's (DTI) are so different as to marketing and promotion of the Barometer, that he seeks release from his gift to Council of the Barometer.

If Council agrees to the removal, Mr Bolle has indicated that he would not seek to dismantle it until approximately February 2011, to take into account the busy tourist season over January and also to ensure that the weather was milder. It is the view of the author that it would be in the best interests of both parties that a 'deadline' be set for its removal to both give finality to the agreement and also to enable other negotiations and actions regarding alternative use of the space to commence with some surety.

In seeking the return, Mr Bolle has requested that Council assist with provision of Council's Maintenance Person for several days and also to have access to a truck for final relocation. Council is also asked to agree to the removal of all of the electrical board that relates to the mechanics of the Barometer. If minor Building alterations cannot occur to remove the backing plate to the glass cylinder of the Barometer, Mr Bolle would contract at his expense a carpenter to carefully 'cut' the backing plate such that removal of the barometer won't require removal of the roof.

**Consultation:**

The author has consulted with the Chair and CEO of Denmark Tourism Inc. who support the intent of the officer recommendation and agreeing that the return of the Barometer is in the best interests of all parties at this time.

The CEO is satisfied that in negotiating with Mr Bolle, that nothing short of full agreement with his terms would result in him withdrawing his request (for return of the Barometer).

Given that the request of itself is, in the authors opinion, unreasonable and contrary to the intent and detail of the Deed and MOU, the CEO is of the opinion that even if Council did agree to the current demands, that there would be nothing preventing similar requests occurring into the future that the Council and or DTI would also have to meet, lest it again be faced with a similar list of demands or ultimatum.

**Statutory Obligations:**

There are no statutory obligations relating to the request.

The Barometer was gifted to Shire subject to a Deed of Gift and MOU. The CEO is of the opinion that the Council has complied with all of its obligations pursuant to these agreements and certainly there is no assertion by Mr Bolle or anyone else that the Council has breached its obligations in any way.

The CEO has not sought legal advice on whether it would be entitled to keep the gift contrary to the request to return it and suggests that Council seek such advice, if it was of the opinion that it wished to retain the gift.

The CEO is also satisfied that there are no legal impediments in returning the gift from the perspective of the Regional Partnership or other Government Grants received in 2006/07 in building the Visitor Centre.

**Policy Implications:**

There are no policy implications.

**Budget / Financial Implications:**

The officer recommendation includes some minor expenditure associated with assisting with the removal of the Barometer. The estimated cost is in the order of \$5,000 and would be allocated to account 1328002 Visitor Centre Maintenance.

**Strategic Implications:**

There are no known significant strategic implications relating to the report or the officer recommendation. The key assertion by the Bolles has been that the Barometer is such an iconic tourism asset, on par with other attractions of the Shire such as the Tree Top Walk, the Coastline and Beaches, Greens Pool, the Walpole Wilderness and the like, that it warrants having an officer, selected in liaison with the Mr Bolle, dedicated to its marketing and promotion specifically, at least 8 hours per week.

Given that none of the tourist assets of the Shire have this level of promotion, the authors view is that the request is not realistic. The CEO of the Denmark Visitors Centre has previously noted that she believes the Barometer, whilst an important tourism asset for the town, is not of itself a tourism asset that achieves visitation to the Shire nor increases length of stay, like the other assets mentioned above.

**Sustainability Implications:**

➤ **Environmental:**

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

➤ **Economic:**

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

➤ **Social:**

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

**Voting Requirements:**

Simple majority.

At the meeting held on the 14 December 2010, Cr Syme asked whether there was any way that Council could determine the additional cost incurred as a result of building the tower specifically for the Bert Bolle Barometer.

The CEO has obtained an estimate from a local builder which is approximately \$60,000.

**OFFICER RECOMMENDATION**

ITEM 8.5.1

That Council agree to Mr Bolle's request to return the Barometer to him and note that the Memorandum of Understanding (MOU) and Deed of Gift between the two parties would therefore cease and in agreeing to the relinquishing of the gift assist Mr Bolle with the reasonable support of the Council in assisting with the dismantling of the Barometer at the discretion of the CEO based on the following indicative requirements;

1. Assistance with a maintenance person of Council for an estimated 3 working days;
2. Assistance with access to a suitable truck for final transport of the Barometer to another location within the Shire;
3. Assistance with provision or hire of suitable scaffolding if required;
4. Assistance with removal of the electrical board if required; and
5. The removal of the Barometer and all associated equipment to be undertaken such that it commences not earlier than 1 February 2011 and concludes no later than the 31 March 2011.

CEO comment

The CEO provides the following Alternate Officer Recommendation to address Councillors concerns and limit Council’s commitment with respect to the removal of the Bert Bolle Barometer.

6.01pm – The Director of Infrastructure Services returned to the meeting.

<p><b>COUNCIL RESOLUTION &amp; ALTERNATE OFFICER</b> ITEM 8.5.1 (a)</p> <p>RECOMMENDATION</p> <p>MOVED: CR BARNES</p> <p>That with respect to the Bert Bolle Barometer, donated absolutely and unencumbered to Council by a deed of gift dated 16 February 2007 and resulting in construction by Council of a purpose built tower in which it is housed, note that Mr Bolle now seeks to be released from the deed such that the Barometer can be returned to him. Council hereby resolves to agree to his request such that he is entitled at his expense (unless Council resolves to assist) to remove the Barometer from the Denmark Visitor Centre subject to the following conditions;</p> <ol style="list-style-type: none"> <li>1. That that the Deed of Gift and Memorandum of Understanding (MOU) relating to use of the Tower and marketing and promotion of the Barometer be declared null and void and;</li> <li>2. The items able to be removed are the Barometer and associated items as listed in the Deed of Gift, and if desired by Mr Bolle, in addition, the electrical monitoring equipment substantially paid for by Council and;</li> <li>3. The removal of the Barometer and all associated equipment is to be undertaken such that it commences not earlier than 1 February 2011 and concludes no later than the 31 March 2011 and;</li> <li>4. The time span of commencement and completion of the removal, in its entirety, being limited to a period no greater than 5 days with these days being as agreed with the CEO of the Shire of Denmark who will consult with the CEO of Denmark Tourism Inc. and;</li> <li>5. The Tower and Visitor Centre are to be left in a clean and, as much as possible, undamaged state and;</li> <li>6. Mr Bolle and or any persons that assist him with the removal in a paid and or unpaid capacity are responsible for their own personal safety and / or demonstrate that they have appropriate insurance coverage and licenses to undertake the work proposed.</li> </ol> <p><b>AMENDMENT</b></p> <p>MOVED: CR RICHARDSON-NEWTON</p> <p>In Part 2 replace the words “and if desired by Mr Bolle, in addition, the electrical monitoring equipment substantially paid for by Council and” with a full stop.</p> <p>LOST: 3/8</p> <p>CARRIED: 11/0</p>	<p>SECONDED: CR SAMPSON</p> <p>SECONDED: CR PEDRO</p> <p>Res: 181210</p> <p>Res: 191210</p>
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<p><b>COUNCIL RESOLUTION &amp; ALTERNATE OFFICER</b> ITEM 8.5.1 (b)  <b>RECOMMENDATION</b>                  MOVED: CR SAMPSON</p> <p>That Council, with respect to the Bert Bolle Barometer and in agreeing to the relinquishing of the gift, assist Mr Bolle, without charge, with the dismantling and removal of the Barometer from Council premises, limited to the following services if required, and subject to the combined cash and or in-kind support not to exceed \$5,000;</p> <ol style="list-style-type: none"> <li>1. Assistance with a maintenance person of Council for up to 5 working days;</li> <li>2. Assistance with access to a suitable truck for final transport of the Barometer to another location within the Shire;</li> <li>3. Assistance with the provision or hire of suitable scaffolding;</li> <li>4. Assistance with removal of the electrical monitoring equipment.</li> </ol> <p>CARRIED: 9/2</p>	<p>SECONDED: CR HINDS</p> <p>Res: 201210</p>
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**8.5.2 COUNCIL MEETING START TIME & DATES FOR 2011**

<b>File Ref:</b>	CR.2
<b>Applicant / Proponent:</b>	Not applicable
<b>Subject Land / Locality:</b>	Not applicable
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	6 December 2010
<b>Author:</b>	Claire Thompson, Executive Assistant
<b>Authorising Officer:</b>	Dale Stewart, Chief Executive Officer
<b>Attachments:</b>	No

**Summary:**

This report recommends that Council keep its Ordinary Meeting start time as 4.00pm and that Council endorse of all of the ordinary Council meeting dates and meetings of citizens and community organisations for 2011.

**Background:**

The following legislation relates to Council meeting dates;

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

**5.3. Ordinary and special council meetings**

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

**5.4. Calling council meetings**

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

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

Council Policies P040101, P040102 & P040103 which relate to Council meetings read as follows;

P040101 ORDINARY COUNCIL MEETINGS

The Council shall meet on a twice monthly basis, unless otherwise determined. The meetings shall be held at 4pm on the third and fourth Tuesday of each month,

commencing August 2008, with the same agenda items being considered at both meetings.

NOTE: The meeting on the third Tuesday of each month is a discussion/ briefing meeting only.

**P040102 MEETINGS OF COUNCIL – LOCATION (MARCH)**

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

**P040103 LOCALITY (WARD) MEETINGS**

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

**Comment:**

The proposed meeting dates (being the 3<sup>rd</sup> and 4<sup>th</sup> Tuesday of each month) for Ordinary Council meetings in 2011 are as follows;

*Please note:*

- Fourth Tuesday in April (26<sup>th</sup>) is a Public Holiday – suggest Wednesday 27<sup>th</sup> instead (due to Easter Monday and ANZAC Day falling on the same day in 2011).
- Fourth Tuesday in December (27<sup>th</sup>) is a Public Holiday – suggest only one meeting for December.

<b>DATE</b>	<b>PURPOSE</b>	<b>LOCATION</b>
18 January 2011	Ordinary Meeting	Council Chamber
25 January 2011	Ordinary Meeting	Council Chamber
15 February 2011	Ordinary Meeting	Council Chamber
22 February 2011	Ordinary Meeting	Council Chamber
15 March 2011	Ordinary Meeting	Nornalup Hall
22 March 2011	Ordinary Meeting	Council Chamber
19 April 2011	Ordinary Meeting	Council Chamber
27 April 2011	Ordinary Meeting	Council Chamber
17 May 2011	Ordinary Meeting	Council Chamber
24 May 2011	Ordinary Meeting	Council Chamber
21 June 2011	Ordinary Meeting	Council Chamber
28 June 2011	Ordinary Meeting	Council Chamber
19 July 2011	Ordinary Meeting	Council Chamber
26 July 2011	Ordinary Meeting	Council Chamber
16 August 2011	Ordinary Meeting	Council Chamber
23 August 2011	Ordinary Meeting	Council Chamber
20 September 2011	Ordinary Meeting	Council Chamber
27 September 2011	Ordinary Meeting	Council Chamber
18 October 2011	Ordinary Meeting	Council Chamber
25 October 2011	Ordinary Meeting	Council Chamber
15 November 2011	Ordinary Meeting	Council Chamber
22 November 2011	Ordinary Meeting	Council Chamber
20 December 2011	Ordinary Meeting	Council Chamber

The first (discussion) meeting in March was held at the Tingledale Hall in 2010 and therefore it is proposed (pursuant to Policy P040102) that this meeting be held in 2011 at the Nornalup Hall.

Pursuant to Council Policy P040103 (Locality (Ward) Meetings), Council also needs to host two meetings with citizens and community. Should the first meeting in March

be held at the Nornalup Hall, then the locality (ward) meetings for 2011 should be held at Peaceful Bay Hall and the Tingle Dale Hall.

**Consultation:**

Nil

**Statutory Obligations:**

Local Government Act 1995 (Sections 5.3 & 5.4).  
Shire of Denmark Standing Orders Local Law (Part 2).

**Policy Implications:**

Council Policies P040101, P040102 & P040103 (detailed above).

**Budget / Financial Implications:**

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

**Strategic Implications:**

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

**Sustainability Implications:**

➤ **Environmental:**

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

➤ **Economic:**

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

➤ **Social:**

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

**Voting Requirements:**

Simple majority.

**OFFICER RECOMMENDATION**

ITEM 8.5.2

That Council with respect to meeting times, dates and locations;

1. Keep the meeting time for Ordinary Meetings at 4.00pm;
2. Endorse the dates for ordinary Council meetings in 2011 as follows;
  - 18 & 25 January 2011
  - 15 & 22 February 2011
  - 15 & 22 March 2011
  - 19 & 27 April 2011
  - 17 & 24 May 2011
  - 21 & 28 June 2011
  - 19 & 26 July 2011
  - 16 & 23 August 2011
  - 20 & 27 September 2011
  - 18 & 25 October 2011
  - 15 & 22 November 2011
  - 20 December 2011
3. Host a meeting of citizens and community organisations at the Peaceful Bay Progress Association Hall and the Tingle Dale Hall at times and dates to be determined by the CEO in conjunction with the Shire President and widely advertise those times & dates prior to the meeting; and
4. Advertise in the Denmark Bulletin, on Council's website and on Council's Notice Boards the dates and locations in parts 2 & 3.



At the meeting held on the 14 December 2010, Cr Wakka raised concern in relation to having two Council meetings in October, before and after the Election.

The CEO advises that the 2011 Local Government Election will be held on the 15 October 2011 which provides Council with the following options;

- Make the first meeting for the month the Special Meeting of Council following the Election and have one only Ordinary (Decision Making) Meeting on the 25<sup>th</sup>;
- Hold the Special Meeting of Council on the 18<sup>th</sup> immediately prior to the Ordinary (Discussion Only) Meeting of Council and keep the Ordinary (Decision Making) meeting on the 25<sup>th</sup>; or
- Hold the Special Meeting of Council on Monday, 17<sup>th</sup> October and keep the third and fourth Tuesday as the usual Ordinary Meetings of Council (18<sup>th</sup> & 25<sup>th</sup>).

#### ALTERNATE OFFICER RECOMMENDATION

ITEM 8.5.2

That Council with respect to meeting times, dates and locations;

1. Keep the meeting time for Ordinary Meetings at 4.00pm;
2. Endorse the dates for ordinary Council meetings in 2011 as follows;
  - 18 & 25 January 2011
  - 15 & 22 February 2011
  - 15 & 22 March 2011
  - 19 & 27 April 2011
  - 17 & 24 May 2011
  - 21 & 28 June 2011
  - 19 & 26 July 2011
  - 16 & 23 August 2011
  - 20 & 27 September 2011
  - 25 October 2011
  - 15 & 22 November 2011
  - 20 December 2011
3. Endorse the date of the 18 October 2011 as a Special Meeting of Council for the following purposes;
  - a. Election of the Shire President & Deputy Shire President;
  - b. The appointment of Council Committees and Delegates;
  - c. The appointment of Council Delegates to external organisations.
4. Host a meeting of citizens and community organisations at the Peaceful Bay Progress Association Hall and the Tingledale Hall at times and dates to be determined by the CEO in conjunction with the Shire President and widely advertise those times & dates prior to the meeting; and
5. Advertise in the Denmark Bulletin, on Council's website and on Council's Notice Boards the dates and locations in parts 2 & 3.

#### CR HINDS' RECOMMENDATION

ITEM 8.5.2

That Council with respect to meeting times, dates and locations;

1. Keep the meeting time for Ordinary Meetings at 4.00pm;
2. Endorse the dates for ordinary Council meetings in 2011 as follows;
  - 18 & 25 January 2011
  - 15 & 22 February 2011
  - 15 & 22 March 2011
  - 19 & 27 April 2011
  - 17 & 24 May 2011
  - 21 & 28 June 2011
  - 19 & 26 July 2011
  - 16 & 23 August 2011
  - 20 & 27 September 2011
  - 18 & 25 October 2011
  - 15 & 22 November 2011
  - 13 & 20 December 2011

3. Host a meeting of citizens and community organisations at the Peaceful Bay Progress Association Hall and the Tingle Dale Hall at times and dates to be determined by the CEO in conjunction with the Shire President and widely advertise those times & dates prior to the meeting; and
4. Advertise in the Denmark Bulletin, on Council's website and on Council's Notice Boards the dates and locations in parts 2 & 3.

**Cr Hinds' comment**

Part 2 is amended to include the 13 December 2011.

<b>COUNCIL RESOLUTION</b>	<b>ITEM 8.5.2</b>
<b>MOVED: CR HINDS</b>	<b>SEDONDED: CR RICHARDSON-NEWTON</b>
That Council with respect to meeting times, dates and locations;	
<ol style="list-style-type: none"> <li>1. Keep the meeting time for Ordinary Meetings at 4.00pm;</li> <li>2. Endorse the dates for ordinary Council meetings in 2011 as follows;                     <ul style="list-style-type: none"> <li>18 &amp; 25 January 2011</li> <li>15 &amp; 22 February 2011</li> <li>15 &amp; 22 March 2011</li> <li>19 &amp; 27 April 2011</li> <li>17 &amp; 24 May 2011</li> <li>21 &amp; 28 June 2011</li> <li>19 &amp; 26 July 2011</li> <li>16 &amp; 23 August 2011</li> <li>20 &amp; 27 September 2011</li> <li>25 October 2011</li> <li>15 &amp; 22 November 2011</li> <li>13 &amp; 20 December 2011</li> </ul> </li> <li>3. Endorse the date of the 18 October 2011 as a Special Meeting of Council for the following purposes;                     <ol style="list-style-type: none"> <li>a. Election of the Shire President &amp; Deputy Shire President;</li> <li>b. The appointment of Council Committees and Delegates;</li> <li>c. The appointment of Council Delegates to external organisations.</li> </ol> </li> <li>4. Host a meeting of citizens and community organisations at the Peaceful Bay Progress Association Hall and the Tingle Dale Hall at times and dates to be determined by the CEO in conjunction with the Shire President and widely advertise those times &amp; dates prior to the meeting; and</li> <li>5. Advertise in the Denmark Bulletin, on Council's website and on Council's Notice Boards the dates and locations in parts 2 &amp; 3.</li> </ol>	
<p>6.25pm – Cr Sampson left the meeting.</p>	
<b>CARRIED: 10/0</b>	<b>Res: 211210</b>

**REASONS FOR CHANGE**

Corrected date from 2010 to 2011 in part 2 and added 13 December 2011.

<b>8.5.3 MOU FOR MUTUAL AID DURING EMERGENCIES &amp; RECOVERY</b>
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<b>File Ref:</b>	ORG20
<b>Applicant / Proponent:</b>	Great Sothern Zone of WALGA
<b>Subject Land / Locality:</b>	Not applicable
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	8 December 2010
<b>Author:</b>	Dale Stewart, Chief Executive Officer
<b>Authorising Officer:</b>	Dale Stewart, Chief Executive Officer
<b>Attachments:</b>	Yes

**Summary:**

The Great Southern Zone of the Western Australian Local Government Association (WALGA) seeks the consideration all Councils of the Great Southern in supporting the principle of a Memorandum of Understanding (MOU) relating to mutual aid between those Councils, in the event of an emergency or post incident recovery.

**Background:**

The author believes that a similar agreement has recently been endorsed by Council's of the South West.

The matter was briefly considered at the last meeting of the Great Southern Zone (of WALGA) for referral to Councils for initial comment and support as to the principle.

**Comment:**

The purpose of this Memorandum is to:

1. Facilitate the provision of mutual aid between member Councils of the Great Southern Zone of the Western Australian Local Government Association during emergencies and post incident recovery.
2. Enhance the capacity of our communities to cope in times of difficulty.
3. Demonstrate the capacity and willingness of participating Councils to work co-operatively and share resources within the region.

The Parties to the Agreement would include;

- City of Albany
- Shire of Broomehill-Tambellup
- Shire of Cranbrook
- Shire of Denmark
- Shire of Gnowangerup
- Shire of Jerramungup
- Shire of Katanning
- Shire of Kent
- Shire of Kojonup
- Shire of Plantagenet
- Shire of Woodanilling

The guiding principle of this Memorandum is that any support given to a local government in a particular emergency event shall be voluntary and of a level that will not unduly compromise the operability of the Council giving the support.

Partners to the Memorandum would agree to;

*"in times of community distress due to an emergency incident, agree where possible to:*

1. *Provide what ever resources may be available within the means of that Council to respond to the emergency incident if requested;*

2. *Provide whatever resources may be available within the means of that Council to assist with post incident recovery in the community.”*

The Memorandum, in the manner it is written, implies that it is the CEO's of the various participatory local authorities that would need to agree to the principles of assisting in times of emergencies. The view of the author is that the document needs to be rewritten emphasising that it is the prerogative of the Councils and the Shire Presidents to undertake such mutual aid. In that regard the signatures to the agreement should therefore also be the Shire Presidents (and Mayor), in conjunction with the CEO's, who need to implement the agreement.

Expectations detailed in the MOU include;

1. *“To provide where possible both physical and human resources to assist with the recovery management during emergencies. The type of assistance initially is to assist immediate response and recovery of a short duration. Ongoing protracted assistance, but still in the absence of the emergency being declared a disaster, will be subject to further negotiation and agreement in writing between the parties concerned.*
2. *To ensure that all requests for support will be made through the Incident Controller (IC) of the designated Hazard Management Agency (HMA) for the incident, in consultation with the designated Local Recovery Coordinator (LRC) and the Local Emergency Coordinator (LEC).*
3. *To ensure all personnel and equipment provided are covered by the providers own insurance.*
4. *Providers of support will be responsible for all costs associated with it's legislative responsibilities for it's employees and equipment incurred during the provision of support unless otherwise agreed in writing.*
5. *The Requestor for support will be responsible for all incidental costs associated with the Provider's personnel and equipment such as catering, accommodation, OHS issues, transport fuel and storage.*
6. *In the event the emergency is declared a Disaster, State and Commonwealth Funding assistance will be sought in compliance with relevant State and Commonwealth Policies”.*

From the Shire of Denmark's Emergency Service Volunteers perspective the provision of mutual aid during emergencies and post incident recovery to other communities is a well established part of their value system and for them the MOU represents a formalisation of how they would already respond to a regional emergency or recovery operation.

The MOU is also a reflection of how Council has responded in the past to emergencies in nearby communities such as the 2000 Mount Barker Fires and fires that periodically occur in the City of Albany.

**Consultation:**

The Council's Local Emergency Management Committee (LEMC) at its meeting of 7 December 2010 resolved as follows;

*“That the Local Emergency Management Committee recommends to Council that;*

1. *The Shire of Denmark authorise the Shire President and Chief Executive Officer to sign the “Memorandum of Understanding of the Member Councils of the Great Southern Zone Western Australian Local Government Association for the provision of mutual aid during emergencies and post incident recovery 2011” subject to it being in accordance with the draft document tabled.*

2. *The Shire of Denmark also to enter into a similar agreement for the provision of mutual aid during emergencies and post incident recovery with the Shires of Manjimup and Boyup Brook.*"

The reason why the Committee has recommended that Council also enter similar agreement with the Shires of Manjimup and Boyup Brook as the LEMC has members from Walpole on it and there is a high likelihood that the Shire of Denmark would be cooperating with both the Shires of Manjimup and Boyup Brook in the event of a major fire from the north west.

**Statutory Obligations:**

The Local Government Act 1995, Section 6.8 relates

*"Expenditure from municipal fund not included in annual budget*

- (1) *A local government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure —*
- (a) *is incurred in a financial year before the adoption of the annual budget by the local government;*
  - (b) *is authorised in advance by resolution\*; or*
  - (c) *is authorised in advance by the mayor or president in an emergency."*

The Emergency Management Act 2005, Emergency Management Regulations 2006 and State Emergency Management Policies also relate and support the general principles espoused in the draft MOU.

**Policy Implications:**

Council's current Policy P040233 relates;

*"P040233 DONATION OF FUNDS TO EMERGENCY AND DISASTER RECOVERY*

*In considering financial assistance to various emergency and disaster relief efforts and to accommodate funding for such unforeseen requests during a budget year the following budget provisions be made;*

- *Allowance for 1 x annual Local and State Emergency/Disaster - up to \$10,000; and*
- *Allowance for 1 x annual National Emergency/Disaster – up to \$5,000; and*
- *International Emergency/Disaster - Nil and the CEO be authorised to advise proponents of requests for international disaster relief that Council's Policy is to refer such requests to State & Federal Governments, whose jurisdiction includes international relations.*

**Budget / Financial Implications:**

The draft MOU quotes that *"that the allocation of a participating Council's staff resources and plant is an operational issue, and as such is the responsibility of the CEO of the Council seeking to offer aid"*.

This may be the case, but the opinion of the author is that (the law) is not intended to imply or be construed to allow the CEO to offer relief assistance to other organisations or other Councils. It has been taken out of context.

This would only be permitted (at law) if, for example, the participating Council had a contingency allocation in the budget for external recovery or emergency aid assistance that the CEO could, with Council Policy and or Budget lines, 'swing' labour and or plant across to that area of the Council's Adopted Budget, and, technically, only within the confines of the amount allocated.

In this regard the author is of the opinion that this needs to be reworded and cross referenced to section 6.8 of the Local Government Act.

There are no known financial implications upon the Council's current Budget or Plan for the Future. Council already has Policies that give some guidance to financial contributions being considered in the Annual Budget. Council's current Budget includes the sum of \$5,000 specifically allocated as a contingency towards State Emergency Disaster Relief assistance.

The intent of the MOU however, is that there would be an expectation of in-kind assistance (personal and equipment) as well as engaging with local community groups and service clubs in assisting the nearby community in their time of need (it may not be just financial).

**Strategic Implications:**

The MOU seeks to establish a protocol of mutual support between local authorities of the Great Southern. Whilst it is hoped that events that require enacting of the MOU are few and far between and that the relationships and communities of interest between neighbouring Councils (and its communities) would be such that there is no official need for such an MOU, the principles espoused in it are supported by the author and it provides a degree of comfort that a community and Council will not be 'on their own' in a time of need.

The author would also recommend that the document not be reviewed annually as suggested in the MOU. The author is of the view that the MOU, in its current simplicity and general lack of prescription and detail, should only need to be reviewed every 5 years or so.

The author has discounted the recommendation of the LEMC regarding entering into a similar agreement with the Shire of Boyup Brook as this Shire is not contiguous with the borders of Denmark and not part of the Great Southern. That is not to say that we will not assist if asked, just that there needs to be a 'border' or boundary to such agreements lest they become meaningless. For example, why not the other 130 local authorities of the State (all 139) all sign the same agreement?

**Sustainability Implications:**

➤ **Environmental:**

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

➤ **Economic:**

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

➤ **Social:**

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

**Voting Requirements:**

Simple majority.

*6.27pm – The Director of Infrastructure Services left the meeting and did not return.*

**COUNCIL RESOLUTION & CR HINDS' RECOMMENDATION** ITEM 8.5.3  
 MOVED: CR HINDS SECONDED: CR RICHARDSON-NEWTON

6.28pm – Cr Sampson returned to the meeting.

That Council;

1. Endorse the principle of a Memorandum of Understanding (MOU) between local authorities of the Great Southern with respect to mutual aid during emergencies and recovery, and encourage the Great Southern Zone of WALGA to seek the assistance of the WALGA Emergency Management Coordinator in reviewing and making recommendations in relation to concerns that the Shire of Denmark may have in some aspects of the document, and thereafter, subject to Council being satisfied with the final agreement, Council authorise the signing of the agreement by the Shire President and CEO.
2. Authorise the Shire President and the CEO to enter into discussions with the Shire of Manjimup regarding a similar MOU with the Shire of Manjimup and bring the results of their discussions to Council for approval and authorisation to sign.

LOST: 5/6

Res: 221210

Cr Hinds' comments

The word "minor" is removed. The changes to the wording establish clearly that Council is to be involved in learning, understanding and taking ownership of the matter. As such, this writer would expect the matter to be discussed at a Briefing Meeting.

The matter is too complex and too important to be rushed through without time for proper consideration.

In addressing questions raised by Cr Richardson-Newton at the previous meeting the CEO, assuming Council adopts the below Officer Recommendation and the effect is such that Council effectively signs an MOU, will provide a report to Council recommending a change to Policy P040233 (Donations of Funds to Emergency and Disaster Recovery).

**COUNCIL RESOLUTION & OFFICER RECOMMENDATION** ITEM 8.5.3  
 MOVE: CR SYME SECONDED: CR WAKKA

That Council;

1. Endorse the principle of a Memorandum of Understanding with local authorities of the Great Southern with respect to mutual aid during emergencies and recovery and encourage the Great Southern Zone of WALGA to seek the assistance of the WALGA Emergency Management Coordinator in reviewing and making recommendations in relation to concerns that the Shire of Denmark has in some minor aspects of the document and thereafter, subject to the signatories being satisfied with the final agreement, authorise signing of the agreement by the Shire President and CEO.
2. Authorise the Shire President and CEO to enter into discussions with the Shire of Manjimup regarding a similar MOU with the Shire of Manjimup.

CARRIED: 10/1

Res: 231210

*The CEO declared a financial & impartiality interest on the basis that the report has the potential to affect the officer's remuneration package and conditions of employment.*

*The Director of Finance & Administration, the Director of Community & Regulatory Services, the Acting Director of Planning & Sustainability and the Director of Infrastructure Services all declared financial interests on the basis they are Seniors Employees of Council employed via Contracts.*

#### **8.5.4 PROPOSED AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1995**

<b>File Ref:</b>	LEG.6
<b>Applicant / Proponent:</b>	Not applicable
<b>Subject Land / Locality:</b>	Not applicable
<b>Disclosure of Officer Interest:</b>	The officer declares an impartiality and financial interest as the reports has the potential to affect the officer's remuneration package and conditions of employment.
<b>Date:</b>	1 December 2010
<b>Author:</b>	Dale Stewart, Chief Executive Officer
<b>Authorising Officer:</b>	Dale Stewart, Chief Executive Officer
<b>Attachments:</b>	Yes

#### **Summary:**

The Minister for Local Government has requested sector feedback through the Western Australian Local Government Association (WALGA) on a number of proposed amendments to the Local Government Act 1995. WALGA encourages a strong response from Local Government Councils with feedback required by **7 January 2011**.

#### **Background:**

WALGA's Infopage (in part) states as follows;

*"The Association's continued endeavour to foster closer working relationships with the Minister for Local Government and his Department has paid dividends, with the Minister asking the Association to lead the consultation process on a Local Government Act Amendment Bill. This is a significant departure from past practice; traditionally, sector comment has been sought once the Minister and Department of Local Government have drafted instructions to the State Solicitor's Office.*

*Some matters of long-standing importance to the sector, underpinned by WALGA State Council endorsement, feature in the proposals. WALGA welcomes this opportunity to provide comment prior to preparation of the drafting instructions and appreciates the influence this consultation process will have in developing amendments to the Local Government Act 1995.*

*In light of the importance of this consultation process, the Association requests that the Minister's proposals are considered at a Full Council meeting, with your Council's resultant resolution relayed to WALGA for collating with other Local Government responses to form a representative view and provide strong arguments should the need arise to negotiate aspects of the Minister's proposals.*

*It is critical to any consultation process that a strong sector response is gathered, and even more so on this occasion as indication of the sector's appreciation of the opportunity to lead and influence the Local Government Amendment Bill as it progresses in 2011".*

#### **Comment:**

Seven amendments to the Local Government Act 1995 are proposed. These issues are expanded in the attached Explanatory Notes, together with the view of WALGA.



Council is requested to indicate the level of support or opposition to each proposal and provide additional comments where appropriate. More detailed submissions are also welcomed.

The Minister’s proposals are highlighted in bold and numbered 1 – 7 as follows;

**1. Reducing the number of Elected Members to between six and nine**

Officer comment: whilst the view of the officer is that most local authorities Governance processes in WA, including the Shire of Denmark would be more effective and efficient with less than 10 Councillors, it is the authors view that this should not be legislated and instead left to the local community to determine.

The position of WALGA and the officer is that “They oppose the Local Government Reform Steering Committee Report recommendation 8 concerning prescribing the number of Elected members to between 6 and 9.”

Council passed a resolution in June 2009 on the general issue of Councillor numbers (with respect to the Shire of Denmark) as follows;

*“That Council, in responding to the Minister for Local Government’s directive of 5 February 2009 in relation to councillor numbers being reduced to between 6 and 9, resolve to make a report to the Local Government Advisory Board proposing that no change be made to its current 3 ward & 12 representative system as the current system is adequate for the needs of the Shire of Denmark. Council will reconsider this issue, subject to adequate community consultation, should the Governments intention in relation to amalgamation and representational issues achieve greater clarity.”*

The Minister issued the request for all Councils to reduce its numbers to less than 10 in February 2009. The Department of Local Government has provided the Shire of Denmark with a table (below) showing the Councils and relative Councillor numbers that will exist for the 2011 Local Government Elections (with several months left for Councils to still resolve to reduce numbers).

The table reflects proposals that have been gazetted or are in the process of (October 2010), including the City of Albany, which resolved recently to submit a proposal to the Minister to reduce from 12 Councillors and the Mayor, to 8 Councillors and the Mayor for 2011. Plantagenet Council presently has 9 Councillors (with a population of approximately 5,000) and Manjimup 11 Councillors (with a population of approximately 9,773).

Number of Elected Members	Number of local governments (gazetted/currently in progress)
6	9
7	34
8	14
9	42
10	8
11	10
12	7
13	11
14	2
15	2
<b>TOTALS</b>	<b>139</b>

An analysis of the table reveals the following statistics;

- There 139 Councils in WA with 40 of those with 10 Councillors or more and 22 with 12 Councillors or more.
- The Councils with 12 Councillors or more are;

Number of Councillors	Council	Population (2009)	Councillors per Capita
12	Wagin	1,844	154
12	Denmark	5,100	425
12	Murray	14,000	1,167
12	Mundaring	33,438	2,787
12	Geraldton-Greenough	36,887	3,074
12	Kalamunda	52,360	4,363
12	Gosnells	100,000	8,333
13	Subiaco	18,115	1,393
13	Nedlands	22,012	1,693
13	Harvey	23,096	1,777
13	South Perth	25,421	1,955
13	Fremantle	27,453	2,112
13	Busselton	29,183	2,245
13	Kalgoorlie-Boulder	29,684	2,283
13	Bunbury	32,841	2,526
13	Mandurah	67,053	5,158
13	Melville	99,351	7,642
13	Joondalup	160,000	12,308
14	Armadale	55,432	3,959
14	Stirling	193,000	13,786
15	Swan	58,861	3,924
15	Wanneroo	134,258	8,951

**2. Salaries and Allowances Tribunal to set the fees for Elected Members and salaries for CEOs**

Officer comment: The officers view is that the introduction of the Salaries and Allowances Tribunal with respect to setting members fees and allowances may have the risk of increasing the costs of governance, unless the fees prescribed are as a guide and not mandatory. From a governance perspective, the officer has the view that a minimum and scale of fees set by another authority, whilst contrary to the principles of self determination, may assist widen the opportunity for prospective Councillors that might otherwise not be able to afford to be a Councillor (by increasing the fees). On balance the CEO supports the position of WALGA however.

With respect to CEO salaries and remuneration, the officer in declaring his obvious financial interest in the question, believes both personally and professionally that legislating to force Councils to pay CEO’s within regulated bands will could have the effect of causing a loss of key personal from the industry to other industries and reduce flexibility for local Councils to employ the personal they wish to if they could meet the ‘market’.

The position of WALGA in relation to the two issues is;

*“That recommendation 1.35 of the Local Government Advisory Board report be supported and that the State Government be requested to amend the Local Government Act 1995 accordingly to achieve the following outcome:*

*“That the Western Australian Salaries and Allowances Tribunal be given the responsibility for establishing the range of fees and allowances for elected members, with each Local Government having the ability to set a fee within this range. The Tribunal also be required to update the fees and allowances on an annual basis.”*

- (a) *That the State Government be requested to amend the Local Government Act accordingly;*
- (b) *In the event the Local Government Act 1995 is amended as per the Association’s advocacy:*
  - i. *that the question of the quantum and extent of Councillor Fees and Allowances be sought from other states with a view of presenting this to the Western Australian Salaries and Allowances Tribunal to support any Association submission on this subject; and*
  - ii. *that targeted research be undertaken on Councillor responsibilities, level of control and work values, so that these can be extrapolated as industry averages and provided to the Tribunal in further support of any Association submission.”*

*“WALGA takes a view that Local Governments should retain the general competence power to determine appropriate remuneration levels for their key executive”.*

### **3. New mechanism for the temporary suspension of Council**

Officer comment: The officer supports the general proposition of the Minister. WALGA’s policy position on this issue “was considered in 2008 where there was support for a mechanism to suspend individual Elected Members rather than an entire Council.”

### **4. Require Elected Members to resign when elected to State or Commonwealth Parliament**

Officer comment: The proposal is supported by the officer and aligns with a State Council resolution of WALGA , of August 2007 –

*That the Minister for Local Government be requested to consider amending the Local Government Act 1995 to require Elected Members to resign from Council immediately upon being declared elected to State or Federal Parliament.*

### **5. Restricting the types of local government investments to low risk products such as those with the WA Treasury Corporation, major banks and government bonds**

Officer comment: The officer supports the position of WALGA which is *“There remains subjectivity in the definition of the term ‘low risk’ in the context of this proposal. The WA Local Government Association supports the sector’s right to retain the principle of general competency powers as provided under the Local Government Act 1995, and that Local Governments be allowed to continue to decide for themselves how best to deal with investment opportunities”.*

### **6. Align criminal conviction criteria for Elected Members with that of WA Members of Parliament**

Officer comment: The officer supports the position of WALGA which is *“..that for true alignment of criteria, the proposal take a holistic approach incorporating all aspects of Candidates/Elected Member qualification and disqualification rather than one aspect of disqualification, namely criminal convictions.”*

*“One option would be for this proposal to be broadened to “Align the qualification and disqualification criteria for Local Government election candidates and Elected Members with that of Western Australian Members of State Parliament”.*”

## **7. To limit employee termination payments to one year's salary**

Officer comment: The officer notes that the Local Government Managers Association's (LGMA) view (the officer is a financial member of the LGMA) is that all staff and CEO's of amalgamated local authorities should have the same rights to redundancy in an amalgamation as all other local government employees (that being 2 years guaranteed employment or salary in lieu of). Noting the officer's obvious financial interest, the officer's view is that he supports the position of the Minister and the right of the State and Local Authority to determine such positions on an amalgamation, but that the termination / payout provisions for all local government employees should be determined on a consistent basis.

The view of the State, and presumably the Local Authority being amalgamated, would be to minimise the potential significant financial exposure to redundancies and minimise the payout, to any staff made redundant, to one year's salary.

The officer's professional opinion is therefore that Council should support the Ministers proposal.

WALGA currently has no position on this suggestion.

### **Consultation:**

Nil

### **Statutory Obligations:**

Local Government Act 1995

### **Policy Implications:**

There are no policy implications.

### **Budget / Financial Implications:**

There are no known financial implications upon the Councils current Budget or Plan for the Future.

### **Strategic Implications:**

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

### **Sustainability Implications:**

#### **➤ Environmental:**

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

#### **➤ Economic:**

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

#### **➤ Social:**

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

### **Voting Requirements:**

Simple majority.

**COUNCIL RESOLUTION & OFFICER RECOMMENDATION** ITEM 8.5.4 (a)  
 MOVED: CR SAMPSON SECONDED: CR PHAIR

That Council respond to the WALGA invitation to comment on various proposed legislative changes to the Local Government Act 1995 as follows;

1. Reducing the number of Elected Members to between six and nine  
 Response: Support the position of WALGA.
2. Salaries and Allowances Tribunal to set the fees for Elected Members and salaries for CEOs  
 Response: Support the position of WALGA.
3. New mechanism for the temporary suspension of Council  
 Response: Support the position of WALGA.
4. Require Elected Members to resign when elected to State or Commonwealth Parliament  
 Response: Support the position of WALGA.
5. Restricting the types of local government investments to low risk products such as those with the WA Treasury Corporation, major banks and government bonds  
 Response: Support the position of WALGA.
6. Align criminal conviction criteria for Elected Members with that of WA Members of Parliament  
 Response: Support the position of WALGA.
7. To limit employee termination payments to one year's salary  
 Response: Support the position of the Minister.

CARRIED: 11/0 Res: 241210

RECOMMENDED ADDITIONAL MOTION ITEM 8.5.4 (b)

That Council request the CEO to provide a report to Council regarding Councillor numbers for the Shire of Denmark following receipt of the proposed Community Survey which includes a question of the community on the Minister's Directive.

**COUNCIL RESOLUTION** ITEM 8.5.4 (b)  
 MOVED: CR SAMPSON SECONDED: CR WAKKA

That Council request the CEO to provide a report to Council regarding Councillor numbers for the Shire of Denmark following receipt of the proposed Community Survey, if it includes a question of the community on the Minister's Directive.

CARRIED: 9/2 Res: 251210

REASONS FOR CHANGE

Replaced the word "which" with the words "if it" so as to not pre-empt that the Survey will include a question on the matter.

**Cr Hinds - Additional suggested amendment to the Local Government Act 1995**

Cr Hinds' Comment

When one observes the comments of State, Territory and Federal parliamentarians as reported in the print and electronic media, it is clear that they have rights to freedom of expression of opinion which are not available to elected members of local government. Such restrictions which are placed upon them are for reasons of party discipline or cabinet confidentiality, not law or regulation. They also are not faced with the threat of a complaint to a Standards Tribunal just for expressing an opinion.

It appears that steps are being taken to align the roles of elected members of government. eg In relation to disqualification from office as suggested in point 6 of this Officer Recommendation.

Freedom of Speech (ie The right to express one's opinion) is a fundamental human right which must not be eroded by the WA Local Government Act 1995 or any other Act.

6.51pm – The Executive Assistant left the meeting.

6.53pm – The Executive Assistant returned to the meeting & the Director of Planning & Sustainability left the meeting.

7.00pm – The Director of Planning & Sustainability returned to the meeting.

<b>COUNCIL RESOLUTION &amp; RECOMMENDED ADDITIONAL ITEM 8.5.4 (c)</b>	
MOTION	
MOVED: CR HINDS	SECONDED: CR RICHARDSON-NEWTON
That in addition to providing other requested advice to the Minister for Local Government with respect to proposed changes to the Local Government Act 1995, that WALGA also support the following concept.	
That the Local Government Act 1995 be amended, where necessary, to allow elected members of Shire and City Councils the same freedoms of expression of opinion that are possessed by elected members of State, Territory and Federal Parliaments.	
LOST: 3/8	Res: 261210

**9. COMMITTEE REPORTS & RECOMENDATIONS**

<b>9.1</b>	<b>POISON POINT UNIVERSAL ACCESS FISHING PLATFORMS</b>
<b>File Ref:</b>	DIS.1
<b>Applicant / Proponent:</b>	Not applicable
<b>Subject Land / Locality:</b>	All privately held land within the Shire of Denmark
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	9 December 2010
<b>Author:</b>	Gregg Harwood, Director of Community & Regulatory Services
<b>Authorising Officer:</b>	Gregg Harwood, Director of Community & Regulatory Services
<b>Attachments:</b>	Yes

**Summary:**

The report considers a recommendation from the Disability Services Advisory Committee expressing support Council Resolution 111108 (Item 9.1.2) of the 25 November 2008 regarding the construction of universal fishing platforms at Poison Point and setting a time table for achieving universal access and recommends that a decision be deferred to the January 2011 round of Council meetings when a more complete report can be prepared by Council staff.

**Background:**

The construction of fishing platforms at Poison Point was a proposal that emerged late in Council's consideration of the Wilson Inlet Foreshore Reserves Plan. The proposal has been the subject of considerable community debate in terms of its form, the need for the facility, its environmental impact, the level of access it will have and its social outcomes.

As part of the community debate/ lobbying process Kees Koning of the Wilson Inlet Restoration Group addressed the Disability Services Advisory Committee on the 8

December 2010 and the following Committee recommendation to Council was the result.

*“That the Disability Services Advisory Committee advise Council that it supports Council Resolution 111108 (Item 9.1.2) of the 25 November 2008 full Council meeting regarding the proposed construction of universal (disability) access fishing platforms at Poison Point and makes the following recommendations regarding the project:*

- 1. The project being fully wheel chair (universal/ disability) accessible in terms of two wheel drive car access / parking, the access path and fishing platforms themselves.*
- 2. If the project is to be constructed on a staged basis it is to be fully wheel chair (universal/ disability) access to the fishing platforms within three years of commencing construction.*
- 3. That the project be a high priority in the 2011 works program.*
- 4. That the Disability Services Advisory Committee be requested to investigate opportunities for obtaining funding from external agencies for the project that have an interest in the site being universally accessible.”*

**Comment:**

Having considered Kees Koning's presentation the Disability Services Advisory Committee moved the resolution for the following reasons:

- 1) They are of the opinion that new infrastructure that is constructed by the Shire of Denmark should be universally accessible.
- 2) They are of the opinion that for a person in a wheel chair being able to fish from a platform at Poison Point would be a special experience.
- 3) The construction of a universal access platform at Poison Point will make it easier for people with prams and young children to access the location.
- 4) The construction of a universal access platform at Poison Point will be an iconic attraction for tourists with disabilities.
- 5) They would like to see the project move forward and to be constructed to full universal access standards.
- 6) They are of the opinion that the construction of a universal access way will be beneficial to the environment of Poison Point in the longer term as it will eliminate the need for the current unregulated access.

In considering the above points and comments at an officer level it is noted that there are parties that would like to participate in the debate and factors that need to be more fully considered. In addition to this the Paths and Trails Committee and the Poison Point Steering Group also have a role to comment and for this reason it is recommended that consideration of the matter be deferred to the January 2011 round of Council meetings when a more complete report can be prepared by Council staff.

**Consultation:**

This Committee's recommendation is the result of their discussion of this issue with Kees Koning of the Wilson Inlet Restoration Group.

**Statutory Obligations:**

Council has an obligation to consider providing universal access to its facilities under its Disability Access and Inclusion Plan, Equal Opportunity Act 1984 and the

Disability Discrimination Act 1992. This obligation is particularly strong in the case of new facilities, where practical.

**Policy Implications:**

Section of Council's Disability Access and Inclusion Plan includes the following access and inclusion policy statement. Section 3 & 6 of this plan are as follows:

*3. ACCESS AND INCLUSION POLICY STATEMENT FOR PEOPLE WITH DISABILITIES, THEIR FAMILIES AND CARERS*

*The Shire of Denmark is committed to ensuring that the community is an accessible and inclusive community for people with disabilities, their families and carers.*

*The Shire of Denmark interprets an accessible and inclusive community as one in which all council functions, facilities and services (both in-house and contracted) are open, available and accessible to people with disabilities, providing them with the same opportunities, rights and responsibilities enjoyed by all other people in the community.*

*The Shire' of Denmark recognises that people with disabilities are valued members of the community who make a variety of contributions to local social, economic and cultural life. The Shire believes that a community that recognises its diversity and supports the participation and inclusion of all of its members makes for a richer community life.*

*The Shire of Denmark believes that people with disabilities, their families and carers who live in country areas should be supported to remain in the community of their choice.*

*6. OUTCOMES*

*The six major outcomes are as follows:*

*Outcome 1: People with disabilities have the same opportunities as others to access the services of and any events organised by, a public authority.*

*Outcome 2: People with disabilities have the same opportunities as other people to access the buildings and other facilities of a public authority.*

*Outcome 3: People with disabilities receive information from a public authority in a format that will enable them to access the information as readily as other people are able to access it.*

*Outcome 4: People with disabilities receive the same level and quality of service from the staff of a public authority as other people receive from the staff of that public authority.*

*Outcome 5: People with disabilities have the same opportunities as other people to make complaints to a public authority.*

*Outcome 6: People with disabilities have the same opportunities as other people to participate in any public consultation by a public authority*

**Budget / Financial Implications:**

The construction of a fully universal access compliant fishing platforms at Poison Point will have significant cost implications for Council and it is unlikely the project will proceed without significant funding from external agencies with an interest in the site being universally accessible.

**Strategic Implications:**

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



**Sustainability Implications:**

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

**➤ Environmental:**

While this is a matter of current community debate based on the success outcome of the infrastructure that the Department of Environment Conservation has constructed in their reserves with proper planning, design and consultation access paths and platforms with acceptable environmental outcomes could be constructed at this location.

**➤ Economic:**

The construction of a fully universal access complaint fishing platforms at Poison Point will make the area easily accessible to tourists stimulating economic growth.

**➤ Social:**

The construction of a fully universal access complaint fishing platforms at Poison Point will have the social benefit of making the area accessible to all Denmark residents but may also have the negative connotation of potentially taking away what is currently a relative quiet, remote fishing retreat that is used and enjoyed mostly by local residents. The Authors view is that, to some extent, getting to fishing spots is half the fun of fishing and if Denmark is to maintain its desirability as residential area while balancing the demands of sharing that environment with tourists during a peak season private space for locals needs to be indentified and maintained.

**Voting Requirements:**

Simple majority.

**COMMITTEE RECOMMENDATION**

9.1

That the Disability Services Advisory Committee advise Council that it supports Council Resolution 111108 (Item 9.1.2) of the 25 November 2008 full Council meeting regarding the proposed construction of universal (disability) access fishing platforms at Poison Point and makes the following recommendations regarding the project:

1. The project being fully wheel chair (universal/ disability) accessible in terms of two wheel drive car access / parking, the access path and fishing platforms themselves.
2. If the project is to be constructed on a staged basis it is to be fully wheel chair (universal/disability) access to the fishing platforms within three years of commencing construction.
3. That the project be a high priority in the 2011 works program.
4. That the Disability Services Advisory Committee be requested to investigate opportunities for obtaining funding from external agencies for the project that have an interest in the site being universally accessible.

**CEO comment:**

The CEO is aware that a recommendation is coming from the Officer involved with the Poison Point Project Steering Committee and this is expected to be available for the January 2011 Council meetings and provides the following Officer Recommendation.

**COUNCIL RESOLUTION & OFFICER RECOMMENDATION** ITEM 9.1  
 MOVED: CR SAMPSON SECONDED: CR PEDRO

That Council defer consideration of the Disability Services Advisory Committee recommendation regarding the construction of universal fishing platforms at Poison Point to the January 2011 round of Council meetings when a more complete report discussing the wider range of factors affecting the proposal can be prepared by Council staff.

7.10pm – Cr Wakka left the meeting.

7.13pm – Cr Wakka returned to the meeting.

CARRIED: 10/1

Res: 271210

**10. MATTERS BEHIND CLOSED DOORS**

Nil

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

Nil

**12. CLOSURE OF MEETING**

7.15pm - *There being no further business to discuss, the Shire President, Cr Thornton, declared the meeting closed.*

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

Signed: \_\_\_\_\_  
*Dale Stewart – Chief Executive Officer*

Date: 22 December 2010

These minutes were confirmed at the meeting of the \_\_\_\_\_

Signed: \_\_\_\_\_  
*(Presiding Person at the meeting at which the minutes were confirmed.)*