

Shire of Denmark

Ordinary Council Meeting **AGENDA**

20 JULY 2021



TO BE HELD IN COUNCIL CHAMBERS, 953 SOUTH COAST HIGHWAY, DENMARK ON TUESDAY, 20 JULY 2021, 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 Ian Osborne
 Cr Jan Lewis
 Cr Janine Phillips
 Cr Roger Seeney
 Vacant

STAFF:

Mr David Schober (Chief Executive Officer)
 Mr David King (Director Assets & Sustainable Development)
 Mr Lee Sounness (Acting, Director Corporate & Community Services)
 Ms Claire Thompson (Governance Coordinator)
 Ms Lisa Sanders (Executive Support Officer)

APOLOGIES

ON APPROVED LEAVE(S) OF ABSENCE

ABSENT

VISITORS

3. DECLARATIONS OF INTEREST

Name	Item No	Interest	Nature

4. ANNOUNCEMENTS BY THE PERSON PRESIDING

5. PUBLIC QUESTION TIME

5.1 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

5.2 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

5.3 QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN

Nil

5.4 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.

- 5.4.1 Denmark Students will provide a presentation regarding the Telstra 5G Network.

6. APPLICATIONS FOR FUTURE LEAVE OF ABSENCE

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

7. CONFIRMATION OF MINUTES

7.1 ORDINARY COUNCIL MEETING – 15 JUNE 2021

OFFICER RECOMMENDATION

ITEM 7.1

That the minutes of the Ordinary Meeting of Council held on the 15 June 2021 be CONFIRMED as a true and correct record of the proceedings, subject to the following corrections;

- Pages 41, 42 and 45 – correct rating category “general” to read rating category “Non-Rural Improved”, where it appears.

7.2 STRATEGIC BRIEFING NOTES – 15 JUNE 2021

OFFICER RECOMMENDATION

ITEM 7.2

That the Notes from the Strategic Briefing Forum held on 15 June 2021 be RECEIVED.

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

The following Notice of Motion was received by the Chief Executive Officer in writing on the 28 June 2021 and therefore complies with the Shire of Denmark Standing Orders Local Law clause 3.9.

8.1 IMPROVING CONTENT OF DIFFERENTIAL RATING PUBLIC NOTICE

File Ref:	Cr.3
Applicant / Proponent:	Cr Bowley
Subject Land / Locality:	Not applicable
Disclosure of Officer Interest:	Nil
Date:	28 June 2021
Author:	Cr Geoff Bowley
Attachments:	Nil

Cr Bowley comment:

1. Council’s past practice has been to provide ratepayers with a very basic public notice about proposed differential rates. This notice meets the minimum statutory requirements but could be improved to provide ratepayers with a more user-friendly explanation of Council’s proposed rating for the coming financial year.
2. During the budget workshop process Councillors are provided with quite clear tables and words that are then used to respond to ratepayers’ questions about rates. There is no obvious reason why that detail, at least in part, cannot be included in the annual public notice (see AMR as a best practice example).

<p>CR BOWLEY MOTION</p> <p>Council REQUESTS the Chief Executive Officer to provide a report to Council, no later than the February 2022 OCM, covering options for improving the content of Council’s annual public notice providing ratepayers with the opportunity to comment on proposed differential rates.</p>	<p>ITEM 8.1</p>
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9. REPORTS OF OFFICERS

9.1 DIRECTOR ASSETS AND SUSTAINABLE DEVELOPMENT

9.1.1 PROPOSED EASEMENTS THROUGH RESERVE 42507

File Ref:	A3905
Applicant / Proponent:	Department of Planning, Lands and Heritage
Subject Land / Locality:	Reserve 42507, Lot 305 Wentworth Road and Lot 304 Richardson Road, Ocean Beach
Disclosure of Officer Interest:	Nil
Date:	28 June 2021
Author:	Craig Pursey., Manager Sustainable Development
Authorising Officer:	David King, Director Assets and Sustainable Development
Attachments:	9.1.1a Landowner proposal for easements 9.1.1b Site plan of proposed easements

Summary:

Council is asked to consider proposed easements across the Nornalup Heritage Trail (Reserve 42507) to facilitate water and effluent disposal pipes between Lot 305 Wentworth Road and Lot 304 Richardson Road, Ocean Beach.

Background:

Lot 305 Wentworth Road and Lot 304 Richardson Road, Ocean Beach are zoned 'Rural' by the Shire's Town Planning Scheme No.3 and are in the same ownership. They are located either side of the Denmark-Nornalup Heritage Rail Trail (Reserve 42507) which is managed by the Shire of Denmark.

A series of development approvals and building applications have been issued for additions and alterations and a change of use to an existing rural outbuilding on Lot 305 to enable its use as a restaurant, tavern, cellar sales and 'rural industry' from June 2020 to February 2021.

The development on Lot 305 proposes to locate infrastructure on the adjacent Lot 304 including:

- Using an existing spring fed dam on the adjacent Lot 304 to supply fire-fighting water; as shown at Attachment 9.1.1a of this report; and
- Locate the effluent disposal system.

The most recent development approval recognises this and applied condition 16 as follows:

"16) Prior to occupation of the premises, should the development be reliant upon any infrastructure, service supply lines or water sources outside the boundary of the subject lot, arrangements shall be made to the satisfaction of the Shire of Denmark to ensure that such infrastructure, service supply lines or water source will be protected by a suitable legal mechanism to secure access rights and obligations in perpetuity (refer Advice Note 13).

Advice Note 13

Condition 16 refers to the need to secure any infrastructure needed for the effective functioning of the development on Lot 305 that may be located on Lot 304 by easement between the two properties, plus the necessary permissions to place infrastructure within Reserve 42507 from Landgate. This is likely to be secured through the placement of easements on the two Titles and the Reserve.

Details of all infrastructure that crosses Reserve 42507, existing and proposed, should be surveyed and lodged with the Shire for separate approval...."

The landowner has approached the Department of Planning, Lands and Heritage (DPLH) for the easements across Reserve 42507, who have written to Council seeking Council's consent as the land manager, (in accordance with section 144(1)(a) of the Land Administration Act 1997).

Consultation:

The development application was advertised for comment previously. No public comment has been sought, as the proposed pipes will be located underground and have negligible impact upon the trail itself once completed.

Statutory Obligations:

DPLH have requested Council consent for the granting of the easements across Reserve 42507 in accordance with Clause 144 (a) of the Land Administration Act 1997, which reads as follows:

144. Easements over Crown land, Minister's powers to grant etc.

- 1) *Subject to this section, the Minister may —*
 - a) *with the consent of every management body of the relevant Crown land and of every person having any interest, right, title or power in respect of that land, grant to any person an easement in, on, over, through or under that Crown land for a specified purpose or any other purpose the Minister thinks fit; and*
 - b) *in that grant express that easement to be subject to specified conditions and the payment of specified consideration.*

Policy Implications:

There are no policy implications.

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

E1.0 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.

B3.4 To manage assets in a consistent and sustainable manner.

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:

DPLH seeks Council's consent to allow two easements across Reserve 42507 which is under the Shire of Denmark's management. The easements are shown at Attachment 9.1.1b of this report.

Staff are not delegated to make this decision.

The easements are required to facilitate fire-fighting water and effluent disposal for the approved tavern, restaurant, cellar sale and rural industry on Lot 305.

Once the pipes are in the ground then there will be little disturbance to the trail. No clearing is required.

The standard DPLH easement indemnifies all parties (the Minister and the Shire) so it is not necessary to stipulate this requirement separately.

Should Council choose to not support the easements the developer will need to prepare alternate solutions for effluent disposal and firefighting water located entirely on Lot 305.

Voting Requirements:

Simple majority.

OFFICER RECOMMENDATION

ITEM 9.1.1

That Council, pursuant to *Section 144(1)(a) of the Land Administration Act (LAA)*, CONSENT to the creation of two easements across Reserve 42507 for the benefit of Lot 305 (40 Wentworth Road) and Lot 304 (2269 South Coast Highway) on Deposited Plan 75450, Ocean Beach as shown at Attachment 9.1.1b with the following condition:

- Public access along Reserve 42507 is maintained

9.1.2 PROPOSED AMENDMENT NO. 150 TO LOCAL PLANNING SCHEME NO. 3

File Ref:	TPS3SA150
Applicant / Proponent:	Not applicable
Subject Land / Locality:	Residential Zone
Disclosure of Officer Interest:	Nil
Date:	28 June 2021
Author:	Will Hosken, Strategic Town Planner
Authorising Officer:	David King, Director Assets and Sustainable Development
Attachments:	9.1.2 – Amendment No. 150 Report

Summary:

This report requests the Council adopt proposed Amendment No. 150 to Local Planning Scheme No. 3 for the purpose of aligning the Shire's approach to ancillary accommodation with the State.

As this amendment proposes consistency with the *Planning and Development (Local Planning Schemes) Regulations 2015* it is classified as a 'basic' amendment, requiring no public consultation and consideration by the Council once only.

Background:

On Monday 10 May 2021, the Shire hosted a discussion forum on housing issues that was proposed by the Bricks and Mortar Housing Alliance (BaMHA). BaMHA represents a group of interested community members and was formed in response to recent housing market pressures and concerns about homelessness in the Shire.

In response to this discussion, Shire officers have assessed a range of potential ways that the Shire could help to ease housing market pressure, acknowledging that the Shire has only a limited scope of influence in the short term. Amongst a wide range of matters it is acknowledged that housing stock in the Shire lacks diversity and this is playing a role in reducing the range of affordable housing options available.

Promoting the development of a more diverse range of housing is a challenge that is being explored within the Shire's review of the Local Planning Strategy, and something that is only likely to change substantially over a number of years. However, it was acknowledged that the opportunity exists for the Shire to act in the nearer term to help free up ancillary accommodation (commonly referred to as 'granny flats').

The Shire currently has more prohibitive controls on the development and use of ancillary accommodation than the standard within the Regulations. This is contained within Clause 5.3.7 of Local Planning Scheme No. 3, which reads as follows:

5.3.7 Ancillary Accommodation

- Where ancillary accommodation is added to an existing building, direct internal access shall be provided from the newly added part of the building to the original part of the building.*

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

An Amendment Report, Attachment 9.1.2, has been prepared to detail the changes to the Scheme necessary to implement this proposal, effectively removing the following planning requirements:

- A covered walkway or direct internal access between ancillary accommodation and a main residence.
- The total area of ancillary accommodation allowable will be increased to a maximum of 70m² instead of 60m² currently.
- Ancillary accommodation may be used by someone who is not related to or dependent on the occupier of the main residence.

Alignment of the Shire's Scheme with the Regulations would potentially provide the following benefits:

- Increased clarity as to which requirements apply, improving certainty for landowners and promoting investment.
- Existing ancillary accommodation will not be restricted to family use, potentially allowing for these units to be used as an additional housing option in the short term.
- Planning requirements associated with ancillary accommodation will be reduced, promoting the development of new ancillary accommodation as an additional housing option.

Within the Residential Zone proposed ancillary accommodation will only require planning approval if it is inconsistent with the Residential Design Codes (R-Codes).

The Scheme does not currently include any provisions for the development of ancillary accommodation in other zones. On this basis, the Shire:

- Refers to the definition of an 'Ancillary dwelling' in the deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
- Accepts and assesses proposals where there is an approved Single House.
- Uses discretion to distinguish between ancillary accommodation and an additional dwelling (grouped dwelling).

The use of discretion is informed by the R-Codes and Clause 5.3.7; however as neither the R-Codes or Clause 5.3.7 directly apply outside of the Residential Zone the Shire will be developing additional guidance for inclusion within the local planning framework.

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:

An amendment to Local Planning Scheme No. 3 must be prepared in the manner and form prescribed by the WA Planning Commission and the *Planning and Development (Local Planning Schemes) Regulations 2015*.

Advice has been sought from the Department of Planning, Lands and Heritage (DPLH) who have confirmed the proposed approach to deleting Clause 5.3.7 as preferred.

Proposed Amendment 150 is classified as a 'basic' amendment which, in accordance with the Regulations, does not require public consultation and is required to be considered by the Council once only. This acknowledges that the Amendment seeks alignment with provisions of State policy.

Policy Implications:

There are no policy implications.

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

N2.0 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.

B3.5 To have diverse and affordable housing, building and accommodation options.

Corporate Business Plan

B3.3.1 Undertake a review of the Local Planning Scheme to activate the community vision and guide future land use and development.

Sustainability Implications:Sustainability Strategy 2021-2031

4.1 Implement responsible and sustainable practices through policy development and land-use planning.

The development of ancillary accommodation is a version of infill development that is typically small-scale, low-key and well suited to existing established areas, making the most of existing infrastructure and increasing the number of dwellings within walking and cycling proximity to services. As a small housing type, it is also inherently more sustainable an option than other alternatives.

➤ 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)
Environmental: That the development of additional ancillary accommodation in unsewered areas increases the risk of environmental harm.	Rare (1)	Minor (2)	Low (1-4)	Inadequate Natural Environ.Man agement Practices	Accept Risk
Reputation: That additional ancillary accommodation is met with community backlash relating to amenity concerns.	Unlikely (2)	Minor (2)	Low (1-4)	Inadequate Engagement - Community / Stakeholders / Crs	Accept Risk

Comment/Conclusion:

Adoption of proposed Amendment No. 150 to Local Planning Scheme No. 3 is recommended in order to ensure the effective implementation of the Planning Regulations and provide the community with the opportunity to more freely develop and use ancillary accommodation as a format of small housing.

Voting Requirements:

Simple majority.

OFFICER RECOMMENDATION	ITEM 9.1.2
<p>That Council, pursuant to section 75 of the <i>Planning and Development Act 2005</i>, resolves to:</p> <ol style="list-style-type: none"> 1. ADOPT proposed Amendment No. 150 to Shire of Denmark Local Planning Scheme No. 3, deleting Clause 5.3.7 of the Scheme text (Attachment 9.1.2). 2. CLASSIFY proposed Amendment No. 150 to Local Planning Scheme No. 3 as a ‘Basic Amendment’ in accordance with the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> for the reason that: <ul style="list-style-type: none"> • The amendment brings the way ancillary accommodation is considered in Local Planning Scheme No. 3 into conformity with the Deemed Provisions of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> and State Planning Policy 7.3 – Residential Design Codes of WA. • The amendment is consistent with the classification of a ‘Basic Amendment’ as identified in Part 5, Division 1, Clause 35(c) of the Regulations. 3. REFER Amendment No. 150 to the Environmental Protection Authority in accordance with Section 81 of the <i>Planning and Development Act 2005</i>. 4. FORWARD proposed Amendment No. 150 to the Western Australian Planning Commission requesting consideration, following receipt of advice from the Environmental Protection Authority, in accordance with Part 5 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>. 	

9.2 DIRECTOR CORPORATE AND COMMUNITY SERVICES

9.2.1 FINANCIAL STATEMENTS FOR THE PERIOD ENDED 31 MAY 2021

File Ref:	FIN.1
Applicant / Proponent:	Not applicable
Subject Land / Locality:	Not applicable
Disclosure of Officer Interest:	Nil
Date:	30 June, 2021
Author:	Scott Sewell, Accountant
Authorising Officer:	Lee Sounness, Acting Director Corporate & Community Services
Attachments:	9.2.1 – May 2021 Monthly Financial Report

Summary:

The attached financial statements and supporting information for the period ending 31 May 2021 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. Furthermore, in line with a commitment provided by the executive team as part of the budget adoption process and the ongoing management of the impacts of COVID, with its potential to affect the operation of Council provided services and facilities at any time, a quarterly review of the budget performance was undertaken for the financial period ended 30 September 2020, 31 December 2020 (the mid-year review) and 31 March 2021 as previously presented to Council. This required all Managers and responsible officers to review all aspects of the activities included within the budget which relate to areas under their control.

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:

The original 2020/2021 budget adopted by Council on 4th August 2020 assumed a \$200,000 surplus closing position. The outcomes of the three quarterly budget reviews and other amendments have adjusted this assumption to a \$592,292 surplus for the May financial report.

During May a thorough project status assessment was completed for both the operating and capital budgets which indicates that there are likely to be further savings in expenditure across the various Programs and Activities undertaken by Council, most of which relate to resourcing issues with either contractor availability or finding the necessary staff time to coordinate the project on the required timeline. Most of these savings are not significant as an individual item but they have the potential to add up as a cumulative total and significantly affect the projected closing funding position in comparison to the budget.

It should also be noted that in early June Council was advised that a prepayment of approximately 50% of the Shire's estimated Financial Assistance Grant allocation for the 2021/2022 year would be made in June. This amount calculated at \$591,799 has been received and will need to be brought to account as part of the year end surplus in addition to the amount referred to above.

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

1.1.1 Advocate for the provision and promotion of services and facilities that meet the needs of the community.

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 31 May 2021, total cash funds held (excluding trust funds) totals \$8,645,051 (Note 1).

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

Reserve Funds (restricted) total \$4,235,786 (Note 5).

Municipal Funds (unrestricted) total \$4,409,265 (Note 2).

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, the 30 June 2021 end of year financial position was initially budgeted for a \$200,000 surplus. As a result of the three quarterly budget reviews (including the mid-year review) undertaken and other adjustments this has been amended to \$592,292 the details of which are contained in Note 3.
- Operating revenue and expenditure is generally in line with year-to-date budget predictions for the period ended 31 May 2021 (Statement of Financial Activity) except for items referenced in Note 3(a), some of the more significant of which relate to variances in the deployment of the depot workforce associated with wage and on-costs which will have no impact on the budget overall.
- The Rates Collection percentage currently sits at 94.08% and is in keeping with historical collection performance statistics (see Note 4)
- The 2020/2021 Capital Works Program is advancing well with 50.38% completed for the year to date with a total committed cost of 95.55% as at 31 May 2021 (see Note 10). It should be noted that a number of changes have been made to the initial timetable set for the capital works infrastructure program which show some variances in the year-to-date budget when compared to actual spend, it is however quite usual for these projects to be undertaken in the second half of the financial year.
- Most transfers to and from general Reserve Funds have not been made for the 2020/2021 year as they are undertaken in the latter part of the financial year, depending on the specific projects to which the transfers relate. One transfer of \$156,292 has been made from the Demark East Development Reserve for recoup of municipal fund expenditure previously incurred.
- Salaries and Wages expenditure is in line with year-to-date budget estimates (not reported specifically in Financial Statement).

Other Information

- Budget Surplus Brought Forward – The adopted budget for 2020/2021 was built on an estimated brought forward surplus position from 2019/2020 of \$1,504,620. The audited Annual Financial Report for 2020 confirms a surplus brought forward of \$1,659,492, a variance increase to the estimate used for the adopted budget of \$154,872. This variance was included in the calculations made and adopted by Council as part of the mid-year budget review and has been adjusted accordingly.
- The financial report for the reporting period ended 31 May 2021 shows that the closing net funding position is currently sitting at \$4.104M, which is comparatively high for the time of year. It should be noted that there is a significant amount of committed expenditure

associated with the capital works program with a lot of projects only partially complete. However, it is possible that weather conditions and contractor availability may hinder the progress of some of the programmed works, and, where applicable, the receipt of funding assistance revenue associated with their completion. This has the capacity to change the net current funding position or closing surplus / (deficit) considerably for the 2021/2022 budget and may mean that certain projects will need to be partially re-budgeted for completion in the new financial year.

- The financial statements as presented now include a Statement of Financial Activity by Nature and Type in addition to the Statement of Financial Activity by Program. This enables the reader to identify and make comparisons in revenues and expenses by certain defined classification types as defined for Local Government statutory reporting in addition to the various Activity Programs into which Local Government services are defined.

Voting Requirements:

Simple majority.

OFFICER RECOMMENDATION	ITEM 9.2.1
<p>That with respect to Financial Statements for the period ending 31 May 2021, Council RECEIVE the Financial Reports, incorporating the Statement of Financial Activity and other supporting documentation.</p>	

9.2.2 LIST OF PAYMENTS FOR THE PERIOD ENDING 31 MAY 2021

File Ref:	FIN.1
Applicant / Proponent:	Not applicable
Subject Land / Locality:	Not applicable
Disclosure of Officer Interest:	Nil
Date:	28 June 2021
Author:	Gina McPharlin, Manager of Corporate Services
Authorising Officer:	Lee Sounness, Acting Director Corporate & Community Services
Attachments:	9.2.2 – 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 2021 to 31 May 2021.

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

L5.4 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 9.2.2
<p>That with respect to the attached Schedule of Payments, totalling \$1,703,395.82, for the month of May 2021, Council RECEIVE the following summary of accounts:</p> <ul style="list-style-type: none"> • Electronic Funds Transfers EFT30191 to EFT30433 - \$1,110,612.66; • Municipal Fund Cheque No's 60434 – 60436 - \$5,208.20; • Internal Account Transfers (Payroll) - \$410,640.54; and • Direct Debit - \$10,406.52; • Corporate Credit Card; \$269.13; • Department of Transport Remittances; \$94,810.10, and • Loan Payments: \$71,448.67. 	

9.2.3 INVESTMENT REPORT FOR THE PERIOD ENDED 31 MAY 2021

File Ref:	FIN.19
Applicant / Proponent:	Not applicable
Subject Land / Locality:	Not applicable
Disclosure of Officer Interest:	Nil
Date:	28 June 2021
Author:	Gina McPharlin, Acting Manager Corporate Services
Authorising Officer:	Lee Sounness, Acting Director Corporate & Community Services
Attachments:	9.2.3 - May 2021 Investment Register

Summary

This report presents the Investment Register for the month ending 31 May 2021.

Background

This report is for Council to receive the Investment Register as at 31 May 2021.

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 investments are to comply with the following 3 key criteria:

- a) Portfolio Credit Framework - limits the percentage of the portfolio exposed to any particular credit rating category (table a.)

Table a.

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%

- b) Counterparty Credit Framework – limits single entity exposure by restricting investment in an individual counterparty/institution by their credit rating (table b.)

Table b.

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.

c) Term to Maturity Framework - limits investment based upon maturity of securities (table c.)

Table c.

Overall Portfolio Return to Maturity		
Portfolio % <1 year	Min 40%	Max 100%
Portfolio % >1 year	Min 0%	Max 60%
Portfolio % >3 year	Min 0%	Max 50%
Portfolio % >3 year < 5 year	Min 0%	Max 25%

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

There are no 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 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

The attached Investment Register, Attachment 9.2.3, summarises how funds are invested as per the Shires Investment Policy and reports on the Investment Portfolio balance as at 31 May 2021.

At 31 May 2021 Council had a total of \$7,396,193 invested and in accordance with Council Policy P040229 exposure to a particular credit rating category is limited and an appropriate portfolio credit rating mix is maintained by investing with four banking institutions.

Council policy P040229 restricts investment in an individual counterparty/institution by their credit rating to limit single entity exposure. Council cannot invest more than 20% of its investment portfolio in an institution with a Standard & Poor (S&P) rating of A-2. With 22.56% (\$1,668,649) of funds invested with the Bendigo Bank (current S&P rating A-2) at the end of May 2021, the Council’s Investment Portfolio does not meet this requirement. In accordance with policy, this will be rectified in June when the term deposit investment with Bendigo Bank matures.

The total Reserve Funds invested as at 31 May 2021 totals \$4,235,786.
 The total Municipal Funds Invested as at 31 May 2021 totals \$3,160,407.

The Reserve Bank of Australia (RBA) has not altered its cash rate for this month. The cash rate remains set at 0.10%.

Voting Requirements

Simple majority.

OFFICER RECOMMENDATION	ITEM 9.2.3
That Council RECEIVE the Investment Register, Attachment 9.2.3, for the period ended 31 May 2021.	

9.2.4 RATES EXEMPTION APPLICATION – MIA MIA HOUSING COLLECTIVE INC

File Ref:	A2535, A2537, A3436
Applicant / Proponent:	Co-operation Housing
Subject Land / Locality:	Units 1-3, 2 Melaleuca Lane Denmark Units 1-6, 6 Melaleuca Lane Denmark Units 7-12, 7 Melaleuca Lane Denmark
Disclosure of Officer Interest:	Nil
Date:	30 June 2021
Author:	Lee Sounness, Acting Director Corporate & Community Services
Authorising Officer:	Lee Sounness, Acting Director Corporate & Community Services
Attachments:	9.2.4a - Rate Exemption Application A2535 – CONFIDENTIAL 9.2.4b - Rate Exemption Application A2537 - CONFIDENTIAL 9.2.4c - Rate Exemption Application A3436 - CONFIDENTIAL

Summary:

To consider an application for a charitable rate exemption on 3 rateable properties managed and/or owned by Mia Mia Housing Collective Inc. in accordance with Section 6.26 of the Local Government Act 1995.

Background:

Section 6.26(2)(g) of the Local Government Act provides a rates exemption for ‘land used exclusively for charitable purposes’. ‘Charitable purposes’ is not currently defined in the Local Government Act 1995 or other statutes; rather charity is defined at common law.

Although the *Local Government Act 1995* does not provide a definition, the Western Australian Local Government Association (WALGA) have produced a Best Practice Guideline and within this document given a definition of “charitable purpose”.

The Western Australian case law (arising from both the Courts and the State Administrative Tribunal) summarise that for a purpose to be charitable –

- a) It must fall within the preamble to the Statute of Elizabeth I enacted in 1601, and the judgement by Lord MacNaghten in *Commissioners for Special Purposes of Income Tax v Pemsel*, which classified the categories of charitable as follows –
 - Trusts for the relief of poverty;
 - Trusts for the advancement of education;
 - Trusts for the advancement of religion; and
 - Trusts for other purposes beneficial to the community.
- b) There must be a public benefit, being a benefit directed to the general community, or to a sufficient section of the community to amount to the public.

Each local government has the responsibility to assess and decide on applications from organisations seeking an exemption from paying rates. The types of land generally considered to be of a charitable nature include community housing, accommodation for the aged, people with disabilities, disadvantaged persons.

A claimant is required to evidence their right to an exemption under Section 6.26 of the Local Government Act by providing information upon which the Local Government can make an objective assessment as to their eligibility. In the case of a charitable land use application, Section 6.26(2)(g) of the Act does not establish an 'as of right' entitlement to a rate exemption on the basis of a claimant organisation's structure, purpose, objectives or the apparent land use.

The basis for an exemption is in regard to the activity that is taking place on the land not the status of the applicant. The fact that a not for profit is conducting an activity on the land is not the singular determining factor in the non-rateable status. The legislation states that it is the 'land use' that qualifies eligibility on a property and as such an application must be considered on that basis.

The applicant, Co-operation Housing, is a not-for-profit company limited by guarantee and were established in 2010 to support and grow Western Australia's housing co-operative sector. They are the only registered community housing provider in the State that specialises in housing co-operatives, currently operates under a delegated management model and is registered as a Community Housing Provider (CHP) with the Department of Communities (WA).

The following are housing co-operatives under the Co-operation Housing model:

- First Fremantle Hosing Collective
- ARCH Housing Collective
- Inanna's House
- **Mia Mia Housing Collective**
- Subiaco Leederville Housing Collective
- Tapper Street Mews

The co-operatives work with Co-operation Housing to support and manage tenancies under the Residential Tenancies Act 1987 and ensure the ongoing maintenance of their properties.

The Mia Mia Housing Collective began in 1991 and was originally known as the Great Southern Housing Collective. It was developed from funding under the Local Government Community Housing Program (LGCHP) on land purchased by the State Government.

Mia Mia Housing Collective is a not-for-profit organisation and has been registered as a charity since December 2012 to help financially disadvantaged people by providing housing to low income households in Denmark. There are 15 unit dwellings across three properties and the number of occupying residents is currently 25.

The Objects of Mia Mia Housing Collective Inc. rules of association are:

1. To advocate for and on behalf of its members.
2. To maintain a system of management by members.
3. To maintain a housing collective for the purpose of providing accommodation for its members, under an agreement which excludes the right to sub-let.
4. To provide access for lower income earners to affordable housing, with security of tenure.
5. To promote the development of a community ethos which emphasises harmony, sharing and caring, and respect for individual rights and needs.
6. To manage the land and houses in an environmentally-sustainable manner

Under Section 4 of Mia Mia’s Rules of Association it states that to be eligible a member must be “Any person who meets Department of Housing (DoH) criteria”. The DoH criteria is outlined in their policies and includes income limits and that rent is set at 25% of the persons income.

In October 20, 2020 Co-operation Housing accepted Mia Mia Housing Collective as a member to their organisation.

The following properties form part of Mia Mia Housing Collective:

Property	Owner	Asses No.	Units	2020/21 Rates \$	Ratepayer
U1-3, 2 Melaleuca Lane	Mia Mia*	A2535	3	\$3,883	Mia Mia Housing
U1-6, 6 Melaleuca Lane	Mia Mia*	A2537	6	\$7,666	Mia Mia Housing
U7-12, 7 Melaleuca Lane	Dept. Of Housing	A3436	6	\$8,213	Mia Mia Housing
		TOTAL	15	\$19,762	

Under sub-section 6.26(2)(a), land owned by the Crown is generally not rateable. However, under section 1.4, if the Crown leases the land to another entity, the lease agreement could contain a clause which causes that entity to be the ‘owner’ of the land for the purpose of rates.

- The Certificate of Title list Mia Mia Housing as the registered proprietor of the above properties but have listed caveats on them by the Department of Housing and technically are still owned by the State. However, Mia Mia Housing has an agreement with the State to manage the properties as if they are their owned by Mia Mia Housing and therefore they are responsible for all expenses, including rates.



In March 2021, Mia Mia Housing Collective wrote to the Shire enquiring about receiving an exemption from rates from the Shire of Denmark. This led to conversations regarding the process and subsequent applications been received by the Shire on 4 June 2021 from Co-operation Housing under Section 6.26(2)(g) of the Local Government Act 1995. Rate’s exemption applications for 3 properties on behalf of Mia Mia Housing Collective with the required supporting information for assessment including:

- Mia Mia Housing Collective Incorporated Association Extract
- Mia Mia Housing Collective Registered Charity Status
- Mia Mia Housing Collective Rules of Association
- Confirmation of rent paid by each unit holder
- Certificate of Titles for 2, 6 and 7 Melaleuca Lane Denmark

To note: The Shire currently has 431 properties listed on its rates register as non-rateable. Of these:

Shire of Denmark properties –	190
Crown Land -	101
State Govt. Exempt Bodies -	62
Strata/Right of Way -	48
Rate Exempt Approved -	20

The following property was determined by Council in 2012 to be Non-Rateable and is similar in nature to the applicant/property owner.

Assess No	Lot No	House No.	Street Name	Suburb	Surname	Description	GRV/CV	Total Area	Description
A2482	8	14	WATTLE	DENMARK	Advance Housing Limited Albany	UNITS – affordable housing	126,360	4,451 sq m	RESID(R10/20)

Consultation:

WALGA Rates and Charitable Land Use Exemption Applications – Best Practice Guideline

Statutory Obligations:

Making a Determination:

Once the application is returned and regarded as complete, consideration is then given to determining whether non-rateable status applies, or is to be declined. Councils may do this in different ways:

- Councils may delegate authority for a rate exemption application to be determined by the CEO; or
- Councils may require an application to be referred to Council together with an Officer Recommendation to either approve or decline the request.

If the application is approved, the applicant is to be notified in writing, with the correspondence including details of the date the exemption is to apply from, the section of the Act applicable to the exemption, the review period (i.e., 3 years) and the amount of rates reversed.

If the application is refused, the applicant will need to be notified in writing of the decision. Where the application is refused, the applicant may object under s. 6.76 of the Local Government Act 1995 to the rate record of the local government in question, on the basis that the land or part of the land was not rateable land. Further, the applicant has the right to appeal a decision made under s. 6.76 to the State Administrative Tribunal (SAT).

Landgate Valuation Services need to be notified of any rates exemptions that are approved or no longer applicable.

Local Government Act 1995

Section 6.26. Rateable Land states in part:

- (1) Except as provided in this section all land within a district is rateable land.
- (2) The following land is not rateable land —
 - (g) **land used exclusively for charitable purposes; and**

Charities Act 2013

Section 12 Definition of charitable purpose states in part:

charitable purpose means any of the following:

- a) the purpose of advancing health;
- b) the purpose of advancing education;
- c) the purpose of advancing social or public welfare;
- d) the purpose of advancing religion;
- e) the purpose of advancing culture;
- f) the purpose of promoting reconciliation, mutual respect and tolerance

Section 7 Provides that certain purposes presumed to be for the public benefit:

- a) the purpose of preventing and relieving sickness, disease or human suffering;
- b) suffering;
- c) the purpose of advancing education;
- d) the purpose of relieving the poverty, distress or disadvantage of individuals or families;
- e) or families;
- f) the purpose of caring for and supporting:
- g) the aged; or

- h) individuals with disabilities;
- i) the purpose of advancing religion.

Policy Implications:

Nil

Budget / Financial Implications:

Property	Owner	Asses No.	Units	2020/21 Rates \$	Ratepayer
U1-3, 2 Melaleuca Lane	Mia Mia	A2535	3	\$3,883	Co-operation Housing
U1-6, 6 Melaleuca Lane	Mia Mia	A2537	6	\$7,666	Co-operation Housing
U7-12, 7 Melaleuca Lane	State Housing Commission	A3436	6	\$8,213	Co-operation Housing
			TOTAL	15	\$19,762

The application was submitted in May 2021. The amount of rates to be reversed for 2020/21 would be \$3293.66, been the amount paid for May-June 2021.

If the rates were made exempt for the above three properties, then in 2021/22 the total reduced rate income for the Shire is estimated to be \$21,020.

Strategic 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.

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

L5.4 To be fiscally responsible.

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)
If Council decline the rates exemption application, then staffing and/or legal costs may be incurred should Mia Mia Housing Inc request the State Administrative Tribunal review the decision	Likely (4)	Moderate (3)	High (10-16)	Failure to meet Statutory, Regulatory or Compliance Requirements	Manage by considering objection in accordance with Local Government Act 1995

Comment/Conclusion:

Three rate exemption applications have been received from Co-operation Housing, seeking a rates exemption for properties owned and/or managed by Mia Mia Housing Collective under Section 6.26 (g) of the Local Government Act 1995 – land used exclusively for charitable purposes.

Historically these type of properties were owned and managed by the Department of Housing (DoH), who met payment on all Local Government rates and charges. In recent years DoH, have moved towards a model of contracting out the property management of these properties to charitable organisations like Mia Mia Housing Collective Inc. or selling the properties to these charitable organisations. Through property management agreements, the DoH has passed on the liability for outgoings which includes Local Government Rates.

For Council to approve rate exemptions for Mia Mia Housing Collective on behalf of the applicant (Co-operation Housing Inc) the land must exclusively be used for charitable purposes. An internal assessment of all three applications received indicate that they are eligible for a rate exemption under section 6.26(2)(g) of the Local Government Act 1995 as the land can be deemed to be used exclusively for charitable purposes and has a purpose beneficial to the public.

Options:

It is open to Council to consider the following options to deal with the current matter:

1. Approve a rates exemption on the three property applications as in accordance with Section 6.26 of the Local Government Act 1995; or
2. Not approve a rates exemption, noting that the applicant would be able to appeal Council’s decision under s6.76 of the Local Government Act 1995.

These applications are now referred to Council for consideration

Voting Requirements:

Simple Majority

<p>OFFICER RECOMMENDATION</p> <p>That Council;</p> <ol style="list-style-type: none"> 1) APPROVE the rate exemption application from Mia Mia Housing Collective Inc under section 6.26(2)(g) of the Local Government Act 1995 effective May 2021 and reverse the following rates paid in 2020/21 on: A2535 Units 1-3, 2 Melaleuca Lane Denmark - \$647.17 A2537 Units 1-6, 6 Melaleuca Lane Denmark - \$1277.67 A3436 Units 7-12, 7 Melaleuca Lane Denmark - \$1368.83; and, 2) AGREE that this rate exemption is to continue where Mia Mia Housing Collective Inc. confirms in writing by the 30 April annually that they continue to operate and use the property for the purposes stated in the application; and, 3) REQUEST the CEO to review the existing rates exempt approved properties as listed on the Shire of Denmark rates register and ensure approved applicants confirm in writing by 30 April annually that they continue to operate and use the property for the purposes as stated in their original application. 	<p>ITEM 9.2.4</p>
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9.2.5 REVISED POLICY – INVESTMENT P040229

File Ref:	ADMIN.2
Applicant / Proponent:	Shire of Denmark
Subject Land / Locality:	Not applicable
Disclosure of Officer Interest:	Not applicable
Date:	29 June 2021
Author:	Gina McPharlin, Acting Manager Corporate Services
Authorising Officer:	Lee Sounness, Acting Director Corporate & Community Services
Attachments:	9.2.5a - Original Investment Policy P040229 9.2.5b – Amended Investment Policy P040229

Summary:

The purpose of this report is to request that Council adopt an amended Investment Policy - P040299, Attachment 9.2.4b.

Background:

The overall objective of the Investment Policy is to provide the criteria for making authorised investments of funds which are surplus to the Shire of Denmark’s immediate requirements and to ensure the security of the Shire’s funds.

While the Investment Policy P040229 requires the policy to be reviewed annually, the last major review was undertaken four years ago in 2017. It is then timely to review the policy to ensure it continues to be sufficiently comprehensive and effectively safeguards Shire investments. It is also important to note that within this period, there have been changes to external factors including reduced institution returns and credit ratings.

Following the policy review and briefing of Councillors, the amendments to the Investment Policy are summarised as follows:

- **Improved readability.** The majority of proposed amendments seek to increase clarity by improving readability. These changes include simplifying text, reordering sub-topics and the inclusion of a Policy Statement to clearly articulate policy intent.
- **Amend Risk Management Guideline criteria (b) Counterparty Credit Framework for Standard & Poor (S&P) A-2 rated institutions from 20% to 25%.** Credit ratings are used to rate the capacity of an institution to meet its financial obligations. S&P’s Short-Term ratings range from A-1+ to B. The Shires investments are currently held in either a A-1+ (Commonwealth Bank, National Australia Bank) or A-2 (Bendigo Bank) rated institution, to meet policy requirements.

The current Investment Policy limits the exposure to a single institution through the Counterparty Credit Framework (table below). The appropriateness of limiting institutions to a S&P short-term credit rating of A-2 to 20% was reviewed. As an A- 2 rating is considered to have a ‘satisfactory capacity to meet its financial commitments’, the limit has been amended upwards to 25%.

Table 1 – Counterparty Credit Framework - Updated

S&P Long Term Rating	S&P Short Term Rating	Direct Investment Maximum %	Managed Funds Maximum %
AAA	A-1+	50%	50%
AA	A-1	35%	45%
A	A-2	25%	40%

This increase will allow for the shifting portfolio credit mix as investments are withdrawn to meet operational cash flow requirements whilst still maintaining the Shire’s conservative appetite for risk.

- **Inclusion of Non-Fossil Fuel Investment criteria.** As a first step to support the Shire’s Sustainability Strategy, criteria have been included to ensure investments are made with institutions that don’t fund fossil fuels, once policy objectives and risk management guidelines have been met.
- **Inclusion of rating agency adoption.** Criteria has been included to document the Shires practice of using S&P as the credit ratings agency and to make sure regular reviews of institutions credit ratings are made.
- **Amend Benchmarking to Reserve Bank of Australia (RBA) Cash Rate only.** To reflect the Shires practise of benchmarking investment return against the current RBA cash rate, the option to benchmark against the UBS Warburg 90 Day Bank Bill Index has been removed.
- **Amend reporting requirement.** The reporting requirement has been amended to align with the current monthly investment report format as directed by Council. This includes reporting portfolio and counterparty credit rating percentages and investment income earned versus budget year to date. The information reported provides assurance the Shire’s investment portfolio complies with legislative and policy limits.

Consultation:

Consultation was conducted with staff and Council briefed on the Policy review.

Statutory Obligations:

LOCAL GOVERNMENT ACT 1995

- Section 5.42 - The authority to make investment decisions and sign investment lodgements and withdrawals can be delegated to the CEO.
- Section 5.44 - The CEO may in turn delegate the day-to-day management of the local government’s investments to an employee.
- Section 6.14 - local government money held in the municipal or trust funds that is surplus to immediate needs, can be invested under The Trustees Act 1962 – Part III Investments. The local government must prescribe the circumstances where the money can be invested and provide for the application of investment earnings and management of investments.

LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) REGULATIONS

- Regulation 19 – a local government must establish and follow control procedures to enable the identification of the nature and location and related transactions of all investments.

- Regulation 19C – restrictions apply to the type, term, and currency of local government investments.
- Regulation 28 – it is a requirement for an estimate of the amount earned from the investment of money held in reserves or other invested money to be included in the notes to the annual budget.
- Regulation 34 – a local government is to prepare a statement of financial activity each month. The report must report on investments (assets), revenue (investment earnings), year to date and annual budget estimates and actual v budget variances.
- Regulation 49 – it is a requirement for the amount earned from the investment of money held in reserves or other invested money to be included in the notes to the annual financial report.

Policy Implications:

This item proposes to amend Investment Policy - P040229.

Budget / Financial Implications:

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

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

L5.4 To be fiscally responsible

N2.4 To acknowledge and adapt to climate change

Corporate Business Plan

Nil

Sustainability Implications:

➤ **Sustainability Strategy 2021-2031**

LE3 Investigate feasibility of developing a Responsible Sustainable Investment Policy for the Shire.

➤ **Governance:**

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

➤ **Environmental:**

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

➤ **Economic:**

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

➤ **Social:**

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

➤ **Risk:**

Risk	Risk Likelihood (based on history and with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
FINANCIAL That by amending the credit rating profiles the Shire is exposed to increased financial risk	Rare (1)	Major (4)	Low (1-4)	Inadequate Financial, Accounting or Business Acumen	Accept Risk
REPUTATIONAL Without reporting requirements in the Policy there is an increased risk of non-compliance with Council Policy	Possible (3)	Minor (2)	Moderate (5-9)	Inadequate Financial, Accounting or Business Acumen	include suitable reporting requirements in the revised policy.

Comment/Conclusion:

The purpose of reviewing the Investment Policy is to ensure its objectives are clear and concise and is sufficiently comprehensive to effectively safeguard Shire investments. Officers have drafted an amended policy, Attachment 9.2.4b, to address each of the issues that were identified throughout the review. Based on the outcome of the review and in consultation with Council at briefing sessions, it is recommended that Council adopt the revised policy.

Voting Requirements:

Simple majority.

OFFICER RECOMMENDATION	ITEM 9.2.5
That Council, with respect to the Investment of Surplus Funds Policy, ADOPT the amended Investment Policy P040229 (Attachment 9.2.4b).	

9.2.6 REQUEST FOR USE OF YOUTH CENTRE BUILDING BY DENMARK BRIDGE CLUB

File Ref:	A3035
Applicant / Proponent:	Denmark Bridge Club
Subject Land / Locality:	McLean Precinct Building- 'Tha House'
Disclosure of Officer Interest:	Not applicable
Date:	24 June 2021
Author:	Renee Wiggins, Acting Manager Community Services
Authorising Officer:	Lee Sounness, Acting Director Corporate & Community Services
Attachments:	Nil

Summary:

The Youth Centre building, formerly known as 'Tha House', is now vacant and the Shire has received a request for use from the Denmark Bridge Club.

Officers have used this opportunity to look at the future use of this facility and review the applicable fees and charges payable for users to hire the building.

Background:

Following extensive review, use of the Tha House for youth services ceased in 2017, with Council opting to move towards the 'Denmark Youth Outreach Service' model; in collaboration with Albany Youth Support Association (AYSA). AYSA acts to provide case management and support for at risk youth in Denmark.

Since its closure, the facility has been predominately occupied by the Denmark Men’s Shed under an arrangement with the Shire to pay Non-Commercial hire rates as listed in the Schedule of Fees & Charges. In February 2021, the Denmark Bridge Club approached the Shire to request an exclusive lease for use of the Youth Centre building upon the departure of the Denmark Men’s Shed. The Denmark Men’s shed vacated the Youth Centre building in April 2021 and the premises remains unoccupied.

The Bridge Club presented to Councillors and shared the club’s history including their recent growth, along with the club’s importance to the Denmark community. The future use of the Youth Centre building for the Shire and other community groups was considered along with the request to lease from the Denmark Bridge Club.

Consultation:

Denmark Bridge Club

Statutory Obligations:

Nil

Policy Implications:

There are no policy implications.

Budget / Financial Implications:

Hire Fees for the McLean Precinct Building hire (GL1620103) as set out in the current Fees and Charges are;

Commercial Hire Rates:

- Full Day (more than 4 hours) \$460
- Half Day (maximum 4 hours) \$230
- Casual (minimum 2 hour charge) \$120

Non-Commercial Hire Rates:

- Full Day (more than 4 hours) \$230
- Half Day (maximum 4 hours) \$120
- Casual (minimum 2 hour charge) \$65
- Cleaning Fee \$69 per hour (if the facility is not left in a reasonable condition after use).

Officers reviewed the above fees and charges and determined no change was required.

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

- B3.1 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
- 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.

Corporate Business Plan

Nil

Sustainability Implications:

- 01 Health & Happiness 1.4
Support initiatives that create connected communities with key service areas.
- 03 Culture & Community 3.6
Embrace inclusivity and ensure availability and access of infrastructure and services to all minority groups including disadvantaged, and people with disabilities.

➤ **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:**

Provides a positive opportunity by utilising a venue that helps community members to connect that also creates additional space for groups and facilitators to host community discussions, training and workshops.

➤ **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)
Competing with other local business that provide venue hire such as DCRC	Likely (4)	Minor (2)	Moderate (5-9)	Not Meeting Community expectations	Treat through ensuring our fees remain higher than similar facility hire fees.

Comment/Conclusion:

The Denmark Bridge club had previously requested exclusive use of the facility for approximately four hours, three times a week through a formal lease arrangement. Through discussions with officers the Denmark Bridge club is now in agreeance with a six-monthly booking arrangement. Usage request is for the main area and access to an additional room to store their electronic scoring equipment used during their sessions. These items will be stored at their own risk. Denmark Bridge Club propose to clean the facility after each use as part of the agreement.

It is recommended that Council hire The Youth Centre building to the Denmark Bridge Club under the Schedule of Fees and Charges. Entering into a formal lease arrangement comes with legislated provisions which dictate a minimum period that is required to allow a tenant to vacate the premises. In addition, this could prove restrictive should the Shire require use of the building in a timeframe less than is set out in State legislation, especially while COVID-19 measures remain present. To ensure equity for all community groups and community members it is also recommended that the availability to hire this facility is promoted to the broader community.

All users, including the Denmark Bridge Club, can apply for re-occurring bookings in increments of up to six months. Hire of the facility will be on a ‘first in - best dressed’ basis and as per the conditions of hire for the building. These conditions allow the Council the ability to terminate bookings should an alternative use be identified.

The officer recommends the Youth Centre building be referred to as ‘McLean House’ for ease of promotion, advertising and administration.

Voting Requirements:

Simple majority.

OFFICER RECOMMENDATION	ITEM 9.2.6
<p>That Council:</p> <ol style="list-style-type: none"> 1. AGREE to the Youth Centre building, formerly known as ‘Tha House’, be referred to as ‘McLean House’. 2. REQUEST the Chief Executive Officer to develop a booking system for McLean House, including guidelines on appropriate use, booking and termination process should the Council decide the future use of the building for its own or alternate use. 	

9.3 CHIEF EXECUTIVE OFFICER

9.3.1 CODE OF CONDUCT FOR COUNCIL MEMBERS, COMMITTEE MEMBERS AND CANDIDATES

File Ref:	ADMIN.2
Applicant / Proponent:	Not applicable
Subject Land / Locality:	Not applicable
Disclosure of Officer Interest:	Nil
Date:	28 May 2021
Author:	Claire Thompson, Governance Coordinator
Authorising Officer:	David Schober, Chief Executive Officer
	9.3.1a – Local Government (Model Code of Conduct) Regulations 2021
	9.3.1b – Draft Code of Conduct for Council Members, Committee Members and Candidates
Attachments:	9.3.1c – Draft Code of Conduct Behaviour Complaints Management Policy
	9.3.1d – Draft Delegations to CEO
	9.3.1e – Draft Behaviour Complaints Committee Charter
	9.3.1f – Draft Delegation to Behaviour Complaints Committee

Summary:

In accordance with the Local Government (Model Rules of Conduct) Regulations 2021, Council is required to:

1. Adopt a Code of Conduct for Council Members, Committee Members and Candidates; and
2. Approve a complaint form; and
3. Authorise a person to receive and withdraw complaints.

To enable administrative efficiency and transparency, the Author has recommended that Council also consider:

1. Delegating actions 2 and 3 above to the Chief Executive Officer;
2. Establishing a Behaviour Complaints Committee;
3. Delegating certain functions to the Behaviour Complaints Committee;
4. Adopting a Behaviour Complaints Policy and Procedure.

Background:

The *Local Government (Model Code of Conduct) Regulations 2021* replaces the *Local Government (Rules of Conduct) Regulations 2007*.

The Shire of Denmark’s current Code of Conduct applies to Council Members, Committee Members and Employees. As a result of the Local Government Act 1995, and Regulations amendments, in February 2021, all local governments are required to adopt a separate Code of Conduct for Elected Members, Committee Members and Candidates.

Consultation:

The Department of Local Government, Sport and Cultural Industries and the West Australian Local Government Association have provided templates and information to assist local governments to comply with the new legislative requirements.

Statutory Obligations:

LOCAL GOVERNMENT ACT 1995

- Section 5.103 – Regulations must prescribe a model code of conduct for council members, committee members and candidates. (See *Local Government (Model Code of Conduct) Regulations 2021*).
- Section 5.104 – a local government must prepare and adopt a code of conduct to be observed by council members, committee members and candidates that incorporates the model code. Absolute majority required.
- Section 5.7(2)(b) describes one of the roles of Council is to determine the local government policies.
- Section 5.42 – enables the Council to delegate its functions to the CEO (subject to any limits under s5.43).
- Section 5.8 – enables the council to, “*establish a committee of 3 or more persons to assist the council and to exercise the powers and discharge the duties of the local government that can be delegated to committees*”. Absolute majority required.
- Section 5.9(2)(b) allows a committee to comprise of Council Members only.
- Section 5.10(2) states that Council Members are entitled to be a member of at least one committee referred to in 5.9(2)(a).
- Section 5.16 – Council can delegate functions to certain committees (subject to any limits under s5.17).
- Section 5.23(1)(b) – requires that meeting of any committees with delegated function must be open to the public.

LOCAL GOVERNMENT (MODEL CODE OF CONDUCT) REGULATIONS 2021

(A copy of the Regulations is attached - see Attachment 9.3.1a)

The purpose of the regulations is to prescribe the model of code of conduct, which includes redrafted versions of the former *Rules of Conduct* regulations. A draft Code of Conduct, based on the Regulations and the West Australian Local Government Association (WALGA) template are attached (see Attachment 9.3.1a).

Complaints under Division 3 are required to be dealt with by the local government.

Complaints under Divisions 4 (replaces the former *Local Government (Rules of Conduct) Regulations 2007*) and will still be required to be referred to the Local Government Standards Panel for assessment and any findings.

Regulations 11(1) and 11(2) – require that the Council must approve a complaint form and appoint a complaints person or persons. The Author has recommended that these functions be delegated to the Chief Executive Officer for administrative efficiency, particularly should minor changes be required to either at any time in the future.

Regulation 12(4) states that if the Council (or the Committee, as proposed) makes a finding that a breach has occurred, it may, “*...take no further action or prepare and implement a plan to address the behaviour of the person to whom the complaint relates*”.

Regulation 15(2) enables a local government to determine the procedure for dealing with complaints, to the extent that it includes any matters not prescribed by Regulations. The attached Policy & Procedure, Attachment 9.3.1c is based on a template provided by WALGA and includes matters such as confidentiality, procedural fairness and Alternative Dispute Resolution.

Policy Implications:

POLICY P040128 – Officers and Elected Members Code of Conduct.

This policy requires repealing. Codes of Conduct are not required to be incorporated into a Council policy.

A review of the Code of Conduct for Employees (including the CEO) is being undertaken and will be implemented by the Chief Executive Officer, in accordance with s5.51A of the Local Government Act 1995 and Part 4A of the Local Government (Administration) Regulations 1996.

A copy of the proposed new Council Members, Committee Members and Candidates *Code of Conduct* is attached (see Attachment 9.3.1b).

BEHAVIOUR COMPLAINTS MANAGEMENT POLICY

The Department of Local Government and the WALGA have recommended that local governments develop further guidance on dealing with complaints through the introduction of a complementary policy and procedure on complaints management, to the extent that it is not provided for in the Regulations. WALGA have noted that as the Council have a policy-making role, they recommend that Council is provided an opportunity to contribute to the development of a Complaints Policy.

The policy;

- gives effect to the Council's commitment to ensure that the internal behaviour complaints process is effective, transparent and consistent;
- establishes and explains the role of a Behaviour Complaints Committee and a Behaviour Complaints Officer;
- information regarding the Council's commitment to confidentiality;
- the availability of Alternative Dispute Resolution;
- information required in a Complaints Report.

DELEGATIONS

It is recommended to delegate the following Council functions. The Regulations referred to below are found in the *Local Government (Model Code of Conduct) Regulations 2021*;

1. To the Chief Executive Officer:
 - a) Appointment of Behaviour Complaints Officer(s) – *Regulation 11(3)*; and
 - b) Approval of Behaviour Complaints Form – *Regulation 11(2)*.

These delegations will allow the CEO to make authorisations as necessary, to address staff changes and provide backup coverage.

A draft delegation is attached (see Attachment 9.3.1d).

2. To a new Behaviour Complaints Committee:
 - a) To deal with behaviour complaints made under Division 3 of the Shire of Denmark's Code of Conduct for Council Members, Committee Members and Candidates – *Regulations 12 & 13*.

This delegation would allow a committee to review and determine the outcome of any complaints instead of any complaints being referred to a full Council meeting.

A draft Delegation and Committee Terms of Reference is attached (see Attachments 9.3.1d and 9.3.1f).

Budget / Financial Implications:

If the Council (or the Committee, as proposed) makes a finding that a breach has occurred, it may, "...take no further action or prepare and implement a plan to address the behaviour of the person to whom the complaint relates". (Regulation 12(4)).

A plan could include mediation, counselling, training or other action considered appropriate.

The policy recommends that any administrative arrangements could be managed in accordance with the Shire's Continuing Professional Development Policy and can be accommodated under the Elected Members Training budget. (GL1410152)

The proposed Committee would have delegated function which means that the meetings would need to be advertised and open to the public. There could be some minor advertising costs involved in advertising any meeting date that can be covered under the Shire's general administration advertising budget.

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.

Sustainability Implications:

➤ **Governance:**

It is a legislative requirement that every local government adopt a Code of Conduct for Council Members, Committee Members and Candidates, have an approved behaviour complaint form and an appointed person or person(s) to handle any complaints made under the code.

➤ **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 Model Code provides for:

- Overarching principles to guide decisions, actions and behaviours;
- Identify behaviours and complaints which are to be managed by local governments; and
- Rules of conduct that, if breached, are to be considered by the Local Government Standards Panel.

Complaints regarding alleged behaviour breaches of the Code of Conduct (Division 3) are to be managed by the council, as the decision making body for the local government.

The emphasis of any remedy is on education and development with the aim of establishing or restoring positive working relations and avoiding further breaches.

Voting Requirements:

Absolute majority.

OFFICER RECOMMENDATION	ITEM 9.3.1
<p>That Council:</p> <ol style="list-style-type: none"> 1. REPEAL Policy P040128 – Officers and Elected Members Code of Conduct; and 2. ADOPT the Code of Conduct for Council Members, Committee Members and Candidates, as per Attachment 9.3.1b; and 3. ADOPT the Code of Conduct Complaints Management Policy; and 4. DELEGATE to the Chief Executive Officer the functions of approving a behaviour complaint form and authorising one or more persons to receive and/or withdraw complaints, as per Attachment 9.3.1d. 	

OFFICER RECOMMENDATION	ITEM 9.3.1
<p>That Council:</p> <ol style="list-style-type: none"> 1. ESTABLISH a Behaviour Complaints Committee with the attached membership and terms of reference (Attachment 9.3.1f); and 2. DELEGATE to the Committee the powers and duties as detailed in the attached Charter (see Attachment 9.3.1e); and 3. APPOINT the following Councillors as members of the Committee; <p style="margin-left: 20px;">Cr _____</p> <p style="margin-left: 20px;">Cr _____</p> <p style="margin-left: 20px;">Cr _____</p> <p style="margin-left: 20px;">Cr _____</p> <p style="margin-left: 20px;">Cr _____</p>	

9.3.2 WORKPLACE HEALTH & SAFETY POLICY STATEMENT

File Ref:	ADMIN.2
Applicant / Proponent:	Shire of Denmark
Subject Land / Locality:	N/A
Disclosure of Officer Interest:	Nil
Date:	23 June 2020
Author:	Noni Entwisle – Project Officer - Corporate Service Marcia Chamberlain – Coordinator Employee Support and Culture
Authorising Officer:	David Schober – Chief Executive Officer
Attachments:	9.3.2a - (New) Workplace Health & Safety Policy Statement 9.3.2b - (Existing) Occupational Safety & Health Policy

Summary:

The existing Occupational Safety and Health Policy - P140302, Attachment 9.3.2b, has been reviewed and updated in line with new Workplace Health and Safety legislation. It is recommended that Council repeal the current Policy and replace it with a new Workplace Health and Safety Policy Statement, Attachment 9.3.2a.

Background:

Policy P140302 was originally adopted by Council in 2011 - Resolution No. 260411. It was amended in 23 August 2011 – Resolution No.080811 and then reviewed and amended again on the 21 February 2017 – Resolution 110217.

Consultation:

The new Workplace Health & Safety Policy - P140302 (Attachment 9.3.2b) has been reviewed after consultation with:

- Shire of Denmark employees
- Shire of Denmark Occupational Safety & Health Committee and Representatives
- Local Government Insurance Services (LGIS)

Statutory Obligations:

The new *Work Health and Safety Act 2020* (WHS Act) replaces the current *Occupational Safety and Health Act 1984* and was assented by the Governor on 10 November 2020. Work on the WHS regulations will progress through 2021.

The new policy proposed removes any reference to the former Act.

Section 2.7(2)(b) of the Local Government Act 1995 provides Council with the power to determine policies.

Policy Implications:

Should Council amend Policy P140302, the change will be reflected in Council's Policy Manual.

The new recommended policy Attachment 9.3.2a.

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

L5.1.23 Review the Policy Manual with relevant staff to drive efficiency and support innovative practice.

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 revised Policy is based on a recommendation received from the Local Government Insurance Scheme (LGIS) and is now presented for the consideration of Council.

Policies provide the community, and the Shire’s administration, with clear guidance and direction. It is important that policies are amended from time to time to comply with statutory and legislative requirements.

By adopting this policy, implementation of a new safety management plan can occur which will be aligned with new legislation.

Voting Requirements:

Simple majority.

OFFICER RECOMMENDATION	ITEM 9.3.2
<p>That Council;</p> <ol style="list-style-type: none"> 1. REPEAL Policy P140302 - Occupational Safety & Health; and, 2. ADOPT the new Workplace Health and Safety Policy Statement, as detailed in the attachment 9.3.2a. 	

9.3.3 DENMARK MENS SHED – RATES CONCESSION REQUEST

File Ref:	LEA.50
Applicant / Proponent:	Not applicable
Subject Land / Locality:	Portion of Lot 952 on Deposited Plan 39348 (No. 2 Inlet Drive, Denmark)
Disclosure of Officer Interest:	Nil
Date:	28 May 2021
Author:	Claire Thompson, Governance Coordinator
Authorising Officer:	David Schober, Chief Executive Officer
Attachments:	Nil

Summary:

Council is asked to grant a 100% rates concession for the Denmark Men’s Shed Inc.

Background:

In February 2020, Council entered into a 21 year lease with the Denmark Men’s Shed Inc. for a portion of land at the Heritage Precinct on Inlet Drive.

Unfortunately, administratively the Shire did not include a rates concession clause which is consistent with Council Policy P110102 and other similar community group leases.

Consultation:

Nil

Statutory Obligations:

Section 6.47 of the Local Government Act 1995 allows the Council to provide a rates concession either at the point of adopting the annual budget or at a later date, by an absolute majority.

Policy Implications:

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

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

- f. Offer local authority rate exemption, rebate or donation (rather than exemption contra); ..

Budget / Financial Implications:

The rates levied for 2020/2021 financial year are \$751.76. Should Council agree to a waiver, this amount will be waived.

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.

Sustainability Implications:

➤ **Governance:**

The recommendation put forward by Officers is to ensure consistency across the provisions in the Shire’s community group leases.

➤ **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 concessional oversight has come to the attention of Officers because the building is at a stage that it can be valued and therefore the Shire’s rating system has generated a rate notice once the value has been applied (1 April 2021).

Voting Requirements:

Absolute majority in accordance with s6.47 of the Local Government Act 1995.

OFFICER RECOMMENDATION	ITEM 9.3.3
<p>That in relation the lease between the Shire of Denmark and the Denmark Mens Shed Incorporated for a portion of Lot 952 on Deposited Plan 39348n and pursuant to section 6.47 of the Local Government Act 1995 Council:</p> <ol style="list-style-type: none"> 1. GRANT a 100% concession for the 2020/2021 rates; and 2. INCLUDE a permanent 100% rates concession in their lease for future years. 	

* Absolute majority required.

9.3.4 GUMNUT CORNER & DENMARK PLAYGROUP LEASE

File Ref:	LEA.3
Applicant / Proponent:	Denmark Occasional Daycare Centre Inc. t/as Gumnut Corner Early Learning Centre & Denmark Playgroup Inc.
Subject Land / Locality:	Lot 500 on Deposited Plan 61023 (Portion of Reserve 37516) No. 81 South Coast Highway, Denmark
Disclosure of Officer Interest:	A person who resides with the Author is employed with a local long day care provider.
Date:	23 June 2021
Author:	Claire Thompson, Governance Coordinator
Authorising Officer:	David Schober, Chief Executive Officer
Attachments:	Nil

Summary:

Council is asked to consider renewing the lease with Gumnut Corner and the Denmark Playgroup (joint tenants) and, if a new lease is agreed to, whether the lease should be of a community or commercial nature.

Background:

The Shire of Denmark has the Management Order for Reserve 37516 where the premises is located on Lot 500 on Deposited Plan 61023, No. 81 South Coast Hwy, Denmark. The use of land is reserved for "civic purposes" and the Shire has power to lease for up to 21 years.

The current lease is for the whole of Lot 500 (2,251sqm), as shown in red in the aerial image below.



The Denmark Playgroup commenced operation in 1984 and was incorporated in 1985. Later that year they commenced the process of constructing the building which became known as the "Gumnut Child Centre". The building was completed in 1987.

The Denmark Occasional Day Care Centre commenced operating at the premises in 1996.

In 2014 the Council entered into a three-year lease with the Denmark Playgroup Inc. ('DP') and the Denmark Occasional Day Care Centre Inc. ('DODCC') (as joint tenants).

In early 2019, the Chief Executive Officer met with the groups to discuss their use of the premises and their service model. The Shire was informed that;

- the DODCC operating an occasional day care service four days a week and the DP held playgroup one day a week;
- both groups were satisfied with the current joint arrangement;
- DODCC explained that they were considering a change to their model that would require them to register with the Federal Government in order for eligible families to claim the child care rebate, and would make their operations more financially viable.

It was agreed that the Shire would allow the DODCC to explore the new model and come back to Officers when they had more information.

Around May 2019, the DODCC approached Council Officers and explained that they had endured some financial setbacks; due to some previous administration practices but were monitoring enrolments, staff ratios and sought some crowd funding to provide some financial stability.

On 23 July 2019, Shire Officers met with DODCC who advised that, their transition to the Federal Government's Child Care Subsidy had been approved and that they were continuing to investigate ways to improve their not-for-profit model to ensure that they remained sustainable into the future.

In August 2019, the DODCC advised Shire Officers that they had met with the DP to discuss their business model and the future of both parties using the premises into the future. DP had stated that they wanted to continue using the building on Mondays and wanted to continue to be a joint lessee.

Consultation:

The Chief Executive Officer and the Governance Coordinator have met with the lessees on a number of occasions.

Should Council agree to enter into a new lease on a commercial (or semi-commercial) basis then the intention would need to be advertised for public comment once an annual rental was agreed upon.

Statutory Obligations:

The Local Government Act 1995 provides Council the power to enter into a lease agreement, subject to disposal provisions.

Policy Implications:

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

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

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

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

Budget / Financial Implications:

The current annual lease fee is \$1.00 (peppercorn) and the lessee has received a rates exemption of \$1,220 in 2020/2021, and similar over the term of the occupancy.

The 2020/2021 Budget included the following items related to the premises;

ITEM	VALUE	ACTUAL EXPENSE INCURRED
Insurance	\$650	\$629.12
Building Maintenance	\$2,500	\$0

A valuation based on an annual commercial market rent was commissioned in September 2018. The annual rent at that time was determined to be \$7,600 (ex GST).

If Council decided that a new lease would be commercial, a new valuation would need to be done because the valuation is over six months old and was never endorsed by Council within 12 months. The cost of a new market valuation could be covered under the Council's existing budget.

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.

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

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

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

E1.0 Our Economy

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

E1.3 To have diverse education and employment opportunities.

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.

B3.4 To manage assets in a consistent and sustainable manner.

Sustainability Implications:

➤ **Sustainability Strategy 2021-2031**

Health & Happiness

1.4 Support initiatives that create connected communities with key service areas.

➤ **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)
Reputational: That DODCC respond that a commercial lease will deem their operations financially unviable.	Possible (3)	Minor (2)	Moderate (5-9)	Not Meeting Community expectations	Manage by allowing the DODCC to respond to Council’s proposal prior to entering into any lease negotiations.

<p>Reputational: That a local commercial childcare provider raises an objection with the Council's proposal.</p>	<p>Possible (3)</p>	<p>Minor (2)</p>	<p>Moderate (5-9)</p>	<p>Not Meeting Community expectations</p>	<p>Manage by advertising, and seeking comment, on Council's intention to enter into a new lease, should the matter progress.</p>
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Comment/Conclusion:

The DODCC and DP are seeking a new joint lease for 21 years.

With the changes made to the DODCC business model, some Officers and Councillors (informally) have questioned whether any new lease should be based on the Council's community group (peppercorn) lease or treated as a commercial lease.

The DP have expressed concern that if the new lease is commercial, with DODCC required to pay commercial rent to the Shire, then they might be required by the DODCC to pay a portion of that commercial rent, which may be considerably more than \$10 per week to cover utility costs.

In order for Officer's to assess the commercial and non-commercial use of the premises, Shire Officers requested that that the DODCC provide information supporting their request, namely the difference between the services they provide as opposed to any other local (commercial) child care providers.

The points of difference advised are that they can provide:

1. "Occasional" or "casual" care, that is, people can be charged by the hour and do not have to book in advance. They can ring up at short notice and use the service if there is a vacancy. If they use the service for an hour or two, they are only charged for that time (not half a day).
2. Care for unimmunised children – whilst the Australian Government's "No Jab, No Pay" policy incentivises parents to vaccinate their children, it is not mandatory.

The new service model for DODCC includes their eligibility to receive the Federally funded Child Care Subsidy, for families who have been approved. Unimmunised children are ineligible to receive the subsidy and are therefore required to pay the full amount to the DODCC.

Shire Officers requested 12 months of statistics from the DODCC to gain a better understanding of what services were being provided that were "unique and community focussed" and what services could be classified as being in direct competition with local commercial childcare providers.

The statistics were taken over a 12 month period and revealed that 14.8% of attendances could have been accommodated at an alternative provider. That is, they were pre-booked half and/or half day bookings of immunised children.

If Council were to contemplate a commercial lease, 100% of the commercial rent could be applied (plus rates) or a percentage of the annual rent could be applied, in consideration on the community services verses commercial activity. A proportionate approach could also acknowledge the DP's use of the facility one day a week, which is fully community focussed.

For example, based on the 2018 valuation;

\$7,600 per annum / 365 days = \$20.82 per day

6 days a week (52 x 6) = 312 days per year (allowance for Denmark Playgroup 1 day a week)

\$20.82 per day x 312 days per year = \$6,495.84.

14.8% of \$6,495.84 = \$961.38.

Council is asked to consider if a new lease is to be offered and if so, whether it is to be based on commercial or community group provisions.

The Officer’s Recommendation is based on an approach of fairness and transparency and ensuring that the DODCC’s commercial activities are not being subsidised by the Council.

Voting Requirements:

Simple majority.

OFFICER RECOMMENDATION	ITEM 9.3.4
<p>That with respect to Lot 500 on Deposited Plan 61023 (No. 81 South Coast Highway, Denmark), the Council:</p> <ol style="list-style-type: none"> 1. INFORM the Denmark Occasional Day Care Centre and the Denmark Playgroup (joint lessees) that it is prepared, in principle, to offer a new lease based on the following; <ol style="list-style-type: none"> a) on a commercial basis, including the requirement to pay local government rates, however it is prepared to consider a pro-rata rental value in recognition of the community service aspect of their operations and Denmark Playgroup’s use of the premises one day a week; and b) for a five year term, including an option for a further five year term following a review of their operations and a new market valuation. subject to disposal provisions and Ministerial consent. 2. Should the lessees agree with the Council’s in principle terms in Part 1 a) and b), REQUEST the Chief Executive Officer to: <ol style="list-style-type: none"> a) arrange an independent market rental valuation; and b) refer the lessee’s comments and the valuation back to Council for consideration. 	

9.3.5 BEVANS (WA) PTY LTD – FISHERMANS LEASE RENEWAL

File Ref:	LEA.47
Applicant / Proponent:	Bevans (WA) Pty Ltd
Subject Land / Locality:	Lot 303 on Deposited Plan 220017 (Portion of Reserve 24510)
Disclosure of Officer Interest:	Nil
Date:	30 June 2021
Author:	Claire Thompson, Governance Coordinator
Authorising Officer:	David Schober, Chief Executive Officer
Attachments:	Nil

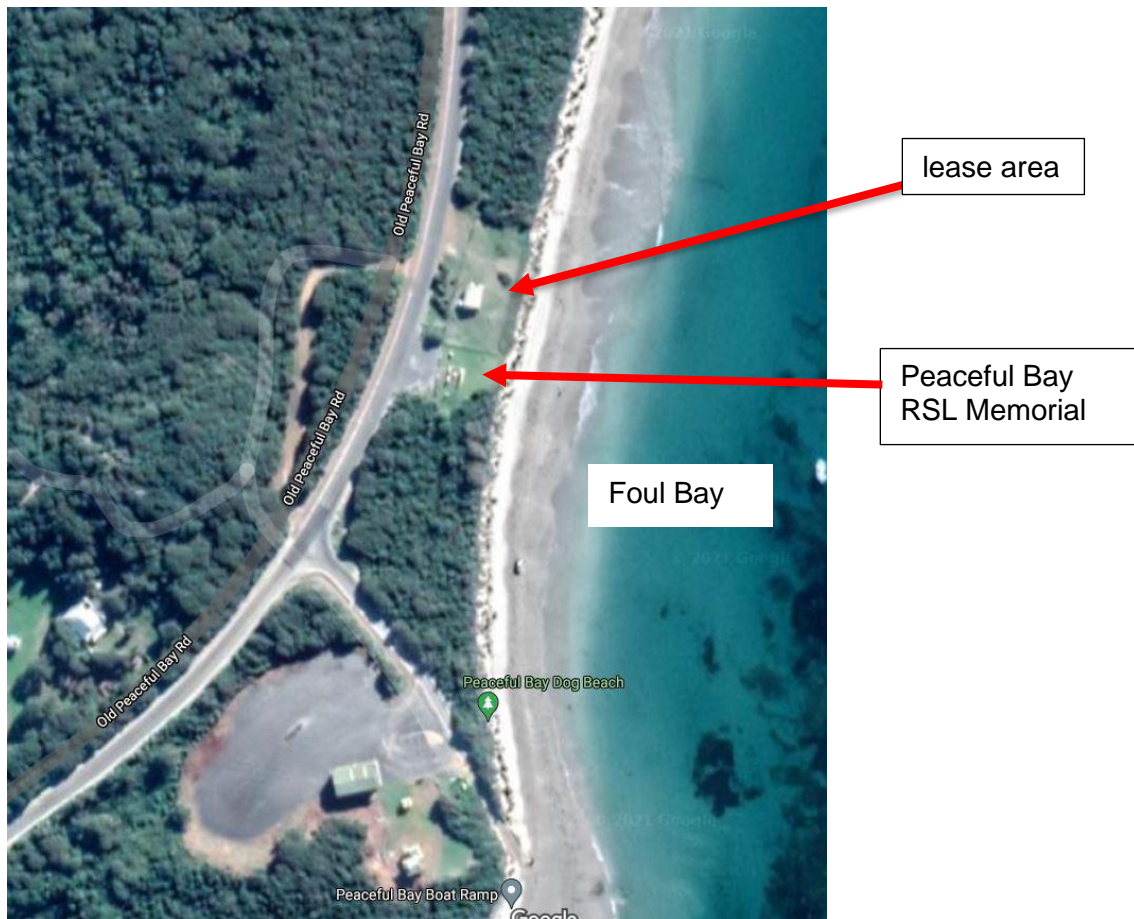
Summary:

Council is asked to consider renewing a lease between Bevans (WA) Pty Ltd and the Shire of Denmark for Lot 303 on Deposited Plan 220017.

Background:

The first record of a formal lease between the Shire and Bevans is 1991 when the portion of land was leased to NT & I E Bevan & Co. (the parents of the current leaseholder). The Bevan family have been fishing from the Peaceful Bay area since the mid-1950s.

The most current lease between Bevans (WA) Pty Ltd and the Shire was for 10 years and expired on 30 June 2021. The Lessee is now occupying the site as a monthly tenant awaiting Council’s decision on a new lease.



Consultation:

Council Officers have met with the current lessees and they have indicated that they would like Council to consider a new lease.

The Officer recommends that Council offer a new lease to Bevans (WA) Pty Ltd and should they agree, that a valuation be obtained and the matter brought back to Council. Ultimately, any new commercial lease is required by legislation to be advertised for public comment.

Statutory Obligations:

LAND ADMINISTRATION ACT 1997

Reserve 24510 is managed by the Shire of Denmark and the Minister has granted the Shire power to lease for any term not exceeding 21 years. The purpose of the reserve is “holiday homes, recreation, caravan park, camping”.

LOCAL GOVERNMENT ACT 1995

Section 3.58 allows local governments to dispose of property, including to lease.

Policy Implications:

There are no policy implications.

Budget / Financial Implications:

In 2020/2021 the annual rent for the site was \$1,420 (including GST) and rates levied was \$1,181. The lessee has paid their rent and rates on time throughout the term of the lease.

The cost of a valuation shall be borne by the lessee, in accordance with the provisions in the existing lease.

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.*

Sustainability Implications:

Sustainability Strategy

6.0 Local & Sustainable Food

6.2 *Support businesses seeking to develop food production facilities.*

➤ **Governance:**

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

➤ **Environmental:**

In the past few years, coastal erosion has uncovered rubbish in the sand dune directly adjacent to the lease area. The lessee advised that they were unsure who the rubbish belonged to and, that upon noticing the waste in the dunes themselves, they carefully removed any items that became exposed.



Waste exposed in adjacent dune

The *Ocean Beach and Peaceful Bay Coastal Hazard Risk Management and Adaptation Plan* (2018) (“the Plan”) evaluated the coastal hazards at Peaceful Bay concluding that “monitoring/planning” in the first 10 years and “managed retreat” thereafter, was a feasible option for the fisherman’s lease and the RSL Memorial (both located at Foul Bay).

Coastal Asset	Planning Horizon (years)										
	5	10	20	30	40	50	60	70	80	90	100
Peaceful Bay: Finger Jetty	Accommodate										
Foul Bay: Old Peaceful Bay Road	Monitoring/ Planning		Protect or Managed Retreat								
Peaceful Bay: Coastal stairs and platforms	Accommodate			Managed Retreat							

ABOVE: Extract from the Plan, page 72.

The Plan also noted that, with the respect to the fisherman’s lease, the Shire had in place the existing risk management controls;

1. Lessee required to maintain a 10 metre separation between any building and structure and the top of the dune cliff.
2. Either party can provide written notice, at any time, to terminate the lease.
3. Lease contains a clause entitled ‘Total Destruction of the Premises’, for any reason including inundation or significant (unacceptable) coastal erosion.





ABOVE: constructed building on leased premises and fenced off dune facing Foul Bay.

As can be seen from the photos above the actual lease area is well maintained and a good distance away from the edge of the sand dune.

➤ **Economic:**

Bevans have not commercially fished at Peaceful Bay since 2009 because the market conditions had not been conducive to salmon and herring fishing, making it not commercially viable.

Since that time, Bevans have been involved in the Australian Seafood Cooperative Research Centre project, to provide industry input, to improve fish quality, foster collaboration and contribute to new seafood product development.

The project was focussed on Australian Salmon (see “FISH”, *Fisheries Research Development Corporation News, Volume 22, Issue 4*. <https://www.frdc.com.au/media-publications/fish/FISH-Vol-22-4/Market-makeover-for-Australian-Salmon>).

Recently however, in 2020 and 2021 there have been significant movements in the Great Southern, and Western Australia in general, to create new domestic and export markets for salmon, including an increase in marketing campaigns.

In 2021, a regional fish processor (Westerberg’s) received \$175,000 in State Government funding to complete the first phase of upgrades to its Albany processing and packaging facility (*Albany Advertiser online. 29 April 2021*). Bevans have been working with Westerberg’s as Bevans are the only processor registered for export in the Albany region.

Bevans are keen to recommence their salmon fishing operation at Peaceful Bay once these diversified markets are available and are proven to be commercially viable.

➤ **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)
Environment: That continued occupancy of the premises has a negative environmental impact.	Unlikely (2)	Insignificant (1)	Low (1-4)	Inadequate Natural Environ. Management Practices	Manage by including provisions in the lease that directly relate to the lessee's responsibility to protect the natural environment and respond to coastal erosion.

Comment/Conclusion:

In 2013, the Lessee requested some amendments to the lease. At the Council meeting held in October 2013, prior to considering the request, the Council requested information about the lessee's fishing operations and requested the lessee to provide reasons why the Council should not terminate the lease, *"...given Council's continuing concerns regarding environmental impacts cause by occupation of the site..."*.

In response, the Lessee provided the following information to address Council's concerns, in that they;

1. continually repair and maintain the building, revegetate the land and attempt to stop any erosion (by using sand bags, and other means);
2. between 2001 and 2005, they relocated and upgraded the building, constructed a fence and revegetated the area to attempt to reduce erosion on the sand cliff;
3. have further revegetated the land in 2003 and 2011;
4. hold a current salmon fishing licence, comply with all of the conditions on the licence and have spent time and money to establish new markets.

Bevans have a current Salmon Fishing Licence for Peaceful Bay and while the Council are not required to provide them with a lease area, they cannot be denied access by any person to the coast to enable them to fish within their licensed area (s77 of the *Fish Resources Management Act 1994*).

Without a lease, Bevans are still permitted to fish within their licensed area and the licence can reference boats, vehicles, number of persons, area of land and waters or any other factor that the licensee is permitted to use or access. The close proximity of the Fisherman's lease area to the beach, allows the licence holder (Bevans) to contain vehicles, equipment and any other necessary resources required for them to fish within the one area (and close to the beach), rather than on the beach itself, or other areas at Peaceful Bay.

The current lease states that use of the premises shall only be for business purposes during the salmon fishing season. There is no limit on the number of occupants at the site. This notwithstanding, the Shire has received a few complaints from nearby residents and/or business operators about the number of caravans the lessee has had on site at particular times. The lessee acknowledges that it would be best to limit the number of people camping at the site at any one time and is prepared to endorse a condition to that effect in any new lease.

The lessee has also acknowledged that at times, visitors have stopped at the leased premises thinking that it was the caravan park. The lessee has expressed a desire to advocate for a sign or signs, prior to the leased area, stating how far away the caravan park is and a "Fisherman's Lease Area" sign to eliminate any confusion and better direct visitors towards the commercial accommodation area.

The lessee has advised that the original lessee, Norm Bevan (*dec.*) passed away recently and the lessee would like to seek the Shire’s approval to erect a sign depicting the history of the Fisherman’s lease site, Norm’s contribution and acknowledge the sites heritage, should a new lease be granted.

The lessees have indicated that they would welcome a new lease from the Shire and accept that they;

1. have a responsibility to protect the area from any negative environmental impact, as they have done previously throughout the term of the leases by undertaking revegetation in an effort to reduce erosion;
2. will be required to maintain a 10 metre separation between any buildings and the edge of the sand dune facing Foul Bay, and should this become unable to be achieved, the lease would be terminated;
3. must only occupy the site during the salmon fishing season.
4. must comply with any conditions imposed by the Council, including the number of caravans, campers, tents or the like on the premises at any one time.

The Officer has recommended a 10 year term as it consistent with the previous term, the term of the fisherman’s lease at Parry Beach and consistent with the CHRMAP “monitor/planning” period.

Voting Requirements:

Simple majority.

<p>OFFICER RECOMMENDATION</p> <p>That with respect to Site 303 on Deposited Plan 220017, Council:</p> <ol style="list-style-type: none"> 1. ADVISE Bevans (WA) Pty Ltd that is prepared to consider a new 10 year lease subject to the lease containing provisions relating to; <ol style="list-style-type: none"> a) Use of the site being restricted to during the salmon fishing season only; b) Limiting the number of caravans, campers, tents or the like on the premises at any one time; c) Requirement for the lessee to minimise any negative environmental impact at the site or land adjacent; d) Referencing the site risks identified in the Ocean Beach and Peaceful Bay Coastal Hazard Risk Management and Adaption Plan, including the continual requirement that any structures on site remain a minimum of 10 metres from the edge of the dune cliff, due to the high risk of continual erosion or a significant one off event; 2. Should Bevans (WA) Pty Ltd agree to the Council’s offer, REQUEST the Chief Executive Officer to liaise with the lessee to obtain an independent market rental valuation and refer the matter back to Council for further consideration. 	<p>ITEM 9.3.5</p>
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10. COMMITTEE REPORTS AND RECOMMENDATIONS

10.1 ROADWISE ADVISORY COMMITTEE – MINUTES AND RECOMMENDATION – 13 MAY 2021

File Ref:	COMM.RWAC
Applicant / Proponent:	Roadwise Advisory Committee
Subject Land / Locality:	The recommendation relates to portion of South Coast Highway across the Frankland River Bridge
Disclosure of Officer Interest:	Nil
Date:	30 June 2021
Author:	Claire Thompson, Governance Coordinator
Authorising Officer:	David King, Director Assets & Sustainable Development
Attachments:	10.1 – Roadwise Advisory Committee Minutes 13 May 2021

Summary:

Council is requested to receive the Minutes from the Roadwise Advisory Committee meeting held on 13 May 2021 and consider a recommendation from the Committee to support a request from the Nornalup Residents and Ratepayers Association (NRRA).

Background:

The Roadwise Advisory Committee met on the 13 May 2021 and considered a request from the NRRA. A copy of their request is an appendix to the Minutes (see Attachment 10.1).

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:

Section 5.22 of the Local Government Act 1995 requires that the Presiding Person of a Council Committee is to cause minutes to be kept of the meeting’s proceedings.

Committee minutes are not required under legislation to be presented to Council however, the Chief Executive Officer has determined that, in order to improve transparency and ensure that Councillors are aware of their various Committees’ activities, all Advisory Committee minutes will be presented to Council to be received.

Policy Implications:

There are no policy implications.

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.
- L5.2 To have meaningful, respectful and proactive collaboration with the community.
- L5.6 To seek two-way communication that is open and effective.

Sustainability Implications:
Sustainability Strategy

1. Health & Happiness
1.4 *Support initiatives that create connected communities with key service areas.*
2. Equity & Local Economy
2.2 *Support the community to promote a circular economy and buy local philosophy.*
3. Culture & Community
3.6 *Embrace inclusivity and ensure availability and access of infrastructure and services to all minority groups including disadvantaged, and people with disabilities.*

➤ **Governance:**

The portion of road and the bridge falls under Main Roads WA jurisdiction however there is nothing preventing the Council from advocating for improvements on behalf of its community.

➤ **Environmental:**

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

➤ **Economic:**

The letter from the NRRRA has indicated that if the alternative river crossing at Sappers Bridge is selected by the Department of Biodiversity, Conservations and Attractions as the only viable crossing (with respect to their intention to upgrade a walk trail between Walpole and the Valley of the Giants), it would mean that trail users would bypass Nornalup completely, depriving the townsite of tourism opportunities.

➤ **Social:**

The NRRRA has advised that they are aware that pedestrians use the Frankland River / South Coast Highway Bridge, walking on the road because there is no path. The NRRRA are concerned with pedestrians using the bridge in combination with cars and trucks.

➤ **Risk:**

Nil

Comment/Conclusion:

The Author recommends that the Minutes be received by Council.

The letter attached from the NRRRA details their request of the Roadwise Advisory Committee who have recommended that Council provide a letter to Main Roads WA in support of their suggestion for a separate pedestrian access across the Frankland River at Nornalup.

Voting Requirements:

Simple majority.

OFFICER RECOMMENDATION	ITEM 9.3.5
That Council RECEIVE the Roadwise Advisory Committee Minutes for the meeting held on 13 May 2021.	

COMMITTEE & OFFICER RECOMMENDATION	ITEM 9.3.5
That Council PROVIDE a letter of support to Main Roads WA regarding the issues raised in the letter from the Nornalup Resident & Ratepayers Association (as appended to the Roadwise Advisory Committee Minutes for the meeting held on 13 May 2021).	

10.2 BUSH FIRE ADVISORY COMMITTEE – MINUTES AND FIRE CONTROL OFFICER & FIRE WEATHER OFFICER APPOINTMENTS FOR 2021/2022

File Ref:	COMM.BFAC
Applicant / Proponent:	Not applicable
Subject Land / Locality:	Shire of Denmark
Disclosure of Officer Interest:	Nil
Date:	5 July 2021
Author:	Lee Shelley, Acting Community Emergency Services Manager Claire Thompson, Governance Coordinator
Authorising Officer:	Lee Sounness, Acting Director Corporate & Community Services
Attachments:	10.2a – Committee Minutes 22 April 2021 10.2b – Committee Annual General Meeting Minutes 17 June 2021 10.2c – Committee Minutes – 17 June 2021 10.2d – Committee Charter

Summary:

Council is asked to:

1. RECEIVE:
 - a) the Bush Fire Advisory Committee Minutes for the meeting held on 22 April 2021;
 - b) the Bush Fire Advisory Committee Minutes for the Annual General Meeting held on 17 June 2017;
 - c) the Bush Fire Advisory Committee Minutes for the meeting held on 17 June 2021;
2. CONSIDER the Bush Fire Advisory Committee's Recommendation to APPOINT Fire Control Officers, a Chief Bush Fire Control Officer, a Deputy Chief Bush Fire Control Officer and a Fire Weather Officer for the 2021/2022 financial year.

Background:

While the Captains, Lieutenants, Secretaries, Equipment Officers and the like are elected by Brigades it is the Council's role to appoint Fire Control Officers, a Chief Bush Fire Control Officer, a Deputy Chief Bush Fire Control Officer and Fire Weather Officers.

Most of the Brigades have put forward their nominated Fire Control Officer for 2021/22 which were considered, and recommended to Council, at the Bush Fire Advisory Committee (BFAC) Annual General Meeting held on 17 June 2021.

Peaceful Bay Brigade and Parryville Brigade were unable to make their recommendations in time for the Annual General Meeting and therefore these positions will remain vacant until the next Annual General Meeting.

The Committee has recommended these appointments together with Council Officers, who they deem should have the same powers and functions of Fire Control Officers.

Consultation:

Volunteer Bush Fire Brigades.

Statutory Obligations:

Section 38 provides a local government the power to "... appoint such persons as it thinks necessary to be its bush fire control officers ... and of those officers shall ... appoint 2 as the Chief Bush Fire Control Officer and the Deputy Chief Bush Fire Control Officer ...".

Section 38 (8) of the Bush Fires Act 1954 provides Council with the authority to appoint to the office of Fire Weather Officer such number of senior Bush Fire Control Officers as it thinks necessary.

BUSH FIRE ADVISORY COMMITTEE

The Bush Fire Advisory Committee was established by the Council in accordance with s67(1) of the Bush Fires Act 1954 ('the Act'). A Charter was developed by Council to establish the quorum and rules for guidance of the Committee, in accordance with s67(3) of the Act.

Clause 8.6 of the Charter requires the Committee to elect a Presiding Person (Chair) and a Deputy Presiding Person (Deputy Chair) at the Annual General Meeting.

In the Minutes from the Annual General Meeting (Attachment 10.2b), the Committee have elected Cr Seeney as the Deputy Chair however, Cr Seeney is not a member of the Committee but rather the Deputy (or proxy) for Cr Allen.

In November 2019, the Charter was reviewed by the Council and Council delegates appointed, the Council’s intention of a Delegate and a Deputy Delegate were clear (see below Resolution No. 201119), the Membership clause in the Charter is ambiguous.

Extract from Resolution No. 201119

“That Council resolves to establish the following Advisory Committees with the membership and terms of reference as per the draft Charters attached to the report;

...

2. Bush Fire Advisory Committee and appoint Cr Allen as the Council Member and Cr Seeney as the Deputy Member;

...”

Under clause 7 (Membership) in the Charter it states:

“Voting Members:
1 x Councillor Delegate and Deputy”

Read in isolation, this could be interpreted to mean 2 Councillors, a delegate and a deputy.

Council has the option to:

1. Amend the Charter to include 2 x Council Delegates and confirm Cr Allen and Cr Seeney as the Council Delegates, noting that they are both voting members; or
2. Receive the AGM Minutes, noting that a non-member has been elected as Deputy which the Committee needs to note at its next committee meeting and resolve to correct the Minutes at the 2022 AGM.

Policy Implications:

Council Delegation D050109 records the Shire of Denmark’s authorised Officers under the Bush Fires Act 1954 and will be amended accordingly should Council agree to make such appointments.

Council Delegation D050110 records the Shire of Denmark’s appointment of Fire Weather Officers and will be amended accordingly should Council agree to make such appointments.

Budget / Financial Implications:

There are some minor financial costs upon the Council’s proposed budget with the costs associated with the official Gazetting of the Fire Weather Officer and the issuing of appointment cards as per the Bush Fires Act 1954. These costs are able to be covered under existing budget lines.

Strategic Implications:

This report and Officer recommendation is 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

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.

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

Corporate Business Plan

1.7.3 *Support the functions of Community Emergency Services in achieving required actions and goals.*

1.7.5 *Maximise community safety through the management of the risks associated with fire, natural events and large scale emergencies, whilst supporting initiatives to improve community safety.*

Sustainability Implications:

➤ **Governance:**

Fire Control Officers assist the local government to comply with their duties under Part 111 of the Bush Fires Act 1954, “Prevention of bush fires”.

➤ **Environmental:**

Fire Control Officers play an important role in protecting and preserving the natural environment when faced with out of control bush fires.

➤ **Economic:**

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

➤ **Social:**

Fire Control Officers play an important role in public safety by assisting the Shire with fire mitigation and control and assisting local volunteer brigades to carry out their activities.

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 appoint Fire Control Officers and therefore by default the Council would be required to undertake the role pursuant to the Bush Fires Act 1954 and local volunteer brigades could lack necessary leadership, coordination leading to reduced efficiency and potential delays in fire response times.	Rare (1)	Catastrophic (5)	Moderate (5-9)	Inadequate Organisation or Community Emergency Management	Accept Officer Recommendation

Comment/Conclusion:

All of the Brigade Officers recommended have carried out senior/management roles in their respective Brigades and have completed, or enrolled to complete, relevant training.

The appointment of Fire Control Officer’s ensures that that person has the powers to assist with any local fire incident which may happen at the same time and provide backup to volunteers and the command structure at a fire.

Voting Requirements:

Simple majority.

OFFICER RECOMMENDATION	ITEM 10.2
That Council RECEIVE the Minutes of the Bush Fire Advisory Committee meeting held on 22 April 2021, as per Attachment 10.2a	

OFFICER RECOMMENDATION	ITEM 10.2
That Council:	
<ol style="list-style-type: none"> 1. AMEND clause 7.0 (Membership) of the Bush Fire Advisory Committee Charter to remove any ambiguity from “1 x Councillor Delegate and Deputy” to “2 x Council Delegates”; and 2. RECEIVE the Minutes of the Bush Fire Advisory Committee Annual General Meeting held on 17 June 2021, as per Attachment 10.2b. 	

OFFICER RECOMMENDATION	ITEM 10.2
That Council RECEIVE the Minutes of the Bush Fire Advisory Committee meeting held on 17 June 2021, as per Attachment 10.2c.	

COMMITTEE RECOMMENDATION	ITEM 10.2
That, pursuant to Section 38 (1) of the Bush Fires Act 1954, Council APPOINT the following persons for the financial year 2021/2022 and that the appointments be advertised in the Denmark Bulletin and Council’s Delegation (Appointments) D050109 be updated accordingly;	
Bush Fire Control Officers authorised within the entire Shire of Denmark	
Senior Ranger	Charmaine Shelley
Ranger	David Lonie
Ranger	Emma Holliday
Bushfire Risk Planning Coordinator	Melanie Haymont
Fire Control Officer & Chief Fire Control Officer	Les Baines
Fire Control Officer & Deputy Chief Fire Control Officer	Shane Howlett
Fire Control Officer & Deputy Chief Fire Control Officer	Nigel Marsh
Bush Fire Control Officers authorised within the entire Shire of Denmark area on behalf respective Brigades	
Carmarthen Volunteer Bush Fire Brigade	Craig Hughes
Denmark East Volunteer Bush Fire Brigade	Will Miller
Harewood Volunteer Bush Fire Brigade	Ian Thompson
Hazelvale/Tingledale Volunteer Bush Fire Brigade	Alex Williams
	Brian Vigus
Kordabup Volunteer Bush Fire Brigade	Craig Lilley
Owingup Volunteer Bush Fire Brigade	Bryce Edwards
Mehniup Volunteer Bush Fire Brigade	Paul Moncrieff
Mt Lindesay Volunteer Bush Fire Brigade	Murray Brooker
Nornalup Volunteer Bush Fire Brigade	Neville Brass
Ocean Beach Volunteer Bush Fire Brigade	Hank Alberts
Parryville Volunteer Bush Fire Brigade	Vacant

Peaceful Bay Volunteer Bush Fire Brigade	Vacant
Scotsdale/Shadforth Volunteer Bush Fire Brigade	Carl Wesley
Somerset Hill Volunteer Bush Fire Brigade	Callum Baxter
William Bay Volunteer Bush Fire Brigade	Simon Coppock
Bush Fire Control Officers authorised within the prescribed Denmark Fire & Rescue Service Area Only	
Denmark Fire and Rescue Service (Volunteer Brigade)	Lee Shelley
Denmark Fire and Rescue Service (Volunteer Brigade)	Paul Harbron

Officer Comment: The section 38 of the Bush Fires Act 1954 allows for the appointment of Fire Control Officers and of those officers the local government shall appoint 2 as the Chief Bush Fire Control Officer and the Deputy Chief Bush Fire Control Officer. The Committee have recommended the appointment of 2 Deputy Chief Bush Control Officers which is not provided for under the legislation, nor does a local government have discretion to determine more.

The Officer Recommendation below is provided which removes one of the recommended appointments. The Officer has discussed the duplication with the current Chief Bush Fire Control Officer, who has suggested that if one needs to be removed, then Nigel Marsh would be the preferred Deputy for the coming year, and that they will endeavour to provide Shane Howlett with learning opportunities so that he can be considered for the role in the future.

OFFICER RECOMMENDATION	ITEM 10.2
That, pursuant to Section 38 (1) of the Bush Fires Act 1954, Council APPOINT the following persons for the financial year 2021/2022 and that the appointments be advertised in the Denmark Bulletin and Council’s Delegation (Appointments) D050109 be updated accordingly;	
Bush Fire Control Officers authorised within the entire Shire of Denmark	
Senior Ranger	Charmaine Shelley
Ranger	David Lonie
Ranger	Emma Holliday
Bushfire Risk Planning Coordinator	Melanie Haymont
Fire Control Officer & Chief Fire Control Officer	Les Baines
Fire Control Officer & Deputy Chief Fire Control Officer	Nigel Marsh
Bush Fire Control Officers authorised within the entire Shire of Denmark area on behalf of their respective Brigades	
Carmarthen Volunteer Bush Fire Brigade	Craig Hughes
Denmark East Volunteer Bush Fire Brigade	Will Miller
Harewood Volunteer Bush Fire Brigade	Ian Thompson
Hazelvale/Tingledale Volunteer Bush Fire Brigade	Alex Williams
	Brian Vigus
Kordabup Volunteer Bush Fire Brigade	Craig Lilley
Owingup Volunteer Bush Fire Brigade	Bryce Edwards
Mehniup Volunteer Bush Fire Brigade	Paul Moncrieff
Mt Lindesay Volunteer Bush Fire Brigade	Murray Brooker
Nornalup Volunteer Bush Fire Brigade	Neville Brass
Ocean Beach Volunteer Bush Fire Brigade	Hank Alberts
Parryville Volunteer Bush Fire Brigade	Vacant
Peaceful Bay Volunteer Bush Fire Brigade	Vacant

Scotsdale/Shadforth Volunteer Bush Fire Brigade	Carl Wesley
Somerset Hill Volunteer Bush Fire Brigade	Callum Baxter
William Bay Volunteer Bush Fire Brigade	Simon Coppock
Bush Fire Control Officers authorised within the prescribed Denmark Fire & Rescue Service Area Only	
Denmark Fire and Rescue Service (Volunteer Brigade)	Lee Shelley
Denmark Fire and Rescue Service (Volunteer Brigade)	Paul Harbron

COMMITTEE & OFFICER RECOMMENDATION	ITEM 10.2
That, pursuant to Section 38 (8) of the Bush Fires Act 1954, Council APPOINT Adrian Kranendonk for the financial year 2021/2022 as a Fire Control Officer and Fire Weather Officer to be authorised within the entire Shire of Denmark;	

11. MATTERS BEHIND CLOSED DOORS

OFFICER RECOMMENDATION	ITEM 11
That the meeting be closed in accordance with Section 5.23(2)(b) and (e) of the Local Government Act 1995.	

11.1 SENIOR OFFICER – PROPOSED OFFER - CONTRACT OF EMPLOYMENT

File Ref:	Personnel File
Applicant / Proponent:	David Schober, Chief Executive Officer
Subject Land / Locality:	Not applicable
Disclosure of Officer Interest:	Nil
Date:	29 June 2021
Author:	David Schober, Chief Executive Officer
Authorising Officer:	David Schober, Chief Executive Officer
Attachments:	11.1a – CONFIDENTIAL – Copy of Curriculum Vitae (CV) provided to Councillors under separate cover 11.1b – CONFIDENTIAL – Copy of Contract provided to Councillors under separate cover

This report and the attachment are confidential and have been provided to Councillors under separate cover.

11.2 SENIOR OFFICER – PROPOSED OFFER - CONTRACT OF RENEWAL OF EMPLOYMENT

File Ref:	Personnel File
Applicant / Proponent:	David Schober, Chief Executive Officer
Subject Land / Locality:	Not applicable
Disclosure of Officer Interest:	Nil
Date:	29 June 2021
Author:	David Schober, Chief Executive Officer
Authorising Officer:	David Schober, Chief Executive Officer
Attachments:	Nil

This report and the attachment are confidential and have been provided to Councillors under separate cover.

12. NEW BUSINESS OF AN URGENT NATURE

Nil

13. CLOSURE OF MEETING