

Shire of Denmark

Ordinary Council Meeting AGENDA

16 June 2020



TO BE HELD IN THE COUNCIL CHAMBERS, 953 SOUTH COAST HIGHWAY,
DENMARK ON TUESDAY, 16 JUNE 2020, COMMENCING AT 4.00PM.



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Strategic Community Plan (snapshot)

E1.0

Our Economy

We are an attractive location to live, invest, study, visit and work

- E1.1 To have a stable and locally supported business community that embraces innovation, creativity, resourcefulness and originality
- E1.2 To be a vibrant and unique tourist destination, that celebrates our natural and historical assets
- E1.3 To have diverse education and employment opportunities
- E1.4 To recognise the importance of agriculture in our local economy and protect prime agricultural land

N2.0

Our Natural Environment

Our natural environment is highly valued and carefully managed to meet the needs of our community, now and in the future

- N2.1 To preserve and protect the natural environment
- N2.2 To promote and encourage responsible development
- N2.3 To reduce human impact on natural resources, reduce waste and utilise renewable energy
- N2.4 To acknowledge and adapt to climate change

B3.0

Our Built Environment

We have a functional built environment that reflects our rural and village character and supports a connected, creative, active and safe community

- B3.1 To have public spaces and infrastructure that are accessible and appropriate for our community
- B3.2 To have community assets that are flexible, adaptable and of high quality to meet the purpose and needs of multiple users
- B3.3 To have a planning framework that is visionary, supports connectivity and enables participation
- B3.4 To manage assets in a consistent and sustainable manner
- B3.5 To have diverse and affordable housing, building and accommodation options

C4.0

Our Community

We live in a happy, healthy, diverse and safe community with services that support a vibrant lifestyle and foster community spirit

- C4.1 To have services that foster a happy, healthy, vibrant and safe community
- C4.2 To have services that are inclusive, promote cohesiveness and reflect our creative nature
- C4.3 To create a community that nurtures and integrates natural, cultural and historical values
- C4.4 To recognise and respect our local heritage and Aboriginal history

L5.0

Our Local Government

The Shire of Denmark is recognised as a transparent, well governed and effectively managed Local Government

- L5.1 To be high functioning, open, transparent, ethical and responsive
- L5.2 To have meaningful, respectful and proactive collaboration with the community
- L5.3 To be decisive and to make consistent and well considered decisions
- L5.4 To be fiscally responsible
- L5.5 To embrace change, apply technological advancement and pursue regional partnerships that drive business efficiency
- L5.6 To seek two-way communication that is open and effective

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1. DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS

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

MEMBERS:

Cr Ceinwen Gearon (Shire President)
 Cr Mark Allen (Deputy Shire President)
 Cr Geoff Bowley
 Cr Kingsley Gibson
 Cr Steve Jones
 Cr Jan Lewis
 Cr Ian Osborne
 Cr Janine Phillips
 Cr Roger Seeney

STAFF:

Mr David Schober (Acting Chief Executive Officer)
 Mr David King (Director Assets and Sustainable Development)
 Mr Lee Sounness (Executive Manager Corporate Services)
 Ms Angela Simpson (Executive Manager Community Services)
 Ms Claire Thompson (Executive Assistant & Governance Coordinator)
 Ms Sue Mearns (Executive Support Officer)

APOLOGIES:

ON APPROVED LEAVE(S) OF ABSENCE:

ABSENT:

VISITORS:

DECLARATIONS OF INTEREST:

Name	Item No	Interest	Nature

3. ANNOUNCEMENTS BY THE PERSON PRESIDING

4. PUBLIC QUESTION TIME

4.1 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

4.2 PUBLIC QUESTIONS

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

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

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

Questions from the Public

4.3 QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN

Nil.

4.4 PRESENTATIONS, DEPUTATIONS & PETITIONS

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

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

Nil.

5. APPLICATIONS FOR FUTURE LEAVE OF ABSENCE

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

6. CONFIRMATION OF MINUTES

6.1 ORDINARY COUNCIL MEETING – 19 MAY 2020

OFFICER RECOMMENDATION

ITEM 6.1

That the minutes of the Ordinary Meeting of Council held on the 19 May 2020 be confirmed as a true and correct record of the proceedings.

6.2 STRATEGIC BRIEFING NOTES – 19 MAY 2020

OFFICER RECOMMENDATION

ITEM 6.2

That the Notes from the Strategic Briefing Forum held on the 19 May 2020 be received.

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

Nil.

8. REPORTS OF OFFICERS

8.1 DIRECTOR ASSETS AND SUSTAINABLE DEVELOPMENT

8.1.1 LIGHTS BEACH CONCEPT PLAN

File Ref:	A3108
Applicant / Proponent:	Shire of Denmark
Subject Land / Locality:	Light Beach Car Park (Reserve 24913)
Disclosure of Officer Interest:	Nil
Date:	2 June 2020
Author:	David King, Director Assets and Sustainable Development
Authorising Officer:	David Schober, Acting Chief Executive Officer
Attachments:	8.1.1a - Draft Lights Beach Concept Plan 8.1.1b - Final Lights Beach Concept Plan 8.1.1c - Schedule of Submissions

Summary:

Following Council's approval of the Lights Beach draft Concept Plan, community consultation has been undertaken and considered prior to presenting Council with a final concept plan for approval.

Background:

A Lights Beach Concept Plan Working Group (LBCPWG) was initiated on 21st November 2017. The group consists of two (2) Councillors, three (3) members of the community and four (4) Shire Officers. The objective was to develop a Concept Plan to provide detail on upgrade of existing facilities and provision of new facilities in the proposed Light Beach area such that the project is "shovel-ready" for funding consideration by Council and/or external funding bodies.

The Concept Plan has been developed through a series of meetings with the group and various iterations of the Concept Plan have been developed through the process.

Attachment 8.1.1a is the draft Lights Beach Concept Plan that was presented to Council in April 2020 and which was the subject of the consultation.

Consultation:

The LBCPWG has formed the internal working group and has developed and agreed on the final draft Concept Plan as attached.

In accordance with Council resolution 040420 the following additional consultation was undertaken:

- Advertising on the Shire website - 1st May 2020
- Advertising in a local paper - 7th May 2020
- Notice Board at the Lights Beach carpark - 1st May 2020

In addition, officers presented the draft Concept Plan to the Disability Services Advisory Committee on the 15th May 2020.

A number of themes were evident from the consultation and are discussed below:

Requirement for the upgrade

A number of comments questioned the need for the upgrade. This is addressed within the economic, social and comment sections of this report.

Experience for all abilities

It is noted that topography constraints would limit the 'all ability' access to beach level. However, the Disability Services Advisory Committee requested that more emphasis should be made on providing an experience for people of 'all ability'. This has been considered and addressed in the revised Concept Plan by providing a central interpretive signage area, proposing that lookouts both West and East are accessible, designing the lookouts to be 'all ability' friendly eg: can be used from a sitting height.

National Park delineation and dog areas

Concerns were raised on the delineation of the Council approved off leash areas and the boundary of the National Park. This will be addressed by appropriate signage with indicative locations shown on the Concept Plan. It is however recognised by officers that even with good signage, some confusion is likely to remain resulting in user conflict. This will be addressed in the review of the Dog Policy which will seek to understand some of the current issues and be addressed via Policy change. The concept design has limited impact on this issue.

Appropriateness to use Drought Community Programme Funding

The Drought Community Programme Funding criteria was not simply aimed at projects to assist directly with drought. The emphasis of the eligibility criteria was to develop projects that stimulate the local economy in activities that are not associated with drought, in order to provide jobs for those who may be impacted. This is addressed in the economic section of this report.

Traffic Hazards

Concerns over the blind summit leading into the car park were raised. The revised concept indicatively shows some traffic calming that will need to be refined through the detailed design phase.

Detailed Comments

There were a number of comments relating to specific details of the plan. The plan is conceptual in nature and will be subject to a detailed design process prior to construction. Through the detailed design process comments can be addressed such as bike rack provisions, parking bay size, colour, and beach access details.

There were a number of comments relating to user movements through the site and general usability. These have been considered and addressed in the final concept plan.

Statutory Obligations:

There is an existing Clearing Permit No. 7027/1 to clear native vegetation under s.51E of the *Environmental Protection Act 1986*. This permit covers the clearing required for the final concept.

Policy Implications:

The Concept Plan makes provisions to address The *Shire of Denmark Disability Access and Inclusion Plan 2018 – 2023*, strategy 2.6: "Seek opportunities to improve accessibility to recreational areas and beaches".

Budget / Financial Implications:

The estimated cost to complete the works is \$750,000. This estimate is based on the concept and would be refined through a detailed design process once funding becomes available to deliver this project.

At present there is no funding allocation for these works. At the time of writing this report, Officers are considering making application through the Drought Community Programme for delivery in the 2020/21 financial year.

Strategic & Corporate Plan Implications:

The report and officer recommendation is consistent with Council's adopted Strategic Community Plan Aspirations and Objectives and the Corporate Business Plan Actions and Projects in the following specific ways:

Denmark 2027**B3.0 Our Built Environment**

We have a functional built environment that reflects our rural and village character and supports a connected, creative and active community.

B3.1 To have public spaces and infrastructure that are accessible and appropriate for our community.

B3.2 To have community assets that are flexible, adaptable and of high quality to meet the purpose and needs of multiple users.

Corporate Business Plan**B3.1.9** Develop a concept plan for the Lights Beach precinct**Sustainability Implications:****➤ Governance:**

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

➤ Environmental:

As with most development, the environment will inevitably be impacted in some way. In this case, an amount of clearing will be required in order to facilitate functional infrastructure. The concept design has considered minimising the impact of the natural environment and avoided the necessity of large cut and fill which would result in larger than necessary clearing footprint. In addition, the project will seek to remediate adjacent degraded areas of vegetation and revegetate areas not required for hard infrastructure.

➤ Economic:

With regard to job creation, this will benefit during both the construction and operational phases. The Shire of Denmark intends to contract out the construction works to local businesses and therefore the figures below are direct impacts on local employment. It is expected that local contractors have the capability to complete the proposed works.

In the construction phase, the most recent input-output tables available from the Australian Bureau of Statistics relate to data from 1996-97. This data indicates that, for every \$1m spent on construction output (houses, non-residential buildings, etc.) in 1996-97, nine (9) jobs were created in the construction industry and a further 28 jobs through a flow-on production-induced effect. The production-induced effect is a combination of:

- A first-round effect is defined as - the amount of output and employment required from all industries that supply goods and services to the construction industry in order for that industry to produce the initial \$1m of extra output.
- An industrial support effect is defined as - the induced extra output and employment from all industries to support the production of the first-round effect;
- A consumption induced effect is defined as - the subsequent inducement for extra output and employment due to increased spending by the wage and salary earners across all industries arising from the compensation received for their labour as part of the other effects above.

For the local economy of Denmark, it is prudent to count just the jobs associated with the initial effect (9) and the first-round effect (3), generating a total of 12 job years per \$1m of construction spend.

Although this data is quite old, it is still being used in recent property industry studies and position papers. However, it is sensible to adjust this by a measure of inflation over the past 20 years. Adjusting for CPI, the \$1m would equate to \$2.34m, or \$1m expenditure. Therefore, the \$0.8 million (Total Project Cost) investment in this project would be expected to create 3.8 FTE years of direct jobs in the construction industry and 4.1 FTE years of jobs in the wider local economy.

Once complete, jobs will be created as a result of the additional tourism spend in the region. The Department of Resources, Energy and Tourism (RET) estimate a total employment multiplier of 11.4 per \$1 million of tourism spend. Whilst not quantified, improving the Shire of Denmark's tourism experience with improved infrastructure will increase visitor nights, tourism spend and therefore job creation, economic activity and retention of tourism based small business.

➤ **Social:**

Public infrastructure, beaches and coastal areas all link generations, bringing people together, providing avenues for outdoor based physical activity and helping build towns and communities.

The services provided by beach infrastructure act as a strong attraction for local residents. Australians have a strong geographical affinity for the coast, with approximately 85% of the Australian population living within 50km of the coast. Around 50% of residential addresses are located within 7km of the coastline, and around 6% in the zone that is less than five metres above mean sea level and within 3km of the coast. Net migration to the coast is expected to increase this proportion even more in the future. To a large extent, the settlement pattern is driven by the recreational opportunities and perceived quality of life benefits associated with coastal areas. Australia's coastline is arguably our most important recreation resource. This is particularly evidenced by the growth in population of Denmark and Albany over all other Local Government Authorities' in the region. Denmark has the highest growth rate in the region, slightly exceeding that of WA as a whole.

Travelling promote social connectivity. As sustainable tourism has an educational element it can foster understanding between people and cultures and provide cultural exchange between guests and hosts.

Coastal tourism can add to the vitality of communities in many ways, for example, events and festivals of the local communities where they have been the primary participants and spectators. Often these are refreshed, reincarnated and developed in response to tourists' interests.

The jobs created by tourism can act as a very important motivation to reduce emigration from rural areas. Local people can also increase their influence on tourism development, as well as improve their jobs and earnings prospects through tourism-related professional training and development of business and organizational skills.

Tourism can also improve the preservation and transmission of cultural and historical traditions. Contributing to the conservation and sustainable management of natural resources can usually bring the chance to protect local heritage or to revitalize native cultures, for instance by regenerating traditional arts and crafts.

In some situations, tourism also helps to raise local awareness concerning the financial value of natural and cultural sites. It can stimulate a feeling of pride in local heritage and interest in its conservation. More broadly, the involvement of local communities in sustainable tourism

development and operation seems to be an important condition for the sustainable use and conservation of the biodiversity.

➤ **Risk:**

Risk	Risk Likelihood (based on history and with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
Reputation: Not meeting community expectations if the plan is unfunded and not built	Possible (3)	Minor (2)	Moderate (5-9)	Not Meeting Community expectations	Manage by seeking the funding through Drought Communities funding program.

Comment/Conclusion:

Lights Beach is a key tourist node in the Shire of Denmark. It is a popular spot for fishing, surfing, yoga and a number of other recreational activities. It is a designated dog off leash area and also intersects the Munda Biddi cycle trail and Bibbulmun Track walk trail which are nationally recognised.

The site contains some minimal, outdated infrastructure. Its toilet facilities are aging, basic and provide no access for less able persons. The carpark is sealed in part, but is not engineered to a contemporary safety standard. Anecdotally this has resulted in a number of minor crashes due to the poor circulation spaces. Access to the beach is steep with little to no provision for the less able. Improved access to the site via a recent sealed road has resulted in increased visitor numbers which exacerbates the deficiencies. In addition, service level failure, with regards to parking numbers in peak season is increasing. This is leading to poor experiences for visitors and in turn does not serve to enhance the towns tourism image or support its primary source of income.

The upgrade seeks to rectify the deficiencies by:

- increasing the sealed parking area and formalising circulation and parking; and
- improving, all access, waterwise toilet facilities, beach access, lookouts and signage.

The proposed final concept plan is provided in Attachment 8.1.1b.

Voting Requirements:

Simple majority.

OFFICER RECOMMENDATION	ITEM 8.1.1
That Council; <ol style="list-style-type: none"> 1. Note the submissions received; and 2. Adopt the Lights Beach Concept Plan as shown in attachment 8.1.1b. 	

8.2 DIRECTOR CORPORATE AND COMMUNITY SERVICES

8.2.1 FINANCIAL STATEMENTS FOR THE PERIOD ENDED 30 APRIL 2020

File Ref:	FIN.1
Applicant / Proponent:	Not applicable
Subject Land / Locality:	Not applicable
Disclosure of Officer Interest:	Nil
Date:	3 June 2020
Author:	Scott Sewell, Accountant
Authorising Officer:	Lee Sounness, Executive Manager Corporate Services
Attachments:	8.2.1 - April Monthly Financial Report

Summary:

The attached financial statements and supporting information for the period ending 30 April 2020 are presented for the consideration of Elected Members.

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

Consultation:

Nil

Statutory Obligations:

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 by legislation to undertake a mid-year review of the Municipal Budget to ensure that income and expenditure is in keeping with budget forecasts. It should be noted that the budget is monitored by management on a monthly basis in addition to the requirement for a mid-year review. The attached statements are prepared in accordance with the requirements of the Local Government Act 1995 (s.5.25(1)) and the Local Government (Financial Management) Regulations 1996.

Policy Implications:

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

For the purposes of Local Government (Financial Management) Regulation 34 regarding levels of variances for financial reporting, Council adopted a variance of 10% or greater of the annual budget for each program area in the budget, as a level that requires an explanation or report, with a minimum dollar variance of \$10,000.

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

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

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

Budget / Financial Implications:

There are no significant trends or issues to be reported.

Strategic & Corporate Plan Implications:

The report and officer recommendation are consistent with Council's adopted Strategic Plan Objectives and Goals and the Corporate Business Plan Actions and Projects in the following specific ways:

Denmark 2027

L5.4 To be fiscally responsible

Corporate Business Plan

Nil

Sustainability Implications:

➤ **Governance:**

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

➤ **Environmental:**

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

➤ **Economic:**

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

➤ **Social:**

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

➤ **Risk:**

Nil

Comment/Conclusion:

As at 30 April 2020, total cash funds held (excluding trust funds) totals \$7,548,358 (Note 1).

Shire Trust Funds total \$850 (Note 9).

Reserve Funds (restricted) total \$4,225,629 (Note 5).

Municipal Funds (unrestricted) total \$3,322,729.

Key Financial Indicators at a Glance

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

- Taking into consideration the adopted Municipal Budget and any subsequent year to date budget amendments identified including the mid-year budget review (refer Note 3), the 30 June 2020 end of year position is estimated to be \$0 which is in line with budget projections (Statement of Financial Activity).
- Operating revenue and expenditure is generally in line with year to date budget predictions for the period ended 31 April 2020 (Statement of Financial Activity) except for items referenced in Note 3(a).
- The Rates Collection percentage currently sits at 92.61%, is in keeping with historical collection performance statistics (see Note 4).
- The 2019/20 Capital Works Program is 52.72% complete utilising actual year to date figures and the total committed cost is 62.97% as at 30 April 2020 (see Note 10).
- Various transfers to and from general Reserve Funds have not been made for 2019/20 as they are generally undertaken in the latter half of the financial year, depending on the specific projects to which the transfers relate. Transfers from Denmark East Development Reserve of \$332,289 relates to current project expenditure for the period (see Note 5).
- Salaries and Wages expenditure is generally in line with year to date budget estimates (not reported specifically in Financial Statement).

Other Information

- The financial statements presented as part of this report have been updated with the outcome of the mid-year budget review (MYBR) which was adopted by Council at its Ordinary meeting held on 17th March 2020 and therefore include all of the amendments to the adopted budget accepted by Council at that meeting.

Voting Requirements:

Simple majority.

OFFICER RECOMMENDATION	ITEM 8.2.1
<p>That with respect to Financial Statements for the period ending 30 April 2020, Council receive the Financial Reports, incorporating the Statement of Financial Activity and other supporting documentation.</p>	

8.2.2 LIST OF PAYMENTS FOR THE PERIOD ENDING 31 MAY 2020

File Ref:	FIN.1
Applicant / Proponent:	Not applicable
Subject Land / Locality:	Not applicable
Disclosure of Officer Interest:	Nil
Date:	5 June 2020
Author:	Scott Sewell, Accountant
Authorising Officer:	Lee Sounness, Executive Manager Corporate Services
Attachments:	8.2.2 - May Monthly List of Accounts Submitted Report

Summary:

The purpose of this report is to advise the Council of payments made during the period 1 May 2020 to 31 May 2020.

Background:

Nil

Consultation:

Consultation was not required for this report.

Statutory Obligations:

Local Government (Financial Management) Regulation 13 relates.

Policy Implications:

Delegation Number D040201 relates.

Budget / Financial Implications:

There are no known significant trends or issues to be reported.

Strategic & Corporate Plan Implications:

Implement a financial strategy to ensure the Shire of Denmark's financial sustainability.

The report and officer recommendation is consistent with Council's adopted Strategic Community Plan Aspirations and Objectives and the Corporate Business Plan Actions and Projects in the following specific ways:

Denmark 2027

L5.0 Our Local Government

The Shire of Denmark is recognised as a transparent, well governed and effectively managed Local Government.

L5.1 To be high functioning, open, transparent, ethical and responsive.

L5.3 To be decisive and make consistent and well considered decisions.

L5.4 To be fiscally responsible.

Corporate Business Plan

Nil

Sustainability Implications:**➤ Governance:**

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

➤ Environmental:

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

➤ Economic:

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

➤ Social:

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

➤ Risk:

Nil

Comment/Conclusion:

Nil

Voting Requirements:

Simple majority.

OFFICER RECOMMENDATION	ITEM 8.2.1
<p>That with respect to the attached Schedule of Payments, totalling \$1,345,914.02, for the month of May 2020, Council endorse the following summary of accounts:</p> <ul style="list-style-type: none"> • Electronic Funds Transfers EFT27633 to EFT27821 - \$848,567.97; • Municipal Fund Cheque No's 60371 – 60374 - \$6,012.55; • Internal Account Transfers (Payroll) - \$338,871.28; • Direct Debit - \$10,722.30; • Corporate Credit Card; \$3087.15; • Department of Transport Remittances; \$39,084.00, • Loan Payments: \$99,568.77 	

8.2.3 INVESTMENT REPORT FOR THE PERIOD ENDED 31 MAY 2020

File Ref:	FIN.7
Applicant / Proponent:	Not applicable
Subject Land / Locality:	Not applicable
Disclosure of Officer Interest:	Nil
Date:	4 June 2020
Author:	Scott Sewell, Accountant
Authorising Officer:	Lee Sounness, Executive Manager Corporate Services
Attachments:	8.2.3 - May 2020 Investment Register

Summary

This report presents the Investment Register for the month ending 31 May 2020.

Background

This report is for Council to receive the Investment Register as at 31 May 2020. Council's Investment of Funds Policy sets the criteria for making authorised investments of surplus funds after assessing credit risk and diversification limits to maximise earnings and ensure the security of the Shire's funds.

Consultation

Nil.

Statutory Obligations

The *Local Government Act 1995 – Section 6.14, the Trustees Act 1962 – Part III Investments, the Local Government (Financial Management) Regulations 1996 - Reg. 19, 28 and 49, and the Australian Accounting Standards*, sets out the statutory conditions under which funds may be invested.

Regulation 34 of the *Local Government (Financial Management) Regulations* requires a monthly report on the Shires Investment Portfolio to be provided to Council.

Policy Implications

All investments are made in accordance with Council Policy P040229 – Investments, which states that in relation to Counterparty Credit Framework that no more than 50% of the total investment portfolio should be held with any one institution.

To control the credit quality over the entire portfolio, the following credit framework limits the percentage of the portfolio exposed to any particular credit rating category.

A. S&P Long Term Rating	B. S&P Short Term Rating	C. Direct Investment Maximum %	D. Managed Funds Maximum %
AAA	A-1+	100%	100%
AA	A-1	60%	80%
A	A-2	40%	80%

Exposure to an individual counterparty/institution will be restricted by their credit rating so that single entity exposure is limited, as detailed in the table below.

A. S&P Long Term Rating	B. S&P Short Term Rating	C. Direct Investment Maximum %	D. Managed Funds Maximum %
AAA	A1+	50%	50%
AA	A-1	35%	45%
A	A-2	20%	40%

If any of the Council’s investments are downgraded such that they no longer fall within the investment policy, they will be divested as soon as practicable.

Investments fixed for greater than 12 months are to be reviewed on a regular basis and invested for no longer than 5 years.

Budget / Financial Implications

The 2019/20 Adopted Budget for earnings from investment income including from the Denmark East Redevelopment Reserve is \$127,631. This was amended to \$107,631 at the Mid-Year Budget Review adopted by Council on 17 March 2020. The interest earned on investments up to 31 May 2020 is \$90,385 compared to a year-to-date budget of \$93,985. Interest is applied at maturity of each investment.

Strategic & Corporate Plan Implications

Implement a financial strategy to ensure the Shire of Denmark’s financial sustainability.

The report and officer recommendation are consistent with Council’s adopted Strategic Plan Objectives and Goals and the Corporate Business Plan Actions and Projects in the following specific ways:

Denmark 2027

L5.0 Our Local Government

The Shire of Denmark is recognised as a transparent, well governed and effectively managed Local Government.

L5.1 To be high functioning, open, transparent, ethical and responsive.

L5.3 To be decisive and make consistent and well considered decisions.

L5.4 To be fiscally responsible.

Corporate Business Plan

Nil

Sustainability Implications**➤ Governance:**

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

➤ Environmental:

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

➤ Economic:

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

➤ Social:

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

➤ Risk:

Nil.

Comment / Conclusion

The attached Investment Report tables summarise how funds are invested as per the Shires Investment Policy and reports on the Investment Portfolio balance as at 31 May 2020.

At the end of May 2020 Council had a total of \$5,976,678 invested with four banking institutions to ensure an appropriate portfolio balance mix with no single institution holding more than 50% of the total funds invested which is in accordance with the requirements outlined in Council policy P040229.

Current Reserve Funds invested total \$4,225,778. The remaining budgeted transfers to and from Reserve will be processed at the end of 2019/20 year. The budgeted reserve balance for the year ending 30 June 2020 is \$3.347 M.

The Reserve Bank of Australia has not altered its cash rate for this month. The cash rate remains set at 0.25%.

Voting Requirements

Simple majority.

OFFICER RECOMMENDATION

ITEM 8.2.3

That with respect to the Investment Register for the period ending 31 May 2020, Council receives the Investment Register for the period ended 31 May 2020.

8.3 CHIEF EXECUTIVE OFFICER

8.3.1 CHANGE OF PURPOSE OF RESERVE 39668 AND ALBANY HANG GLIDING CLUB INC. LICENCE

File Ref:	AGR.56, A3190 & A3073
Applicant / Proponent:	Albany Hang Gliding Club Inc.
Subject Land / Locality:	Reserve No. 20298 and Reserve No. 39668, Parryville
Disclosure of Officer Interest:	Nil
Date:	6 April 2020
Author:	Claire Thompson, Executive Assistant & Governance Coordinator
Authorising Officer:	David Schober, Acting Chief Executive Officer
Attachments:	8.3.1 – Draft Deed of Licence

Summary:

Council are asked to consider changing the purpose of one of the Reserves from “Quarry Site” to “Quarry and Recreation” and request the Minister to provide power to lease.

The Albany Hang Gliding Club Inc. have requested a review of their Licence Agreement to access Reserves at Parry Beach to accurately reflect their new site and change the entity to the Hang Gliding and Paragliding Association of Western Australia.

Background:

RESERVE 39668

In December 1986, the Shire received a Vesting Order from the WA Governor for Reserve 39668 for the purpose of “Quarry Site”, with no power to lease.

In May 2012 the Shire requested the Department of Regional Development and Lands (DRDL) to consider amalgamating Reserves 36578 and 39668 into Parry Beach Reserve 20928.

The DRDL advised, in 2017, that;

- Main Roads WA did not support the amalgamation because they believed there was still “limestone material at the quarry site which was essential for ongoing maintenance and re-construction of South Coast Highway in the area”; and
- The Department of Mines and Petroleum also believed there was still limestone material at the site.

There is no record of any agreement with either Department providing them permission to access the lime within Reserve 39668.

On inspection of the site in 2019, it would appear that it is in a process of natural revegetation. There was no evidence which would lead Officers to conclude that limestone is still being taken from the site.

In 2019, the Shire’s Chief Executive Officer advised the Department of Planning, Lands and Heritage that the Shire did not believe that the amalgamation was still required.

LICENCE

In 2013 the Shire entered into an Agreement with the Albany Hang Gliding Club Inc, to access and use portions of Reserves at Parry Beach and Hiller Bay, Parryville, for the purpose of hang gliding and paragliding activities. The Agreement was due for a review in 2018.

In 2015 a memorial seat and barrier fence were installed, to commemorate the late Bill Pinniger, at the location which was previously used as the launching site for the Albany Hang Gliding Club. A nearby alternative site was sought which the Club has been using since then.



ABOVE: Aerial of Hiller Bay, Parryville

Consultation:

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

Officers have negotiated the attached draft Licence with the Albany Hang Gliding Club Inc. and they have advised that the Hang Gliding and Paragliding Association of Western Australia has also agreed to the terms and conditions.

Department of Planning, Lands and Heritage have provided advice on the Shire's options regarding changes to the management order to enable the Shire to provide a licence to the Association.

Statutory Obligations:

Section 3.13 (j) of the Shire's Property Local Law states that parachuting, hang gliding, abseiling or base jumping on local government property requires a permit. Section 3.1 does not apply to a "person" using the property under a written agreement with the local government to do so.

The Licence is exempt from the disposal provisions detailed in section 3.58. Pursuant to Regulation 30 (2) (b) of the Local Government (Functions & General) Regulations 1996 a disposal is exempt if the land is disposed of to a body, the objects of which are "... recreational".

Based on the original 2013 Agreement, the draft Licence has been drafted by a legal firm to ensure that both parties are adequately protected and appropriate legislation has been considered.

The Shire has Management Orders for both of the reserves and will need to seek Ministerial Approval for the Licence, pursuant to Section 18 of the Land Administration Act 1997. As discussed in the background section of this report, the Management Order for Reserve 39668 would need to be amended to enable a licence to be granted.

Policy Implications:

There are no policy implications.

Budget / Financial Implications:

The Albany Hang Gliding Association Inc. have agreed to cover the cost of drawing up the new Licence.

The draft Licence includes an annual permit fee of \$200.00 (including GST). This would adequately cover the cost of any administration, liaison or inspection that may be required from time to time throughout the term of the Licence. It is also aligned with other recreational organisations that use Council reserves from time to time who are required to pay a hire fee.

Strategic & Corporate Plan Implications:

The report and officer recommendation is consistent with Council's adopted Strategic Community Plan Aspirations and Objectives and the Corporate Business Plan Actions and Projects in the following specific ways:

Denmark 2027

C4.0 Our Community

We live in a happy, healthy, diverse and safe community with services that support a vibrant lifestyle and foster community spirit.

Corporate Business Plan

Nil

Sustainability Implications:**➤ Governance:**

The draft Licence requires the Licensee to have a minimum of \$10,000,000 public liability insurance and indemnify the Shire of Denmark against any cost, expense, loss or other liability. Refer Clauses 7.11 and 7.12.

Council will note that the draft Licence will be with the Hang Gliding and Paragliding Association of Western Australia as any hang gliding site agreements are made through them and then managed by the local clubs, being the Albany Hang Gliding Association Inc. in this instance. All club members are required to be a member of the State Association which has measures in place regarding participants' injury or risk.

➤ Environmental:

The Albany Hang Gliding Association Inc. have acknowledged the need to protect the environment and minimise impact during access and set up. The photographs attached show their agreed parking area (maximum of 2 vehicles at a time, generally only 1) and "goat track" (existing) to the set up and take off area.

Officers have worked with the Association to include environmental considerations in the draft Licence, refer Clauses 7.4, 7.10, 7.14 and 8.4.

➤ Economic:

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

➤ Social:

Hang Gliding is a recognised recreational pursuit, providing an activity to get participants' outdoors which is more generally acknowledged as good for one's health.

➤ **Risk:**

Risk	Risk Likelihood (based on history and with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
Environmental: That the Licensee does not adhere to the Licence conditions and there is negative environmental impact at the site.	Rare (1)	Minor (2)	Low (1-4)	Inadequate Natural Environ.Man agement Practices	Accept Risk and note that should the Licensee breach Licence conditions, the Licence can be terminated.

Comment/Conclusion:

RESERVE 39668

The draft Licence was forwarded to the Department of Planning, Lands and Heritage for assessment with respect to obtaining Ministerial approval under section 18 of the Land Administration Act 1997. The Department responded that the purpose of Reserve 39668 was not appropriate for the type of activity covered by the licence and the Management Order (vesting) did not include any power to lease.

The Department suggested that Council could consider changing the purpose from “Quarry Site” to “Quarry and Recreation” and requesting power to lease, which is recommended by the Author. This would permit recreational use of the reserve whilst retaining the ability to use the limestone, should it be required in the future.

The Officer Recommendation is in two parts. Should the Council resolve not to change the purpose of the reserve or request power to lease, the second recommendation to grant a licence cannot be considered.

LICENCE

The site is approximately 200mtrs south west of the current approved site and situated on a rocky limestone outcrop located adjacent to the old Lime Quarry (Reserve 39668). Access to the site is along the Bill Pinninger Walk Trail approximately 1.2kms through 2 barrier gates locked with the Shire’s ‘H’ key system.

The Bill Pinninger Walk Trail is slashed annually up to the public lookout which is also used by commercial fishermen as a Salmon lookout. The old quarry site is about another 300m further along the trail and this part of the trail is not maintained.



ABOVE: portion of access track



ABOVE: Carpark area at old quarry site

The members park at the old quarry site and walk their equipment approximately 300m to the set-up area, via a 'goat track'. The vehicle is then driven back down to Parry Beach where the pilots land, typically on the sandbar in front of Parry Inlet on the border of the Shire of Denmark and DBCA managed land.

BELOW: Goat track route to set up and launch site





ABOVE: launch area overlooking Hillier Bay

Only members are permitted to use the site and it has very minimal use compared to other hang gliding sites such as Shelley Beach in the City of Albany. Typically, it is only used during the summer months (December to April). Pilots are mostly from Denmark and Albany, with occasional (registered) pilots visiting during the Christmas / New Year period.

Unlike other sites, the Hillier Bay site is not listed on the WA Hang Gliding Association's website because it is only accessible through the Albany Hang Gliding Association who have the only access key.

A draft Deed of Licence is attached (refer Attachment 8.3.1).

NOTE: The Officer Recommendation is in two parts. Should the Council resolve not to change the purpose of the reserve or request power to lease, the second recommendation to grant a licence cannot be considered.

Voting Requirements:

Simple majority.

ITEM 8.3.1 a)

OFFICER RECOMMENDATION

That with respect to Reserve 39668, Parryville, Council request the Minister for Planning to change the purpose to "Quarry and Recreation" and include a power to lease for up to 21 years in the Management Order to the Shire of Denmark.

ITEM 8.3.1 b)

OFFICER RECOMMENDATION

That with respect to the Hang Gliding and Paragliding Association of Western Australia Inc's Licence to access a site at Parryville for hang gliding and paragliding, Council approve the attached draft Deed of Licence, subject to receiving Ministerial Approval pursuant to Section 18 of the Land Administration Act 1997.

PLEASE NOTE: The information in this report may contain material that is confronting and distressing. If you require support, please contact Lifeline 131114 anytime for confidential telephone crisis support.

8.3.2 NATIONAL REDRESS SCHEME – PARTICIPATION BY WESTERN AUSTRALIAN LOCAL GOVERNMENTS & DEVELOPMENT OF A CHILD SAFETY & WELLBEING POLICY

File Ref:	FER.19
Applicant / Proponent:	Not applicable
Subject Land / Locality:	Not applicable
Disclosure of Officer Interest:	Nil
Date:	4 June 2020
Author:	Claire Thompson, Executive Assistant & Governance Coordinator (Some of the wording in this report has been provided to local governments by the Department of Local Government, Sport and Cultural Industries)
Authorising Officer:	David Schober, Acting Chief Executive Officer
Attachments:	Nil

Summary:

Council are asked to consider participating in the WA Government's participation declaration with respect to the National Redress Scheme which has been developed from a recommendation of the Royal Commission into Institutional Responses to Child Sexual Abuse.

In addition, this report recommends that the Shire undertake self-assessments in relation to current programs and procedures to inform the development of a Child Safety & Wellbeing Policy.

Background:

The Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) was established in 2013 to investigate failures of public and private institutions to protect children from sexual abuse. The Royal Commission released three reports throughout the inquiry:

- Working with Children Checks (August 2015);
- Redress and Civil Litigation (September 2015); and
- Criminal Justice (August 2017).

The Royal Commission's Final Report (15 December 2017) incorporated findings and recommendations of the three previous reports and contained a total of 409 recommendations, of which 310 are applicable to the Western Australian Government and the broader WA community.

The implications of the Royal Commission's recommendations are twofold: the first is accountability for historical breaches in the duty of care that occurred before 1 July 2018 within any institution; the second is future-facing, ensuring better child safe approaches are implemented holistically moving forward.

The scope of this report addresses only the historical element of institutional child sexual abuse through the National Redress Scheme.

All levels of Australian society (including the WA local government sector and the Shire of Denmark) will be required to consider leading practice approaches to child safeguarding separately in the future.

National Redress Scheme

The Royal Commission's *Redress and Civil Litigation (September 2015)* Report recommended the establishment of a single National Redress Scheme (the Scheme) to recognise the harm suffered by survivors of institutional child sexual abuse.

The Scheme acknowledges that children were sexually abused, recognises the suffering endured, holds institutions accountable and helps those who have been abused access counselling, psychological services, an apology and a redress payment.

The Scheme commenced on 1 July 2018, will run for 10 years and offers eligible applicants three elements of Redress:

- A direct personal response (apology) from the responsible institution, if requested;
- Funds to access counselling and psychological care; and
- A monetary payment of up to \$150,000.

All State and Territory Governments and many major non-government organisations and church groups have joined the Scheme.

The WA Parliament has passed the legislation for the Government and WA based non-government organisations to participate in the National Redress Scheme.

The Western Australian Government (the State) started participating in the Scheme from 1 January 2019.

Under the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), local governments may be considered a State Government institution (section 111(1)(b)).

A decision was made at the time of joining the Scheme to exclude WA local governments from the State Government's participation declaration. This was to allow consultation to occur with the sector about the Scheme, and for more comprehensive consideration of how the WA local government sector could best participate.

The WALGA State Council meeting on 3 July 2019 recommended that:

1. *WA local government participation in the State's National Redress Scheme declaration with full financial coverage by the State Government, be endorsed in principle, noting that further engagement with the sector will occur in the second half of 2019.*
2. *WALGA continue to promote awareness of the National Redress Scheme and note that local governments may wish to join the Scheme in the future to demonstrate a commitment to the victims of institutional child sexual abuse.*

Following extensive consultation, the State Government (December 2019):

- Noted the consultations undertaken to date with the WA local government sector about the National Redress Scheme;
- Noted the options for WA local government participation in the Scheme;
- Agreed to local governments participating in the Scheme as State Government institutions, with the State Government covering payments to the survivor; and
- Agrees to the Department of Local Government, Sport and Cultural Industries (DLGSC) leading further negotiations with the WA local government sector regarding local government funding costs, other than payments to the survivor including counselling, legal and administrative costs.

The WALGA State Council meeting of 4 March 2020:

1. *Acknowledged the State Government's decision to include the participation of Local Governments in the National Redress Scheme as part of the State's declaration;*
2. *Endorsed the negotiation of a Memorandum of Understanding and Template Service Agreement with the State Government, and*
3. *Endorsed by Flying Minute the Memorandum of Understanding prior to execution, in order to uphold requirements to respond within legislative timeframes.*

Consultation:

The State, through the Department of Local Government, Sport and Cultural Industries (DLGSC), consulted with the WA local government sector and other key stakeholders on the Royal Commission into Institutional Responses to Child Sexual Abuse (in 2018) and the National Redress Scheme (in 2019).

The consultation throughout 2019 has focused on the National Redress Scheme with the aim of:

- raising awareness about the Scheme;
- identifying whether WA local governments are considering participating in the Scheme;
- identifying how participation may be facilitated; and
- enabling advice to be provided to Government on the longer-term participation of WA local governments.

Between March and May 2019, DLGSC completed consultations that reached 115 out of 137 WA local governments via:

- Webinars to local governments, predominately in regional and remote areas;
- Presentations at 12 WALGA Zone and Local Government Professional WA meetings;
- Responses to email and telephone enquiries from individual local governments.

It was apparent from the consultations local governments were most commonly concerned about the:

- potential cost of Redress payments;
- availability of historical information;

- capacity of local governments to provide a Direct Personal Response (apology) if requested by Redress recipients;
- process and obligations relating to maintaining confidentiality if Redress applications are received, particularly in small local governments;
- lack of insurance coverage of Redress payments by LGIS, meaning local governments would need to self-fund participation and Redress payments.

LGIS published and distributed an update (April 2019) regarding the considerations and (potential) liability position of the WA local government sector in relation to the National Redress Scheme. LGIS recommend that local governments establish a policy for safeguarding the welfare of children and review any other policies or procedures that relate to safeguarding minors in their care or in the care of contractors.

DLGSC representatives presented at a WALGA hosted webinar on 18 February 2020 and presented at all WALGA Zone meetings in late February 2020.

The State's decision, in particular to cover the costs / payments to the survivor, has taken into account the feedback provided by local governments during the consultation detailed above.

Statutory Obligations:

In agreeing to participate in the Scheme, the Shire of Denmark will be required to adhere to legislative requirements set out in the National Redress Scheme for Institutional Child Abuse Act 2018 (Cth).

Should Council agree to participate, authorisation will be required to delegate, to an appropriate person, authority to execute a service agreement with the State Government, if a Redress application is received. The following new delegation is recommended:

Delegation D040232 – National Redress Scheme, Authorisation to Execute Agreement

Pursuant to section 9.49(4) of the Local Government Act 1995, the Chief Executive Officer is authorised to execute a standard service agreement with the State Government if a Redress application is received.

Recording Requirements

Request for Information records are required to be kept in a confidential and secure manner and in accordance with the National Redress Scheme for Institutional Child Abuse Act 2018 (Cth).

Policy Implications:

There are no known policy implications. Upon general advice from the LGIS, the Shire's insurer, it is recommended that Council request the Chief Executive Officer to review any current policies or procedures relating to the safeguarding and wellbeing of children in the Shire's care or in the care of a contractor. This would include the development of a Child Safety and Wellbeing Policy. The Department of Local Government, Sport & Cultural Industries have developed a self-assessment tool which can be used by local governments or community organisations.

Budget / Financial Implications:

The State's decision will cover the following financial costs for local governments:

- Redress monetary payment provided to the survivor;
- Costs in relation to counselling, legal and administration (including the coordination or requests for information and record keeping); and
- Trained staff to coordinate and facilitate a Direct Personal Response (DPR – Apology) to the survivor if requested (on a fee for service basis with costs to be covered by the individual local government – see below).

The only financial cost the local government may incur will be the payment of the DPR's, which is on an 'as requested' basis by the survivor. This will be based on the standard service fee of \$3,000 plus travel and accommodation depending on the survivor's circumstances. All requested DPR's will be coordinated and facilitated by the Redress Coordination Unit – Department of Justice.

The State's decision also mitigates a significant financial risk to the local government in terms of waiving rights to future claims. Accepting an offer of redress has the effect of releasing the responsible participating organisation and their officials (other than the abuser/s) from civil liability for instances of sexual abuse and related non-sexual abuse of the person that is within the scope of the Scheme. This means that the person who receives redress through the Scheme, agrees to not bring or continue any civil claims against the responsible participating organisation in relation to any abuse within the scope of the Scheme.

Should Council decide not to participate in the Scheme, it needs to be acknowledged that this would result in;

- Complete removal of the State's coverage of costs and administrative support, with the Shire of Denmark having full responsibility and liability for any potential claim.
- That the only remaining method of redress for a victim and survivor would be through civil litigation, with no upper limit, posing a significant financial risk to the Shire of Denmark.

LGIS have advised that it is a complex area and that any claim would be subject to its own circumstances. The National Redress Scheme (NRS) is based on "recognition of harm" whereas LGIS Liability covers "personal injury". LGIS state, "*neither the protection offered by LGIS or a conventional liability insurance policy would respond to redress awards*".

With respect to general insurance aspects, LGIS have confirmed that they, "*currently do not carry a sexual molestation limitation and members will be indemnified in line with the protection offered*".

Strategic & Corporate Plan Implications:

The report and officer recommendation is consistent with Council's adopted Strategic Community Plan Aspirations and Objectives and the Corporate Business Plan Actions and Projects in the following specific ways:

Denmark 2027

L5.0 Our Local Government

The Shire of Denmark is recognised as a transparent, well governed and effectively managed Local Government.

L5.1 To be a high functioning, open, transparent, ethical and responsive.

C4.0 Our Community

We live in a happy, healthy, diverse and safe community with services that support a vibrant lifestyle and foster community spirit.

Corporate Business Plan

Nil

Sustainability Implications:

➤ **Governance:**

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

➤ **Environmental:**

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

➤ **Economic:**

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

➤ **Social:**

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

➤ **Risk:**

Risk	Risk Likelihood (based on history and with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That Council resolve not to join the National Redress Scheme.	Rare (1)	Catastrophic (5)	Moderate (5-9)	Inadequate Financial, Accounting or Business Acumen	Accept Officer Recommendation

Comment/Conclusion:

The following will be covered for local governments participating in the Scheme as a State Government institution and part of the State’s declaration:

- Redress monetary payment provided to the survivor;
- Costs in relation to counselling, legal and administration (including the coordination of requests for information and record keeping in accordance with the *State Records Act 2000*); and
- Trained staff to coordinate and facilitate a Direct Personal Response (DPR – Apology) to the survivor if requested (on a fee for service basis with costs to be covered by the individual local government – see below for further explanation).

State Government financial support for local government participation in the Scheme, as set out, will ensure that Redress is available to as many WA survivors of institutional child sexual abuse as possible.

Individual local governments participating in the Scheme as a State Government institution, with the State will be responsible for:

- Providing the State with the necessary (facilities and services) information to participate in the Scheme;
- Resources and costs associated with gathering their own (internal) information and providing that information (Request for Information) to the State (if they receive a Redress application); and
- Costs associated with the delivery of a DPR (apology), if requested (based on a standard service fee, plus travel and accommodation depending on the survivor’s circumstance). The State’s decision includes that all requested DPR’s will be coordinated and facilitated by the Redress Coordination Unit – Department of Justice, on every occasion.

The State and WALGA will sign a Memorandum of Understanding to reflect the principles of WA local governments participating in the Scheme as State Government institutions and being part of the State’s declaration.

State agencies (led by DLGSC), WALGA and Local Government Professionals WA will support all local governments to prepare to participate in the Scheme from 1 July 2020 (or earlier, subject to completing the necessary arrangements).

The financial and administrative coverage offered by the State will only be afforded to WA local governments that join the Scheme as a State Government institution, as part of the State's amended declaration.

Should Council formally decide **not** to participate with the State or in the Scheme altogether, considerations for the Shire of Denmark include:

- Divergence from the Commonwealth, State, WALGA and the broader local government sector's position on the Scheme (noting the Commonwealth's preparedness to name-and-shame non-participating organisations).
- Potential reputational damage at a State, sector and community level.
- Complete removal of the State's coverage of costs and administrative support, with the Shire of Denmark having full responsibility and liability for any potential claim.
- Acknowledgement that the only remaining method of redress for a victim and survivor would be through civil litigation, with no upper limit, posing a significant financial risk to the Shire of Denmark.

Considerations for the Shire of Denmark

Detailed below is a list of considerations for the Shire of Denmark to participate in the Scheme:

1. Executing a Service Agreement

All Royal Commission information is confidential, and it is not known if the Shire of Denmark will receive a Redress application. A Service Agreement will only be executed if the Shire of Denmark receives a Redress application.

Council needs to give authority to an appropriate position / officer to execute a service agreement with the State, if a Redress application is received.

Timeframes for responding to a Request for Information are 3 weeks for priority applications and 7 weeks for non-priority applications. A priority application timeframe (3 weeks) will be outside most Council meeting cycles and therefore it is necessary to provide the authorisation to execute an agreement in advance.

2. Reporting to Council if / when an application is received

Council will receive a confidential report, notifying when a Redress application has been received. All information in the report will be de-identified but will make Council aware that an application has been received.

3. Application Processing, Staffing and Confidentiality

Administratively the Chief Executive Officer will determine:

- Which position(s) will be responsible for receiving applications and responding to Requests for Information (RFI). This position will have a level of seniority in order to understand the magnitude of the undertaking and to manage any potential conflicts of interest and confidentiality requirements;
- Support mechanisms for staff members processing Requests for Information, such as access to the Employee Assistance Program.

4. Record Keeping

The State Records Office advised (April 2019) all relevant agencies, including Local Governments, of a 'disposal freeze' initiated under the *State Records Act 2000* (the Act) to protect past and current records that may be relevant to actual and alleged incidents of child sexual abuse. The Shire of Denmark's record keeping practices as a result, have been modified to ensure the secure protection and retention of relevant records. These records (or part thereof) may be required to be provided to the State's Redress Coordination Unit in relation to a Redress application.

The Redress Coordination Unit (Department of Justice) is the state record holder for Redress and will keep copies of all documentation and RFI responses. Local

Governments will be required to keep their own records regarding a Redress application in a confidential and secure manner, and in line with all requirements in *The Act*.

5. Redress Decisions

The Shire of Denmark should note that decisions regarding Redress applicant eligibility and the responsible institution(s), are made by Independent Decision Makers, based on the information received by the applicant and any RFI responses. The State Government and the Shire of Denmark do not have any influence on the decision made and there is no right of appeal.

Voting Requirements:

Absolute majority.

OFFICER RECOMMENDATION	ITEM 8.3.2
<p>That with respect to the National Redress Scheme developed as a result of a recommendation from the Royal Commission into Institutional Responses to Child Sexual Abuse, Council;</p> <ol style="list-style-type: none"> 1. Note the background information and the WA Government’s declaration to join the National Redress Scheme; 2. Note the key considerations and administrative arrangements for the Shire of Denmark to participate in the National Redress Scheme; 3. Endorse the Shire of Denmark’s participation in the National Redress Scheme as a State Government institution and include as part of the State Government’s amended declaration; 4. Note that a confidential & de-identified report will be provided to Council if a Redress application is received by the Shire of Denmark; 5. Delegates authority to the Chief Executive Officer to execute a standard service agreement with the State Government should a Redress application be received; 6. Request the Chief Executive Officer to; <ol style="list-style-type: none"> a) Review current practices and procedures throughout the organisation to ensure that appropriate records are kept and retained regarding any Shire function, service or facility which includes interactions with persons under the age of 18; b) Undertake introductory self-assessments, using the Department of Local Government, Sport & Cultural Industries’ self-assessment tool, for every service or function provided by the Shire of Denmark which includes any interactions with persons under the age of 18; c) Establish a draft Child Safety and Wellbeing Policy, for Council’s consideration, in consultation with stakeholders, which will include, but not limited to, the following aspects; <ol style="list-style-type: none"> (i) Address the 10 National Principles for Child Safe Organisations; (ii) Demonstrate the Shire of Denmark’s commitment to the safety and wellbeing of children and young people; (iii) Identify to leaders, staff and volunteers the actions required to keep children safe and well, and to promote and protect their rights; (iv) Clarify roles and responsibilities in relation to recognising and responding to child harm or abuse. 	

* *Absolute majority required.*

8.3.3 ADOPTION OF NEW RATING STRUCTURE

File Ref:	RTS.11
Applicant / Proponent:	Not applicable
Subject Land / Locality:	Not applicable
Disclosure of Officer Interest:	Nil
Date:	2 June 2020
Author:	Teiga Murray, Corporate Planning Officer
Authorising Officer:	David Schober, Chief Executive Officer
Attachments:	8.3.3a - 21 April 2020 Council Minutes – 8.2.4 Review of Rating Structure 8.3.3b - Rating Review Recommendation Paper 8.3.4c - Rating Review Submissions

Summary:

The purpose of this report is to provide Council with an overview of the feedback received during the 2020 Rating Review and endorse a new rating model to form the basis of the 2020/21 Municipal Budget.

Background:

In April 2020, Council endorsed a proposal to consider changes to the Shire’s existing differential rating system to better align with the principles of Local Government Rating (s6.33 differential rates):

- a. Objectivity;
- b. Fairness and Equity;
- c. Consistency;
- d. Transparency and;
- e. Administrative efficiency.

The draft recommendation was prepared after a series of workshops with Council and included advice and recommendations provided by Local Government industry experts, McLeod’s Barristers and Solicitors and accountants Moore Stephens. A summary of the process and recommendations that formed the basis of the draft proposal are provided in the *21 April 2020 Council Minutes – 8.2.4 Review of Rating Structure* as an attachment to this item.

Following Council Resolution 110421, the Shire of Denmark commenced Stage 1 of the Rating Review as per the Council endorsed Communication and Engagement Plan. The Shire commenced advertising the draft recommendation, which proposed reducing the number of rating categories from fourteen to four, as per the below table.

<i>Existing Category</i>	<i>Existing Rate in the dollar</i>	<i>Existing Minimum Payment</i>		<i>Recommended Category</i>	<i>Indicative Rate in the dollar</i>	<i>Indicative Minimum Payment</i>
GRV						
Residential Developed	9.6428	\$1,097		GRV General	9.6428	\$ 1,097
Business/Commercial Developed	10.3483	\$1,220	→			
Lifestyle Developed	9.6735	\$1,125				
Rural Developed	10.3791	\$1,125				
GRV						
Holiday Use Developed	10.7881	\$1,208	→	GRV Holiday Use (Tourism)	10.7881	\$ 1,097
GRV						
Residential Vacant	19.2243	\$997		GRV Vacant	17.9000	\$ 1,097
Business/Commercial Vacant	14.6228	\$950	→			
Rural Vacant	14.6228	\$1,109				
Lifestyle Vacant	18.2017	\$1,020				

UV		
UV Base	0.4857	\$1,343
UV Additional Use 1	0.5343	\$1,477
UV Additional Use 2	0.5829	\$1,611
UV Additional Use 3	0.6315	\$1,745
UV Additional Use 4	0.6800	\$1,879

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UV	0.4857	\$1,343
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The draft proposal also provided an overview of Stage 2 of the Rating Review (due to take place in 2020/21) which will consider split and spot rating where UV properties are used for multiple purposes (previously categorised as Additional Use).

Consultation:

The Shire of Denmark engaged the Department of Local Government, Sport and Cultural Industries, Moore Stephens (WA) Pty Ltd, McLeods Barristers & Solicitors, Landgate, Council and Shire Officers during the preparation of the draft recommendation. A summary of this engagement is provided in the in the *21 April 2020 Council Minutes – 8.2.4 Review of Rating Structure* as an attachment to this item.

Following Council’s endorsement of the draft recommendation and associated Communication and Engagement Plan, Shire of Denmark Officers commenced a broad scale engagement exercise with ratepayers during the month of May.

Community Consultation

The Shire of Denmark provided the following opportunities for community engagement on the draft recommendation, as outlined in the following table.

Engagement Method	Date	Level of Engagement	Participation
Mailout to all Ratepayers	08.05.2020	Inform	3,873
Facebook Post – Community Information Sessions Reminder	12.05.2020	Inform	909 (Post Reach)
Stakeholder Meeting – Denmark Chamber of Commerce Board	14.05.2020	Consult	9
Facebook Post – Engagement Opportunities Reminder	19.05.2020	Inform	639 (Post Reach)
SMS Reminder	19.05.2020	Inform	819
Stakeholder Meeting – Real Estate Agents Forum	20.05.2020	Consult	5
Community Information Session/Webinar 1	20.05.2020	Consult	10
Stakeholder Meeting – Denmark Residents and Ratepayers Association	21.05.2020	Consult	8
Denmark Bulletin Advert	21.05.2020	Inform	-
Community Information Session/Webinar 2	22.05.2020	Consult	9
Walpole Weekly Advert	20.05.2020	Inform	-
Facebook Post – Stakeholder Focus Groups Reminder	22.05.2020	Inform	337 (Post Reach)
Stakeholder Focus Group – GRV General	25.05.2020	Collaborate	8
Stakeholder Focus Group – GRV Vacant	26.05.2020	Collaborate	7
Stakeholder Focus Group – GRV Holiday Use	26.05.2020	Collaborate	9
Stakeholder Meeting – Nornalup Progress Association	26.05.2020	Consult	10
Stakeholder Focus Group – UV	27.05.2020	Consult	0

Stakeholder Meeting – Peaceful Bay Progress Association	01.06.2020	Consult	12
Facebook Post – Submission Deadline Reminder	03.06.2020	Inform	331 (Post Reach)
Formal Submissions	03.06.2020	Consult	14

In addition to the formal engagement listed above, the Shire of Denmark also received a number of phone calls on the Rating Review, where officers were able to explain the changes and any impact that the review would have on a case by case basis.

During the engagement period, the Shire of Denmark received a variety of feedback from the community which has helped to shape the final recommendation to Council. Where feedback was received five times or more during the engagement period, it has been categorised as strong feedback (S). A summary of the feedback is provided below. A copy of the formal submissions received during the review is also provided as an attachment to this item.

General Feedback

The general community feedback received on the rating review in its entirety included the following:

- Support for a simpler system and spending less money on administering the system. (S)
- Feedback that the way that the Shire/Council has approached the review is fair and reasonable and the work completed to date has been good and easy to understand. (S)
- Appreciation of the extensive community consultation. Appreciative of the online zoom sessions, as it makes it easier for people who do not live in Denmark to be involved in the process. (S)
- Request to minimise outsourcing of Shire reviews and projects. (S)
- Advocacy for more time to allow further investigation and financial modelling.
- Request to defer the rate review until after COVID-19.
- Feedback that the delay between market changes and valuations by the Valuer General causes inequity.
- Feedback that the ability for the Shire to ‘fine tune’ rating amounts is reduced when the number of categories is reduced, especially with commercial properties.
- Feedback that creating the same minimum payment for all GRV properties also provides an unnecessary constraint on Council’s ability to fine tune rates in pursuit of fairness and equity.

GRV General

Community feedback received on the GRV General rating category included the following:

- The view that registered businesses, including commercial accommodation providers, should receive the same rate in dollar as all businesses in Denmark benefit from tourism. (S)
- The view that Council should create a separate GRV Commercial category. (S)

GRV Holiday Use

Community feedback received on the GRV Holiday Use rating category included the following:

- Support for Council in addressing the current inequity and new compliance approach to short stay accommodation. (S)
- Support for a higher rate in the dollar for this category, with the money to subsidise tourism activities funded by the Shire. (S)
- The view that the current rating system is unfair with the Airbnb sector not paying their way. (S)
- Feedback that there are similar accommodation providers and properties that are in different rating categories at the moment, which needs further clarity. (S)

- The view that deluxe accommodation and basic accommodation should be captured differently.
- The view that commercial chalet providers/businesses should not pay a higher rate in the dollar compared to other commercial businesses that also benefit from tourism.
- The view that a bed tax or occupancy rate system would be a fairer option.

GRV Vacant

Community feedback received on the GRV Vacant rating category included the following (noting no strong feedback was recorded in this category):

- The view that developers may struggle to sell vacant land or make a profit.
- Support for charging a higher rate in the dollar for vacant land.
- Feedback that the indicative minimum payment advertised for residential vacant land is higher than the existing minimum payment and the view that it does not seem fair to decrease the rate in the dollar for this category but increase the minimum payment.
- The view that a higher rate in the dollar may cause Denmark to be built out quicker.
- The view that the proposal will support growth in economic activity for the town.

UV Rural

Community feedback received on the UV Rural rating category included the following:

- General agreement for split and spot rating, however further information is needed. (S)
- Acknowledgement of the need to address accommodation on UV land, and split and spot rating seems a logical way to do so. (S)
- The inequity between minimum payment amounts for UV Rural and GRV categories. (S)

Peaceful Bay

Community feedback specific to leaseholds at Peaceful Bay included the following:

- The view that Peaceful Bay should be treated separately from the rest of the Shire, having its own rating category and reduced minimum payment, as full-time occupancy is not permitted and the valuations of Peaceful Bay leasehold properties are lower. (S)

Statutory Obligations:

Valuation of Land Act 1978

The Minister for Local Government has the responsibility for determining the method of valuation of land to be used by the Valuer General.

Section 6.28 (1) & (2) of the Local Government Act 1995 states:

(1) *The Minister for Local Government is to –*

- (a) *determine the method of valuation of land to be used by a local government as the basis for a rate; and*
- (b) *publish a notice of the determination in the Government Gazette.*

(2) *In determining the method of valuation of land to be used by a local government the Minister is to have regard to the general principle that the basis for a rate on any land is to be –*

- (a) *where the land is used predominantly for rural purposes, the unimproved value of the land; and*
- (b) *where the land is used predominantly for non-rural purposes, the gross rental value of the land.*

Section 6.33 (1), (2), (3) & (4) of the Local Government Act 1995 states:

(1) *A local government may impose differential general rates according to any, or a combination, of the following characteristics:*

- (a) the purpose for which the land is zoned, whether or not under a local planning scheme or improvement scheme in force under the Planning and Development Act 2005; or*
- (b) a purpose for which the land is held or used as determined by the local government; or*
- (c) whether or not the land is vacant land; or*
- (d) any other characteristic or combination of characteristics prescribed.*

(2) Regulations may:

- (a) specify the characteristics under subsection (1) which a local government is to use; or*
- (b) limit the characteristics under subsection (1) which a local government is permitted to use.*

(3) In imposing a differential general rate a local government is not to, without the approval of the Minister, impose a differential general rate which is more than twice the lowest differential general rate imposed by it.

(4) If during a financial year, the characteristics of any land which form the basis for the imposition of a differential general rate have changed, the local government is not to, on account of that change, amend the assessment of rates payable on that land in respect of that financial year but this subsection does not apply in any case where section 6.40(1) (a) applies.

Where the Minister changes the basis of valuation from UV to GRV, Council may resolve to apply the change of valuation immediately / or phase in any changes in valuation in accordance with Schedule 6.1 of the Act.

Section 6.35 states that Council may impose a minimum payment for each category.

Policy Implications:

There are no policy implications.

Budget / Financial Implications:

There are no financial implications on the current 2019/20 adopted Budget. The 2020/21 draft Budget is currently being prepared on the basis of a zero increase in overall rate revenue yield. An amount of up to \$30,000 is to be included in the 2020/21 Budget for the administration of Split/Spot rating of UV properties with additional uses. Adjustments to the Long Term Financial Plan will need to be made and subsequently adopted by Council to recognise the impact of this change.

Strategic & Corporate Plan Implications:

The report and officer recommendation are consistent with Council's adopted Strategic Community Plan Aspirations and Objectives and the Corporate Business Plan Actions and Projects in the following specific ways:

Denmark 2027

L5.0 Our Local Government

The Shire of Denmark is recognised as a transparent, well governed and effectively managed Local Government.

L5.1 To be high functioning, open, transparent, ethical and responsive.

L5.2 To have meaningful, respectful and proactive collaboration with the community

L5.3 To be decisive and make consistent and well considered decisions.

L5.4 To be fiscally responsible.

L5.6 To seek two-way communication that is open and effective

Corporate Business Plan

E1.4.1 Review our differential rating policy to ensure fairness and equity across all rating categories and promote and encourage agricultural land use.

Sustainability Implications:

➤ **Governance:**

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

➤ **Environmental:**

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

➤ **Economic:**

There are no known significant economic considerations impacting on Council’s ability to deliver the 2020/21 Municipal Budget. This report recognises that changes to the rating structure will result in a different ‘split’ of rating revenue, across four categories as opposed to fourteen, however the total collection amount will remain unchanged.

➤ **Social:**

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

➤ **Risk:**

Risk	Risk Likelihood (based on history and with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That Council choose to retain the existing rating structure	Unlikely (2)	Insignificant (1)	Low (1-4)	Not Meeting Community expectations	Accept Officer Recommendation or Accept Risk and manage by explaining the reasons for not proceeding with changes to the rating structure.

Comment:

Following the conclusion of the engagement period, Officers recommend that Council should proceed with reducing the number of rating categories from fourteen to four and proceed with levying a higher rate in the dollar for GRV Holiday Use and GRV Vacant.

The recommendation is based on the general feedback received to date that supports a reduction in categories to simplify the system and reduce administrative costs.

Feedback proposing an additional rating category for commercial properties has been considered and it is the Officer’s opinion that this would be in contradiction with the proposed view of utilising valuations provided by the Valuer General as the main driver of rating charges levied within the Shire of Denmark.

Feedback generally supported the application of a higher rate in the dollar for vacant land to stimulate economic development, and a higher rate in the dollar for short term holiday accommodation (such as Airbnb’s) where they are valued by the Valuer General on a non-commercial basis. Feedback received during the engagement period on the Holiday Use category has been used to amend the characteristics, objects and reasons of this category to ensure that commercially GRV valued accommodation providers pay the same rate in the dollar as other commercial GRV businesses that benefit from tourism. The new Holiday Use

category is intended to capture short stay accommodation that is valued similarly to long-term residential accommodation.

Feedback received from ratepayers within the Peaceful Bay area generally highlighted the desire to receive a lower minimum payment amount due to lower GRV valuations in the area and the inability to occupy properties full time. Specified Area Rating provides a mechanism to implement specific area rates for locations such as Peaceful Bay, however it is typically used to impose a separate additional rate over the specified area for the purpose of meeting the cost of specific works, services or facilities within that area (as opposed to reducing minimum rating payments).

Additionally, there are other properties within the Shire that receive a valuation that results in a lower rate than the proposed minimum payment across the GRV General category and other rating categories. These properties do not receive a reduced fee and are required to pay the minimum payment amount for their specific category. The Officer recognises that some Peaceful Bay properties do have occupancy restrictions in place, which other properties in the Shire do not have, however considers that this would be more appropriately considered via a review of the leasing process as opposed to the rating review.

As such, the Officer recommends the following four categories, defined by the specified characteristics, objects and reasons.

Description	Characteristics	Objects	Reasons
1. GRV General	All properties valued on a Gross Rental Value (GRV) basis which are not included within the GRV Holiday Use or GRV Vacant categories.	The object of the rate in the dollar for this category is to be the base rate for all GRV rated properties and against which a higher rate is determined for other GRV rate categories.	<ol style="list-style-type: none"> 1. To ensure that all ratepayers make a reasonable contribution towards the ongoing maintenance and provision of works, services and facilities in the Shire. 2. To achieve the required amount of revenue from the GRV rate category.
2. GRV Holiday Use	All properties, or portions of properties, valued on a non-commercial Gross Rental Value (GRV) basis, which have Shire planning approval to operate as a registered holiday home or holiday accommodation.	The object of a higher rate in the dollar for this category is to raise additional revenue to fund the level of service provided to these properties and the costs that result from visitors to these properties. The rate recognises the impact of such properties on infrastructure, the environment, housing availability and affordability within the Shire.	<ol style="list-style-type: none"> 1. To assist in meeting the additional costs associated with providing tourism related infrastructure and services. 2. To address the inequity in valuations between long term rentals, holiday homes / holiday accommodation and commercial accommodation providers.
3. GRV Vacant	All properties valued on a Gross Rental	The object of a higher rate in the dollar for this category is to	<ol style="list-style-type: none"> 1. To encourage vacant land owners to develop their land.

	Value (GRV) basis which are currently vacant.	encourage development within the Shire.	<ol style="list-style-type: none"> 2. To avoid excessive vacant land leaving subdivisions barren and aesthetically unappealing. 3. To stimulate the local economy and support affordable housing through supply.
4. UV Rural	All properties valued on an Unimproved Value (UV) basis.	The object of the rate in the dollar for this category is to set the applicable rate for rural properties valued as unimproved (UV).	<ol style="list-style-type: none"> 1. To ensure that all ratepayers make a reasonable contribution towards the ongoing maintenance and provision of works, services and facilities in the Shire. 2. To achieve the required amount of revenue from the UV rate category.

The Officer also recommends investigating options during stage two of the review to create greater equity between the minimum payment amount for GRV General and UV Rural properties.

The Officer believes that this would be in line with Council’s desire to ensure that the valuations provided by the Valuer General are the primary driver of rating charges in the Shire of Denmark and would also support the objective of Corporate Business Plan action *E1.4.1 Review our differential rating policy to ensure fairness and equity across all rating categories and **promote and encourage agricultural land use.***

Voting Requirements:

Absolute majority.

OFFICER RECOMMENDATION	ITEM 8.3.3
<p>That Council;</p> <ol style="list-style-type: none"> 1. Endorse the categories, characteristics, objects and reasons contained within this report as the basis of the Shire of Denmark’s Rating System and 2020/21 Municipal Budget; 2. Authorise the CEO to commence community engagement on Stage 2 of the Rating Review in 2020/21, which will include: <ol style="list-style-type: none"> a. Consideration of split and spot rating where UV properties are utilised for multiple purposes, noting that if Council cannot satisfactorily implement split or spot rating then Council would look to reintroduce UV additional use category(ies); and b. Explore options to create greater equity between the minimum payment amount for GRV General and UV Rural properties. 3. Authorise the CEO to finalise the rate in the dollar and minimum payment amounts for each category as part of the 2020/21 Municipal Budget Process and advertise the Shire of Denmark’s Notice of Intention to Levy Differential Rates for a period of 21 days. 	

8.3.4 DEED OF VARIATION – LOCAL GOVERNMENT HOUSE TRUST

File Ref:	GOV.32
Applicant / Proponent:	Western Australian Local Government Association (WALGA)
Subject Land / Locality:	170 Railway Parade, Leederville, Western Australia
Disclosure of Officer Interest:	Nil
Date:	18 May 2020
Author:	Claire Thompson, Executive Assistant & Governance Coordinator
Authorising Officer:	David Schober, Acting Chief Executive Officer
Attachments:	8.3.4 - Draft Deed of Variation & Clause 12 of Trust Deed (Excerpt)

Summary:

Council are asked to provide their consent to vary the Trust Deed for the Local Government House Trust (The Trust).

Background:

The Local Government House Trust (“The Trust”) exists to provide building accommodation for the Western Australian Local Government Association (WALGA), since 2014, at 170 Railway Parade, Leederville, Western Australia.

The Trust commenced in 1993, with a vesting date 79 years, and was amended in 2002 to reflect the merger of the metropolitan and country associations into WALGA.

The current Trust Deed pronounces WALGA as Trustee and unit holders as Beneficiaries, with the Trustee holding property and associated monies “upon Trust” and in proportion to the units provided.

The Trust is exempt from income tax on the basis of being a State / Territory Body (STB) pursuant to Division 1AB of the *Income Tax Assessment Act 1936*.

Consultation:

The Author was provided a copy of the City of Albany’s report to Council and received advice from the Shire’s Accountant.

Statutory Obligations:

There are no known statutory obligations.

Policy Implications:

There are no policy implications.

Budget / Financial Implications:

The Shire of Denmark is a unit holder and beneficiary to the Local Government House Trust, holding 3 unit/s as advised in WALGA’s Quarterly Report Q4 2019.

The current value of the units are \$17,517 each as at 30 June 2019.

Strategic & Corporate Plan Implications:

The report and officer recommendation is consistent with Council’s adopted Strategic Community Plan Aspirations and Objectives and the Corporate Business Plan Actions and Projects in the following specific ways:

Denmark 2027

- L5.0 Our Local Government
The Shire of Denmark is recognised as a transparent, well governed and effectively managed Local Government.
- L5.1 To be high functioning, open, transparent, ethical and responsive.
- L5.5 To embrace change, apply technological advancement and pursue regional partnerships that drive business efficiency.

Corporate Business Plan

Nil

Sustainability Implications:**➤ Governance:**

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

➤ Environmental:

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

➤ Economic:

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

➤ Social:

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

➤ Risk:

Nil. The proposed variation is based on legal advice and has been approved by the Board of Trustees.

Comment/Conclusion:

The Shire of Denmark is a unit holder and beneficiary to the Local Government House Trust, holding 3 units and The Trust requires consent of at least 75 per cent of all beneficiaries in order to execute the variation.

As a beneficiary, the Shire of Denmark is requested to consent to the Trustee to formally execute the attached Deed of Variation. The Shire of Denmark is not required to sign the attached document.

Further details on the particular Deed Variations and objectives to be achieved by this variation are outlined below.

Trust Deed Variation

Trust Deed amendments set out in the draft Deed of Variation are based on legal advice obtained by WALGA and are intended to assist the Trust's income tax exempt status by strengthening the position that the Trust is a State / Territory Body (STB).

WALGA's legal advice identified that the Trustee's ability to retire and appoint a new Trustee might affect the Trust's classification as a STB. This view, while based upon highly technical grounds, is a risk nonetheless.

Subsequently the Deed of Variation proposed by WALGA aims to strengthen the position that the Trust is a STB through the following amendments:

1. removing the existing Trustee's power to retire and appoint a new Trustee (Clause 2.1 and 2.2 (22.3) of the Deed of Variation)
2. enabling the beneficiaries to appoint and remove a Trustee (Clause 2.2 (22.4) of the Deed of Variation), and
3. ensuring that the Board of Management is the 'governing body' of the Trust (Clause 2.3 of the Deed of Variation)

The three proposed amendments when applied to the relevant clauses inserted by the Deed of Variation dated 5 June 2002 will subsequently read as follows (proposed amendments shown in red text):

1. Variation 2.1 amends clause 22.1 to point to additional clause:
 22.1 Any Trustee of the Trust may retire as Trustee of the Trust. ~~The Subject to clause 22.3, the~~ right to appoint any new or additional trustee or trustees of the Trust is hereby vested in the retiring or continuing trustee. A corporation or incorporated association may be appointed as Trustee of the Trust.

2. Variation 2.2 inserts two new clauses:
 22.3 The retiring or continuing trustee shall only be entitled to appoint any new or additional trustee of the Trust with the consent of not less than 75% of the Beneficiaries.
 22.4 The Beneficiaries may at any time by Special Resolution:
 (a) remove a Trustee from the office as Trustee of the Trust; and
 (b) appoint such new or additional Trustee.

3. Variation 2.3 insert a new clause 13A
13A Delegation to the Board of Management
 Unless the Beneficiaries otherwise direct (such direction to be given by not less than 75% of the Beneficiaries), the Trustees shall delegate all of the powers authorities and discretions contained in subclauses (a) to (x) of clause 12 to the Board of Management. The Trustees shall, at the direction of the Board of Management, do such things as may be necessary to give effect to the exercise of a power, authority or discretion by the Board of Management.

Comment provided by WALGA

The first two amendments outlined above remove powers granted to the Trustee in the 2002 Deed Variation resulting from the merger to a single Association representing WA Local Governments.

These amendments which previously facilitated the transfer of trusteeship to the then new Western Australian Local Government Association are removed, but with the clarification that any appointment must be with the consent of the beneficiaries.

The final amendment intends to confirm that power rests with the Board of Management. As the Board of Management comprises Local Governments, this satisfies the requirements of a STB for tax purposes. This amendment reflects the actual operation of the Trustee in implementing the decisions of the Board of Management whilst retaining sufficient operational discretion to place and renew investments and pay suppliers.

These amendments provide greater power to beneficiaries through the Board of Management, and as such it is anticipated they will be considered acceptable.

Voting Requirements:

Simple majority.

OFFICER RECOMMENDATION	ITEM 10.1
That as a beneficiary to the Local Government House Trust, holding 3 units, Council consent the Trustee to formally execute the proposed Deed of Variation, as attached.	

8.3.5 POLICY P040220 – PURCHASING POLICY AMENDMENTS

File Ref:	ADMIN.2
Applicant / Proponent:	Not applicable
Subject Land / Locality:	Not applicable
Disclosure of Officer Interest:	Nil
Date:	5 June 2020
Author:	Claire Thompson, Executive Assistant
Authorising Officer:	David Schober, Acting Chief Executive Officer
Attachments:	8.3.5 – Amended Purchasing Policy

Summary:

The tender threshold needs to be amended in the Shire's Purchasing Policy to align with recent changes to the Local Government (Functions and General) Regulations 1996.

Council are asked to consider some other minor amendments to the policy to provide clearer guidance to officers.

Background:

On 8 May 2020, the State Government gazetted updates to the Local Government (Functions and General) Regulations 1996 which included an increase to the tender threshold from \$150,000 to \$250,000.

Local Governments are now required to update their purchasing policies to reflect the changes.

Consultation:

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

Statutory Obligations:

Regulation 11A of the Local Government (Functions and General) Regulations 1996 requires local governments to adopt and implement a purchasing policy in relation to contracts for other persons to supply goods or services. The policy must make provision for the form of acceptable quotes, the minimum number of quotes required (whether oral or written) and record keeping.

Part 4, Division 3 of the Local Government (Functions and General) Regulations 1996 provides for local governments to establish panels of pre-qualified suppliers and outlines the requirements to do so.

Regulation 24C, subregulation (2) sets out the matters which need to be included in any written policy for panels of pre-qualified suppliers.

Policy Implications:

Policy P040220 – Purchasing Policy will be amended according to Council's Resolution.

Budget / Financial Implications:

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

Strategic & Corporate Plan Implications:

The report and officer recommendation is consistent with Council's adopted Strategic Community Plan Aspirations and Objectives and the Corporate Business Plan Actions and Projects in the following specific ways:

Denmark 2027

L5.0 Our Local Government

The Shire of Denmark is recognised as a transparent, well governed and effectively managed Local Government.

L5.1 To be high functioning, open, transparent, ethical and responsive.

L5.3 To be decisive and to make consistent and well considered decisions.

Corporate Business Plan

Nil

Sustainability Implications:

➤ **Governance:**

Local Governments are required to adopt a Purchasing Policy containing certain information. The policy provides consistency and guidance to employees and suppliers in relation to purchasing and ensuring value for money.

➤ **Environmental:**

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

➤ **Economic:**

A purchasing policy provides consistent guidance to employees when making purchases for goods or services on behalf of the Shire. It also provides transparency for local suppliers, particularly when written quotes are required or a tender process is undertaken.

➤ **Social:**

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

➤ **Risk:**

Risk	Risk Likelihood (based on history and with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That Council not increase the tender threshold in Policy P040220.	Rare (1)	Minor (2)	Low (1-4)	Failure to meet Statutory, Regulatory or Compliance Requirements	Accept Officer Recommendation.

Comment/Conclusion:

The attached policy shows amendments which have been recommended by the Director Assets & Sustainable Development and the Executive Assistant & Governance Coordinator.

The changes are summarised as follows;

- **Purchasing Requirements** – increased the tender threshold from \$150,000 to \$250,000.
- **Purchasing Thresholds** – removed reference to Panel of Pre-Qualified Supplier from tender thresholds, removing the requirement for a quote to be sought from panel members in any purchasing category relevant to the panel.
- **Minimum Requirements** – added section requiring officers to report and detail any instance where the minimum requirements detailed under the purchasing thresholds are not met.
- **Tendering Exemptions** – removed references to specific exemptions and referred to the exemption regulations.

- **Distribution of Work for Panel Members** – reworded to improve administrative efficiencies and provide flexibility for officers to appoint non-panel members for contracts, subject to adherence to the requirements under the purchasing threshold table.

Voting Requirements:

Simple majority.

OFFICER RECOMMENDATION

ITEM 8.3.5

That Council adopt the amended Purchasing Policy, as per attachment 8.3.5.

9. COMMITTEE REPORTS AND RECOMMENDATIONS

Nil

10. MATTERS BEHIND CLOSED DOORS

Nil

11. NEW BUSINESS OF AN URGENT NATURE**12. CLOSURE OF MEETING**