

# Shire of Denmark

## Ordinary Council Meeting

# AGENDA

16 NOVEMBER 2021



TO BE HELD IN COUNCIL CHAMBERS, 953 SOUTH COAST HIGHWAY, DENMARK ON TUESDAY, 16 NOVEMBER 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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**DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS**

**RECORD OF ATTENDANCE/APOLOGIES/APPROVED LEAVE OF ABSENCE**

**MEMBERS:**

- Cr Ceinwen Gearon (Shire President)
- Cr Kingsley Gibson (Deputy Shire President)
- Cr Clare Campbell
- Cr Donald Clarke
- Cr Donna Carman
- Cr Jackie Ormsby
- Cr Jan Lewis
- Cr Janine Phillips
- Cr Nathan Devenport

**STAFF:**

- Mr David Schober (Chief Executive Officer)
- Mr David King (Director Assets & Sustainable Development)
- Mr Gina McPharlin (Director Corporate & Community Services)
- Ms Claire Thompson (Governance Coordinator)
- Ms Lisa Sanders (Executive Support Officer)
- Mrs Judy Savic (Rates Officer)

**APOLOGIES**

**ON APPROVED LEAVE(S) OF ABSENCE**

**ABSENT**

**VISITORS**

**DECLARATIONS OF INTEREST**

Name	Item No	Interest	Nature

**ANNOUNCEMENTS BY THE PERSON PRESIDING**

**4.1 RATES INCENTIVE WINNERS**

The Shire of Denmark Rates Officer, Judy Savic will present the winners of the rates incentive programme with their prizes.

**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.

**APPLICATIONS FOR FUTURE LEAVE OF ABSENCE**

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

**CONFIRMATION OF MINUTES**

**7.1 ORDINARY COUNCIL MEETING – 19 OCTOBER 2021**

OFFICER RECOMMENDATION

ITEM 7.1

That the minutes of the Ordinary Meeting of Council held on the 19 OCTOBER 2021 be CONFIRMED as a true and correct record of the proceedings.

**7.2 STRATEGIC BRIEFING NOTES – 19 OCTOBER 2021**

OFFICER RECOMMENDATION

ITEM 7.2

That the Notes from the Strategic Briefing Forum held on 19 OCTOBER 2021 be RECEIVED.

**ELECTED MEMBERS MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

Nil

## REPORTS OF OFFICERS

### 9.1 DIRECTOR ASSETS AND SUSTAINABLE DEVELOPMENT

#### 9.1.1 SCHEME AMENDMENT 144 – AMENDING SPECIAL RURAL No. 10 PROVISIONS AND LOCAL STRUCTURE PLAN

<b>File Ref:</b>	TPS3/SA144
<b>Applicant / Proponent:</b>	Williams Consulting
<b>Subject Land / Locality:</b>	No. 111 (Lot 4) Lantzke Road, No. 109 (Lot 5) Lantzke Road, No. 61 (Lot 6) Lantzke Road, No. 39 (Lot 7) Lantzke Road and No. 117 (Lot 3) McLean Road, Scotsdale
<b>Disclosure of Officer Interest:</b>	None
<b>Date:</b>	25 October 2021
<b>Author:</b>	Craig Pursey, Manager Sustainable Development
<b>Authorising Officer:</b>	David King, Deputy Chief Executive Officer
<b>Attachments:</b>	9.1.1a – Location Plan 9.1.1b – Extract of Scheme Amendment 144 Report & Local Structure Plan report 9.1.1c – Schedule of Submissions 9.1.1d – Schedule of Modifications & explanatory plan 9.1.1e – Scheme Amendment 144 Scheme Provisions

#### **Summary:**

Council initiated Scheme Amendment 144 and the associated Structure Plan on 19 February 2019 (Res: 130219). The assessment process has now been completed and it is recommended that the Scheme Amendment and Structure Plan be adopted subject to modifications.

#### **Background:**

##### Site Characteristics

The site is located approximately 3.5km north of the Denmark townsite as shown in Attachment 9.1.1a.

The site consists of five (5) existing lots that range in size between 4.4 – 15.4ha. Each lot is currently developed with a single house, with the balance of the lot being used for a combination of grazing, horticulture and remnant vegetation. Lot 5 Lantzke Road is developed with Jonathon Hook Ceramics (Gallery & Studio) and it is this property that was zoned in 2003 to allow for up to 900m<sup>2</sup> of gallery/restaurant to be developed over time.

The site is zoned 'Special Rural' and is identified as SR10 in Town Planning Scheme No.3 (the Scheme).

##### Application History

Council considered full scheme amendment documentation and an associated amended structure plan at its meeting on 19 February 2019 and resolved (Res: 130219) to:

- Retain the Special Rural zoning but modify the provisions to facilitate the further subdivision of the site from 5 lots to 10 rural residential lots. This was supported by a land capability assessment, geotechnical investigations and bushfire management plan; and
- Separately prepare a Local Structure Plan (previously called a Subdivision Guide Plan) to facilitate the proposed re-subdivision.

Council resolved (Res 130219) to support (initiate) the scheme amendment and structure plan on 19 February 2019.

Following advertising, the scheme amendment and structure plan were presented to Council for final approval on 21 September 2021 with a recommendation to remove Lot 7 from the proposal. This recommendation was on the basis that a submission from the new owners of Lot 7 was misinterpreted by staff as a request to be excluded from the amendment and

structure plan. Their intention to be included was clarified before the September Council meeting where Council resolved as follows:

“That Council REQUEST the CEO to;

1. Reassess Amendment No. 144 and consider the inclusion of lot 7; and,
2. Prepare a report for Council to consider adoption of Amendment No. 144 at the November 2021 Ordinary Council Meeting.”

An extract of Scheme Amendment 144 report including the Local Structure Plan can be found in Attachment 9.1.1b. A full copy of all documentation has been made available for Councillors and members of the public are welcome to request an electronic copy.

### **Consultation:**

In line with Council’s resolution 130219 of the 19 February 2019 Ordinary Council Meeting (OCM), the documentation was referred to the Environmental Protection Authority (EPA) in accordance with Section 81 of the *Planning and Development Act 2005* on 21 October 2019.

The EPA considered the proposal and determined that the proposed scheme amendment should not be assessed under Part IV Division 3 of the *Environmental Protection Act 1986* but provided advice relating to creek line protection and buffers to horticultural activity. This is summarised and addressed in the Schedule of Submissions at Attachment 9.1.1c.

### Government agency and community referrals

Public advertising of Scheme Amendment No.144 and Structure Plan commenced on 11 December 2019 and closed on 14 February. During the advertising period the following consultation took place:

- Advertising notice in the Denmark Bulletin.
- Referral of the Scheme Amendment documentation to various government departments inviting comment.
- Referral to 17 landowners generally within a 1km radius of the subject site inviting comment.
- Scheme Amendment documentation was available for viewing at the Shire Administration Office and on the Shire’s website.

At the close of the advertising period, a total of twelve (12) submissions were received, attached at Attachment 9.1.1c is the Schedule of Submissions – with most submissions received being entered into the schedule verbatim. Column 4 of the Schedule of Submissions represents Planning Services comments/response to the submissions with several modifications recommended arising from submissions.

One additional late submission was received from the owners of Lot 7 Lantzke Road clarifying that they still wished to be included in the proposal.

### **Statutory Obligations:**

- *Planning and Development Act 2005* – TPS No. 3 is an operative Local Planning Scheme under the Act;
- Planning and Development (Local Planning Scheme) Regulations 2015; in particular clause 50 that describes the process for consideration of submissions following public advertising and referral; and
- Town Planning Scheme No. 3 – the site is currently zoned ‘Special Rural’ with Special Provisions detailed under Appendix VI of the Scheme applicable.

### **Policy Implications:**

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

- State Planning Policy No. 2: Environment and Natural Resources Policy
- State Planning Policy No. 2.5: Rural Planning
- State Planning Policy No. 2.9: Water Resources
- State Planning Policy No. 3: Urban Growth and Settlement

- State Planning Policy 3.6: Development Contributions for Infrastructure
- State Planning Policy 3.7: Planning in Bushfire Prone Areas
- Town Planning Scheme Policy No. 29: Rural Settlement Strategy
- Government Sewerage Policy

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

Fees associated with the amendment have been paid as per Council's Fees and Charges Schedule.

#### **Strategic & Corporate Plan Implications:**

The site is designated 'Rural Smallholding' in the Local Planning Strategy (2011). The proposal is consistent with the Local Planning Strategy.

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

#### Denmark Strategic Community Plan 2027

##### 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

##### B3.0 Our Built Environment

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

B3.3 To have a planning framework that is visionary, supports connectivity and enables participation.

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

#### **Sustainability Implications:**

##### ➤ **Governance:**

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

##### ➤ **Environmental:**

The proposed changes to the planning framework will result in a consolidation of an existing zone, assisting in a small way to reduce urban sprawl. Restrictions on the construction of further dams and reintroduction of creek line buffers will protect the availability of water in the catchment.

##### ➤ **Economic:**

Rural living and associated development are important to Denmark's economy.

##### ➤ **Social:**

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

##### ➤ **Risk:**

There is no risk to Council in determining this Structure Plan amendment proposal. If Council chooses to recommend support or refusal, this recommendation is forwarded to the Western Australian Planning Commission (WAPC) for final determination and any appeal of their final decision lies with the WAPC.

#### **Comment/Conclusion:**

Council is being asked to consider two inter-related applications:

1. Scheme Amendment 144, which seeks to modify Town Planning Scheme No.3 to reference the new structure plan that will guide the future subdivision within this zone and permit subdivision intensification on the site from the current five (5) lots to ten (10) lots; and



2. Adopt a new Structure Plan that would replace the original Subdivision Guide Plan to accommodate the coordinated development of ten lots across the entire Special Rural Zone No.10.

Council's role at this stage of the Scheme Amendment and Structure Plan processes is to assess submissions and make recommendations to the WAPC on whether to:

1. Support the amendment without modification; or
2. Support the amendment with proposed modifications to address issues raised in the submissions; or
3. Not to support the amendment.

The major issues raised during the public consultation period included:

1. The condition of Lantzke Road and the impact of increasing the number of lots accessing it regularly;
2. The potential impact of additional dams at the top of the catchment area;
3. The potential impact of the 900m<sup>2</sup> restaurant/gallery identified in the zone; and
4. Bushfire Management Plan (BMP) issues raised by DFES.

The issues listed above are addressed in some detail in the Schedule of Submissions at Attachment 9.1.1c with recommended modifications arising from the submissions summarised in the Schedule of Modifications at Attachment 9.1.1d.

#### Lantzke Road

Lantzke Road is a gravel road that has a moderate amount of traffic, that increases during the summer period. This road is also quite narrow in places with roadside vegetation being retained.

The Shire's road upgrading program does not prioritise the upgrading of Lantzke Road at this time, based on the current traffic numbers and the condition of the road when compared to other demands in the Shire of Denmark.

It is acknowledged that Lantzke Road's role in the wider road network may change as residential development at Kearsley Road and McLean Road develop immediately to the south.

At the time of subdivision, a contribution toward the upgrading of this road to a suitable sealed standard would be considered fair and reasonable.

#### Additional Dams

Submissions received from a nearby landowner and the Department of Water and Environmental Regulation (DWER) recognise the lack of capacity in the immediate catchment to support the existing dams in this area.

It is proposed to prohibit additional dams in this zone on the following basis:

- Existing dams in this small valley already appear to be affecting the existing creek and landholdings further down the catchment
- The reduction in lot size to a more rural residential character (away from productive rural small holdings) means that the focus of the development will be rural living rather than hobby farming
- The smaller lot sizes and existing vegetation would prevent an additional dam from being constructed that meets the usual setback requirements of the Scheme
- The existing orchard on proposed Lot 4 can access water in existing dams (as it always has) if it is secured through easement at the time of subdivision.

#### 900m<sup>2</sup> restaurant/gallery

The scheme provision that would allow Council to consider a gallery/restaurant (up to 900m<sup>2</sup>) was introduced to the Scheme in 2003 as part of Scheme Amendment No.85. This was in recognition of the request from Jonathon Hook (landowner) who had identified the previous limitation of 250m<sup>2</sup> as impractical.

Lot 5 is currently developed with a large holiday home and a studio/gallery approximately 480m<sup>2</sup> in area located at the Lantzke Road frontage.

Council has the option of removing the potential for a restaurant through this scheme amendment if they feel the land use is inappropriate. However, retaining the potential (as an 'SA' use in the Scheme) would allow for the existing tourist business (the gallery & studio) to expand and potentially increase its viability. Any proposal for a restaurant would be referred for public comment, need to comply with noise regulations and is highly likely to attract a considerable road upgrade condition.

It is recommended that the structure plan be modified to clearly show that this provision applies to the existing gallery site only and to adjust the proposed building envelope on proposed Lot 7 to reflect the location of the existing gallery and associated structures.

**Bushfire Management Plan (BMP)**

Department of Fire and Emergency Services (DFES) raised several issues with the methodology, format and content of the BMP lodged as a supporting document with the structure plan.

Whilst the document does require updating to serve as an appendix to the structure plan, there is enough information to inform the current proposal and gives officers the confidence to support the structure plan lot layout and access.

It is recommended that the BMP be updated to reflect the modified structure plan including changes to building envelope locations.

A separate issue raised is the applicable Guidelines for Planning in Bushfire Prone Areas recommend against the use of battle-axe legs for access to new lots. In this case, the battle axe legs are supported on the following basis:

- There are two existing houses located well into the development area that will always be accessed by long driveways, regardless of further subdivisions.
- The extension of these existing driveways to enable two new lots are relatively short.
- The existing driveways will be upgraded as a subdivision condition to allow for two-way traffic and appropriate sealed standard.
- The driveways run largely through paddocks which would allow for multiple ways to escape in the event of a bushfire.

Alternative access arrangements; such as introducing new road alignments and exploring the development of unmade road reserves through to Scotsdale Road, were explored but considered impractical in this instance, due to the low lot yield and fragmented land ownership.

**Voting Requirements:**

Simple majority.

OFFICER RECOMMENDATION	ITEM 9.1.1
<p>That Council;</p> <ol style="list-style-type: none"> <li>1. In accordance with Regulation 50(2) of the Planning and Development (Local Planning Schemes) Regulations 2015;             <ol style="list-style-type: none"> <li>a) NOTES the submissions received in respect to Amendment No. 144 to the Shire of Denmark Town Planning Scheme No.3; and,</li> <li>b) ENDORSE the response to the submissions, Attachment 9.1.1c; and,</li> </ol> </li> <li>2. In accordance with Regulation 50(3)(b) of the Planning and Development (Local Planning Schemes) Regulations 2015, SUPPORT Amendment No. 144 to the Shire of Denmark Town Planning Scheme No.3, as shown in Attachment 9.1.1e, with the following modifications:             <p style="margin-left: 40px;">Inserting new clauses to the Special Provisions as follows:</p> </li> </ol>	

*xiii. No further dams or soaks shall be constructed on any of the lots.*

*xiv. Commencement of development within the Creekline Protection Area defined on the Structure Plan, shall require the prior approval of Council. Development shall be deemed to include preclusion of Riparian rights by damming, diversion or other impediment to water flow, regrading the natural banks, clearing and construction of residences, outbuildings, bridges, or any form of marine structure.*

*xv. The Local Government will request the Western Australian Planning Commission to impose a condition at the time of subdivision requiring the revegetation of the 'Creekline Protection Area'.*

*xvi. The Local Government may request the Western Australian Planning Commission to impose a condition at the time of subdivision requiring planting and maintenance of buffers to adjoining agricultural uses, as indicated on the Structure Plan.*

3. In accordance with Regulation 35(2) of the Planning and Development (Local Planning Schemes) Regulations 2015, DETERMINE that Amendment 144 is a standard amendment for the following reasons:
  - a) It is an amendment that is consistent with a local planning strategy that has been endorsed by the Western Australian Planning Commission; and,
  - b) It is an amendment that is considered will have minimal impact on land in the scheme area that is not the subject of the amendment; and,
  - c) It is an amendment that is considered will not result in any significant environmental, social, economic or governance impacts on land in the scheme area; and
  - d) Is not a complex or basic amendment.
4. AUTHORISES the Shire President and the Chief Executive Officer, in accordance with Section 9.49a of the Local Government Act 1995, to execute under Common Seal Amendment No. 144 to the Shire of Denmark Town Planning Scheme No.3.
5. In accordance with the requirements of the Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 2, Part 4, clause 20:
  - a) ENDORSE the proposed Structure Plan Amendment for Lots 4-7 Lantzke Road and Lot 3 McLean Road, Scotsdale and recommend the modifications to the Western Australian Planning Commission as listed in the Schedule of Modifications, Attachment 9.1.2d; and
  - b) FORWARD a copy of the structure plan amendment, Council report and schedule of submissions to the Western Australian Planning Commission for determination.
6. ADVISE those who provided a submission of Council's resolution.

## 9.1.2 PROPOSED FINAL ADOPTION OF LOCAL PLANNING POLICY NO. 49 – ANCILLARY DWELLINGS

<b>File Ref:</b>	PLN.70.O
<b>Applicant / Proponent:</b>	Not applicable
<b>Subject Land / Locality:</b>	Shire wide (excluding General Industry Zone)
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	5 October 2021
<b>Author:</b>	Will Hosken, Strategic Town Planner
<b>Authorising Officer:</b>	David King, Deputy Chief Executive Officer
<b>Attachments:</b>	9.1.2a – DRAFT Local Planning Policy No. 49: Ancillary Dwellings 9.1.2b - Schedule of Submissions

### Summary:

This report requests the Council adopt proposed Local Planning Policy No. 49: Ancillary Dwellings subject to minor modifications following public consultation.

The purpose of this Policy is to detail how the Shire will consider proposals for the development of an ancillary dwelling (commonly known as a 'granny flat').

### Background:

At its meeting on 17 August 2021 (Res: 060821) the Council adopted Draft Local Planning Policy No. 49: Ancillary Dwellings for the purpose of public consultation.

The accompanying report to Council on 17 August 2021 (item 9.1.1) provides background and a detailed description of the purpose of the Policy.

In summary, the intent of the proposed Policy is to:

- Promote the development of ancillary dwellings as a type of small-format housing, while seeking to preserve the amenity of residential and rural residential areas.
- Provide direction for the development of ancillary dwellings outside of the Residential Zone, where there is currently no specific guidance in the local planning framework.
- Specify how the Shire will consider proposals for the use of an ancillary dwelling for short stay accommodation.

A number of minor changes to the Policy are proposed following advertising:

- In Part 2, rewording of the second Policy objective to refer to amenity in all areas (not just Residential and Special Residential areas).
- In Part 3, providing additional clarity that an Ancillary Dwelling typically requires kitchen and bathroom facilities to be considered self-contained.
- Rewording of part 4.2 to clarify that the Shire may accept proposals for an ancillary dwelling as development that is incidental to a 'Single House'.

The Draft Policy referred to an Ancillary Dwelling as a 'use not listed' in the Local Planning Scheme. The Shire has since received legal advice on the interpretation of the Scheme, supporting the position that an Ancillary Dwelling is considered as development incidental to a 'Single House'. This interpretation supports consistency with the Residential Design Codes and will avoid onerous requirements for proponents.

This part of the Policy seeks to reflect the relevant approval processes identified in the Scheme. This clarification is not considered a material change to the Policy as the Scheme takes precedence over the Policy regardless.

- Removing part 4.3 – this section contains advice on the requirement for building approval and will be contained within separate public information materials, rather than the Policy.
- Additional wording added to 5.2.2 to clarify that housing in the Rural zones can have either two houses, or a house and ancillary dwelling, in a manner consistent with the

adopted Local Planning Policy No.7 – Second Dwellings/Additional Houses and Chalet Developments on Rural zoned lots.

- Renumbering of the provisions outlined in part 5.2.4 (correcting a typographical error).
- Rewording part 5.2.4 (f) to improve opportunities for sustainability, reading as follows:

*Connected to adequate servicing for water supply, wastewater disposal and electricity supply, as determined by the Shire. Where an on-site water supply is provided to the lot, this may include a condition of approval for an increase to this supply.*

This does not change servicing requirements, but provides a greater degree of flexibility to consider alternative solutions.

- Rewording part 5.3 to improve clarity, reading as follows (changes underlined):

### **5.3 Short Stay Accommodation**

*Approval for an Ancillary Dwelling to be developed assumes that it will be used as a permanent residence and does not automatically allow for use as short stay accommodation.*

*Application may be made to the Shire to use an Ancillary Dwelling for short stay accommodation under the 'Holiday Accommodation' use class in the Scheme, where permissible. Where this occurs the Shire will exercise discretion to support proposals in the following circumstances only:*

- *In any permissible zone, an ancillary dwelling may be approved for use as short stay accommodation where the landowner is a permanent resident on site.*
- *In any zone other than the Residential, Special Residential or Special Rural zones, an ancillary dwelling may be approved for use as short stay accommodation (subject to assessment).*

*In effect, the Shire will not support short stay leasing of an ancillary dwelling as an un-hosted form of accommodation in the Residential, Special Residential or Special Rural zones unless specifically provided for in the Scheme. This includes:*

- *Short stay leasing of an ancillary dwelling in addition to the primary residence, as one combined accommodation unit; and,*
- *Short stay leasing of both a primary residence and an ancillary dwelling as two separate accommodation units.*

*Note: There are very few Special Residential and Special Rural zones where the Shire may consider proposals for Holiday Accommodation – please refer to the Scheme and contact the Shire for further advice.*

One significant modification to the Policy is also proposed:

- Additional points added to Part 5.2.4(g), reading as follows (changes underlined):

*(g) Within the Special Residential Zone:*

- *Sized such that a minimum of 80% open space is maintained on the lot.*
- *Connected to the Single House or otherwise designed to appear as single development form.*
- *Designed in accordance with relevant provisions of the Residential Design Codes including Section 5.5.1 and Section 5.4.4.*

These additional points have been proposed in order to reduce potential impacts on visual amenity, as a direct response to concerns raised in public submissions.

Officers recommend that the Council adopt the proposed Policy subject to these modifications and proceed to publish public notice of its enactment.

**Consultation:**

The Draft Policy was advertised for a six (6) week period, between 23 August 2021 and 4 October 2021, exceeding the twenty one (21) day minimum period required by the *Planning and Development (Local Planning Schemes) Regulations 2015*.

The Policy was advertised through newspaper, website and social media, while a comment page was opened on the Shire's Your Denmark platform.

As of 5 October 2021, the Shire had received thirteen (13) public submissions, including seven (7) submissions generally in support, five (5) submissions in objection, and one (1) raising questions but not stating a position. These submissions and the concerns raised are detailed in a schedule, Attachment 9.1.2b.

It is relevant to note, that a recent development proposal including an ancillary dwelling in the Springdale Beach Estate received eight (8) public submissions, six (6) of which objected to this specific development proposal on the basis of concerns relevant to the Policy.

Broad concerns raised in submissions included:

- *Increased density resulting from 'multiple' dwellings.*

The State Planning Framework considers an ancillary dwelling as an extension of a single house, distinct from a grouped or multiple dwelling. An ancillary dwelling is associated in its location and use, limited in size, and cannot be separated on title.

Special Residential estates (such as Springdale Beach) often demonstrate sensitivity to new development, with some landowners seeking more space *for* development and others seeking more space *from* development.

To assist in managing density the proposed Policy provides a minimum requirement for open space on lots within the Special Residential Zone (though only in relation to the development of ancillary dwellings, the extent of its scope).

Additionally, a change to the Policy is proposed to provide additional protections for visual amenity (detailed above).

- *Concern about the impact of holiday homes and short stay accommodation.*

At present there is no guidance on the potential use of ancillary dwellings as short stay accommodation, which may be approved under the 'Holiday Accommodation' use class.

The proposed Policy enables the Shire to address these concerns by adopting a position where the Shire will only support the use of an ancillary dwelling as short stay accommodation in limited circumstances.

A rewording of part 5.3 of the Policy has been proposed to assist in clarifying this matter, but this does not reflect any change in the position of the Policy as advertised.

It is noted that the Shire cannot approve the use of an ancillary dwelling as Holiday Accommodation in the majority of Special Residential zones (where objections have largely originated from).

Two (2) submissions to the Policy raised concerns with the proposed limitation of ancillary dwellings on rural lots where multiple dwellings already exist. Officers recommend that the Policy retains this restriction, which closes a loophole allowing multiple dwellings on a rural lot to each have an ancillary dwelling. The opportunity to have two or more completely separate dwellings on a rural lot is considered to sufficiently provide for large families and

farm staff, while seeking to limit the loss of agricultural land for residential purposes. This opportunity is also generous compared to other like local governments.

One submission also requests a relaxation of the provisions proposed in the Policy, including:

- *Removing the requirement for an ancillary dwelling to be located within proximity (specified in the Policy as within 50m) of the Single House.*

Officers recommend the retention of this provision as a primary means of ensuring an ancillary dwelling is incidental and not developed as a wholly separate second dwelling. This also reduces the likelihood of visual and environmental impacts and limits the creation of additional bushfire risks in rural areas.

- *Removing the requirement for compatible colour, roof pitch and materials.*

Officers recommend the retention of this provision to allow negotiation to improve built form outcomes on behalf of neighbouring landowners. This provision suggests that an ancillary dwelling must be compatible, rather than consistent.

- *Allowing for the provision of services separate to the existing Single House where this may improve sustainability and self-sufficiency (eg. remote solar, water tanks).*

Officers support this approach, and a minor rewording is proposed in the Policy accordingly.

One submission asks about rating implications for properties that rent an ancillary dwelling for short term accommodation. Similar to holiday homes, this will necessitate the property being classified within the 'Holiday Purposes' rating category.

Submissions supporting the proposed Policy generally cited the following reasons:

- Providing more opportunities for landowners to develop.
- Reducing pressure for growth to occur via expansion/sprawl.
- Providing more rental dwellings to help alleviate housing market stress.

### **Statutory Obligations:**

The preparation of a Local Planning Policy must occur in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015*, including public consultation.

The Regulations state that:

*(3) After the expiry of the period within which submissions may be made, the local government must —*

*(a) review the proposed policy in the light of any submissions made; and*

*(b) resolve to —*

*(i) proceed with the policy without modification; or*

*(ii) proceed with the policy with modification; or*

*(iii) not to proceed with the policy.*

In accordance with the Regulations a new or amended Local Planning Policy has effect once a local government has resolved to proceed with the policy and published notice of its adoption.

### **Policy Implications:**

If adopted by the Council, proposed Local Planning Policy No. 49: Ancillary Dwellings, will form part of the local planning framework and inform assessment of relevant development and land use applications.

As part of implementing the Policy the Shire can consider whether any provisions could be strengthened through inclusion in the Local Planning Scheme, upon review.

**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 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.

## L5.0 Our Local Government

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

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

**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)
<b>Environmental:</b> 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. Management Practices	Manage by the assessment of on-site treatment methods as part of planning assessment.
<b>Reputation:</b> 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 Officer Recommendation

**Comment/Conclusion:**

Adoption of proposed *Local Planning Policy No. 49: Ancillary Dwellings* is recommended to help provide clarity and consistency for the development of ancillary dwellings in the Shire.

The finalised Policy includes several minor modifications as a result of public consultation, providing greater clarity on the implementation of a number of provisions. It is not considered that these recommended modifications reflect a material change in the intent of the Policy as advertised.

The finalised Policy also includes one significant change, being the inclusion of additional provisions designed to preserve visual amenity within Special Residential zoned areas. This change is recommended to provide the Shire with additional tools to consider this issue as part of planning assessment.

A final amended version of the Policy is included as Attachment 9.1.2a.

**Voting Requirements:**

Simple majority.

OFFICER RECOMMENDATION	ITEM 9.1.2
<p>That Council, pursuant to Schedule 2, Part 2 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>, resolves to:</p> <ol style="list-style-type: none"> <li>1. ADOPT proposed Local Planning Policy No. 49: Ancillary Dwellings, subject to the minor modifications specified; and,</li> <li>2. PUBLISH notice of the adoption of Local Planning Policy No. 49: Ancillary Dwellings.</li> </ol>	

### 9.1.3 PROPOSED MIXED USE DEVELOPMENT AT LOTS 103 & 104 STRICKLAND STREET, DENMARK

<b>File Ref:</b>	A5871 & A5872
<b>Applicant / Proponent:</b>	Williams Consulting
<b>Subject Land / Locality:</b>	Lots 103 & 104 Strickland Street, Denmark (corner of North St)
<b>Disclosure of Officer Interest:</b>	None
<b>Date:</b>	27 October 2021
<b>Author:</b>	Craig Pursey, Manager Sustainable Development
<b>Authorising Officer:</b>	David King, Deputy Chief Executive Officer
<b>Attachments:</b>	9.1.3a - Development application 9.1.3b - Extract from R-Codes Volume 2 – Mixed Use Development

**Summary:**

Council has received a development application for the vacant lots at the corner of Strickland and North Streets proposing single storey shops fronting Strickland Street and a mixed-use development fronting North Street.

The proposal generally complies with the Scheme and policy requirements. Council are asked to consider adaptive use of the mix-use development fronting North Street, designing for a shop/office but allowing its residential use until its commercial use is financially viable.

Conditional approval is recommended.

**Background:**

Subject site

Lots 103 and 104 Strickland Street, Denmark (the subject site) are located on the corner of Strickland Street and North Street opposite the IGA and a public parking area.

Lots 103 and 104 are 457m<sup>2</sup> and 473m<sup>2</sup> in area respectively, having a total area of 930m<sup>2</sup>. Lots 103 & 104 have limited development (only retaining walls and some parking) and are zoned Commercial by the Shire’s Town Planning Scheme No.3 (the Scheme) with a residential density coding of R25.

Clause 5.3.3 of the Scheme allows Council to determine the appropriate residential density for mixed use development on a Commercial zoned property.

A site plan is provided in the development application at Attachment 9.1.3a of this report.

Previous Proposals & Approvals

Council have considered several development proposals for this site and the adjacent lots (now Lot 101 & 102) since 2013, summarised as follows:

DA	Date Determined	Proposed Land Use	Notes
2013/241	Approved 29/7/2014	Mixed Use Development (Restaurant (Café), Four (4) Commercial Units (Shop/Office) and Seven (7) Dwellings) on No. 3 (Lot 200) Strickland Street, Denmark	Approved after initial refusal, SAT determination on application of residential density clauses and assessment of multiple dwellings as ‘Use Not Listed’.
2015/216	Approved 18/4/2016	Mixed Use Development (eight (8) tenancies at ground level for commercial (shop/office) usage and eight (8) multiple dwellings (first floor permanent residential units) on No. 3 (Lot 200) Strickland Street, Denmark	Approved following initial assessment at Council’s January 2016 meeting.  Mixed use development subsequently built on What became Lots 101 & 102 Strickland Street.

153259	Subdivision finalised August 2017	Four lot subdivision	Lots 101 to 104 created, many cross easements created for services and carparking.
DEN2-17 & DEN1-18	Built Strata finalised July 2018	Built Strata of completed mixed use development	Lots 101 & 102 had tenancies divided under a built strata arrangement
DA2018/59	Approved July 2018	Change of Use First floor residences to - Holiday Accommodation	Approved under delegated authority
DA2019/52	Refused 20 August 2019	Change of Use Proposed conversion of ground floor tenancies at Lot 101 & 102 from shop & office to holiday accommodation	Council resolved to refuse the proposal for reasons including it being contrary to the intent of the Commercial zoning and its impact upon amenity and character.

**Current Proposal**

The applicant describes the proposal as follows:

“This application seeks development approval for two (2) double storey single houses, with allowance for ground floor commercial (townhouses) and two (2) single storey commercial premises (i.e. shop/laundromat and café including an outdoor alfresco terrace), including associated vehicle access way and parking.

The townhouse development provides two (2), three-bedroom dwellings. The townhouses incorporate a ground floor area that can be adapted to accommodate a commercial office space (if required), subject to separate Council approval. Each dwelling also incorporates a large balcony, over and above the private open space requirements.

The commercial premises’ have been designed to accommodate a shop/laundromat and café, but provide flexibility for other suitable uses to occupy the premises’ (if required) subject to separate Council approval. These premises’ are designed with substantial glazing and will provide an active frontage to Strickland Street.

The development incorporates a suitable amount of high quality open space, in the form of an outdoor alfresco terrace overlooking the intersection of Strickland and North Streets. The terrace incorporates a flat louvered roof system providing users with protection from the sun and rain. Public open space is provided directly to the east of the subject site at Norm Thornton Park on the Denmark River foreshore.”

Parking is provided at the rear, access is changed to have cars entering the property from Strickland Street, necessitating the removal of a number of on-street parking bays.

The existing two-storey parapet wall is proposed to be covered in ivy to soften its appearance.

Lastly, the applicant has lodged a subdivision proposal concurrently with this development application to place each subsequent building onto a separate title.

A full copy of the development application is found at Attachment 9.1.3a of this report.

**Consultation:**

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

The applicant indicated he has informally approached the neighbouring landowners for support and agreement to release and realign easements they have over Lots 103 and 104. No response from the neighbouring landowners has been lodged with Council to date.

**Statutory Obligations:**

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

Should Council refuse this Development Application or impose conditions on a Development Approval that the applicant is aggrieved by, as per the provisions of the *Planning and Development Act 2005*, the applicant can apply to the State Administrative Tribunal for a Right of Review.

**Policy Implications:**

Town Planning Scheme Policy No. 15: Townscape Policy, Town Planning Scheme Policy No. 31: Commercial Strategy, Town Planning Scheme Policy No. 42: Public Art and Local Planning Policy 47 Town Centre Parking and Transportation are relevant to this development application and have been considered accordingly.

Schedule 2, Part 2, Clause 3(5) of the *Planning and Development (Local Planning Schemes) Regulations 2015* states:

*“In making a determination under this Scheme the local government must have due regard to each relevant local planning policy to the extent that the policy is consistent with this Scheme.”*

In accordance with TPS No.3, the subject site is zoned “Commercial (R25)”, and given the proposal is for a mixed-use development, as per Clause 5.3.3 of TPS No 3, Council is to determine the applicable density code that relates to the development proposal (notwithstanding the designation on the Scheme map).

**Budget / Financial Implications:**

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

As per Council’s 2020/21 Fees & Charges Schedule, cash in lieu of car parking is to be calculated as per the recommendations in Local Planning Policy 47 at a flat rate of \$5,000 per bay.

**Strategic & Corporate Plan Implications:**

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

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

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

B3.3 To have a planning framework that is visionary, supports connectivity and enables participation.

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

**Sustainability Implications:****➤ Governance:**

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

**➤ Environmental:**

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

➤ **Economic:**

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

➤ **Social:**

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

➤ **Risk:**

Risk	Risk Likelihood (based on history and with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That an undesirable precedent is created for residential development elsewhere in the town centre	Possible (3)	Moderate (3)	Moderate (5-9)	Not Meeting Community expectations	Accept Officer Recommendation

**Comment:**

The proposal has been assessed having regard to the relevant provisions of the Scheme, relevant Town Planning Scheme Policies and the R-Codes, and the proposal is generally compliant with, or can be conditioned to comply with, the relevant requirements except for the following issues that require Council’s determination:

- Proposed land uses and whether it is appropriate to allow residences within the Commercial zone;
- Relationship of the proposed development with the adjoining development;
- Changes to access; and
- Establishing the car parking requirements.

Each of these issues is discussed in detail below.

***Proposed Land Use***

The application consists of:

1. Two (2) single-storey commercial buildings fronting Strickland Street; and
2. Two (2) two-storey town houses fronting North Street.

1. Commercial buildings

The application form lists these buildings as ‘commercial buildings’, the plans show them as ‘shops’ and the written application describes them as a café and shop/laundromat.

For the purposes of assessment as a development application the café is a restaurant (permitted) and the laundromat/shop as a ‘shop’ (permitted).

Given that the ‘Deemed Provisions’ and the Council’s Local Planning Policy 47 allow for ‘as of right change of use’ between land uses in existing buildings, the ramifications of assigning a land use class at this stage are minimal for the commercial development. Compliance with health and building legislation will be more relevant when considering alternate commercial land uses into the future.

2. ‘Townhouses/adaptive buildings’

The proposed townhouses fronting North Street are proposed as ‘adaptive’ buildings that allow the front rooms of the ground floor to be used as separate commercial premises (shop/office) or as purpose built residential space when the market does not justify its commercial use.

This raises issues of what to 'class' the townhouses when assessed against the Scheme requirements. The townhouse will need to meet the requirements of both a Grouped Dwelling and a mixed-use development to enable its adaptive/flexible use into the future.

When considering the suitability of the two townhouses in this location the following factors are of relevance:

- A Grouped Dwelling is a discretionary (AA) land use in the Commercial zone.
- A Grouped Dwelling is defined as:  
*“a dwelling that is one of a group of two or more dwellings on the same lot such that no dwelling is placed wholly or partly vertically above or below another, except where special conditions of landscape or topography dictate otherwise, and includes a dwelling on a survey strata with common property.”*

In this case, there is a down stairs kitchen and living upstairs so the townhouse would be more appropriately considered a 'grouped dwelling' rather than a 'multiple dwelling'.

- Straight residential land use at the ground floor of mixed-use development is discouraged as it creates spaces in a commercial area with a lack of vibrancy; particularly when considering the future of the main street.
- Council previously refused an application to convert an existing, purpose-built shop to holiday accommodation on the ground floor fronting Strickland Street at Lot 101 and 102. This was due to the main street location and the holiday accommodation is not considered to be an 'active use' and that the buildings were not designed appropriately.  
 The current proposal is designed a purpose built, adaptive building seeking to overcome the issues raised in this previous refusal.
- The Denmark Town Centre could reasonably be described as a 'mixed use precinct' with development assessed (in part) against the principles in the Residential Design Codes Volume 2 – Apartments and in particular section 4.14 'Mixed Use'. Whilst the scale of the proposed development is not considered to be an 'apartment' (i.e. multiple dwelling) the principles of this document are relevant. A copy of the mixed-use provisions from Volume 2 of the R-Codes is found at Attachment 9.1.3b of this report.

Relevant mixed-use requirements of the R-codes include:

#### *Acceptable Outcomes*

- A4.14.1 *Where development is located within a mixed-use area designated within the local planning framework, ground floor units are designed for future adaptation to non-residential uses.*
- A4.14.2 *Ground floor uses, including non-commercial uses... enhance and activate the street.*
- A4.14.3 *Non-residential space in mixed use development is accessed via the street frontage and/or primary entry as applicable.*

#### *Design Guidance*

- DG4.14.1 *One of the desirable outcomes of mixed-use development is better activation of the street. This can be achieved by considering design solutions that enhance the streetscape such as:*
  - *development addresses the street and is directly accessed from the street*
  - *flexible and adaptable design that can attract diverse range of activities and be adapted over time to different uses*
  - *street frontages are well-articulated and include a mix of solid wall and glazing that allow interaction between the street and the interior*
  - *providing live-work apartments at ground floor rather than commercial uses.*
- DG4.14.3 *The design of mixed-use development should include the necessary infrastructure to support business activity. Applicants should review the local planning framework to see if there are any applicable requirements that apply to non-residential uses beyond the scope of this policy. Some design considerations include:*

- *provision of universal access to the premises*
  - *vehicle access for deliveries*
  - *providing sufficient staff and customer parking*
  - *inclusion of amenities for staff and customers, such as toilets.*
- The subdivision proposal lodged concurrently with this development application relies upon the mixed-use nature of each component of the proposed development if it is to be supported by the WAPC.

Assessment

The proposed shop & restaurant fronting Strickland Street are permitted uses and whilst a more intense use of the land would be preferred in the town centre, they generally comply with the requirements of the Scheme and policy framework.

The proposed ‘Townhouses’ (adaptive buildings) meet the recommendations of the mixed-use guidelines from the R-Codes in that the front of the ground floor is designed to be an adaptive space that could be used as a shop or office. This includes higher ceilings, universal access, disabled parking at the rear and a toilet located on the ground floor level available to staff.

On the other hand, the retaining wall fronting North Street and houses being elevated from street level reduce the ability of the buildings to address the street and to contribute to the streetscape and ‘activate’ the space.

On balance, the fall of the land needs to be allowed for and there is some merit in the raised alfresco area looking out over the open space on the other side of North Street. Plus, the stairs provide good access up from North Street and the parking at the rear is at level that allows for universal access.

The officer recommendations to Council on 20 August 2019 (Item 8.1.4) to ensure that ground floor tenancies in the town centre are retained with ‘active frontages’ remain true for Strickland Street, being the main street and the heart of the Denmark Town Centre. North Street may be considered to be periphery to the main street environment and an alternate, more flexible approach taken.

It is recommended that these buildings be approved as “mixed use buildings” (shop/office/grouped dwelling) to make it clear that any of these uses is appropriate moving forward and that a density coding of R40 be applied to enable the residential component of the development.

**Parking**

The development proposes to provide six (6) parking bays on site, inclusive of a disabled bay. A loading bay is already provided on the adjacent Lot 102 and is currently secured by an easement.

The current development, when viewed in isolation, generates a requirement to provide parking as follows:

<b>Proposed land use</b>	<b>Floor area</b>	<b>Ratio</b>	<b>Required</b>
Café/shop	120m <sup>2</sup>	1 per 40m <sup>2</sup>	3
Shop	69m <sup>2</sup>	1 per 40m <sup>2</sup>	2
Townhouse/adaptive buildings			4
<b>TOTAL</b>			<b>9</b>

However, the new access proposed from Strickland Street removes two (2) on-street bays and the adjacent development on Lots 101 & 102 have six (6) bays provided on Lot 103 secured by an easement.

This results in a shortfall of eleven (11) bays for the development.

Council has the option of taking 'cash in lieu' for parking (essentially money to develop parking elsewhere) or refusing the application on the basis that there is insufficient parking provided.

Local Planning Policy 47 – Town Centre Parking and Sustainable Transport (LPP47) states:

“The Council seeks to promote the ‘inner core’ of the Denmark town centre as the key commercial area in the Shire; making it an even better place to visit, shop, enjoy and stay. The Council’s vision is that the Denmark town centre has a high level of amenity and activity and a well-defined sense of place. This includes promoting development which activates the town centre, including outside usual business hours, such as cafes, restaurants and small bars.

To achieve the above, the Council seeks to promote business activity, encourage appropriate redevelopment and development and promote sustainable transportation options such as walking and cycling. To assist in implementing this, until at least the finalisation of a new Local Planning Scheme, the Council will support varying certain planning standards to achieve stated Policy objectives.

Although an adequate supply of convenient parking is essential, the Council also appreciates that car parking areas should not dominate the structure of the town centre given it may make the town centre less attractive and vibrant. There is already adequate parking to support the town centre on private property, in the street and in public parking areas without unduly constraining new development with excessive parking requirements. Relaxing the parking requirements is one way in which the land use planning system can assist to incentivise development.”

The relevant clauses of LPP47 include:

- All residential and short stay development provide parking on-site;
- Bicycle parking should be provided as part of the development; four (4) spaces are required.
- “Cash-in-lieu of on-site parking  
Even with a reduction of car parking space standards set in this Policy, there will be instances where the required number of car parking bays cannot be provided on site for non-residential development. In these instances, the local government will consider the applicant meeting the difference through a cash-in-lieu payment.”  
LPP47 sets a rate of \$5,000 per parking space.

The parking for the residential component of the development has been provided on site.

The applicant has accepted the need to pay for eleven (11) bays cash-in-lieu.

Whilst the Shire does not have an adopted car parking plan for the town centre, there is scope to develop further parking in the North Street road reserve and in nearby reserves if cash in lieu money is taken.

Support for this aspect of the proposal is recommended.

### **Access**

A new driveway through to a parking area at the rear of the proposed development is proposed from Strickland Street. This would result in the removal of two (2) on-street parking bays and result in two (2) parapet walls on either side. It would also reverse the current direction of traffic into the existing neighbouring development at Lot 101 & 102.

The loss of parking bays is discussed elsewhere in this report.



The new driveway and parapet walls are not ideal in a main street environment, they have the potential to disrupt the flow of development, cause additional points where vehicles and pedestrians meet, lack passive surveillance and the large blank walls offer poor amenity.

On the other hand, a new access driveway in this location allows for development to wrap around the intersection of Strickland Street and North Street and the large wall space can be softened with artwork or greenery.

**Existing Development**

Lots 101 to 104 Strickland Street, Denmark, had been issued a development approval for an eight (8) unit mixed-use development in 2016. Only the first four (4) units were constructed; those on Lots 101 & 102.

To facilitate the development of the first four (4) units, easements and services were provided across Lots 103 and 104 for 6 parking bays and drainage infrastructure. This was undertaken in anticipation of Lots 103 and 104 being developed in accordance with the previous approvals. The landowner now has an alternate vision for Lots 103 and 104 and will require the lifting of easements to enable the proposed development.

It is important to note that the current development application cannot proceed without the support of the owners of Lots 101 and 102 in agreeing to lift the current easements. It is recommended that an advice note be clearly placed on any approval noting this and that there is no obligation for the owners of Lots 101 and 102 to agree to lifting these easements.

**Conclusion**

The current development application is an alternate proposal to the previously approved eight (8) unit mixed-use development.

The application largely meets the requirements of the Town Planning Scheme and local planning policies with discretion required regarding parking, land use and access.

Approval is recommended subject to conditions.

**Voting Requirements:**

Simple majority.

OFFICER RECOMMENDATION	ITEM 9.1.3
<p>That with respect to the development application for the proposed Mixed-Use Development (adaptive building consisting of Shop, Office and/or Grouped Dwelling), Restaurant and Shop on Lot 103 and 104 Strickland Street, Denmark, COUNCIL resolves to:</p> <ul style="list-style-type: none"> <li>A. DETERMINE, as per Clause 5.3.3 of Town Planning Scheme No. 3, that the appropriate density code to apply for development requirement purposes for the subject site is “R40”; and,</li> <li>B. GRANT development approval subject to the following conditions: <ul style="list-style-type: none"> <li><u>General</u></li> <li>1. The development hereby approved shall be undertaken in accordance with the signed and stamped approved Development Plans dated 28 June 2021 and revised site plan dated 3 November 2021 except as may be modified by the following conditions.</li> <li>2. The approved parking plan associated with condition (9) must be implemented, constructed and thereafter maintained to the satisfaction of the Shire of Denmark, for the life of the development.</li> <li>3. The loading and unloading of goods to and from the premises shall be carried out entirely within the site at all times and shall be undertaken in a manner so as to cause minimum interference with other vehicular traffic.</li> </ul> </li> </ul>	

4. Sign(s) shall not be erected on the lot without the prior approval of the Shire of Denmark.
5. External clothes drying area(s) appurtenant to the dwelling(s) shall be provided in a location such that they are screened from public view from the street. Mechanical driers are available to be used as an alternative to external clothes drying area(s).
6. Balconies associated with the dwellings shall not be used for clothes drying purposes at any time.
7. All outdoor lighting shall be designed and installed in accordance with Australian Standard AS4282/2019 and thereafter maintained to the satisfaction of the Shire of Denmark. Lighting is to be positioned and shielded so as not to cause any direct, reflected or incidental light to encroach beyond the property boundaries.

Prior to physical works commencing

8. A Construction Management Plan shall be prepared and submitted to the Shire for approval at least 30 days prior to commencement of works. The Construction Management Plan shall detail how the construction of the development will be managed including the following:
  - i) Access to and from the site.
  - ii) The delivery of materials and equipment to the site.
  - iii) The storage of materials and equipment on the site.
  - iv) The parking arrangements for contractors and sub-contractors.
  - v) Management of construction waste.
  - vi) Dust and sand mitigation measures.
  - vii) Construction times (if proposing different times to the relevant Regulations) and associated noise prevention measures.
  - viii) the storage of materials and equipment on site (no storage of materials on the verge will be permitted); and
  - ix) any other matters likely to impact upon the surrounding properties or road reserve.Once approved, the development is to be constructed in accordance with the Construction Management Plan to the satisfaction of the Shire of Denmark.
9. The applicant is to submit and have approved to the satisfaction of the Shire of Denmark a detailed parking plan design which complies with the Australian Standard AS/NZS 2890 and AS/NZS 1428, including a minimum of 6 parking bays (including 1 disabled bay), aisle widths, circulation areas, paths of travel, driveway/s and points of ingress and egress.
10. A stormwater management plan being submitted to and approved by the Shire of Denmark (Infrastructure Services), with such stormwater plan to be in accordance with water sensitive urban design principles.
11. A Landscaping Plan shall be submitted to the Shire of Denmark for approval. The approved Landscaping Plan shall be implemented prior to occupancy or within the next available planting season and maintained thereafter to the satisfaction of the Shire of Denmark (refer Advice Note b).
12. A waste management plan shall be submitted and approved by the Shire of Denmark (Infrastructure Services/Health Services). Such plan is to detail how all refuse generated from the site will be dealt with, including the location and design of all refuse storage areas. This may necessitate the introduction of a ramp to North Street.
13. All piped, ducted and wired services, air conditioners, hot water systems, water storage tanks, service meters and bin storage areas must be located to minimise any visual and noise impact on the occupants of nearby properties and screened from view from the street. Design plans for the location, materials and construction for screening of any proposed external building plant must be submitted to and approved by the Shire of Denmark

14. A schedule of materials and colours to be used on the approved buildings/structures shall be submitted to the Shire of Denmark for approval.

Prior to occupation or use of the development

15. The vehicle crossovers to Strickland Street to be constructed, drained and sealed (concrete, asphalt or brick paved) to the satisfaction and specifications of the Shire of Denmark.
16. The existing crossover to North Street is to be removed and the footpath, verge and kerb is to be reinstated entirely at the applicant's cost to the specification and satisfaction of the Shire of Denmark.
17. A minimum of six (6) car parking bays being provided on-site.
18. A minimum of four (4) bicycle spaces (two (2) for residents; two (2) for commercial land uses) being provided on-site, with the bicycle spaces being designed in accordance with Australian Standard AS2890.3:2015 Parking Facilities Part 3: Bicycle Parking.
19. The landowner shall enter into a Deed of Agreement (prepared and executed at the cost of the applicant/landowner) to the satisfaction of the Shire of Denmark, to guarantee a reciprocal 'right of carriageway' for vehicular and pedestrian movements and establish ongoing maintenance responsibilities between the subject site and Lots 101 and 102 Strickland Street, Denmark. Such a Deed of Agreement is to be registered on the relevant Certificate of Titles as an encumbrance.
20. A cash in lieu contribution for the shortfall of eleven (11) car parking bays on-site is to be paid to the Shire of Denmark, with such payment to be calculated as per Council's operative Schedule of Fees & Charges applicable at the time of payment (refer Advice Note d).
21. A public art proposal to the value of 0.5% of the estimated cost of development (or payment of cash-in-lieu) in accordance with the Shire of Denmark Town Planning Scheme Policy No. 42: Public Art, shall be submitted to the Shire of Denmark for approval. Prior to final occupancy of the development, the details approved for the public art proposal shall be implemented, completed and thereafter maintained, to the satisfaction of the Shire of Denmark (refer Advice Note e).
22. All lots that are the subject of this development approval shall be amalgamated (Refer Advice Note c) unless an alternative timeframe is agreed to in writing by the Shire of Denmark,
23. The parapet walls shall be constructed to an acceptable finished standard such as cladding, face brick or render, with artwork and/or greenery added to soften the appearance and maintained thereafter to the satisfaction of the Shire of Denmark.
24. The developer shall notify the Shire of Denmark (Planning Services), in writing, of the effective completion of the approved development such that a Final Inspection can be carried out to determine compliance with the conditions contained on this Development Approval.

Advice Notes:

- a) There are several easements across the subject site in favour of Lot 101 and 102 Strickland Street, Denmark that protect infrastructure and secure access rights and parking bays for the existing development on these properties. The lifting or adjustment of these easements will require the agreement of the adjoining landowners to enable the current development proposal to proceed. The adjoining landowners are under no obligation to agree to the lifting of any easements.
- b) The Landscaping Plan required at condition 12 shall be drafted to comply with the requirements of clause 4.12 of the Residential Design Codes – Volume 2 and should include:

- The existing parapet wall between Lots 102 and 103 will require rendering and vines or creepers to soften the appearance of this wall;
  - A minimum of one (1) tree shall be planted per townhouse; and
  - The development shall provide a minimum 10% of each site area as deep soil area, with the deep soil area to have a minimum dimension of 1.5m.
- c) The development currently sits across the existing boundary between Lot 103 and 104. The Building Code of Australia (BCA) assesses a lot boundary as a 'fire source feature'; the lot boundaries will need adjusting to allow individual buildings to be located within a property boundary.
- d) In relation to Condition 20, in accordance with Council's adopted Fees & Charges Schedule and the recommendations of Town Planning Scheme No.47, cash in lieu of car parking is to be provided at a flat rate of \$5,000 per bay.
- e) A contribution toward public art is required at condition 16 as the value of development on the development application form has been understated (\$450,000). The standards applied through the building assessment process place the value of development at closer to \$900,000. The Public Art policy requirements apply at development worth more than \$500,000.
- f) It is the responsibility of the developer to ensure that building setbacks correspond with the legal description of the land. This may necessitate re-surveying and re-pegging the site. The Shire of Denmark will take no responsibility for incorrectly located buildings.
- g) It is the responsibility of the developer/owner to search the title of the property to ascertain the presence of any easements and/or restrictive covenants that may apply.

**9.1.4 ROAD RESERVE CLOSURE**

<b>File Ref:</b>	A3200
<b>Applicant / Proponent:</b>	Nil
<b>Subject Land / Locality:</b>	Reserve 47890 and adjacent unnamed road reserve
<b>Disclosure of Officer Interest:</b>	None
<b>Date:</b>	22 October 2021
<b>Author:</b>	Craig Pursey, Manager Sustainable Development
<b>Authorising Officer:</b>	David King, Deputy Chief Executive Officer
<b>Attachments:</b>	9.1.4 - DBCA Request to close road & plan

**Summary:**

The Department of Biodiversity Conservation and Attractions (DBCA) has requested that the Shire of Denmark close a portion of unmade road reserve (known as Road No.8603) located immediately adjacent to the Mount Roe National Park (Reserve 47890).

It is intended that the road reserve be closed and amalgamated into the National Park; Officers support this request.

**Background:**

Council received a request from DBCA requesting advice on two matters:

1. If the Shire had any objection to Lot 1494 Northumberland Road, Kentdale, a reserve currently managed by the Department of Water and Environmental Regulation (DWER), being added to the adjacent Mount Roe National Park; and
2. The Shire's consideration of a proposal to close and amalgamate a portion of unmade road reserve adjacent to Lot 1494.

A copy of the DBCA correspondence and a plan showing the land parcels in question is provided in Attachment 9.1.4.

The request is consistent with the recommendations made in the Walpole Wilderness Management Plan 2008 including:

*“Many unused Crown road reserves are not best located to satisfy access requirements, are unnecessary or no longer required. These road reserves should be rationalised through consultation with local authorities, Main Roads Western Australia, and private property owners to ensure that local access requirements are best satisfied and to protect the environmental and landscape values of the planning area. Crown road reserves no longer required will be investigated with the view to adding these to the planning area's conservation estate”.*

Staff advised DBCA that the Shire had no objection to the amalgamation of Lot 1494 in the adjacent National Park.

A road closure has a formal process to follow under the *Land Administration Act 1997*.

**Consultation:**

To comply with the specific requirements of section 58(3) of the *Land Administration Act*, the Local Government must publish its intent in a newspaper circulating in its district and consider any submissions.

**Statutory Obligations:**

Section 58 of the *Land Administration Act 1997* provides the process of closing a road and requires the request to close a road be made to the Minister.

**Policy Implications:**

There are no policy implications.

**Budget / Financial Implications:**

There are no known financial implications associated with this proposed road closure.

**Strategic & Corporate Plan Implications:**

The report and officer recommendation is consistent with Council's adopted Strategic Community Plan Aspirations and Objectives in the following specific way:

Denmark 2027

L5.0 Our Local Government

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

**Sustainability Implications:**

The proposal to close and amalgamate the road reserve into the adjacent National Park for management by DBCA is consistent with the key principle of the Council's adopted Sustainability Strategy:

“We will protect and enhance our natural systems that are vital to the sustainability of our local community.”

➤ **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:**

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

**Comment/Conclusion:**

A plan of the proposed closure is provided in Attachment 9.1.4.

The portion of the road that is the subject of this request is un-cleared, with a small portion of a track named Northumberland Road cutting across the reserve. There is no requirement to ever construct this road, noting that it doesn't provide access to any freehold lots or the National Park.

DBCA has the management of the adjacent Mount Roe National Park.

DWER has agreed to release the management orders over Lot 1494 and have this property amalgamated into the Mount Roe National Park.

The road reserve is undeveloped and uncleared, and it would appear to be reasonable to have the entirety of this land parcel managed by a single agency.

This Council report seeks a resolution from Council to advertise the proposed road closure. Following a submission period of 35 days, this recommendation also seeks authorisation for the Chief Executive Officer to request closure to the Minister. If any objections are received during the submission period, officers propose that Council reconsider closing the road with a second report to Council.

**Voting Requirements:**

Simple majority.

**OFFICER RECOMMENDATION**

**ITEM 9.1.4**

That Council; pursuant to section 58(3) and 58(1) of the Land Administration Act 1997,

1. REQUEST the Chief Executive Officer to provide public notice, seeking submissions for thirty-five (35) days, or more, of Councils intent to permanently close the unmade road reserve (Road No.8603) adjacent to Mount Roe National Park as defined in Attachment 9.1.4; and
2. AUTHORISE the Chief Executive Officer to request the Minister close the unnamed Road Reserve as defined in Attachment 9.1.4, subject to no objections being received during the submission period, and in accordance with section 9 of the Land Administration Regulations 1998.

**9.1.5 PRAED LANE ROAD CLOSURE**

<b>File Ref:</b>	PROJ.ENG.52.21/22
<b>Applicant / Proponent:</b>	N/A
<b>Subject Land / Locality:</b>	Praed Lane Road Reserve
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	25/10/2021
<b>Author:</b>	David King – Deputy Chief Executive Officer
<b>Authorising Officer:</b>	David King – Deputy Chief Executive Officer
<b>Attachments:</b>	Nil

**Summary:**

The Shire of Denmark’s Capital Works Programme allocates \$110,000 for the upgrade of Praed Lane to a sealed standard. The original scope of works was for the upgrade to extend along Praed Lane from Bent Street, 77m to the rear of the bakery.

It is proposed that the scope of works be increased to complete the upgrade through to Barnett Street. A budget increase is required to accommodate the additional works.

**Background:**

Location

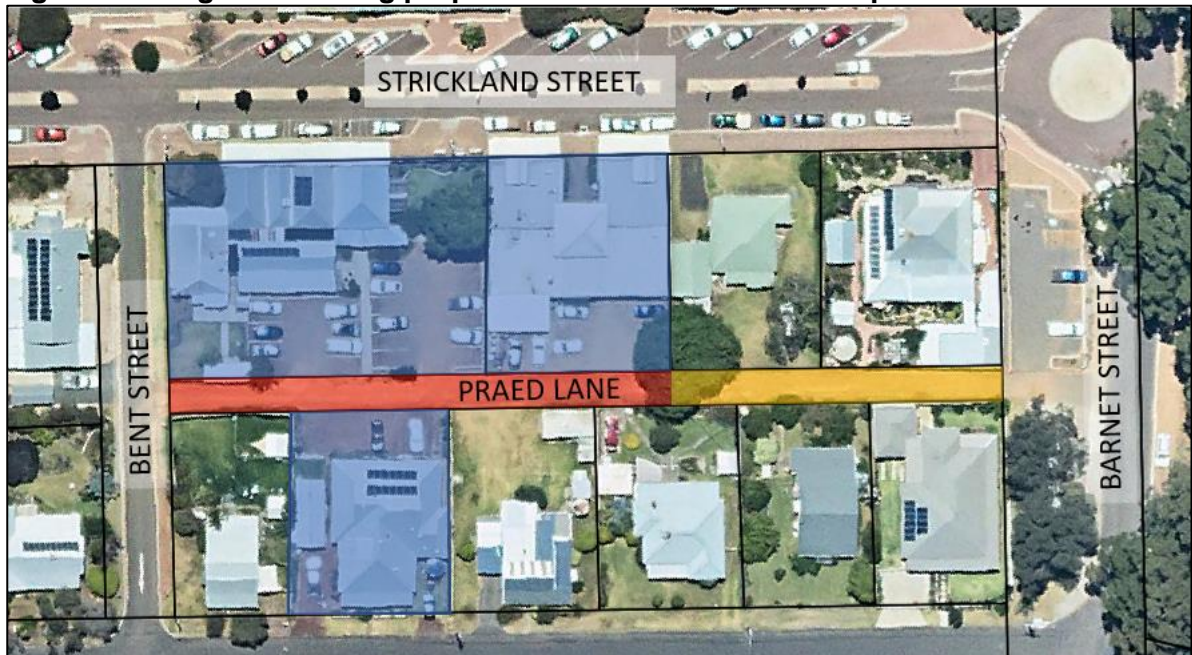
Praed Lane is an unsealed laneway located in the town centre that connects Bent Street to Barnett Street.

Developer Contributions

The Shire of Denmark has several unsealed laneways throughout the town centre. As development occurs that is adjacent to an unsealed laneway, it is usual that a developer contribution is sought for the upgrade of the laneway.

Praed Lane has ten (10) adjacent properties, of which three (3) have made development contributions to a total value of \$33,296. The blue highlighted properties shown in figure 1 have made developer contributions.

**Figure 1 – Diagram showing properties that have made developer contributions.**



State Planning Policy 3.6 Infrastructure Contributions (SPP 3.6) provides principles for infrastructure contributions that must be met.

One of the principles that must be met is “Certainty”. To meet this principle, the scope, timing, priority for delivering infrastructure items, the cost of infrastructure contributions, and methods of accounting for escalation, should be identified.

Whilst not a specific requirement of policy, SPP 3.6 discusses that developer contributions contained within a Development Contribution Plan (DCP) should be spent within a ten-year timeframe. Although the contributions taken for Praed Lane are not associated with a DCP, expenditure within a ten-year timeframe would be a reasonable expectation of timing certainty.

Developer contributions collected for the Praed Lane upgrade date back to the year 2000 which is well outside a ten-year timeframe.

The red highlighted area in figure 1 shows the upgrades required to remove the contract liability associated with the development contributions.

It is unlikely that any further significant development contributions will be forthcoming for Praed Lane in the short term.

#### Upgrade extents and costs

The existing budget was based on the contract liability associated with the developer contributions. This scope included a sealed road, kerb, and drainage for the first 77m of Praed Lane from Bent Street and is shown in red in figure 1.

Officers have completed a detailed design and have tested the market by undertaking a quotation process. The market has been tested for two options.

1. Increased scope to upgrade the entirety of Praed Lane (157m – red and orange highlighted areas in figure 1)  
Expected cost - \$205,000 (\$1,306/m)
2. Retain existing scope to upgrade Praed Lane from Bent Street a distance of 77m to the back of the bakery. (red area highlighted in figure 1)  
Expected cost \$150,000 (\$1,948/m)

The market indicated that the construction efficiencies gained by completing the entire length represent a 32% increase in cost efficiency. As such officers have considered increasing the scope to complete the Praed Lane upgrade in its entirety.

#### Community Expectations

It is an expectation from the developers that have made contributions that the laneway will be upgraded to provide sealed access to their rear car parking areas.

#### Other considerations

Completing the upgrade through to Barnett Street has the benefits of improving permeability in the network because users are more likely to access the rear car parking from either end of the laneway.

With only a partial upgrade, the rear car parking on Praed Lane would only have sealed access from Bent Street. Bent Street is one-way off Strickland Street and therefore sealed access to the carparks can only be achieved by driving down Strickland Street. By providing sealed access to Barnett Street, achieved with the full upgrade, traffic movements on Strickland Street are likely to be reduced.

#### Deferring the works

Both options 1 and 2 require an additional budget authorisation to proceed. As such, the option of deferring the project has also been considered. However, due to the contract liability risk and community expectation that this laneway will be upgraded, this option is not recommended.



**Consultation:**

Once the contract is awarded, the affected landowners will be informed of the construction timeframe and impacts.

**Statutory Obligations:**

State Planning Policy 3.6 Infrastructure Contributions (SPP 3.6)

This State Planning Policy is prepared under Part Three of the *Planning and Development Act 2005* and prescribes how and when development contributions may be sought.

Local Government Act 1995

Section 6.8. applies and prescribes process requirements for expenditure not included in the annual budget.

**Policy Implications:**

Nil

**Budget / Financial Implications:**

A budget adjustment is necessary to proceed with options 1 or 2. Financial Implications are outlined in Table 1.

**Table 1 – budget implications on options.**

Options	Current Budget	Required Budget	Variance
<b>Option 1</b> Amend scope to include full upgrade of Praed Lane	\$110,000	\$205,000	(\$95,000)
<b>Option 2</b> Keep existing scope	\$110,000	\$150,000	(\$40,000)
<b>Option 3 -</b> Defer Project until 2022/23	\$110,000	\$0	\$110,000

**Strategic & Corporate Plan Implications:**

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

Denmark 2027

B1.0 Our Built Environment

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

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

**Sustainability Implications:**

The whole of life carbon footprint of this upgrade has not been costed. However, it is considered to be minimal.

➤ **Governance:**

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

➤ **Environmental:**

Reduction of airborne dust and silt in stormwater drainage will be achieved by sealing the laneway.

➤ **Economic:**

Upgrading the laneway will improve the quality of life for users, residents, and business owners.

➤ **Social:**

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

➤ **Risk:**

The below table outlines the various Risk associated with the presented options.

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)
<b>Option 1 - Amend scope to include a full upgrade of Praed Lane</b>					
<b>Financial:</b> That by completing the whole scope the Shire misses out on the opportunity to collect contributions from further development	Possible (3)	Minor (2)	Moderate (5-9)	Inadequate Financial, Accounting or Business Acumen	Accept Risk
<b>Option 2 - Keep the existing scope</b>					
<b>Financial:</b> That construction inefficiency and cost escalation into the future result in an additional cost to the Shire to complete works if development does not occur.	Possible (3)	Minor (2)	Moderate (5-9)	Inadequate Financial, Accounting or Business Acumen	Accept Risk
<b>Reputational:</b> That escalating costs and therefore increasing development contribution requirements stifles main street development	Possible (3)	Moderate (3)	Moderate (5-9)	Not Meeting Community expectations	Accept Risk
<b>Option 3 - Defer Project until 2022/23</b>					
<b>Financial:</b> That developers seek their contributions to be returned.	Possible (3)	Moderate (3)	Moderate (5-9)	Inadequate Financial, Accounting or Business Acumen	Manage by continued communication with affected parties
<b>Reputational:</b> That community dissatisfaction with the condition of the road increases.	Likely (4)	Moderate (3)	High (10-16)	Not Meeting Community expectations	Manage by scheduling in the upgrade

**Comment/Conclusion:**

It is recommended to complete the upgrade for the entire length of Praed Lane.

This is due to the improbability of any further significant developer contributions, a community expectation to seal all roads within the town centre, and cost efficiencies in completing the work in a single contract.

**Voting Requirements:**

Absolute majority.

<b>OFFICER RECOMMENDATION</b>	<b>ITEM 9.1.5</b>
<p>That Council:</p> <ol style="list-style-type: none"> <li>1. AUTHORISE the over expenditure of budget line item 50100 up to a total project cost of \$205,000 to encompasses the additional scope.</li> <li>2. NOTE that the budget adjustment will be undertaken through a further report to Council.</li> </ol>	

**9.1.6 TEN.2-2021/22 – DRFAWA – STORM DAMAGE REPAIRS ASSOCIATED WITH ARGN 933**

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<b>File Ref:</b>	TEN.2-2021/22
<b>Applicant / Proponent:</b>	Shire of Denmark
<b>Subject Land / Locality:</b>	Mt Shadforth Road and 30 other roads
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	5 November 2021
<b>Author:</b>	David King, Deputy Chief Executive Officer
<b>Authorising Officer:</b>	David King, Deputy Chief Executive Officer
<b>Attachments:</b>	9.1.6a - Works List 9.1.6b Briefing Note (CONFIDENTIAL to councillors, see the body of the report for further details)

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**Summary:**

The Shire of Denmark issued a request for tender to provide civil works associated with the storms and flooding damage during August 2020 along the South Coast of WA.

This report recommends the appointment of MC Civil Contractors to be awarded the contract to undertake the works.

**Background:**

The Shire of Denmark received substantial damage to the road and drainage network associated with a storm event on 3 and 4 August 2020.

This event was proclaimed an eligible disaster under the Disaster Recovery Funding Arrangement Western Australia (DRFAWA) and assigned disaster number AGRN 933.

Over 30 roads received substantial storm damage, which included Mount Shadforth Road where the damage sustained was extensive. A works list is provided in Attachment 9.1.6a.

Claims under the DRFAWA scheme can be categorised into three (3) components. For each increasing component, there is an increasing burden of proof required to make a claim.

1. Emergency Works

Works are required to be completed within three (3) months of the event. This was undertaken by the Shire of Denmark staff.

2. Immediate Reconstruction Works

Works are required to be completed within three (3) months of the event. Wet weather following the event affected the ability to complete immediate reconstruction works.

3. Essential Public Asset Reconstruction (EPAR)

Works are required to be completed before 30 July 2023 for AGRN 993. The tender for consideration here is for these works.

It was not possible to complete the EPAR works in the 2020/21 construction season (November – March) as the pre-approval from the DRFAWA for the Mt Shadforth failure required a detailed process that was not feasible within the timeframe.

**Consultation:**

A request for tender was published in the West Australian on 15 October 2021, Albany Advertiser on 19 October 2021, and in the Denmark Bulletin on 14 October 2021.

**Statutory Obligations:**

Regulation 11 of the Local Government (Functions and General) Regulations 1996 (Regulations) requires Council to publicly tender if the contract is, or is expected to be, or more than \$250,000.00.

Regulation 18 of the Regulations outlines several requirements relating to the choice of tender. Council is to decide which of the acceptable tenders is the most advantageous to Council. The Council may also decline to accept any tender.

Regulation 19 of the Regulations requires Council to advise each tenderer in writing the result of the Council's decision.

**Policy Implications:**

P040220 Purchasing Policy and P040216 Regional Price Preference Policy apply to this item.

**Budget / Financial Implications:**

The DRFAWA covers a portion of the costs associated with the recovery works.

Covered costs include all consultancy and contract construction works. Works undertaken by the Shires workforce are claimable in part, but certain overheads cannot be claimed.

The EPAR works proposed here are contract-based for both project management and construction. Therefore, all costs, except officer contract time, can be claimed.

Local governments contribute 25% of the cost of the restoration or replacement of essential public assets, up to the local government contribution limit. The contribution limit for the Shire of Denmark is \$187,000.

All costs can be claimed under DRFAWA and are based on actual expenditure. This is determined via the defined acquittal process.

The costs associated with AGRN 933 are within the budget estimates.

**Strategic & Corporate Plan Implications:**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.*

*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 is one significant tree that requires removal as part of the Mt Shadforth reconstruction works. This tree has already de-stabilised as a result of the storm event.

**➤ 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)
<b>Financial:</b> That a tender is not awarded promptly resulting in risk to loss of funding.	Unlikely (2)	Moderate (3)	Low (1-4)	Business Disruption	Accept Risk
<b>Financial:</b> That DRFAWA does not approve the claim.	Major (4)	Unlikely (2)	Moderate (8)	Errors, Omissions, or Delays	Accept Risk

**Comment/Conclusion:**

Evaluation

At the closing date, two (2) submissions were received. Tenders are evaluated using a weighted attributed methodology. The method scores the evaluation criteria and weights the importance to determine an overall point score for each tender.

The evaluation panel consisted of three (3) Shire officers, including a Director. The purpose of the Panel was to assess and score the tender and undertake any communication with the tenderer that may be necessary to clarify the submission. To ensure value for money, the Panel assessed the tender according to a pre-determined weighting schedule.

The criteria and weightings are shown in Table 1 – Criteria and Weightings

**Table 1 – Criteria and Weightings**

Criteria	% Weight
Relevant Experience	25%
Tenderers Resources	25%
Cost	50%

The qualitative criteria of ‘relevant experience’ and ‘tenderers resources’ were scored as per Table 2 – Qualitative scoring.

**Table 2 – Qualitative scoring**

Score	Description
0	Inadequate or non-appropriate offer, many deficiencies, does not meet criterion (did not submit any documentation to support claims)
1	Between 0 and 2
2	Marginal offer, some deficiencies, partly meet the criterion
3	Between 2 and 4
4	Fair offer, few deficiencies, almost meet the criterion
5	Between 4 and 6
6	Good offer, no deficiencies, meet the criterion
7	Between 6 and 8
8	Very good offer, exceed the criterion
9	Between 8 and 10
10	Outstanding offer, greatly exceed the criterion

Table 3 summarises the tenderers and overall evaluation score.

**Table 3 – Total Score**

<b>Tenderer</b>	<b>Total Score</b>
MC Civil Contractors	<b>777</b>
Tenderer B	<b>472</b>

Based on the evaluation process, the tender from MCC Contractors was deemed to satisfy all the selection criteria outlined in Table 1. A detailed breakdown and more discussion on the scoring are provided confidentially under separate cover.

The Shire Officer has recommended that the contract be awarded to MC Civil Contractors

**Voting Requirements:**

Simple majority.

OFFICER RECOMMENDATION	ITEM 9.1.6
That Council ACCEPT the tender from MC Civil Contractors for TEN.2-2021/22 – DRFAWA – Storm Damage Repairs Associated with ARGN 933	

**9.2 DIRECTOR CORPORATE AND COMMUNITY SERVICES**

**9.2.1 FINANCIAL STATEMENTS FOR THE PERIOD ENDED 30 SEPTEMBER 2021**

<b>File Ref:</b>	FIN.1
<b>Applicant / Proponent:</b>	Not applicable
<b>Subject Land / Locality:</b>	Not applicable
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	26 October, 2021
<b>Author:</b>	Lee Sounness, Manager Corporate Services
<b>Authorising Officer:</b>	Gina McPharlin, Director Corporate & Community Services
<b>Attachments:</b>	9.2.1 – September 2021 Monthly Financial Report

**Summary:**

The attached financial statements and supporting information, Attachment 9.2.1, for the period ending 30 September 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. The attached statements are prepared in accordance with the requirements of the Local Government Act 1995 (s.5.25(1)) and the Local Government (Financial Management) Regulations 1996.

**Policy Implications:**

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

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

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

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

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

**Budget / Financial Implications:**

There are no significant trends or issues to be reported since the budget adoption on 17<sup>th</sup> August 2021.

**Strategic & Corporate Plan Implications:**

The report and officer recommendation are consistent with Council's adopted Strategic Community Plan Aspirations and Objectives 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 30 September 2021, total cash funds held (excluding trust funds) totals \$10,107,109 (Note 1).

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

Reserve Funds (restricted) total \$4,655,697 (Note 5).

Municipal Funds (unrestricted) total \$5,451,412 (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 2022 end of year financial position is estimated to be balanced at zero. At this early stage of the financial year there are no known circumstances to suggest that the actual closing position will differ significantly from the amount calculated in the adopted budget (Statement of Financial Activity).
- Operating revenue and expenditure is in line with year to date budget predictions for the period ended 30 September 2021 (Statement of Financial Activity) except for items referenced in Note 3(a) which includes depreciation expense which is yet to be applied for the 2021/2022 financial year.
- The Rates Collection percentage for the year sits at 41.44%. This is lower than previous years but is related to the late adoption date of the budget and therefore the timing of the Rates Notices being issued and the due date for payment. (see Note 4)
- The 2021/2022 Capital Works Program has only just commenced with 0.48% completed for the year to date with a total committed cost of 9.08% as at 30 September 2021 (see Note 10).
- Various transfers to and from General Reserve Funds have not been made for the 2021/2022 year as they are undertaken in the latter part of the financial year, depending on the specific projects to which the transfers relate.
- Salaries and Wages expenditure is in line with budget estimates (not reported specifically in Financial Statement).

Other Information

- Budget Surplus Brought Forward – The adopted budget for 2021/2022 was built on an estimated brought forward surplus position from 2020/2021 of \$1,553,964.
- Depreciation Expense – Depreciation of all asset classes have not yet been calculated for the reporting period. Depreciation expense will be applied once the annual audit of the financial accounts for the year ended 30 June 2021 have been completed.

**Voting Requirements:**

Simple majority.

OFFICER RECOMMENDATION	ITEM 9.2.1
<p>That Council, with respect to Financial Statements for the period ending 30 September 2021, 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 30 SEPTEMBER 2021

<b>File Ref:</b>	FIN.1
<b>Applicant / Proponent:</b>	Not applicable
<b>Subject Land / Locality:</b>	Not applicable
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	28 October 2021
<b>Author:</b>	Lee Sounness, Manager of Corporate Services
<b>Authorising Officer:</b>	Gina McPharlin, Director Corporate & Community Services
<b>Attachments:</b>	9.2.2 – September Monthly List of Payments Summary

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### Summary:

The purpose of this report is to advise the Council of payments made during the period 1 September 2021 to 30 September 2021, provided as Attachment 9.2.2.

### 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.

<b>OFFICER RECOMMENDATION</b>	<b>ITEM 9.2.2</b>
<p>That with respect to the attached Schedule of Payments, totalling \$1,237,825.37, for the month of September 2021, Council RECEIVE the following summary of accounts:</p> <ul style="list-style-type: none"> <li>• Electronic Funds Transfers EFT31110 to EFT31302 - \$597,590.65;</li> <li>• Municipal Fund Cheque No's 60450 – 60451 - \$3,889.90;</li> <li>• Internal Account Transfers (Payroll) - \$518,670.89; and</li> <li>• Direct Debit - \$8,152.78;</li> <li>• Corporate Credit Card; \$5,554.50;</li> <li>• Department of Transport Remittances; \$103,966.65, and</li> <li>• Loan Payments: \$0.</li> </ul>	

**9.2.3 INVESTMENT REPORT FOR THE PERIOD ENDED 30 SEPTEMBER 2021**

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

**Summary**

This report presents the Investment Register for the month ending 30 September 2021.

**Background**

This report is for Council to receive the Investment Register as at 30 September 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 three (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	25%	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 twelve (12) months are to be reviewed on a regular basis and invested for no longer than five (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 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**

The attached Investment Register summarises how funds are invested as per the Shires Investment Policy and reports on the Investment Portfolio balance as at 30 September 2021.

The Investment Portfolio complies with the criteria of Investment Policy P040229 with the portfolio balance mix meeting the requirement of no single institution holding more than 50% of the total funds invested, and an individual institutions Standard & Poor's (S&P) credit rating meeting the required threshold to limit single entity exposure.

The total Reserve Funds invested as at 30 September 2021 totals \$4,655,696.

The total Municipal Funds Invested as at 30 September 2021 totals \$658,674.

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 30 September 2021.	

## 9.2.4 BUDGET AMENDMENTS – 2021/2022 CAPITAL EXPENDITURE PROGRAM

<b>File Ref:</b>	FIN.9
<b>Applicant / Proponent:</b>	Not Applicable
<b>Subject Land / Locality:</b>	Not Applicable
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	28 October 2021
<b>Author/s:</b>	David King, Deputy CEO Gina McPharlin, Director Corporate and Community Services
<b>Authorising Officer:</b>	Gina McPharlin, Director Corporate and Community Services
<b>Attachments:</b>	9.2.4 - Schedule of Budget Amendments

### Summary:

Officers have reviewed the adopted 2021/2022 Capital Expenditure Budget and have reforecast capital project expenditure and source of funds. Where material variances are expected, budget amendments are requested to enable the works to proceed.

Where new funding was received from the Australian Government's Black Spot Program after the adoption of the 2021/2022 Annual Budget, a budget amendment is requested to reflect the grant funds and to enable works to proceed.

### Background:

Council has a statutory obligation to review the budget on a monthly basis and report any monthly variances that exceed 10% or a minimum of \$10,000 (adopted material variance at the Ordinary Council Meeting, 17 August 2021 Res: 230821)

Where an expected variation exceeds the adopted materiality threshold, and is expected to exceed the total annual adopted budget for that item, the variation must be reported to Council. Where variation is significant, it is good practise to amend the budget so that Council can understand the overall impact.

Funding under the Australian Government's Black Spot Program was secured in July 2021 to substantially improve dangerous crash sites on Western Australian roads in 2021–22. The \$37,375 Lights Road intersection improvement project is not currently listed within the 2021-2022 Adopted Budget. The Lights Road project is fully grant funded and does not require a contribution from the Shire with associated grant payments to be received according to the milestones set out in the agreement. It is therefore necessary to amend the budget to include this project into the 2021-22 capital expenditure budget to ensure it can be completed within the timeframe stipulated within the grant agreement.

### 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.

Refer to the Community Engagement Framework

### Statutory Obligations:

LOCAL GOVERNMENT ACT 1995

S6.8 (1)(b) – a Local Government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure is authorised in advance by resolution.

LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) REGULATION 34

Regulation (1) – the Shire is to prepare a monthly Statement of Financial Activity reporting on the sources and applications of funds, as set out in the annual budget.

Regulation (1)(d) the monthly Statement of Financial Activity is to include material variances between budget estimates and actual expenditure, revenue, and income.

Regulation 34(5) - Council is to adopt a material variance threshold every year.

**AUSTRALIAN ACCOUNTING STANDARDS**

AASB 1031 is the Australian Accounting Standard - materiality.

**Policy Implications:**

Policy P040222 - Material Variances in Budget and Actual Expenditure - An explanation or report is required for levels of variances for financial reporting exceeding 10% (minimum dollar variance of \$10,000) of the annual budget estimates to the end of the month to which the report refers for each program or General/Ledger Job Account.

**Budget / Financial Implications:**

The additional expenditure required in 2021-2022 for the designated projects in the Capital Expenditure Program is \$415,787 and will be funded by:

- Infrastructure Reserve transfer - \$ 71,816
- Plant Replacement Reserve transfer - \$ 32,000
- Regional Road Group MRWA - \$187,000
- Black Spot MRWA - \$ 37,375
- Roads to Recovery - \$ 50,000
- Federal Grants - \$ 37,596
- \$415,787

Attachment 9.2.4 details the schedule of proposed budget adjustments. These are reflected in alternate form in Table 1 below.

**Table 1 – Proposed Capital Works Budget Adjustments**

**ADOPTED Capital Expenditure Budget by Program - 2021/22 (excerpt)**

Capital Expenditure			Source of Funds								
COA or Job	Description	Budget \$	RRG \$	R2R \$	Federal Grants \$	Other Grants \$	Reserve Funds \$	Drought Relief \$	Other Cont. \$	Council \$	Total Funding \$
<b>Governance</b>											
52027	Council Chamber Upgrade - Climate Control Heating/Cooling	40,000								40,000	40,000
1421254	Plant Replacement - Governance (DE 87)	39,000					39,000			0	39,000
1421254	Plant Replacement - Administration	39,000					39,000			0	39,000
<b>Recreation &amp; Culture</b>											
51674	Berridge Park Gazebo Replacement	11,664								11,664	11,664
<b>Transport</b>											
51002	Wattle Way Footpath	100,000			100,000					0	100,000
50362	MRWA Project - Peaceful Bay Road SLK 0.00 - 5.60 - 2020/21 project rebudget	356,667	120,000					216,667		20,000	356,667
50627	Blackspot - Atkinson Road/South Coast Highway	40,000	26,667							13,333	40,000
50628	Blackspot - Mount Shadforth Road/ Tree Lane	43,000	28,666							14,334	43,000
50100	Praed Lane Roadworks	110,000							24,200	85,800	110,000
<b>Airport</b>											
54010	Fencing Upgrade - Denmark Airport	98,200				73,650				24,550	98,200
<b>Total</b>		<b>877,531</b>	<b>175,333</b>	<b>0</b>	<b>100,000</b>	<b>73,650</b>	<b>78,000</b>	<b>216,667</b>	<b>24,200</b>	<b>209,681</b>	<b>877,531</b>

**PROPOSED Capital Expenditure Budget by Program - 2021/22 (excerpt)**

Capital Expenditure			Source of Funds								
COA or Job	Description	2021/22 Revised Budget \$	RRG \$	R2R \$	Federal Grants \$	Other Grants \$	Reserve Funds \$	Drought Relief \$	Other Cont. \$	Council \$	Total Funding \$
<b>Governance</b>											
52027	Council Chamber Upgrade - Climate Control Heating/Cooling	20,000								20,000	20,000
1421254	Plant Replacement - Governance (DE 87)	50,000					50,000			0	50,000
1421254	Plant Replacement - Administration	60,000					60,000			0	60,000
<b>Recreation &amp; Culture</b>											
51674	Berridge Park Gazebo Replacement	20,030					8,366			11,664	20,030
<b>Transport</b>											
51002	Wattle Way Footpath	115,000			100,000		15,000			0	115,000
50362	MRWA Project - Peaceful Bay Road SLK 0.00 - 5.60 - 2020/21 project rebudget	543,667	307,000					216,667		20,000	543,667
50627	Blacksport - Atkinson Road/South Coast Highway	57,000	26,667				17,000			13,333	57,000
50628	Blacksport - Mount Shadforth Road/ Tree Lane	74,000	28,666				31,000			14,334	74,000
50629	Blacksport - Lights Beach	37,375	37,375								37,375
50100	Praed Lane Roadworks	205,000		50,000			450		24,200	130,350	205,000
<b>Airport</b>											
54010	Fencing Upgrade - Denmark Airport	111,246			61,900	49,346				0	111,246
<b>Total</b>		<b>1,293,318</b>	<b>399,708</b>	<b>50,000</b>	<b>161,900</b>	<b>49,346</b>	<b>181,816</b>	<b>216,667</b>	<b>24,200</b>	<b>209,681</b>	<b>1,293,318</b>
<b>Variance</b>		<b>415,787</b>	<b>224,375</b>	<b>50,000</b>	<b>61,900</b>	<b>(24,304)</b>	<b>103,816</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>415,787</b>

**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

**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)
<b>Financial:</b> That a delay in variance approvals results in incomplete works that compromises grant funding conditions	Almost Certain (5)	Moderate (3)	High (10-16)	Business Disruption	Accept Officer Recommendation
<b>Reputational:</b> That works are incomplete due to insufficient funds allocated	Almost Certain (5)	Moderate (3)	High (10-16)	Business Disruption	Accept Risk

**Comment/Conclusion:**

Forecast over expenditures are detailed in Table 2.

**Table 2 – Over expenditures**

COA or Job	Description	2021/2022 Budget \$	2021/2022 Reforecast \$	Comments
1421254	Plant Replacement - Governance (DE 87)	39,000	50,000	Increase to facilitate the purchase of a full EV vehicle.
1421254	Plant Replacement - Administration	39,000	60,000	Increase to facilitate the purchase of a full EV vehicle.
51674	Berridge Park Gazebo Replacement	11,664	20,000	Revision to increase budget expense estimate to align to cost estimate received.
51002	Wattle Way Footpath	100,000	115,000	Revision to increase budget expense estimate to align to cost estimate received.
50362	MRWA Project - Peaceful Bay Road SLK 0.00 - 5.60 - 2020/21 project rebudget	356,667	543,667	Increase expected as a result of latent conditions relating to the contract.
50627	Blackspot - Atkinson Road/South Coast Highway	40,000	57,000	Revision to increase budget expense estimate to align to cost estimate received.
50628	Blackspot - Mount Shadforth Road/ Tree Lane	43,000	74,000	Revision to increase budget expense estimate to align to cost estimate received.
50100	Praed Lane Roadworks	110,000	205,000	Increase associated with market tested price and increase in scope of works.
54010	Fencing Upgrade - Denmark Airport	98,200	111,246	Additional grant funding secured to increase project scope. Council funding contribution no longer required.

Where projects are grant funded, and a material variance is identified to complete the funding agreed scope, there is a risk to grant income where projects are not complete on time, or to the agreed scope. These include:

- Wattle Way Footpath



- MRWA Project - Peaceful Bay Road SLK 0.00 - 5.60 - 2020/21 project re-budget
- Blackspot - Atkinson Road/South Coast Highway
- Blackspot - Mount Shadforth Road/ Tree Lane
- Fencing Upgrade - Denmark Airport

Where projects are not grant funded, the above risks are not applicable and therefore deferring or amending projects carries less financial risk. These include:

- Plant Replacement - Governance (DE 87)
- Plant Replacement - Administration
- Berridge Park Gazebo Replacement
- Praed Lane Roadworks

With respect to Plant Replacement – Administration, it should be noted that purchasing two (2) electric vehicles will increase expenditure by \$31,000, however the reduction in fuel and servicing costs are expected to be greater than this amount over the life the two (2) vehicles. Noting that solar power from the Shire, rather than purchasing electricity, will significantly contribute to these savings.

Whilst non grant funded projects carry less financial risk, it is a community expectation that the capital items adopted in the 2021/22 budget are complete.

It is recommended that all budgeted projects are accommodated through a variation to budget.

**Voting Requirements:**

Absolute majority.

OFFICER RECOMMENDATION	ITEM 9.2.4
That Council ADOPT the 2021/22 municipal budget amendments in accordance with the schedule provided as Attachment 9.2.4 of this report.	

**9.2.5 NOT RATEABLE PRIVATE LAND HOLDING REVIEW AND RATES EXEMPTION APPLICATION – MIA MIA HOUSING COLLECTIVE INC**

<b>File Ref:</b>	A961, A2535, A2537, A3436
<b>Applicant / Proponent:</b>	Co-operation Housing on behalf of Mia Mia Housing Inc.
<b>Subject Land / Locality:</b>	Units 1-3, 2 Melaleuca Lane, Denmark Units 1-6, 6 Melaleuca Lane, Denmark Units 7-12, 7 Melaleuca Lane, Denmark
<b>Date:</b>	27 October 2021
<b>Author:</b>	Lee Sounness, Manager Corporate Services
<b>Authorising Officer:</b>	Gina McPharlin, Director Corporate & Community Services
<b>Attachments:</b>	9.2.5a - Rate Exemption Application A2535 – (CONFIDENTIAL to councillors) 9.2.5b - Rate Exemption Application A2537 – (CONFIDENTIAL to councillors) 9.2.5c - Rate Exemption Application A3436 – (CONFIDENTIAL to councillors) 9.2.5d - Correspondence to the Minister for Transport, Housing and Emergency Services 9.2.5e – WALGA Best Practice Guideline – Rates and Charitable Land Use Exemption Applications

**Summary:**

Mia Mia Housing Collective Inc (Mia Mia) submitted three (3) rate exemption applications on 4 June 2021. In considering the applications, Council asked the Chief Executive Officer to report on all rate exempt private landholdings within the Shire of Denmark and consider the Council's ability to apply rates to these properties in the future.

This report discusses all 'not rateable' private landholdings and makes a recommendation on the Mia Mia rate exemption applications.

**Background:**

WALGA has advocated for removing constraints to Local Government revenue (rates) capacity as a critical success factor for an improved Local Government system in Western Australia in their 2019 Final Submission – Select Committee into Local Government (review of the Local Government Act 1995). Of particular concern to the Local Government sector is the rate exemption relating to charitable purposes. WALGA's 2018 survey of Local Governments suggests that \$16.5 million of rate revenue is forgone is due to this rate exemption.

**Not Rateable Crown Owned Land Holdings**

Land owned by the Crown, and used or held for public purpose, are not rateable under Section 6.26 (2)(a)(i) of the Local Government Act 1995.

Properties that are owned by the Crown have not been discussed in this report. A separate briefing and report to Council are recommended for these properties ahead of the 2022/23 budget being endorsed by Council.

**Rate Waivers**

A rate waiver is a discretionary concession of Council, separate to a 'not rateable' consideration. The Shire annually applies rate waivers to a number of properties.

Rate waivers are not considered in this report and a separate briefing and report to Council are recommended for these properties ahead of the 2022/23 budget being endorsed by Council.

**Review of Not Rateable Private Land Holdings**

A review of the Shire's rates register confirms there are currently four hundred and thirty one (431) properties registered as not rateable, and of those, twenty (20) are privately owned.

Section 6.26 of the Local Government Act 1995 provides that all land within a district is rateable land. Section 6.26(2) lists exceptions, that is, land that is not rateable.

An organisation must evidence its right to an exemption under Section 6.26 (2) by providing information upon which the Local Government can objectively assess their eligibility by submitting a rates exemption application. If the application is approved, the rates are known as rate exempt. These properties are discussed in the comment section of this report.

An organisation has the right to challenge a rates exemption decision made by a Local Government under Section 6.76 – Grounds of objection. If the matter cannot be settled via mediation, it may result in an application to the State Administrative Tribunal (SAT).

**Rates Exemption Application – Mia Mia Housing Collective Inc.**

At the Shire of Denmark's July 2021 Ordinary Council Meeting, Council considered Rate Exemption Applications for three (3) rateable properties managed and/or owned by Mia Mia Housing Collective Inc. (Mia Mia) on the grounds of land used exclusively for charitable purposes.

Mia Mia is a not-for-profit company limited by guarantee established in 2010. It has been registered as a charity since December 2012 to help financially disadvantaged people by providing housing to low-income households in Denmark. The Collective has fifteen (15) unit dwellings across three (3) properties. The number of occupying residents is currently twenty-five (25).

As the only registered community housing provider in the State specialising in housing co-operatives, Mia Mia currently operates under a delegated management model and is registered with the Department of Communities (WA) as a Community Housing Provider (CHP).

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

- \* First Fremantle Housing Collective
- \* ARCH Housing Collective
- \* Inanna's House
- \* **Mia Mia Housing Collective** (accepted October 2020)
- \* Subiaco Leederville Housing Collective
- \* Tapper Street Mews

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

Section 4 of Mia Mia's Rules of Association states that a member must be 'Any person who meets Department of Housing (DoH) criteria to be eligible.' The DoH criteria is outlined in their policies and include income limits and setting rent at 25% of the members' income.

In March 2021, Mia Mia Housing Collective Inc. wrote to the Shire enquiring about receiving rates exemption.

On 4 June 2021, Co-operation Housing, on behalf of Mia Mia Housing Collective Inc., submitted rate exemption applications for three (3) properties (Table 1.) to the Shire under Section 6.26(2)(g) of the Local Government Act 1995. Applications included the following supporting information necessary for assessment:

- 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

Table 1. Mia Mia Housing Collective Inc. properties

Property	Owner	Asses No.	Units	2020/21 Rates \$	2021/22 Rates \$	Ratepayer
U1-3, 2 Melaleuca Lane	Mia Mia*	A2535	3	\$3,883	\$4,038	Mia Mia Housing
U1-6, 6 Melaleuca Lane	Mia Mia*	A2537	6	\$7,666	\$7,972	Mia Mia Housing
U7-12,7 Melaleuca Lane	Dept.of Housing	A3436	6	\$8,213	\$8,541	Mia Mia Housing
		<b>TOTAL</b>	<b>15</b>	<b>\$19,762</b>	<b>\$20,551</b>	

\* 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 and, they are responsible for all expenses, including rates.

Map 1. Mia Mia Housing Collective Inc. properties



**Consultation:**

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

**Statutory Obligations:**

LOCAL GOVERNMENT ACT 1995

- Section 6.26 Rateable Land — provides broad definitions for rateable and not rateable land.
- Section 6.76 Grounds of objection
  - (1) A person may, in accordance with this section, object to the rate record of a local government on the ground —
    - (a) that there is an error in the rate record —
    - (ii) on the basis that the land or part of the land is not rateable land;
- Section 6.47 Concessions – a local government may resolve to waive a rate or service charge.

**Policy Implications:**

Nil



**Budget / Financial Implications:**

Table 2 provides rating information relating to the Mia Mia exemption applications.

Table 2 – Mia Mia rating information

Property	Owner	Asses No.	Units	2020/21 Rates \$	2021/22 Rates \$	Ratepayer
U1-3, 2 Melaleuca Lane	Mia Mia	A2535	3	\$3,883	\$4,038	Co-operation Housing
U1-6, 6 Melaleuca Lane	Mia Mia	A2537	6	\$7,666	\$7,972	Co-operation Housing
U7-12, 7 Melaleuca Lane	State Housing Commission	A3436	6	\$8,213	\$8,541	Co-operation Housing
		<b>TOTAL</b>	<b>15</b>	<b>\$19,762</b>	<b>\$20,551</b>	

Approval of the Mia Mia Rate Exemption Application (submitted in May 2021) would have the following budget revenue impact:

- \$3,294 decrease – reversal of 2020/21 (May-June 2021) rates invoiced (pro-rata)
- \$20,551 decrease - 2021/22 rates

Should Council agree to the Rates Exemption applications, adjustment to rate revenue will be made at the mid-year Budget review.

**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.*

L5.3 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:**

Review of Not Rateable Private Land Holdings

A review of not rateable private landholdings has been undertaken, and the following information is presented for Council’s information.

*Land use for religious purposes*

There are eight (8) properties applicable to this category.

Section 6.26 (2) (d) provides a rates exemption for land used or held exclusively by a religious body as a place of public worship or in relation to that worship, a place of residence of a minister of religion, a convent, nunnery, or monastery, or occupied exclusively by a religious brotherhood or sisterhood.

*Land use for non-government school*

There are five (5) properties applicable to this category.

Section 6.26 (2) (f) provides a rates exemption for land used exclusively as a non-government school within the meaning of the School Education Act 1999.

*Land use for charitable purposes*

There are seven (7) properties applicable under this category, including aged care, social housing, and community services.

Section 6.26 (2) (g) provides a rates exemption for 'land used exclusively for charitable purposes. As 'charitable purpose' is not defined in the Local Government Act 1995 or other statutes, the common law meaning is used. To assist, the Western Australian Local Government Association (WALGA) produced a Best Practice Guideline – Rates and Charitable Land Use Exemption Applications. (Attachment 9.2.5e)

WALGA's Best Practice Guidelines provide direction for local governments in these situations. Definitions of terms such as charitable purpose and exclusive use are broad and can be applied to both aged care and social housing.

In 2009 Council challenged the charitable status of Amaroo aged care services.

Council resolved in March 2010, Res: 210310, to refuse the application on the grounds that Amaroo Care Services Inc had not demonstrated charitable activity. This decision was appealed under S6.76, and the matter was referred to the State Administrative Tribunal (SAT).

While the proceeding was withdrawn from SAT, in July 2010, Amaroo Care Services Inc was advised that Council would agree to approve a rating exemption, and the not rateable status would be backdated to 1 July 2009

Unless there are any significant changes to legislation, the broad definition of charitable purpose under Common Law results in a high likelihood of a successful challenge against a refusal relating to aged care, social housing, or community service uses on private land.

Rates Exemption Application – Mia Mia Housing Collective Inc

In light of the above discussion, an internal assessment of all three (3) applications received indicates that Mia Mia Housing Collective Inc. is eligible for a rate exemption under section 6.26(2)(g) of the Local Government Act 1995. The land is deemed to be used exclusively for charitable purposes.

Rates Exemption Review Period

Council's ability to apply rates in the future to properties that are currently registered as not rateable, would be determined by regular review of the applicable properties' land use circumstances and how Section 6.26 (2) applies. It is recommended that reviews be conducted within a period of two (2) years. This will make sure rates exemptions are correct if land-use circumstances change (i.e. a lease expiry).

**Voting Requirements:**

Absolute Majority

OFFICER RECOMMENDATION	ITEM 9.2.5a
<p>That Council;</p> <ol style="list-style-type: none"> <li>1. NOTE the Chief Executive Officer recommendation 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 biannually, that they continue to operate and use the property for the purposes as stated in their original application; and,</li> <li>2. REQUEST the Chief Executive Officer to review: <ul style="list-style-type: none"> <li>• not rateable properties on Crown Land; and,</li> <li>• annual rate waivers.</li> </ul> </li> </ol>	

OFFICER RECOMMENDATION	ITEM 9.2.5b
<p>That Council:</p> <ol style="list-style-type: none"> <li>1. DETERMINE the following property to be not rateable under Section 6.26(g) of the Local Government Act 1995: <ul style="list-style-type: none"> <li>• A2535 Units 1-3, 2 Melaleuca Lane Denmark</li> <li>• A2537 Units 1-6, 6 Melaleuca Lane Denmark</li> <li>• A3436 Units 7-12, 7 Melaleuca Lane Denmark</li> </ul> <p>This is to be effective from May 2021; and,</p> </li> <li>2. NOTE, that by amending the rate record, a refund is applicable in accordance with Section 6.40 (3) (i) of the <i>Local Government Act 1995</i>, as follows; <ol style="list-style-type: none"> <li>a. 2020/21 financial year <ul style="list-style-type: none"> <li>• A2535 Units 1-3, 2 Melaleuca Lane Denmark - \$647.17</li> <li>• A2537 Units 1-6, 6 Melaleuca Lane Denmark - \$1277.67</li> <li>• A3436 Units 7-12, 7 Melaleuca Lane Denmark - \$1368.83</li> </ul> </li> <li>b. 2021/22 financial year: <ul style="list-style-type: none"> <li>• A2535 Units 1-3, 2 Melaleuca Lane Denmark - \$4,038.00</li> <li>• A2537 Units 1-6, 6 Melaleuca Lane Denmark - \$7,972.00</li> <li>• A3436 Units 7-12, 7 Melaleuca Lane Denmark - \$8,541.00;</li> </ul> </li> </ol> </li> </ol>	

## 9.2.6 LIFEGUARD PATROL OCEAN BEACH 2021/2022

<b>File Ref:</b>	SER.26
<b>Applicant / Proponent:</b>	Not Applicable
<b>Subject Land / Locality:</b>	A5588
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	25 October 2021
<b>Author:</b>	Renee Wiggins, Community Services Manager
<b>Authorising Officer:</b>	Gina McPharlin, Director Corporate and Community Services
<b>Attachments:</b>	9.2.6 - Surf Life Saving Western Australia Incorporated (SLSWA) proposal

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### Summary:

The Shire has operated the service at Ocean Beach, employing lifeguards and supervisors since 2008/2009 (14 years).

Council is requested to consider the proposal submitted by Surf Life Saving Western Australia Incorporated (SLSWA) to deliver beach patrol and safety services for the Shire of Denmark at Ocean Beach during the peak tourist season of 2021/2022 (December – February, plus Easter holidays).

The SLSWA proposal requires additional funding if it is to be implemented in the 2021/22 financial year.

### Background:

The Shire of Denmark operates a beach lifeguard patrol service at Ocean Beach Denmark over the Shire's peak tourist season. The hazard/risk rating of Ocean Beach has a 'Highly Hazardous' rating of 7/10 with the Australian Beach Safety & Management Program (ABSAMP). It is a dangerous beach where drownings have occurred. The rating is above that of Middleton Beach (4/10), Margaret River Mouth (5/10), Smiths Beach (6/10), Bunker Bay (5/10) and Meelup (4/10). It is on par with Yallingup Beach (7/10).

The Shire operates the lifeguard service between December and February and the Easter holiday period. During the operating period, the beach lifeguard patrol service is delivered six (6) days per week (Mon – Fri 9am to 5pm, Sat 9am to 1pm), with two (2) lifeguards on duty.

During the operating period, the Demark Surf Life Saving Club (DSLSC) patrol Ocean Beach on Sundays and public holidays as a volunteer service.

SLSWA ran the beach patrol service from 2000/2001 to 2006/2007.

The Shire has operated the service at Ocean Beach, employing lifeguards and supervisors since 2008/2009.

To assist the Shire employed lifeguards, a Service Agreement between the Shire of Denmark and the DSLSC is in place that includes identification, demarcation and patrol of designated swimming areas, advice to beach patrons, and responding to emergencies.

Officers conducted a review after the 2020/2021 beach patrol season. The review sought to assess the Shire's Ocean Beach lifeguard patrol service and address issues or concerns raised by relevant stakeholders.

The review identified the following:

- Shire of Denmark does not have staff with expertise in beach safety and beach patrol servicing to supervise the lifeguards.
- The Shire does not have sufficient resources to deliver adequate supervision for the lifeguards. Ranger Services currently provide supervision.



- SLSWA do not recognise Ocean Beach as being patrolled through the 'My Beach' website, so the public is not made aware of the location of patrolled beaches.
- SLSWA advise that, along with the Shire of Broome and the City of Stirling, the Shire of Denmark is one (1) of only three (3) Local Governments in WA currently managing lifeguard services. All other Local Governments use the services of SLSWA.
- DSLSC members have concerns about the risks of operating lifesaving services outside of the State recognised body.
- The Shire does not have access to equipment such as Inflatable Rescue Boat (IRB) and Side-by-Side Vehicle (SSV) to undertake roving patrols.

A proposal has been received from SLSWA for the Shire to contract the beach lifeguards service for the 2021/22 season. Surf Life Saving WA is the sole provider for beach lifeguard related services in our region. All Local Governments outsourcing these services are directly engaging SLSWA.

The SLSWA proposal for 2021/22 is \$43,440, including a partnership with the City of Albany. This still prioritises the employment of local lifeguards, but provides further support by having access to Middleton Beach lifeguards in the event of staff shortages.

The SLSWA proposal offers:

- Service Days – Friday 10 December 2021 to 29 January 2022; inclusive
- Frequency – Monday to Saturday; excluding Christmas Day and New Year's Day
- Service Hours – 9 am-5 pm Monday to Friday, and 9 am-1 pm on Saturdays
- This period considers service delivery on Monday 27 December, Tuesday 28 December and Monday 3 January, which are additional gazetted public holidays
- Service Days – Friday 15th April 2022 to Monday 18 April 2022; inclusive.
- Access to the Shire's facilities and equipment to supplement the equipment and facilities provided by SLSWA.
- The Woodside Beach Camera Network at Ocean Beach is managed by SLSWA and provides remote operational oversight and situational awareness.
- SLSWA can mobilise the DSLSC SSV and IRB for roving patrols to act as a preventative. Currently, lifeguards cannot easily monitor boards between flags, patrol for sharks, or check on swimmers quickly.

In summary, the proposal services the same operational hours as has historically been provided by the Shires direct employment of lifeguards.

The main benefits associated with the proposal are:

- the Shires administration would not be responsible for supervision or human resource management of the lifeguards,
- improved co-ordination between the lifeguards and DSLSC through integration with SLSWA.

#### **Consultation:**

The officer has considered the requirement for community consultation and/or engagement in accordance with the Council's Community Engagement Policy, P040123, and the associated Framework. In accordance with the assessment criteria, a "Consult" level of engagement was required. The below consultations were undertaken:

Research into beach safety through Australian Beach Safety & Management Program [beachsafe.org.au/beach/wa/denmark/ocean-beach/ocean-beach-denmark](https://beachsafe.org.au/beach/wa/denmark/ocean-beach/ocean-beach-denmark).

Consultation includes discussions with the President of the Denmark Surf Life Saving Club, Martin Norwood.

Discussions with the Lifesaving Coordinator, Surf Life Saving WA, Nick Pavy.

Discussions with Manager Sport & Community Recreation, Shire of Augusta-Margaret River, Dylan Brown.

**Statutory Obligations:**

Nil

**Policy Implications:**

Purchasing Policy P040220

The Shire's policy requires two (2) written quotes for contracts or purchases over \$20,000; however, it also notes that it can depend on the type and nature of the contract or purchase.

Given the nature of services required, Officers have considered the procurement process and deemed a non-conforming quote is suitable under these circumstances as there are no other suppliers of a lifeguard service locally.

**Budget / Financial Implications:**

The 2021/2022 adopted budget for the employment of lifeguards is \$21,750.

It is estimated an additional \$8,000 of officer time is spent on the administration and management of the service. This includes advertising and recruiting qualified lifesavers, organising training, managing beach patrol staff, ordering and supplying uniforms, rostering, ensuring legislative compliance, timesheet authorisation, and performance reviews.

Therefore, the total cost of the service is estimated to be \$29,750.

If the SLSWA proposal is accepted, a total budget of \$43,440 is required.

The proposal exceeds the budget amount of \$21,750. If accepted by Council, additional funds to cover the increased expenditure will be sought at the 2021-/22 Mid-Year Budget Review.

**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

L5.5 To embrace change, apply technological advancement and pursue regional partnerships that drive business efficiency

C4.1 To have services that foster a happy., healthy, vibrant and safe community

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

Corporate Business Plan

Surf lifesaving - **LEAD** discussion on the long-term delivery of seasonal surf lifesaving services at Ocean Beach. Operational Efficiency to be reviewed 22/23.

**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 known economic benefits relating to the report or officer recommendation for the community.

➤ **Social:**

There have been two deaths at Ocean Beach in the last few years, so public safety at this beach is a significant concern, especially given the longer opening time for the bar and coastal erosion, which has created some dangerous rips in the area.

➤ **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)
<b>Health:</b> That poor supervision results in a beach safety incident	Possible (3)	Catastrophic (5)	High (10-16)	Inadequate Employee, Visitor or Public Safety & Security	Manage by additional staff training and dedicating additional staff time to supervision or accept officer recommendation.

**Comment/Conclusion:**

The Shire of Denmark currently manages lifeguards and beach safety at Ocean Beach. Supervision of the lifeguards is typically undertaken by Ranger Services who do not have the appropriate qualifications for lifeguard supervision.

To compound the issue, Ranger services experience high workload during the lifeguard service times due to increased tourist activity and associated population increase. This results in inadequate management of the lifeguards, who rely heavily on the DSLSC for direction. This presents a high risk to Council that requires management.

SLSWA are better placed to run and operate the patrol service as this is a part of their core business for Local Governments across the state. The additional cost is offset, in part, by the reduction on administrative requirements for the Shires administration.

If the SLSWA proposal is not accepted by Council, officers will need to undertake additional training, and allocate additional resources for the supervision of the service. It is expected that this cost would be similar to those proposed by SLSWA.

The officer recommendation is that Council accepts the SLSWA proposal. Accepting the SLSWA proposal provides the most comprehensive solution to the issues outlined in this report.

**Voting Requirements:**

Simple majority.

<b>OFFICER RECOMMENDATION</b>	<b>ITEM 9.2.6</b>
<p>That with respect to the management of lifeguards at Ocean Beach during 2021/22, Council:</p> <ol style="list-style-type: none"> <li>1. ACCEPT the attached SLSWA proposal for the provision of lifeguard services at Ocean Beach for \$43,440 during 2021/2022, and;</li> <li>2. NOTE the over expected expenditure of Account 1121022 by \$21,690 and that a budget amendment will be sought at 2021/2022 Mid-Year Budget Review.</li> </ol>	

## 9.3 CHIEF EXECUTIVE OFFICER

### 9.3.1 DENMARK CHAMBER OF COMMERCE – SERVICE AGREEMENT AND LEASE

<b>File Ref:</b>	Reserve 48198
<b>Applicant / Proponent:</b>	Not applicable
<b>Subject Land / Locality:</b>	A6066
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	27 October 2021
<b>Author:</b>	Angela Simpson, Corporate Planner Claire Thompson, Governance Coordinator David Schober, Chief Executive Officer
<b>Authorising Officer:</b>	David Schober, Chief Executive Officer
<b>Attachments:</b>	9.3.1a - Denmark Chamber of Commerce Lease 9.3.1b - Denmark Chamber of Commerce Service Agreement

#### Summary:

Council is requested to approve a three (3) year service agreement and lease for the Denmark Chamber of Commerce to operate from Reserve 48198, whole of Lot 501 on Deposited Plan 61023 (Denmark Visitors Centre).

#### Background:

At the Ordinary Council Meeting on 21 September 2021, Council resolved (Resolution 180921) to grant the Denmark Chamber of Commerce (DCC) use of the Denmark Visitor Centre (DVC) and an annual cash contribution for the delivery of tourism services through to June 2024.

Specifically, Council committed to:

1. a three-year (3) service agreement for the DCC to operate from the DVC, located at 73 South Coast Highway Denmark; including key performance indicators and reporting requirements; and,
2. an allocation of \$95,000 in the first year, on a pro-rata basis, payable in monthly instalments, from account GL1327802, to support the DCC to deliver tourism services, including face-to-face visitor servicing, through to 30 June 2022; and,
3. draft a lease for the DCC, including a rates waiver, yearly rental of \$1.00, and include conditions for any hire and sub-tenancy arrangements.

Through a series of Council briefings staff were provided with direction on achieving the above three elements. This included discussions with DCC staff and Board to understand any operational impediments in Council determining the preparation of suitable documentation.

#### Consultation:

Officers drafted both the service agreement and lease and engaged a local legal practitioner to review and provide further advice.

The DCC has been engaged to provide feedback on the conditions attached to both the lease and service agreement drafted by staff and the legal practitioner.

#### Statutory Obligations:

The Shire of Denmark has a management order for Reserve 48198, for community purposes, with the power to lease for up to twenty-one (21) years.

#### Local Government Act 1995

- Section 3.58 enables a local government to dispose of property (includes leasing).
- Section 6.47 allows a local government to grant a concession or waive a rate or service charge. (Absolute majority required for waiver).

Local Government (Functions & General) Regulations 1996

Regulation 30 (b) provides an exemption from disposal provisions if the land is disposed to a body;

- ... (i) the objects of which are of a charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature; and
- (ii) the members of which are not entitled or permitted to receive any pecuniary profit from the body’s transactions;...

Land Administration Act 1997

Section 18 requires that Ministerial Approval is required to lease crown land.

**Budget / Financial Implications:**

Waiving of property rates, which provides a 100% concession, for the DCC is consistent with the current policy (P110102) for community groups who occupy Council buildings or land.

The current rates payable on this property is \$5,882.30

**Strategic & Corporate Plan Implications:**

The report and officer recommendation is consistent with Council’s adopted Strategic Community Plan Aspirations and Objectives 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.*

E1.0 Our Economy

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

*E1.2 To be a vibrant and unique tourist destination that celebrates our natural and historical assets*

**Sustainability Implications:**

➤ **Governance:**

The officer recommendation within this report seeks to ensure consistency across the Shire’s leases with respect to how community groups and membership organisations can utilise Shire owned assets.

➤ **Environmental:**

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

➤ **Economic:**

The waiving of rates and the provision of a peppercorn lease will reduce income to the Shire as noted within this report.

➤ **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)
<b>Reputational:</b> DCC elect not to sign the lease and/or service agreement.	Rare (1)	Moderate (3)	Low (1-4)	Not Meeting Community expectations	Accept Risk

**Comment/Conclusion:**

The complexity of visitor servicing, and tourism more broadly, has been the subject of intense community interest for the past two (2) years with the demise of regional tourism body, the Amazing South Coast Tourism Incorporated, who operated the DVC up until August 2020.

Council has formally considered tourism, and specifically the use of the Denmark Visitor Centre, at the:

- Ordinary Council Meeting, 21 September 2021
- Ordinary Council Meeting, 20 April 2021
- Special Council Meeting, 1 December 2020
- Ordinary Council Meeting, 20 October 2020
- Concept Briefing, 8 September 2020
- Ordinary Council Meeting, 21 July 2020

The officer recommendation contained in this report seeks to provide Council with the outcomes required from Resolution 180921 from its Ordinary Council Meeting on 21 September 2021.

Officers believe the recommendation provides both value for money and a customer service opportunity which reflects community sentiment. Community feedback has been expressed through the Sustainable Tourism Strategy community engagement process and general feedback received by officers and Council over the past two years. Officers have also consulted a local legal practitioner and the DCC to ensure Council’s intent does not unduly restrict the DCC as to limiting operations in seeking to deliver a sustainable and viable service delivery model into the future.

**Voting Requirements:**

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

<p><b>OFFICER RECOMMENDATION</b></p> <p>That with respect to the Denmark Visitor Centre (Reserve 48198, whole of Lot 501 on Deposited Plan 61023, Certificate of Title Volume LR3157 Folio 222, corner of South Coast Highway and Ocean Beach Road, Denmark);</p> <ol style="list-style-type: none"> <li>1. APPROVE the Denmark Chamber of Commerce Service Agreement, including key performance indicators and reporting requirements included within; and,</li> <li>2. APPROVE a peppercorn lease of \$1.00 per annum to the Denmark Chamber of Commerce; and,</li> <li>3. AUTHORISE the Chief Executive Officer and Shire President to execute a Lease and Service Agreement with the Denmark Chamber of Commerce, containing the following conditions;             <ol style="list-style-type: none"> <li>a) an annual report to the Chief Executive Officer, including one (1) presentation to Council in May each year; and</li> <li>b) lease term to expire on 30 June 2024; and</li> <li>c) annual payment, disbursed monthly, of \$95,000 in year 1 of the agreement; and</li> <li>d) notionally agrees, subject to the annual budget determinations, an amount of \$95,000 in year 2 and \$95,000 in year 3 of the Service Agreement; and</li> <li>e) provide an annual rate waiver; and</li> <li>f) provide a peppercorn lease, with a yearly rental of \$1.00.</li> </ol> </li> </ol>	<p><b>ITEM 9.3.1</b></p>
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**9.3.2 APPOINTMENT OF COMMUNITY MEMBERS ON THE PUBLIC HEALTH PLAN WORKING GROUP AND THE STRATEGIC COMMUNITY PLAN WORKING GROUP**

<b>File Ref:</b>	PLN.88.A
<b>Applicant / Proponent:</b>	Various
<b>Subject Land / Locality:</b>	Not applicable
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	31 October 2021
<b>Author:</b>	Angela Simpson, Corporate Planner
<b>Authorising Officer:</b>	David Schober, Chief Executive Officer
<b>Attachments:</b>	9.3.2a - Community Member Applications (CONFIDENTIAL to Councillors) 9.3.2b - Strategic Community Plan Working Group Terms of Reference 9.3.2c - Public Health Plan Working Group Terms of Reference

**Summary:**

This report recommends that Council appoint five (5) community members to the Public Health Plan Working Group and four (4) to the Strategic Community Plan Working Group.

**Background:**

**Public Health Plan**

In November 2019, Council established a Working Group to develop a Public Health Plan (PHP) for the Shire of Denmark.

At the time, the Shire had grant funding from the Department of Health and appointed a dedicated project officer to manage the Working Group and oversee the plan's development. Due to the COVID19 pandemic, the Working Group could not meet, and the decision was made to halt proceedings until March 2021.

At the ordinary meeting held on 16 March 2021, (Resolution 140321) Council resolved to:

- re-establish the Public Health Plan Working Group; and
- amend the Terms of Reference as attached; and
- appoint Cr Bowley as the Council's Delegate; and
- advertise for community members and health industry representatives; and
- consider any applications received prior to making a recommendation.

**Strategic Community Plan**

Following the ordinary council meeting held on 17 August 2021, Council resolved (Resolution 150821) to:

- create a Strategic Community Plan Working Group consisting of three (3) councillors, four (4) community representatives and two (2) Shire of Denmark staff; and,
- appoint three (3) Councillors; being Cr Gibson, Cr Phillips, Cr Allen; and,
- advertise for community members for a minimum of fourteen (14) days, and convene the first meeting of the Strategic Community Plan Working Group by 30 December 2021.

The following vacancies were advertised:

Committee / Working Group	Number of Vacancies
Strategic Community Plan Working Group (New)	4
Public Health Plan Working Group	5

**Consultation:**

Advertising commenced on 6 April 2021 and 3 May 2021, through Facebook, to announce the Public Health Plan was to be reactivated, including the placement of advertisements in the Bulletin on the 22 April 2021 and the 7 June 2021.

A further round of advertising, including both Working Groups, was conducted on 30 September 2021 in the Denmark Bulletin, the Shire's website, monthly e-newsletter, posters displayed around town, and a Facebook page (commencing 23 September 2021). A media release to local media on 23 September 2021 was picked up by the Denmark Bulletin in the 30 September issue and later covered on air by Denmark FM.

The closing date for applications was Friday, 22 October 2021.

### **Statutory Obligations:**

#### **Strategic Community Plan**

The Local Government Act 1995 and the Local Government (Administration) Regulations 1996 require each Local Government to adopt a Strategic Community Plan as part of a 'Plan for the Future.'

#### **Public Health Plan**

The Public Health Act 2016 is being implemented in stages. Part 5 of the Act, which will require local governments to have a local public health plan, has not yet come into effect. It could come into effect in 2021. Local governments will be required to have a plan within two (2) years of Part 5 being enacted, notwithstanding, the Department of Health notes (on their website) that many local governments are producing public health plans in anticipation of the commencement of Part 5 of the Public Health Act 2016.

### **Policy Implications:**

Nil

### **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 are consistent with Council's adopted Strategic Community Plan Aspirations and Objectives in the following way:

#### Denmark 2027

##### L5.0 Our Local Government

*"The Shire of Denmark is recognised as a transparent, well-governed and effectively management Local Government."*

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

### **Sustainability Implications:**

#### ➤ **Governance:**

Community representation on Working Groups provides a consultative structure to assist the Council with its decision making and its delivery of projects and provision of services and facilities.

#### ➤ **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:**

Community members on Working Groups can provide a 'community' perspective on Council functions, service provisions and strategic direction.



➤ **Risk:**

There are no known risks associated with the report or officer recommendations.

**Comment/Conclusion:**

Copies of the applications are attached (refer to Attachment 9.3.2a – CONFIDENTIAL to Councillors).

**STRATEGIC COMMUNITY PLAN WORKING GROUP**

There were six (6) applications received, for four (4) vacancies, before close of business on 16 October 2021. Two (2) additional requests to join the committee were received after the closing date.

The first application received after the closing date was communicated via email during the application period. The applicant advised they did not have time to complete an application form. The second application was made verbally to an officer after the close date for applications. The officers' opinion is that applicants who fail to submit the minimum required paperwork, or submit after the close date, should not be considered.

As Mark Allen is no longer on Council another Council delegate is required, in addition to Councillors Gibson and Phillips.

**PUBLIC HEALTH PLAN WORKING GROUP**

There were seven (7) applications received before close of business on 16 October 2021. One (1) additional application to join the committee was made to an officer after the close date for applications. The officers' opinion is that applicants who submit after the close date should not be considered.

As Geoff Bowley is no longer on Council a Council delegate is required.

**Voting Requirements:**

Simple majority.

<b>OFFICER RECOMMENDATION</b>	<b>ITEM 9.3.2a</b>
<p>That Council resolves to ESTABLISH the Strategic Community Plan Working Group, with the Terms of Reference and membership being as per the Terms of Reference attached to the report, Attachment 9.3.2b, and;</p> <p>1. APPOINT Cr _____, in addition to Councillors Gibson and Phillips, as the Council Members; and,</p> <p>2. APPOINT four (4) community members, being:</p> <ul style="list-style-type: none"> <li>• _____;</li> <li>• _____;</li> <li>• _____ and,</li> <li>• _____.</li> </ul>	

<b>OFFICER RECOMMENDATION</b>	<b>ITEM 9.3.2b</b>
<p>That Council resolves to RE-ESTABLISH the Public Health Plan Working Group, with the Terms of Reference and membership being as per the Terms of Reference attached to the report, Attachment 9.3.2c and;</p> <p>1. APPOINT Cr _____ as Council's representative; and,</p> <p>2. APPOINT five (5) community members, being:</p> <ul style="list-style-type: none"> <li>• _____</li> <li>• _____</li> <li>• _____ and,</li> <li>• _____.</li> </ul>	

### 9.3.3 COUNCIL COMMITTEES, WORKING GROUPS AND APPOINTMENT OF DELEGATES

<b>File Ref:</b>	CR.2
<b>Applicant / Proponent:</b>	Not applicable
<b>Subject Land / Locality:</b>	Not applicable
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	1 November 2021
<b>Author:</b>	Claire Thompson, Governance Coordinator
<b>Authorising Officer:</b>	David Schober, Chief Executive Officer
<b>Attachments:</b>	9.3.3a - Committee Charters 9.3.3b - Local Planning Strategy working group terms of reference 9.3.3c - WALGA Great Southern Elected Member Prospectus 9.3.3d - WALGA Great Southern Nomination Form

#### Summary:

Council are asked to nominate a delegate to the Regional Road Group, the Local Planning Strategy Working Group, The WA Local Government Association (WALGA) – Great Southern Zone and Council Committees.

#### Background:

Whilst it is not a statutory requirement, following each Local Government election it is considered good practice for Council to take the opportunity to review its committees and working groups, particularly as there are five (5) new Elected Members.

#### 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.

The Chief Executive Officers (CEO), Directors and the Governance Coordinator led a discussion with Elected Members regarding Committees and Working Groups at the Induction Forum held on 2 November 2021.

#### Statutory Obligations:

Section 5.8 to 5.10 of the Local Government Act 1995 relates to Council Committees.

#### 5.8. *Establishment of committees*

*A local government may establish\* committees 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.*

#### 5.9. *Committees, types of*

(1) *In this section —*

**other person** *means a person who is not a council member or an employee.*

(2) *A committee is to comprise —*

- a) *council members only; or*
- b) *council members and employees; or*
- c) *council members, employees and other persons; or*
- d) *council members and other persons; or*
- e) *employees and other persons; or*
- f) *other persons only.*

#### 5.10. *Committee members, appointment of*

(1) *A committee is to have as its members —*

- a) *persons appointed\* by the local government to be members of the committee (other than those referred to in paragraph (b)); and*
- b) *persons who are appointed to be members of the committee under subsection (4) or (5).*
- (2) *At any given time each council member is entitled to be a member of at least one committee referred to in section 5.9(2)(a) or (b) and if a council member nominates himself or herself to be a member of such a committee or committees, the local government is to include that council member in the persons appointed under subsection (1)(a) to at least one of those committees as the local government decides.*
- (3) *Section 52 of the Interpretation Act 1984 applies to appointments of committee members other than those appointed under subsection (4) or (5) but any power exercised under section 52(1) of that Act can only be exercised on the decision of an absolute majority of the local government.*
- (4) *If at a meeting of the council a local government is to make an appointment to a committee that has or could have a council member as a member and the mayor or president informs the local government of his or her wish to be a member of the committee, the local government is to appoint the mayor or president to be a member of the committee.*
- (5) *If at a meeting of the council a local government is to make an appointment to a committee that has or will have an employee as a member and the CEO informs the local government of his or her wish —*
- a) *to be a member of the committee; or*
- b) *that a representative of the CEO be a member of the committee,*
- the local government is to appoint the CEO or the CEO's representative, as the case may be, to be a member of the committee."*

Division 1A, Section 7.1A of the Local Government Act 1995 and the Local Government (Audit) Regulations 1996 relate to the Audit Advisory Committee and is referred to within the comment section of the report.

Section 67 of the Bush Fires Act 1954 relates to the Bush Fire Advisory Committee and is referred to within the comment section of the report.

Section 38 (1) of the Emergency Management Act 2005 relates to the Local Emergency Management Committee and is referred to within the comment section of the report.

Part 17 of the Shire of Denmark Standing Orders Local Law relates to the establishment of Committees (Charters & Terms of Reference), appointment of Deputies and Committee recommendations.

**Policy Implications:**

*Policy P040235 – Presiding Members of Council Committees and Working Groups relates and reads as follows;*

Objectives

- *To maximise the adherence of Council Committees and Working Groups to adopted policies and procedures;*
- *To maximise the likelihood of Council Committees and Working Groups having continuity of a Presiding Person for the duration of its term; and*
- *To maximise the efficiency and effectiveness of Committees and Working Groups by ensuring that the Chairperson has the appropriate training and support.*

Policy

*Wherever there is one or more Elected Members appointed to a Council Committee or Working Group, then it is Council Policy that the members of the Committee should elect one of those Elected Members to the role of Presiding Person.*

*A Presiding Person, and if required a Deputy, is to be elected using the same method as detailed in Section 5.12 of the Local Government Act 1995.*

*A deputy of a member of a Committee or Working Group may perform the functions of the member when the member is unable to do so by reason of illness, absence or other cause and a deputy of a member of a Committee or Working Group, while acting as a member, has all the functions of and all the protection given to a member (Section 5.11A of the Local Government Act 1995)."*

Delegation D040231 relates to the Audit Advisory Committee.

**Budget / Financial Implications:**

Costs associated with advertising community member vacancies can be accommodated under the existing advertising budget.

**Strategic & Corporate Plan Implications:**

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

Denmark 2027

## L5.0 Our Local Government

ASPIRATION: The Shire of Denmark is recognised as a transparent, well governed and effectively management 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.

## 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.

Details of Strategic Alignment with the Strategic Community Plan has been included within each Committee Charter and Working Group Terms of Reference.

**Sustainability Implications:**➤ **Governance:**

Council Committee and Working Groups provide consultative structure to assist the Council with its decision making and its delivery of projects and provision of services and facilities.

Council Delegates provide a conduit between the Council and external organisations as well as fulfilling the Council's role in some required positions.

➤ **Environmental:**

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

➤ **Economic:**

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

➤ **Social:**

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

➤ **Risk:**

Risk	Risk Likelihood (based on history and with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That a Committee or Working Group is established or disbanded which is not expected by the community.	Rare (1)	Insignificant (1)	Low (1-4)	Not Meeting Community expectations	Accept Risk
That Officer resources are not sufficient to manage or implement meetings and required outcomes.	Possible (3)	Minor (2)	Moderate (5-9)	Ineffective People Management	Manage by monitoring frequency of meetings and progress of objectives.

**Comment/Conclusion:**

A Committee can be defined as a group of people appointed for a specific function by a larger group and typically consisting of members of that group. A Committee is generally ongoing and does not have specific tasks to undertake within a required timeframe.

A Working Group can be defined as a group appointed to study, report and/or undertake a specific question or project. Generally, a Working Group has a specific goal or project and has a sunset clause when they will cease to exist following conclusion of the project or set task.

The Charters for each Advisory Committee are attached, Attachment 9.3.3a.

The Terms of Reference for the Local Planning Strategy Working Group is attached, Attachment 9.3.3b.

**A. CURRENT COUNCIL COMMITTEES**

**AUDIT ADVISORY COMMITTEE**

This Committee is required to be established pursuant to Section. 7.1A of the Local Government Act 1995.

**7.1A. Audit committee**

- (1) *A local government is to establish an audit committee of 3 or more persons to exercise the powers and discharge the duties conferred on it.*
- (2) *The members of the audit committee of a local government are to be appointed\* by the local government and at least 3 of the members, and the majority of the members, are to be council members.*  
\* Absolute majority required
- (3) *A CEO is not to be a member of an audit committee and may not nominate a person to be a member of an audit committee or have a person to represent him or her as a member of an audit committee.*
- (4) *An employee is not to be a member of an audit committee.*

**7.1B. Delegation of some powers and duties to audit committees**

- (1) *Despite section 5.16, the only powers and duties that a local government may delegate\* to its audit committee are any of its powers and duties under this Part other than this power of delegation.*

*A delegation to an audit committee is not subject to section 5.17.*

#### Officer comment

In 2017 the Council included provision for three (3) community members on the Committee, this followed a suggestion from a member of the public at the time. The positions were advertised and no nominations were received. In April 2018, Council resolved to remove the community member vacancies to reduce the possibility of a quorum not being achieved.

The Audit Advisory Committee is the only Committee with delegated authority and therefore meetings are required to be advertised, open to the public and include a public question time.

#### **BUSH FIRE ADVISORY COMMITTEE**

This Committee is not required to be established under legislation however Section 67 of the Bush Fires Act 1954 states that a local government “may” establish a Bush Fire Committee.

#### 67. *Advisory committees*

- (1) *A local government may at any time appoint such persons as it thinks fit as a bush fire advisory committee for the purpose of advising the local government regarding all matters relating to the preventing, controlling and extinguishing of bush fires, the planning of the layout of fire-breaks in the district, prosecutions for breaches of this Act, the formation of bush fire brigades and the grouping thereof under group brigade officers, the ensuring of co-operation and co-ordination of bush fire brigades in their efforts and activities, and any other matter relating to bush fire control whether of the same kind as, or a different kind from, those specified in this subsection.*
- (2) *A committee appointed under this section shall include a member of the council of the local government nominated by it for that purpose as a member of the committee, and the committee shall elect one of their number to be chairman thereof.*
- (3) *In respect to a committee so appointed, the local government shall fix the quorum for the transaction of business at meetings of the committee and may —*
  - a) *make rules for the guidance of the committee; and*
  - b) *accept the resignation in writing of, or remove, any member of the committee; and*
  - c) *where for any reason a vacancy occurs in the office of a member of the committee, appoint a person to fill that vacancy.*
- (4) *A committee appointed under this section —*
  - a) *may from time to time meet and adjourn as the committee thinks fit;*
  - b) *shall not transact business at a meeting unless the quorum fixed by the local government is present;*
  - c) *is answerable to the local government and shall, as and when required by the local government, report fully on its activities.*

#### Officer Comment

No change is recommended to the Charter, membership and terms of reference.

A draft Charter is attached, Attachment 9.3.3a.

#### **DISABILITY ADVISORY COMMITTEE**

This Committee is not required to be established under legislation. It has general and specific functions, is ongoing and has some specific tasks to undertake within required statutory timeframes. All public authorities in WA (including local governments) are required to have a current Disability Access and Inclusion Plan (pursuant to the Disability Services Act 2003), implement and review the plan and report annually to the Minister on the 7 legislated outcomes. For this reason, it is recommended that the Committee continue in its current form to under the tasks as per its Terms of Reference.

A draft Charter is attached, Attachment 9.3.3a.

#### LOCAL EMERGENCY MANAGEMENT COMMITTEE

This Committee is required to be established pursuant to Section 38 (1) of the Emergency Management Act 2005.

#### 38. Local emergency management committees

- (1) *A local government is to establish one or more local emergency management committees for the local government's district.*
- (2) *If more than one local emergency management committee is established, the local government is to specify the area in respect of which the committee is to exercise its functions.*
- (3) *A local emergency management committee consists of —*
  - a) *a chairman and other members appointed by the relevant local government in accordance with subsection (4); and*
  - b) *if the local emergency coordinator is not appointed as chairman of the committee, the local emergency coordinator for the local government district.*
- (4) *Subject to this section, the constitution and procedures of a local emergency management committee, and the terms and conditions of appointment of members, are to be determined by the SEMC.*

A draft Charter is attached, Attachment 9.3.3a.

#### ROADWISE ADVISORY COMMITTEE

Officers recommend the Committee be altered to an inter-agency bi-monthly meeting, instead of a Committee of Council, and thus does not require a Council delegate.

For the above reason it is not recommended to re-establish the Roadwise Advisory Committee.

## B. REVIEW OF COUNCIL WORKING GROUPS

#### LOCAL PLANNING STRATEGY WORKING GROUP

This Working Group assists Shire Officers in reviewing the required update to the current Strategy.

Objective:

- *To support the Shire of Denmark in its update of the Shire of Denmark Local Planning Strategy (LPS).*
- *Provide advice and encourage synergies and communication between agencies and groups involved in land use planning in the Shire of Denmark.*
- *Facilitate delivery of applicable aspects of the Strategic Community Plan relevant to land use planning.*
- *Provide advice and recommendations regarding best practice in strategic land use planning for Council and Officers consideration.*
- *Assist and participate in community consultation as appropriate.*
- *Review the draft LPS document throughout its preparation.*

Sunset Clause: *The Working Group will cease to exist following final adoption of the endorsement of the LPS by the Western Australian Planning Commission.*

Over the past 12 months, a significant body of work has been done in terms of presenting topics of discussion and working through a number of issues.

This working group has reached the point where the various sections of the Local Planning Strategy will be drafted by officers for the working groups' feedback.

It is expected that a draft strategy will be presented to the whole of council for consideration in February 2022. If a Councillor was newly appointed to this group, there would be a significant workload for both officers, and the new member. As such it is recommended that the third councillor position remain vacant.

Terms of Reference is attached, Attachment 9.3.3b.

### **C. DELEGATES TO EXTERNAL ORGANISATIONS**

External Organisations or Committees that require a Council Delegate due to legislation, their charter / constitution or in accordance with a Deed or Agreement.

#### **WA LOCAL GOVERNMENT ASSOCIATION (WALGA) – GREAT SOUTHERN ZONE**

There are 12 WALGA Zones which are geographically aligned. Members are responsible for:

- Director Elections of State Councillors;
- input into policy formulation; and
- advise on matters.

Council is requested to nominate a delegate for the WA Local Government Association (WALGA) – Great Southern Zone. The WALGA Great Southern zone will meet 19 November 2021 and requires a Council representative be appointed as soon as possible.

Member Councils of the Great Southern Zone are: Albany, Broomehill-Tambellup, Cranbrook, Denmark, Gnowangerup, Jerramungup, Katanning, Kent, Kojonup, Plantagenet and Woodanilling.

Meetings are typically held every two months at one of the member Council locations.

2 x Councillors

#### **GREAT SOUTHERN REGIONAL ROAD GROUP**

There are 10 Regional Road Groups (RRG) in WA, established under the State Road Funds to Local Government Agreement which is overseen by a State Advisory Committee (SAC). The RRGs make recommendations to the SAC regarding the Annual Local Government Roads Program for their Region and any other relevant issues.

Council is requested to nominate a delegate for The Great Southern Regional Road Group (GSRRG). The GSRRG will meet 19 November 2021 and requires Council representation be appointed as soon as possible.

Member Councils of the GSRRG are: Albany, Broomehill-Tambellup, Cranbrook, Denmark, Gnowangerup, Jerramungup, Katanning, Kent, Kojonup, Plantagenet and Woodanilling.

Meetings are typically held every two months at one of the member Council locations and are usually aligned at the same location and day as the Great Southern Zone meeting.

#### **Membership**

Deputy CEO (non-voting)

1 x Councillor

1 x Councillor (Deputy)

Additional external organisations or Committees that seek a Council Delegate or the Council has previously determined that it should have ongoing representation with will be considered at the December 2021 Ordinary Council Meeting.

#### **Voting Requirements:**

Absolute majority.



ITEM 9.3.3a

**OFFICER RECOMMENDATION**

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, Attachment 9.3.3.a;

1. Audit Advisory Committee; APPOINT Cr \_\_\_\_\_, Cr \_\_\_\_\_, Cr \_\_\_\_\_, Cr \_\_\_\_\_, Cr \_\_\_\_\_ and Cr \_\_\_\_\_ as the Council Members;
2. Bush Fire Advisory Committee; APPOINT Cr \_\_\_\_\_ and Cr \_\_\_\_\_ as the Council Members;
3. Disability Services Advisory Committee;
  - a) APPOINT Cr \_\_\_\_\_ as the Council Member; and,
  - b) ADVERTISE for five (5) community members, as per charter Attachment 9.3.3.a
4. Local Emergency Management Committee (LEMC); APPOINT the Shire President, Cr Gearon and Cr \_\_\_\_\_ as members and appoint the Shire President, Cr Gearon as the Chairperson.

ITEM 9.3.3b

**OFFICER RECOMMENDATION**

That Council:

1. CONTINUE the Local Planning Strategy Working Groups with the Terms of Reference and membership being as per the drafts attached to the report, Attachment 9.3.3b; and,
2. NOTE the continuation of Council Delegates Cr Kingsley Gibson and Cr Jan Lewis.
3. RESOLVE to leave the third Councillor delegate position vacant.

ITEM 9.3.3c

**OFFICER RECOMMENDATION**

Council NOMINATES the following delegates to the Great Southern Regional Road Group;

- Director Assets and Sustainable Development (non-voting)
- Cr \_\_\_\_\_
- Cr \_\_\_\_\_ (Deputy)

ITEM 9.3.3d

**OFFICER RECOMMENDATION**

Council NOMINATES the following delegates to the WA Local Government Association (WALGA) – Great Southern Zone;

- Cr \_\_\_\_\_, and
- Cr \_\_\_\_\_

**COMMITTEE REPORTS AND RECOMMENDATIONS**

Nil

**MATTERS BEHIND CLOSED DOORS**

Nil

**NEW BUSINESS OF AN URGENT NATURE**

Nil

**CLOSURE OF MEETING**