



## **NOTICE OF ORDINARY MEETING OF COUNCIL (COMMISSIONER)**

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To be held on

**Wednesday 22 March 2023**

Commencing at 5.00pm

Shire of Donnybrook Balingup Council Chamber, Donnybrook

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**Kim Dolzadelli  
Acting Chief Executive Officer**

**17 March 2023**

### **Disclaimer**

Please note the items and recommendations in this document are not final and are subject to change or withdrawal.

Also please note that this is an updated Agenda with the addition of Item 11.1 Donnybrook Community Sporting, Recreation and Events Precinct (VC Mitchell Park) Project – Loan Application Approval.

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**SHIRE OF DONNYBROOK BALINGUP**  
**NOTICE OF ORDINARY COUNCIL (COMMISSIONER) MEETING**

To be held at the Council Chambers  
Wednesday, 22 March 2023 at 5.00pm

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## **1 DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS**

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### **Commissioner – Acknowledgment of Country**

The Commissioner to acknowledge the traditional custodians of the land, the Wardandi People of the Noongar Nation, paying respects to Elders, past, present and emerging.

The Commissioner to declare the meeting open and welcome the public gallery.

The Commissioner to advise that the meeting is being live streamed and recorded in accordance with Council Policy EM/CP-2. The Commissioner to further state the following:

*“This meeting is being livestreamed and digitally recorded in accordance with Council Policy.”*

*“Members of the public are reminded that no other visual or audio recording of this meeting by any other means is allowed without the permission of the chairperson.”*

*“Whilst every endeavour has been made to only record those who are actively participating in the meeting, loud comments or noises from the gallery may be picked up on the recording.”*

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## **2 ATTENDANCE**

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### **MEMBERS PRESENT**

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| <b>MEMBERS</b>              | <b>STAFF</b>                                       |
|-----------------------------|--|
| Gail McGowan - Commissioner | Ben Rose – Chief Executive Officer                 |
|                             | Kira Strange – Acting Director Operations          |
|                             | Kim Dolzadelli – Director Corporate and Community  |
|                             | Archana Arun – Admin. Officer Executive Services   |
|                             | Loren Clifford – Acting Manager Executive Services |
|                             | Damien Morgan – Manager Works and Services         |

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### **PUBLIC GALLERY**

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#### **2.1 APOLOGIES**

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#### **2.2 APPROVED LEAVE OF ABSENCE**

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## **2.3 APPLICATION FOR A LEAVE OF ABSENCE**

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## **3 ANNOUNCEMENTS FROM PRESIDING MEMBER**

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## **4 DECLARATION OF INTEREST**

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Division 6: Sub-Division 1 of the *Local Government Act 1995*. Care should be taken by all Councillors to ensure that a financial/impartiality interest is declared and that they refrain from voting on any matter, which is considered to come within the ambit of the Act.

1. *The Manager of Works and Services and Executive Staff declare an impartiality interest in Item 9.1.1 Road Sealing Request Involving Private Contribution – King Spring Road, Thomson Brook as one of the landowners making the request is an employee of the Shire.*
2. *The Commissioner declares an impartiality interest in Item 9.2.3 Rates Exemption – Lot 142, 8 Bridge Street, Donnybrook, Bunbury Housing Association (Inc) as she is a Board Director at Foundation Housing.*

## **5 PUBLIC QUESTION TIME**

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### **5.1 RESPONSES TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

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Question: Simon McInnes on behalf of DBRRA

The Bridge Street Affordable Housing Project has several important considerations, such as:

- The land was originally to be leased, however, is now to be transferred to Alliance Housing.
- Are there any mechanisms to secure tenancies for local community members.
- What obligations will the Shire have in ongoing management of the tenancies / dwellings.
- What are the public advertising requirements for the land transaction with Alliance Housing?

Can you provide an update on the project, including the above details?

### Response

In 2016, the Shire partnered with Alliance Housing to lodge a grant application to the State Government, requesting \$2M, towards the affordable housing project, on the basis that:

- 12 independent living units would be built at 8 (Lot 142) Bridge Street, Donnybrook.

- The Shire would lease the land to Alliance Housing (lease rate to be negotiated, although likely to be a non-commercial rate) on a long-term lease for the project and contribute up to \$250,000 towards site works.
- Alliance Housing would contribute at least \$875k towards the development costs.
- Alliance Housing would manage the units (tenancy, maintenance etc) under their Accredited State Community Housing Provider status.
- The grant application was successful and was announced by the State Government to receive \$2M in early 2017.
- Shortly after the successful grant announcement, the grants were retracted (across the whole State) by a newly incoming State Government.

In early 2018, the State Government opened a new funding round for affordable housing and the Shire and Alliance Housing re-lodged the combined grant application on the same general basis as in 2016. In mid 2018, the Shire was advised that the grant application for \$2M was successful. After completing the State grant agreement in October 2018, a project team was assembled, including Shire staff, Alliance Housing staff and an external project manager. As the project detailed planning stage was nearing completion, Alliance Housing made the Shire aware that it would not / could not proceed with the project without having security of land tenure via ownership (for commercial/financial reasons), rather than by lease. As this was a significant departure from the original terms of the project (and the State grant agreement), the Shire paused the project to consider Alliance Housing's request. Over a series of Council meetings in late 2019 and early 2020, the Council deliberated on whether to 'abandon' the project, or to continue under a different project structure. At the September 2019 and April 2020 Council Meetings, Council resolved to proceed with the project on the basis that the Shire was no longer an active project partner; rather, just a land donor. The revised project structure included:

- Shire to donate the land to Alliance Housing (instead of the originally proposed leasing arrangement):
  - The donation of land includes the contractual right for the Shire to have the first option to re-purchase the land in the future, if Alliance ever decide to sell, at the unimproved value (i.e. land value only).
  - Alliance Housing to pay/reimburse land transaction costs (e.g. conveyancing costs, duty)
  - The land transfer from Shire to Alliance Housing to take effect soon after 'practical completion' of the dwellings is achieved (likely to occur in April 2023).
  - Land valuation was \$300,000 (as at December 2019).
  - The Local Government Act does not require public advertising for land transactions where the Shire is transacting with a registered not-for-profit organisation / public benevolent institution. Although not obligatory, the Shire will advertise (for public notification) the land transaction details once 'practical completion' of the dwellings has been achieved.
- Novation of the \$2M grant agreement to Alliance Housing (from the Shire).
- No Shire contribution to site works costs.

Additional information in relation to the operation of the dwellings:

- A Restrictive Covenant will be placed on the land title, restricting occupancy of the units to people over the age of 65, or over the age of 55 if of Aboriginal or Torres Strait Islander background.

- Neither the Shire or Alliance Housing can restrict occupancy of the dwellings exclusively (or partially) for people from within the Shire (or any other geographic/spatial boundary). Alliance Housing’s Community Housing Provider Agreement with the State Government does not permit this. However, Alliance Housing have given a commitment to the Shire to actively seek-out potential local candidates, which also comply with the means-testing requirements. Additionally, the Shire has (and will continue to) provide details of affordable housing wait list candidates (e.g. for Langley Villas and Minninup Cottages) to Alliance Housing.
- Alliance Housing are solely responsible for the management, operation and maintenance of the dwellings (i.e. no Shire resource or cost implications).
- Similarly to most affordable housing operators, Alliance Housing are exempt from paying Shire rates.

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## **5.2 PUBLIC QUESTION TIME**

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## **6 PRESENTATIONS**

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### **6.1 PETITIONS**

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### **6.2 PRESENTATIONS**

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### **6.3 DEPUTATIONS**

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## **7 CONFIRMATION OF MINUTES**

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### **7.1 AUDIT AND RISK MANAGEMENT COMMITTEE MEETING – 18 JANUARY 2023**

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Minutes of the Audit and Risk Management Committee Meeting held 18 January 2023 are attached (attachment 7.1(1)).

### **EXECUTIVE RECOMMENDATION**

**That the Minutes from the Audit and Risk Management Committee Meeting held 18 January 2023 be received.**

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### **7.2 ORDINARY MEETING OF COUNCIL (COMMISSIONER) – 22 FEBRUARY 2023**

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Minutes of the Ordinary Meeting of Council (Commissioner) held 22 February 2023 are attached (attachment 7.2(1)).

**EXECUTIVE RECOMMENDATION**

**That the Minutes from the Ordinary Meeting of Council (Commissioner) held 22 February 2023 be confirmed as a true and accurate record.**

**7.3 AUDIT AND RISK MANAGEMENT COMMITTEE MEETING – 8 MARCH 2023**

Unconfirmed Minutes of the Audit and Risk Management Committee Meeting held 8 March 2023 are attached (attachment 7.3(1)).

**EXECUTIVE RECOMMENDATION**

**That the Unconfirmed Minutes from the Audit and Risk Management Committee Meeting held 8 March 2023 be received.**

**7.4 ANNUAL GENERAL MEETING OF ELECTORS – MINUTES AND CONSIDERATION OF MOTIONS**

|                            |  |
|----------------------------|--|
| <b>Location</b>            | Shire of Donnybrook Balingup                               |
| <b>Applicant</b>           | Electors of the Shire of Donnybrook Balingup               |
| <b>File Reference</b>      | N/A  |
| <b>Author</b>              | Various  |
| <b>Responsible Manager</b> | Ben Rose, Chief Executive Officer                          |
| <b>Attachments</b>         | 7.4(1) - Annual General Meeting of Electors 2023 – Minutes |
| <b>Voting Requirements</b> | Simple Majority  |

| Recommendation   |
|--|
| <p><b>That Council (Commissioner):</b></p> <ol style="list-style-type: none"> <li><b>Receive the Minutes of the 7 March 2023 Annual General Meeting of Electors, as attached.</b></li> <li><b>Receive the following motion from the 7 April 2023 Annual General Meeting of Electors:</b> <p><b><u>Motion 1:</u> Instruct the CEO to update the Shire of Donnybrook Balingup website in order to include all Shire owned or part owned property lease agreements and associated arrangements.</b></p> </li> <li><b>Acknowledge that it has considered Motion 1 from the 2023 Annual General Meeting of Electors and resolve to publish a lease register on the Shire’s website from 1 July 2023 onwards.</b></li> </ol> |



**Reason:** The development of a lease register will be required as part of the package of Local Government reforms presently under consideration by the State Government. The reform package will introduce new state-wide standards for reporting of important local government transactions online, including the publication of a lease register containing information on the leases entered into by the Shire as Lessor. To enable further consideration around the level of information to be included in the register (and legislative guidance through the reform packages), as well as research into other local government approaches/registers, it is recommended that the 'live date' for the web-based register is 1 July 2023.

4. Receive the following motion from the 7 April 2023 Annual General Meeting of Electors:

**Motion 2:** Re-establish a Shire statutory committee with Councillor and Community stakeholder representation, to discuss develop and acquire relevant information to inform full Council on all matters concerning infrastructure new and existing.

Committee to be approved at the next OCM and implemented as soon as practicable after the OCM.

5. Acknowledge that it has considered Motion 2 from the 2023 Annual General Meeting of Electors and resolve that the Commissioner further consider the merits of establishing a Community Reference Group to assist in informing the Commissioner's decision making on Council business.

**Reason:** Whilst Shire staff are unable to identify any previous Statutory Committees with terms of reference relating to new/existing infrastructure, the merit of establishing a Community Reference Group (with a broad advisory remit to the Commissioner) is recommended for further consideration by the Commissioner. The objectives/purpose, membership, term and membership criteria would all require further deliberation by the Commissioner.

6. Receive the following motions from the 7 April 2023 Annual General Meeting of Electors:

- 6.1. **Motion 3:** Instruct the CEO to immediately notify the landholders if they will be affected by any application for a mining exploration tenements within 7 days of being served a notice of Application by a mining company or individual applicant. The information should be conveyed by public notice and direct contact to the land owner.

- 6.2. **Motion 4:** Instruct the CEO to inform Councillors and the Shire President within 24 hours of being served a notice of Application by a mining company or individual applicant.

- 6.3. **Motion 5:** Engage in consultation with the community in regard to the future of mining within the shire.

**6.4. Motion 6: Instruct the CEO to investigate a rating value of the current tenements and whether such rate can be applied directly to the tenement holder.**

**6.5. Motion 7: In keeping with the Donnybrook-Balingup Local Planning Strategy that states:**

**(i) discourage land uses unrelated to agriculture from location on agricultural land (unless the proponent suitably demonstrates there are exceptional circumstances and that these can be compatible with agricultural uses to the satisfaction of the local government) and;**

**(ii) discourages development that may result in land or environmental degradation;**

**Instruct the CEO to pursue a policy of lodging objections to mining tenement applications, which do not align with the above Local Planning Strategy. This is also in line with other affected Councils such as Collie, Murray and Serpentine-Jarrahdale Shire Councils.**

**7. Acknowledge that it has considered Motion 3, 4, 5, 6 and 7 from the 2023 Annual General Meeting of Electors and resolve to:**

**7.1. Instruct the CEO to investigate the processes and procedures of surrounding and similar local governments to ascertain the best practice for receipt of notifications of this nature;**

**7.2. Instruct the CEO to advocate via the South West Zone of WALGA for overall improved DMIRS processes of notification requirements for mining tenement applications, particularly as they relate to private landholders;**

**7.3. Consider developing a formal position of Council with regards to the permissibility of mining operations within the Shire through provisions within proposed Local Planning Scheme 8;**

**7.4. Instruct the CEO to update the Shire's website to include links to the Department of Mines, Industry Regulation and Safety website, specifically the 'eMiTS Mineral Titles' database and the 'TENEGRAPH Web Public' mapping system; and**

**7.5. Acknowledge that under the Local Government Act 1995, relevant tenement holders are issued a rates notice each year in accordance with information provided to the Shire by Landgate and the Department of Mines, Industry Regulation and Safety;**

**Reason: The processing and approval of mining tenements in Western Australia is the responsibility of the Department of Mines, Industry Regulation and Safety and administered under the Mining Act 1978.**

**Section 120 of the Mining Act 1978 establishes a connection to the Planning and Development Act 2005, such that provisions of a Local Planning Scheme are to be taken into account, however cannot prohibit the granting of a mining tenement. Some local governments choose to formulate a position on ‘mining operations’ within their Shire, specifically through the permissibility’s within the zoning table and communicate this to DMIRS when required under section 120.**

**Notwithstanding this, Council may wish to consider their position on mining operations within the Shire as to whether they are generally supported or not, when reviewing the local planning framework, particularly the new Local Planning Scheme 8 as the key statutory planning mechanism, however this should be deferred to a decision of an elected Council of community representatives. However, preliminary work can continue on the formulation and presentation of the draft Local Planning Scheme 8 for preliminary advertising.**

**In any case, further research and investigation is required prior to making further recommendations to Council and/or DMIRS as they relate to the process of mining tenements within the Shire.**

**With regards to Motion 6 and recommendation 7.6 above, relevant tenement holders are issued with a rates notice each year under the Local Government Act 1995, based on information received by Landgate Valuation Services and the Department of Mines, Industry Regulation and Safety.**

## **STRATEGIC ALIGNMENT**

The following outcomes from the Council Plan relate to this proposal:

- |            |      |   |
|------------|------|---|
| Outcome    | 11   | Strong, visionary leadership.                                   |
| Objectives | 11.1 | Provide strategically focused, open and accountable governance. |

## **EXECUTIVE SUMMARY**

The Shire’s Annual General Meeting of Electors (AGM) was held on 7 March 2023, where seven motions were carried. Section 5.33 of the Local Government Act requires the Council to consider these motions. Minutes of the AGM are appended to this report.

## **BACKGROUND**

The following seven motions were carried at the 2023 AGM:

1. Instruct the CEO to update the Shire of Donnybrook Balingup website in order to include all Shire owned or part owned property lease agreements and associated arrangements.
2. Re-establish a Shire statutory committee with Councillor and Community stakeholder representation, to discuss develop and acquire relevant information to inform full Council on all matters concerning infrastructure new and existing.

Committee to be approved at the next OCM and implemented as soon as practicable after the OCM.

3. Instruct the CEO to immediately notify the landholders if they will be affected by any application for an a mining exploration tenements within 7 days of being served a notice of Application by a mining company or individual applicant. The information should be conveyed by public notice and direct contact to the land owner.
4. Instruct the CEO to inform Councilors and the Shire President within 24 hours of being served a notice of Application by a mining company or individual applicant.
5. Engage in consultation with the community in regard to the future of mining within the shire.
6. Instruct the CEO to investigate a rating value of the current tenements and whether such rate can be applied directly to the tenement holder.
7. In keeping with the Donnybrook-Balingup Local Planning Strategy that states:
  - a) discourage land uses unrelated to agriculture from location on agricultural land (unless the proponent suitably demonstrates there are exceptional circumstances and that these can be compatible with agricultural uses to the satisfaction of the local government) and;
  - b) discourages development that may result in land or environmental degradation;

Instruct the CEO to pursue a policy of lodging objections to mining tenement applications, which do not align with the above Local Planning Strategy. This is also in line with other affected Councils such as Collie, Murray and Serpentine-Jarrahdale Shire Councils.

## **FINANCIAL IMPLICATIONS**

Nil implications associated with officer recommendation.

## **POLICY COMPLIANCE**

Nil.

## **STATUTORY COMPLIANCE**

Section 5.33 of the Local Government Act 1995, relating to electors' meetings, sets out the following requirements:

**5.33. Decisions made at electors' meetings**

*(1) All decisions made at an electors' meeting are to be considered at the next ordinary council meeting or, if that is not practicable —*

*(a) at the first ordinary council meeting after that meeting; or*

*(b) at a special meeting called for that purpose, whichever happens first.*

- (2) *If at a meeting of the council a local government makes a decision in response to a decision made at an electors' meeting, the reasons for the decision are to be recorded in the minutes of the council meeting.*

## **CONSULTATION**

Not applicable.

## **OFFICER COMMENT**

**Motion 1: Instruct the CEO to update the Shire of Donnybrook Balingup website in order to include all Shire owned or part owned property lease agreements and associated arrangements.**

Recommendation: That the Council (Commissioner) acknowledge that it has considered Motion 1 from the 2023 Annual General Meeting of Electors and resolve to publish a lease register on the Shire's website from 1 July 2023 onwards.

Reason: The development of a lease register will be required as part of the package of Local Government reforms presently under consideration by the State Government. The reform package will introduce new state-wide standards for reporting of important local government transactions online, including the publication of a lease register containing information on the leases entered into by the Shire as Lessor. To enable further consideration around the level of information to be included in the register (and legislative guidance through the reform packages), as well as research into other local government approaches/registers, it is recommended that the 'live date' for the web-based register is 1 July 2023.

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**Motion 2: Re-establish a Shire statutory committee with Councillor and Community stakeholder representation, to discuss develop and acquire relevant information to inform full Council on all matters concerning infrastructure new and existing.**

**Committee to be approved at the next OCM and implemented as soon as practicable after the OCM.**

Recommendation: That the Council (Commissioner) acknowledge that it has considered Motion 2 from the 2023 Annual General Meeting of Electors and resolve that the Commissioner further consider the merits of establishing a Community Reference Group to assist in informing the Commissioner's decision making on Council business.

Reason: Whilst Shire staff are unable to identify any previous Statutory Committees with terms of reference relating to new/existing infrastructure, the merit of establishing a Community Reference Group (with a broad advisory remit to the Commissioner) is recommended for further consideration by the Commissioner. The terms of reference, membership, term and membership criteria would all require further deliberation by the Commissioner.

**Motion 3: Instruct the CEO to immediately notify the landholders if they will be affected by any application for an a mining exploration tenements within 7 days of being served a notice of Application by a mining company or individual applicant. The information should be conveyed by public notice and direct contact to the land owner.**

**Motion 4: Instruct the CEO to inform Councilors and the Shire President within 24 hours of being served a notice of Application by a mining company or individual applicant.**

**Motion 5: Engage in consultation with the community in regard to the future of mining within the shire.**

**Motion 6: Instruct the CEO to investigate a rating value of the current tenements and whether such rate can be applied directly to the tenement holder.**

**Motion 7: In keeping with the Donnybrook-Balingup Local Planning Strategy that states:**

- a) discourage land uses unrelated to agriculture from location on agricultural land (unless the proponent suitably demonstrates there are exceptional circumstances and that these can be compatible with agricultural uses to the satisfaction of the local government) and;**
- b) discourages development that may result in land or environmental degradation;**

**Instruct the CEO to pursue a policy of lodging objections to mining tenement applications, which do not align with the above Local Planning Strategy. This is also in line with other affected Councils such as Collie, Murray and Serpentine-Jarrahdale Shire Councils.**

Officer Comment: An exploration licence is considered a mining tenement under the *Mining Act 1978*. An application for an exploration licence (mining tenement) is made to the Department of Mines, Industry Regulation and Safety (DMIRS) and must comply with the requirements of the *Mining Act 1978* (the Act) and the *Mining Regulations 1981* (the Regulations). DMIRS notification requirements are dependent on the tenement being applied for, the details of the activity and the land tenure. However, in any case, this process is regulated and administered by DMIRS.

The Shire receives copies of tenement application notifications sporadically throughout the year. The Shire is not necessarily notified of all tenement applications, depending on the nature of each application and the requirements of the *Mining Act 1978*. DMIRS provide a number of useful online resources relating to mining tenements which are all publicly accessible. The 'eMiTS Mineral Titles' database provides information on tenements applied for within the Shire in 3-month periods. Similarly, the 'TENEGRAPH Web Public' mapping system provides an interactive map of all tenements within Western Australia.

Under section 120 of the *Mining Act 1978*, consideration may be given to the provisions of any Local Planning Scheme in force under the *Planning and Development Act 2005*,

however it cannot prohibit or affect the granting of a mining tenement authorised under the *Mining Act 1978*.

Notwithstanding this, some local governments choose to formulate a position on ‘mining operations’ within their Shire in order to ‘enact’ section 120 of the Act, specifically through the permissibility’s within the zoning table and/or an appropriate clause within their Local Planning Scheme (Scheme). For example, according to the Rural Planning Guidelines prepared by the DPLH, a provision that has been used in some Scheme’s where mining operations are contrary to their Scheme is:

*“In considering proposals to commercially extract minerals, Council may exercise its discretion to inform the Minister for Mines and the Minister for Planning in writing that the granting of a mining lease or general purpose lease is contrary to the provisions of the Scheme and the Local Planning Strategy.”*

A preliminary review of the Collie, Murray and Serpentine – Jarrahdale Council websites, indicate that they do not have a specific policy relating to the lodging of objections, however, the Shire of Collie’s Scheme does make provision for the permissibility of ‘mining operations’ within their zoning table.

Council (Commissioner) may wish to consider their position on mining operations within the Shire as to whether they are generally supported, or not, when reviewing the local planning framework, particularly the new Local Planning Scheme No. 8 as the key statutory planning mechanism. In any case, further research and analysis should be prepared by Officers and brought to Council for further consideration.

Whilst the first draft of Local Planning Scheme No. 8 is expected to be brought to Council (Commissioner) by mid-2023, the final endorsement is not expected to occur until an elected Council is reinstated. In this regard, the preparation of the draft documentation and preliminary consultation can reasonably continue with all relevant submissions and edits to be brought to a reinstated Council for final endorsement.

With regards to the rating of tenement holders, under section 6.29 of the *Local Government Act 1995*, the local government collects rates from tenement holders based on information provided by Landgate Valuation Services and DMIRS.

Each year, Landgate Valuation Services provide the Shire with an official Mining Tenement Unimproved Valuation Roll including unimproved values, holder details and tenement areas. Landgate receive the tenement and holder data each year from DMIRS. Based on this information, a rates notice is issued to the relevant tenement holders each year for payment to the Shire.

## 8 REPORTS OF COMMITTEES

Nil.

## 9 REPORTS OF OFFICERS

### 9.1 DIRECTOR OPERATIONS

#### 9.1.1 ROAD SEALING REQUEST INVOLVING PRIVATE CONTRIBUTION – KING SPRING ROAD, THOMSON BROOK

|                                |  |
|--------------------------------|--|
| <b>Location</b>                | King Spring Road, Thomson Brook  |
| <b>Applicant</b>               | Suzanne Gray and Jason Walshaw   |
| <b>File Reference</b>          | A4258  |
| <b>Author</b>                  | Damien Morgan - Manager Works and Services   |
| <b>Responsible Manager</b>     | Kira Strange – Acting Director Operations  |
| <b>Attachments</b>             | 9.1.1(1) Extent of Requested King Spring Rd Sealing<br>9.1.1(2) Email Correspondence from owners of lot 280  |
| <b>Voting Requirements</b>     | Simple majority  |
| <b>Declaration of Interest</b> | The Manager of Works and Services and Executive Staff declare an impartiality interest in this agenda item, as one of the landowners making the request is an employee of the Shire. |

| Recommendation  |
|---|
| <p><b>That Council (Commissioner):</b></p> <ol style="list-style-type: none"> <li>1. <b>Instruct the Chief Executive Officer to give due consideration to allocating \$53,900 (GST inclusive) when preparing the 2023/24 Shire of Donnybrook Balingup draft Annual Budget, for the purpose of upgrading 200 metres of King Spring Road to a sealed standard (adjacent to 661 King Spring Road), subject to the following contributions:</b> <ol style="list-style-type: none"> <li>1.1. \$26,950 (GST inclusive) - Shire funding; and</li> <li>1.2. \$26,950 (GST inclusive) - External private contributions.</li> </ol> </li> <li>2. <b>Subject to Council’s (Commissioner’s) support for Point 1, instruct the Chief Executive Officer to formally communicate to Ms Gray and Mr Walshaw that:</b> <ol style="list-style-type: none"> <li>2.1. <b>The draft 2023/24 Annual Budget presented to Council (Commissioner) may or may not include the allocation identified in Point 1, depending on the capacity of the draft Budget to accommodate the Shire’s contribution;</b></li> <li>2.2. <b>If the allocation is included in the 2023/24 draft Annual Budget, there is the possibility that the project may be removed later from the adopted Annual Budget as part of Council’s (Commissioner’s) formal Budget deliberations;</b></li> </ol> </li> </ol> |



**2.3. If funding for the works are approved in the adopted 2023/24 Annual Budget, the private contribution of \$26,950 (GST inclusive) will be required to be received prior to any works being commenced;**

**2.4. In the event that the private contribution of \$26,950 (GST inclusive) is not received within the 2023/24 financial year, the project will not be automatically ‘rolled over’ into 2024/25 and will require re-consideration by Council;**

**2.5. The applicant is advised that in the event that the \$26,950 (GST inclusive) private contribution is not forthcoming at all, the Shire is unlikely to seal the relevant portion of King Spring Road in the future, due it being a low priority road; and**

**2.6. The timing of any works will be at the discretion of the Shire.**

## **STRATEGIC ALIGNMENT**

The following outcomes from the Council Plan relate to this proposal:

|            |      |  |
|------------|------|--|
| Outcome    | 8.0  | Safe and convenient movement of people in and around the district. |
| Objectives | 8.1  | Improve road safety, connectivity, and traffic flow for all users. |
| Outcome    | 11.0 | Strong, visionary leadership.                                      |
| Objectives | 11.1 | Provide strategically focused, open, and accountable governance.   |

## **EXECUTIVE SUMMARY**

The owners of Lot 280 (661) King Spring Road, Thomson Brook, have made a request to upgrade the gravel section of King Spring Road to a sealed standard, for a distance of 200m, adjacent to their house. The request has been made based on the owners contributing \$26,950 (GST inclusive) towards the cost of the works.

One of the joint owners, Mr Jason Walshaw, is an employee of the Shire of Donnybrook Balingup.

## **BACKGROUND**

King Spring Road is located within the locality of Thomson Brook and provides access to several rural properties in the area. The majority of the road is unsealed, however there are some small, sealed sections in front of rural houses for dust management.

The owners of Lot 280 King Spring Road, Thomson Brook, approached the Shire in August 2022 to request the sealing of a 200m section of King Spring Road in front of their house (Attachment 9.1.1(1)). They made this request so as to reduce the dust created from vehicles travelling on this section of road, past their house.

Requests of this nature are assessed by officers in accordance with the Shire of Donnybrook Balingup *Unsealed Roads Upgrade Plan* (Plan), to determine the priority of the requested works.

The Plan determines the priority for requests to seal gravel roads based on several factors including:

- road usage;
- strategic significance;
- crash history;
- network connectivity; and
- tourism.

When assessed by officers in accordance with the Plan, the priority for the Shire to seal this section of King Spring Road was determined to be low.

Historically, the Shire has considered the sealing of low priority gravel roads when property owner/s contribute towards the cost of the works. Council has typically only considered these requests when the following criteria are met:

- Property owner/s are proposing to contribute at least 50% of the cost of the upgrades;
- The standard of the works is to the Shire's satisfaction;
- Works are completed by the Shire, or a contractor approved by the Shire; and
- Council's contribution towards the works being typically limited to maximum amount of \$50,000.

Historically, this approach has largely been applied to landowners seeking to reduce dust from gravel roads adjacent to a residential dwelling.

Subsequent to being provided with this information and obtaining an estimated cost for the works, the applicants have confirmed (Attachment 9.1.1(2)) that in-principle, they support the works being undertaken in accordance with the below:

- The minimum required standard for the upgrade of this section of road to a sealed standard, would be to achieve a 6m wide seal (2 coats), with suitable gravel shoulders.
- The estimated cost for the Shire to undertake this work for the requested 200m is \$53,900 (GST inclusive), which makes allowance for:
  - preliminaries, pre-planning, and site establishment;
  - traffic management;
  - supply and delivery of suitable gravel road base;
  - plant and labour costs for the upgrade works; and
  - a 2-coat seal.
- The applicant's contribution to the works would be \$26,950 (GST inclusive).

- The Shire's contribution for the financial year that the upgrade works would be undertaken would be at \$26,950 (GST inclusive).

### **FINANCIAL IMPLICATIONS**

The total estimated cost for the sealing of King Spring Road for 200m is \$53,900 (GST inclusive). If the project is ultimately adopted by Council (Commissioner) in the 2023/24 Annual Budget, the Shire would be responsible for the following funding amounts:

- \$26,950 (GST inclusive - 2023/24)

The applicants would be responsible for funding \$26,950 (GST inclusive), which would be required to be received prior to the works being undertaken.

### **POLICY COMPLIANCE**

Up until the Special Council Meeting held on 21 December 2021, *Council Engineering Policy 4.28 Request for Upgrades or Expansions of Council Assets* was in effect and was the basis for how requests of this nature were considered.

The policy was rescinded as a Council Policy at the meeting, as the content was determined to be of an operational nature and was re-classified and implemented as an Administration Policy in accordance with Council's Policy Framework.

It is noted that this is still a work in progress, however in the interim, officers have applied principles of the former policy 4.28, in order to achieve a level of consistency in terms of how these types of requests are handled.

### **STATUTORY COMPLIANCE**

Nil.

### **CONSULTATION**

Officers have undertaken regular consultation with the applicants in relation to the request.

### **OFFICER COMMENT/CONCLUSION**

The upgrading of the outlined section of King Spring Road is a low priority when assessed against the Shire of Donnybrook Balingup *Unsealed Roads Upgrade Plan*. However, the owners are proposing to fund 50% of the works, which warrants further consideration of the request.

The sealing of this section of road will have benefits to the Shire's gravel road maintenance requirements in the Thomson Brook area, along with the benefits to other property owners who regularly use this section of road.

Whilst the proposed works warrant further consideration through the 2023/24 Annual Budget preparation process, given budgetary constraints, staff will need to apply detailed consideration for the proposition in light of the many competing funding needs of the annual budget. Staff are aware of several competing priorities in the preparation of the 2023/24 draft Annual Budget. Subject to Council's (Commissioner's) endorsement, as per

the officer recommendation, due consideration will be given to this project when preparing the draft Annual Budget.

**9.1.2 ROAD DEDICATIONS – BROOKHAMPTON ROAD, KIRUP; GLENARDEN ROAD, SOUTHAMPTON; AND MORRISSEY ROAD, YABBERUP**

|                            |   |
|----------------------------|---|
| <b>Location</b>            | Brookhampton Road, Kirup;<br>Glenarden Road, Southampton;<br>Morrissey Road, Yabberup   |
| <b>Applicant</b>           | Shire of Donnybrook Balingup  |
| <b>File Reference</b>      | RD 0018 (Brookhampton Road)<br>RD 0145 (Glenarden Road)<br>RD 0102 (Morrissey Road)   |
| <b>Author</b>              | Kira Strange, Acting Director Operations  |
| <b>Responsible Manager</b> | Ben Rose, Chief Executive Officer   |
| <b>Attachments</b>         | 9.1.2(1) Location Plan – Brookhampton Road<br>9.1.2(2) Proposed Road Dedication – Brookhampton Road<br>9.1.2(3) Location Plan – Glenarden Road<br>9.1.2(4) Proposed Road Dedication – Glenarden Road<br>9.1.2(5) Location Plan – Morrissey Road<br>9.1.2(6) Proposed Road Dedication – Morrissey Road |
| <b>Voting Requirements</b> | Simple Majority   |

| <b>Recommendation</b>  |  |
|--|--|
| <p><b>That Council (Commissioner):</b></p> <p><b>1 Pursuant to Section 56 of the <i>Land Administration Act 1997</i>:</b></p> <p><b>1.1 Authorise the Chief Executive Officer to request the Minister for Lands to dedicate the portion(s) of land, as illustrated on Attachment 9.1.2(2) (Brookhampton Road, Kirup); Attachment 9.1.2(4) (Glenarden Road, Southampton); and Attachment 9.1.2(6) (Morrissey Road, Yabberup), subject to:</b></p> <p><b>1.1.1 there being no objections from landowners and/or relevant external agencies that are unable to be addressed or rectified at officer level;</b></p> <p><b>1.1.2 all associated costs with the request being borne by the Shire; and</b></p> <p><b>1.1.3 the Minister for Lands be indemnified against any costs, including any claims for compensation and costs that may reasonably be incurred by the Minister in considering granting the request to dedicate the land as road.</b></p> |  |

**STRATEGIC ALIGNMENT**

The following outcomes from the Council Plan relate to this proposal:

|           |     |   |
|-----------|-----|---|
| Outcome   | 8   | Safe and convenient movement of people                            |
| Objective | 8.1 | Improve road safety, connectivity and traffic flow for all users. |

## **EXECUTIVE SUMMARY**

Road dedications are administered by the Local Government in accordance with the *Land Administration Act 1997* (LAA) and *Land Administration Regulations 1998* (LAR) then forwarded to the Minister for Lands for approval.

There are number of road carriageways within the Shire that have no dedicated road reserve and therefore create ongoing issues relating to the legality of vehicular access.

Under the LAA, where land has had uninterrupted public use as a road and has been under the care and control of the local government for a period of not less than 10 years, the local government may request the Minister dedicate the land as 'road'.

In this regard, it is recommended that Council (Commissioner) formally resolves to request the Minister dedicate the various land parcels in the Attachments in accordance with the LAA subject to no issues being identified.

## **BACKGROUND**

Typically, a 'legal' road consists of a carriageway (the physical, constructed road surface) and the road reserve (a dedicated area of land in which the carriageway is located).

The use of informal tracks and 'roads', particularly within State Forest, is not uncommon within the Shire and across the State. However, in order for a road to be considered 'legal' for the purposes of access and egress, there must be a dedicated road reserve associated with the carriageway. In this regard, there are many 'roads' within the Shire that are not considered technically legal due to the absence of a dedicated road reserve.

In addition, there are also a number of cases (such as with Brookhampton Road, Glenarden Road and Morrissey Road) where portions of the constructed carriageway have a dedicated road reserve and other portions do not. Similarly, many carriageways deviate 'outside' of the dedicated road reserve. This is likely due to legacy issues associated with the typical ad-hoc patterns of development throughout history and the different levels of technology available when constructing and planning for roads.

Notwithstanding this, the lack of dedicated roads has become a more prevalent issue due to the increased number of recent land sales and property development experienced during the COVID-19 period. Under the *Shire of Donnybrook Balingup Local Planning Scheme No. 7* (LPS7), when considering development on a property, a landowner must first demonstrate legal and constructed access. As advised by the Lands division of the Department of Planning, Lands and Heritage (DPLH), carriageways that do not contain a dedicated road reserve are not considered legal under the LAA, and therefore development of a property cannot generally occur.

Brookhampton Road is identified as a local distributor road under the Main Roads Western Australia (MRWA) road hierarchy whilst Glenarden Road and Morrissey Road are both identified as access roads. In any case, all three roads provide connections and access to many properties within the Shire however as illustrated in Attachments 9.1.2(1), 9.1.2(3) and 9.1.2(5), portions of each do not contain dedicated road reserves.

All three road are under the care and control of the Shire, so it is important that they be formalised to avoid any future associated issues.

## FINANCIAL IMPLICATIONS

This project is not specifically budgeted however there is a 'Land Administration' account (G/L 175620) relevant to matters such as this. It is estimated that costs to undertake the dedication of the land would be in the vicinity of \$10,000 – \$15,000 which may need to be considered for the 2023/2024 financial year.

Section 56 (4) of the LAA requires the local government to indemnify the Minister for Lands against any claim for compensation associated with a road dedication request. Section 56 (6) notes that in relation to a road dedication request, a person with an interest in the land is not entitled to compensation because of that dedication. As such, the Shire cannot reasonably expect to have any liability issues arise as a result of the dedication.

## POLICY COMPLIANCE

N/A

## STATUTORY COMPLIANCE

With regards to the statutory requirements under LPS7, prior to considering development on a lot, the landowner must demonstrate legal and constructed access. Clause 4.34 of LPS7 states:

*4.34 Notwithstanding any other provision of the Scheme, development approval is required for any development on land abutting an unconstructed road or a lot or location which does not have frontage to a dedicated road. In considering such an application, the local government may –*

- (i) refuse the application until the road has been constructed and/or access by means of a dedicated and constructed road is provided; or*
- (ii) require other legal arrangements to be made for permanent legal access to the satisfaction of the local government; or*
- (iii) where dedicated road access is available, grant approval to the application subject to a condition requiring the applicant to pay a sum of money for the cost of constructing the road or part thereof or construct the road to the local government's road construction standards.*

With regards to the statutory process to formally dedicate a road, a request must be made to the Minister for Lands in accordance with Section 56 of the *Land Administration Act 1997*.

Section 56(1)(c) of the LAA states:

*(1) If in the district of a local government – ...*

- (c) land comprises a private road of which the public has had uninterrupted use for a period of not less than 10 years, and that land is described in a plan of survey, sketch plan or document,*

*the local government may request the Minister to dedicate that land as a road.*

Section 56(2) of the LAA outlines:

- (2) If a local government resolves to make a request under subsection (1), it must —*

- (a) *in accordance with the regulations prepare and deliver the request to the Minister; and*
- (b) *provide the Minister with sufficient information in a plan of survey, sketch plan or document to describe the dimensions of the proposed road.*

In requesting the Minister to dedicate the land as road, in accordance with Regulation 8(c) of the *Land Administration Regulations 1998* the local government must provide the Minister with the following:

- (i) *Written confirmation that the public has had uninterrupted use of the private road for a period of not less than 10 years;*
- (ii) *A description of the section or sections of the public who have had that use;*
- (iii) *A description of how the private road is constructed;*

and

- (d) *Copies of any submissions received by the local government relating to the request and the local governments comments on those submissions; and*
- (e) *A any other information the local government considers relevant to the Minister's consideration of the request; and*
- (f) *Written confirmation that the local government has complied with section 56(2) of the Act.*

## **CONSULTATION**

Whilst in this case there is no technical requirement under the LAA to advertise and/or undertake consultation for the road dedication, the Shire will notify each of the adjacent landowners of the formal dedication.

A 'Before You Dig' enquiry resulted in four responses from agencies identifying assets within each subject portion of land including:

### **Brookhampton Road, Kirup**

- Telstra;
- Western Power; and
- Water Corporation

### **Glenarden Road, Southampton**

- Telstra;
- Western Power; and
- Water Corporation

### **Morrissey Road, Yabberup**

- Telstra; and
- Western Power



In this regard, the proposed road dedication will be referred to relevant external agencies including but not limited to:

- Western Power;
- NBN No (WA);
- Telstra;
- Water Corporation;
- Main Roads Western Australia;
- Department of Planning Lands and Heritage including the Western Australian Planning Commission;
- Department of Mines, Industry Regulation and Safety;
- Department of Water and Environmental Regulation; and
- Department of Fire and Emergency Services.

Similarly, the three portions of road are located with significant forest areas where the Department of Biodiversity, Conservation and Attractions (DBCA) are responsible for the management of the land. In this regard, consultation with the DBCA will need to occur.

As the proposal is to formalise the existing use of the land as a public road, the Shire does not anticipate that there will be any objections to the dedication.

#### **OFFICER COMMENT/CONCLUSION**

Whilst there are numerous examples of ‘roads’ within the Shire that do not have dedicated road reserve, Brookhampton Road, Glenarden Road and Morrissey Road have been identified as a priority due to their frequent use. The process to formally dedicate a road involves a significant amount of time to ensure compliance with the relevant provisions of the LAA and the LAR. There are also costs associated with the surveying and land administration required. In addition, there are also adverse implications for the Shire’s road program whereby many tracks and carriageways are not the responsibility of the Shire and therefore should not be dedicated as formal road.

Brookhampton Road, Glenarden Road and Morrissey Road have been consistently used by the general public and surrounding landowners for a significant period exceeding 10 years. The Shire’s Works and Services have identified that Glenarden Road and Morrissey Road have each been on the grading reports since at least 2013/2013 for 1 to 2 grades per year depending on conditions. In addition, account enquires for all roads also indicate that funding has been allocated to each road over the past 10 years which can be demonstrated to the DPLH. Should the DPLH require additional information to demonstrate compliance with the LAA or the LAR, Shire officers can provide this.

In light of the above, a preliminary assessment of the proposed dedication indicates the following:

- The public has had uninterrupted use of the subject roads, for a period of not less than 10 years (and likely much longer);

- The Shire's Works and Services team have advised that all three roads have been under the care and control of the local government for well over 10 years and are included in the relevant road program for ongoing management; and
- The dedications will formalise the existing public use of the three carriageways by finalising the relevant administrative processes.

It is therefore recommended that Council (Commissioner) resolves to request the Minister for Lands dedicate the roads in accordance with the Officer's recommendation.

**9.1.3 PRELIMINARY ENDORSEMENT TO ADVERTISE DRAFT LOCAL PLANNING STRATEGY**

|                            |  |
|----------------------------|--|
| <b>Location</b>            | Shire of Donnybrook Balingup   |
| <b>Applicant</b>           | Shire of Donnybrook Balingup   |
| <b>File Reference</b>      | TP 19  |
| <b>Author</b>              | Kira Strange, Acting Director Operations   |
| <b>Responsible Manager</b> | Ben Rose, Chief Executive Officer  |
| <b>Attachments</b>         | 9.1.3(1) Draft Local Planning Strategy Part 1 – The Strategy<br>9.1.3(2): Draft Local Planning Strategy Part 2 – Background Information and Analysis |
| <b>Voting Requirements</b> | Simple Majority  |

| Recommendation   |
|--|
| <p><b>That Council (Commissioner):</b></p> <ol style="list-style-type: none"> <li><b>1. Pursuant to Regulation 12 of the <i>Planning and Development (Local Planning Scheme) Regulations 2015</i>, instruct the Chief Executive Officer to provide a copy of the draft Local Planning Strategy to the Western Australian Planning Commission for certification for the purposes of proceeding to public advertising;</b></li> <li><b>2. Subject to making any required amendments as instructed by the Western Australian Planning Commission, authorise the Chief Executive Officer to advertise the draft Local Planning Strategy to the public and relevant agencies for 21 days, pursuant to Regulation 13 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>; and</b></li> <li><b>3. Following the completion of the advertising period, as soon as practicable, the Chief Executive Officer is to present a report to Council (Commissioner) for consideration including:</b> <ol style="list-style-type: none"> <li><b>3.1 any submissions received during the public advertisement period; and</b></li> <li><b>3.2 any recommended modifications to the draft Local Planning Strategy as a result of relevant feedback received during the public advertising period.</b></li> </ol> </li> </ol> |

**STRATEGIC ALIGNMENT**

The following outcomes from the Council Plan relate to this proposal:

|                   |       |   |
|-------------------|-------|---|
| Outcome           | 6     | The built environment is responsibly planned and well maintained                    |
| Objective         | 6.1   | Ensure sufficient land is available for residential, industrial and commercial uses |
| Priority Projects | 6.1.1 | Review the Local Planning Strategy  |

## EXECUTIVE SUMMARY

The Shire is undertaking a review of the local planning framework as directed by the Western Australian Planning Commission (WAPC) in October 2020, including the:

- Review of Local Planning Strategy 2014 and preparation of a new Local Planning Strategy (Strategy);
- Review of Local Planning Scheme No. 7 (LPS7) and preparation of a new Local Planning Scheme (Scheme); and
- Review and consolidation of all Local Planning Policies (LPPs).

The purpose of this report is to present the draft Local Planning Strategy for preliminary endorsement in order to forward the document to the WAPC for certification to publicly advertise the document under Regulation 12 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (LPS Regulations).

It is recommended that Council (Commissioner) resolve in accordance with the Officer's recommendation to enable the formal commencement of this process.

## BACKGROUND

Following the preparation of a Report of Review by the Shire as required by the LPS Regulations, at the Ordinary Council Meeting held 18 December 2021, it was resolved that Council:

1. *Pursuant to Part 6, Division 1, Sections 66(1)(b) and (c) of the Planning and Development (Local Planning Schemes) Regulations 2015 approves the "Report of Review" (Attachment 9.1.3(1)) and provides a copy to the Western Australian Planning Commission;*
2. *Pursuant to Part 6, Division 1, Section 66(3)(a) of the Planning and Development (Local Planning Schemes) Regulations recommends to the Western Australian Planning Commission that Local Planning Scheme 7 be amended;*
3. *Pursuant to Part 6, Division 1, Section 66(3)(b) of the Planning and Development (Local Planning Schemes) Regulations recommends to the Western Australian Planning Commission that the Local Planning Strategy be reviewed.*

The Report of Review was forwarded to the WAPC in December 2019 and the WAPC provided a formal response in December 2020 which was formally presented to Council in April 2021.

At the Ordinary Council Meeting held 28 April 2021, it was resolved that Council:

1. *Receives the formal advice from the Western Australian Planning Commission (WAPC), dated 20 October 2020 as contained in Attachment 9.1.2(1);*
2. *Resolves to prepare a new Local Planning Scheme pursuant to Part 4, Division 1, Regulation 19 of the Planning and Development (Local Planning Schemes) Regulations 2015;*
3. *Authorises the Chief Executive Officer to undertake the necessary notifications of Council's decision to prepare a new Local Planning Scheme pursuant to Part 4, Division 1, Regulation 20 of the Planning and Development (Local Planning Schemes) Regulations 2015;*

4. *Instructs the Chief Executive Officer to consider resourcing requirements in the preparation of the 2021/22 draft Annual Budget;*
5. *Subject to funding under Point 4 being approved in the 2021/22 Annual Budget, instructs the Chief Executive Officer to prepare and present a Project Plan to Councillors for the Scheme / Strategy Review in a Concept Forum.*

As per the resolution, a Project Plan was prepared and presented to Council in a Concept Forum in November 2021 that broadly outlined the process required for the formal review of the local planning framework.

As part of the Project, a preliminary engagement survey was published for community participation from 10 December 2021 to 7 February 2022. The key purpose of the engagement survey was:

- to translate broad themes from the Strategic Community Plan into actionable objectives within the context of the Planning framework;
- to find out how the community would like to be engaged with during the consultation stage of the project; and
- to establish a mailing list of all community members that are directly interested in the review project.

There were 21 questions within the survey and a total of 184 participants. The results of the survey were presented to Council at the Ordinary Meeting held 23 March 2022 where it was resolved to:

1. *Acknowledge the completion of the preliminary community engagement survey; and*
2. *Instruct the Chief Executive Officer to continue preparing the draft Local Planning Strategy and Local Planning Scheme ensuring due regard is given to the responses and comments received within the survey results.*

In addition, there are a total of 78 recipients on the email list that has been gathered for notifications and updates.

The draft Local Planning Strategy has now been prepared and is hereby presented.

## **FINANCIAL IMPLICATIONS**

Council, at the Ordinary Meeting held 28 April 2021 authorised the CEO to consider the budgeting and resourcing requirements for the preparation of the relevant documentation required as part of the local planning framework review. As a result, \$25,000 was allocated to the entire project as a transfer from the Strategic Planning reserve. It was determined that the project would be completed 'in-house' to reduce consultancy fees however there are a number of specialised services required that cannot be completed by staff.

The key external costs associated with the Local Planning Strategy have included:

1. Engaging a bushfire consultant to undertake the required Bushfire Hazard Level Assessment; and
2. The preparation of required Strategy maps.

The cost of the consultant has equated to \$825 for the 2021 / 2022 financial year and an additional \$8,745 for the 2022 / 2023 financial year (all inc. GST).

The Strategy maps have been prepared by the DPLH at an estimated cost of \$3,280 (inc. GST).

There will be additional costs associated with the advertising process and the future gazettal of the document.

The budget allocation also needs to include the costs associated with the preparation of a new Local Planning Scheme and Local Planning Policies. Similar to the Strategy, it is anticipated that the key cost associated with the Scheme and Policies will be the preparation of required maps, advertising costs and consultant reviews (if required).

## **POLICY COMPLIANCE**

Under the LPS Regulations, the Local Planning Strategy sets out the long-term planning directions for the local government which includes the preparation of future Local Planning Policies.

## **STATUTORY COMPLIANCE**

Part 3 of the LPS Regulations, outlines the statutory requirements for the review, amendment and/or preparation of Local Planning Strategies. The Shire must adhere to these regulations and demonstrate compliance to the WAPC throughout the process.

The statutory requirements of Part 3 as they relate to the process of preparing a Local Planning Strategy are extracted as follows:

### **11. Requirement for local planning strategy for local planning scheme**

- (1) A local government must prepare a local planning strategy in accordance with this Part for each local planning scheme that is approved for land within the district of the local government*
- (2) A local planning strategy must —*
  - (aa) be prepared in a manner and form approved by the Commission; and*
  - (a) set out the long-term planning directions for the local government; and*
  - (b) apply any State or regional planning policy that is relevant to the strategy; and*
  - (c) provide the rationale for any zoning or classification of land under the local planning scheme...*

### **12. Certification of draft local planning strategy**

- (1) Before advertising a draft local planning strategy under regulation 13 the local government must provide a copy of the strategy to the Commission...*
- (4) If the Commission is satisfied that a draft local planning strategy complies with regulation 11(2) it must certify the strategy accordingly and provide a copy of the certification to the local government for the purpose of proceeding to advertise the strategy.*

### **13. Advertising and notifying local planning strategy**

- (1) A local government must, as soon as reasonably practicable after being provided with certification that a local planning strategy complies with regulation 11(2), advertise the strategy...*
- (2) The period for making submissions on a local planning strategy is —*
  - (a) the period of 21 days after the day on which the notice of the strategy is first published under subregulation (1)(a); or*
  - (b) a longer period approved by the Commission...*

### **14. Consideration of submissions**

- (1) After the expiry of the period within which submissions may be made in relation to a local planning strategy, the local government must review the strategy having regard to any submissions made...*
- (3) After the completion of the review of the local planning strategy the local government must submit to the Commission —*
  - (a) a copy of the advertised local planning strategy; and*
  - (b) a schedule of the submissions received; and*
  - (c) particulars of any modifications to the advertised local planning strategy proposed by the local government.*

### **15. Endorsement by Commission**

- (1) Within 60 days of the receipt of the documents referred to in regulation 14(3) the Commission may —*
  - (a) endorse the strategy without modification; or*
  - (b) endorse the strategy with some or all of the modifications proposed by the local government; or*
  - (c) require the local government to modify the strategy in the manner specified by the Commission before the strategy is resubmitted to the Commission for endorsement; or*
  - (d) refuse to endorse the strategy...*

### **16. Publication of endorsed local planning strategy...**

- (2) A local government must ensure that an up-to-date copy of each endorsed local planning strategy of the local government...*

## **CONSULTATION**

Under regulation 13(2) of the LPS Regulations, a Local Planning Strategy is to be publicly advertised for a period of 21 days unless a longer period is approved by the WAPC.

Under regulation 12(1), the local government must forward the documentation to the WAPC for certification prior to advertising the Strategy. The WAPC are required to review the Strategy and determine whether it complies with regulation 11(2).

In certifying the Strategy, the WAPC may, or may not, instruct the Shire to make amendments prior to commencing advertising. In this regard, the Shire must wait until the Strategy is certified by the WAPC and make any amendments, as instructed, before it can commence public advertising.

Following the certification, the Shire make any required amendments then advertise the Strategy in accordance with regulation 76A of the LPS Regulations including:

- Publishing the document on the Shire’s website and posting a link to the document on the Shire’s social media;
- Provide a copy of the document at the Shire’s Administration Office for public viewing;
- Publish an advertisement in the South Western Times and the Preston Press;
- Directly notify the recipients of the email list gathered as part of the preliminary engagement survey;
- Directly notify community groups including:
  - Balingup & Districts Tourist Association and Visitor Centre;
  - Balingup Progress Association;
  - Balingup Townscape Committee;
  - Brookhampton Progress Association / Hall Association;
  - Donnybrook Balingup Chamber of Commerce;
  - Donnybrook Tourism Association and Visitors Centre;
  - Donnybrook Town Team;
  - Donnybrook-Balingup Community Radio;
  - Donnybrook Balingup Ratepayers and Residents Association;
  - Kirup Progress Association;
  - Mullalyup Improvement Group;
  - Mullalyup Town Team;
  - Noggerup Hall Association;
  - Yabberup Community Hall Association; and
  - Yabberup Grapevine
- Notify all adjoining local governments; and
- Notify all relevant public agencies and authorities.

## **OFFICER COMMENT / CONCLUSION**

The purpose of a Local Planning Strategy is to set the long-term planning and development direction for the Shire for the next 10 to 15 years.

Shire officers are pleased to present the draft Local Planning Strategy to Council (the Commissioner) following a significant period of research, analysis, preparation, and preliminary community engagement.



The Strategy will form the basis of the preparation of the Local Planning Scheme and Local Planning Policies and represents significant progress in the review local planning framework.

A summary of the key findings of the Strategy that have formed the actions and directions within Part 1 is as follows:

### **Population Forecast and Dwelling Yield Analysis**

- The Shire's population at the 2021 census was 6,155 which has been projected to grow to approximately 6,600 to 7,000 by 2037 (the end of the 15-year period of the Strategy).
- The number of dwellings at the 2021 census was 2,808 with an average of 2.4 persons per household.
- Based on this information, it has been calculated that the Strategy will need to identify areas of growth that can cater for at least 200 to 700 additional dwellings over the next 15 years.
- As at 30 June 2022, existing Residential and Rural Residential approved subdivisions equated to 269 lots.
- 19 Planning Areas have been identified within the Strategy of which 13 are for future Residential and/or Rural Residential growth and development.
- The estimated lot yield of the 13 Residential / Rural Residential Planning Areas is 655.
- Therefore, approximately 924 lots have been accounted for within the Strategy which exceeds the number of dwellings / lots required to be catered for and doesn't include potential infill development of other Residential / Rural Residential lots.
- Therefore, sufficient land has been identified to cater for the projected growth and dwelling yield requirements within this Strategy (i.e. for the next 10 to 15 years).

### **Community, Urban Growth and Settlement**

- The Shire has experienced sustained growth in recent decades which is anticipated to continue.
- The Shire's average age is 49 which is 11 years higher than the State's average.
- There is a strong demand for housing however options are limited, particularly as service infrastructure is limited (water and sewer) and natural hazards present significant challenges (bushfire and flood management).
- There is increased interest in sustainable, alternative housing, including rural strata cluster development in/around Balingup.
- Heritage assets and conservation is valued by the community and presents many opportunities.

## **Economy and Employment**

- Of the people who indicated they were within the labour force, 4.2% indicated that they were unemployed at the 2021 census. This is lower than that of the State which was calculated at 5.1%.
- ‘Agriculture, forestry and fishing’ remains the leading industry classification for local employment within the Shire.
- Tourism is an active and growing industry, however, is increasingly fettered by constraints such as bushfire and access (specifically those on a Main Roads WA road).
- The Strategy itself has limited capacity to drive economic development, however, can provide for development and investment opportunities whilst remaining cognisant of potential land use conflict.
- 2 Planning Areas have been specifically identified for Commercial and Industrial development with an approximate lot yield of 426.

## **Environment**

- The Shire has a diverse natural environment and a number of assets which are of great value to the community.
- Natural hazards can also present challenges which impact growth and development within the Shire including vegetation (bushfire), rainfall and waterways (flood and stormwater management).
- Over 82% of the Shire’s land is within a designated bushfire prone area.
- As renewal energy technologies evolve, more opportunities may present for the Shire.

## **Infrastructure**

- The Shire is very limited in service provision, particularly with reticulated scheme water and sewer.
- 50% of dwellings within the Shire are identified as being connected to reticulated water supply.
- 28.8% of dwellings within the Donnybrook townsite are connected to the reticulated sewer system, which is the only location available to the reticulated sewer infrastructure. Therefore, only 12.4% of dwellings within the entire Shire are identified as being connected to the reticulated sewer system.
- The Shire contains over \$161 million worth of transport infrastructure including roads, car parks, paths, drainage, electrical and guard rails which have significant management and maintenance costs (replacement value).
- The Shire is strategically located along transport routes that present opportunities for regional business investment.

The draft documents hereby presented to Council (Commissioner) may differ from the draft documents advertised, depending on instructions from the WAPC. However, following the advertising period, the Strategy will be presented to Council (Commissioner)

for endorsement, including all submissions received, prior to sending to the WAPC for consideration for final approval.

Officers are continuing to prepare the Local Planning Scheme and Local Planning Policies as per the instructions of the WAPC and the Project Plan presented to Council in November 2021.

It is anticipated that these draft documents will be presented to Council (Commissioner) by mid-2023 prior to commencing public advertising and agency referrals.

## **9.2 DIRECTOR CORPORATE AND COMMUNITY**

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### **9.2.1 ACCOUNTS FOR PAYMENT**

The Schedule of Accounts Paid under Delegation (No 1.2.21) is presented for public information (attachment 9.2.1(1)).

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### **9.2.2 MONTHLY FINANCIAL REPORT – FEBRUARY 2023**

The Monthly Financial Report for February 2023 is attached (*attachment 9.2.2(1)*).

### **EXECUTIVE RECOMMENDATION**

**That the monthly financial report for the period ended February 2023 be received.**

**9.2.3 RATES EXEMPTION – LOT 142, 8 BRIDGE STREET, DONNYBROOK, BUNBURY HOUSING ASSOCIATION (INC)**

|                            |  |
|----------------------------|--|
| <b>Location</b>            | Lot 142, 8 Bridge Street, Donnybrook   |
| <b>Applicant</b>           | Bunbury Housing Association (Inc). Trading as Alliance Housing (WA)  |
| <b>File Reference</b>      | A3849  |
| <b>Author</b>              | Stuart Eaton – Finance Projects  |
| <b>Responsible Manager</b> | Kim Dolzadelli – Director Corporate and Community  |
| <b>Attachments</b>         | 9.2.3(1) Correspondence - Request for rates exemption<br>9.2.3(2) Australian Charities and Not-for-profits Commission online register report |
| <b>Voting Requirements</b> | Absolute Majority  |

| <b>Recommendation</b>   |  |
|---|--|
| <p><b>That Council (Commissioner):</b></p> <ol style="list-style-type: none"> <li><b>Acknowledges Bunbury Housing Association (Inc) is exempt from Shire rates for Lot 142, 8 Bridge Street, Donnybrook, in accordance with s6.26(2)(g) of the Local Government Act 1995.</b></li> <li><b>Notes the rates exemption for Lot 142, 8 Bridge Street, Donnybrook will be effective from the date of title transfer to Bunbury Housing Association (Inc).</b></li> </ol> |  |

**STRATEGIC ALIGNMENT**

The following outcomes from the Council Plan relate to this proposal:

Outcome 12 A well respected, professionally run organisation.

Objective 12.1 Deliver effective and efficient operations and service provision.

**EXECUTIVE SUMMARY**

At its Ordinary Meeting on 22 April 2020, Council resolved (resolution 59/20) to transfer title of Lot 142, 8 Bridge Street Donnybrook to Bunbury Housing Association (Inc) (BHA) for the Bridge Street Affordable Housing Project.

*That Council reaffirm its position on the Bridge Street Affordable Housing Project as per Resolution 145/19 from the September 2019 Ordinary Meeting of Council, subject to an arrangement being put in place to ensure the land is only transferred once the development has reached practical completion.*

BHA has requested (attachment 9.2.3(1)) rates exemption for Lot 142, 8 Bridge Street, Donnybrook.

BHA is a registered charity by the national regulator, the Australian Charities and Not-for-profits Commission (attachment 9.2.3(2)).

In accordance with s6.26(2)(g) of the Local Government Act 1995, land used exclusively for charitable purposes is not rateable land.

### **CONSULTATION**

Not required for rates exemption application.

### **OFFICER COMMENT/CONCLUSION**

Officers assess that the Bridge Street Affordable Housing Project, when owned and operated by BHA, will be a charitable use of the subject property and therefore the land will not be rateable under s6.26(2)(g) of the Local Government Act 1995.

At the time of drafting the report, the Shire is awaiting notification of practical completion from BHA. Upon practical completion, transfer of land title from the Shire of Donnybrook Balingup to BHA will occur. Rates exemption will be effective from the date of title transfer.

The subject property is not currently rated as it is owned by the Shire of Donnybrook Balingup. No loss of rate revenue will occur.

BHA will be liable for rubbish receptacle charges and Emergency Services Levy as these charges fall outside s6.26(2)(g) of the Local Government Act 1995.

### 9.2.4 PROPOSED EXPRESSION OF INTEREST – PUMP TRACK BUILDING

|                            |   |
|----------------------------|---|
| <b>Location</b>            | Shire of Donnybrook Balingup                          |
| <b>Applicant</b>           | Shire of Donnybrook Balingup                          |
| <b>File Reference</b>      | N/A   |
| <b>Author</b>              | Susie Delaporte – Senior Community Engagement Officer |
| <b>Responsible Manager</b> | Kim Dolzadelli – Director Corporate and Community     |
| <b>Attachments</b>         | Nil   |
| <b>Voting Requirements</b> | Simple Majority                                       |

| <b>Executive Recommendation</b>     |   |
|-------------------------------------|---|
| <b>That Council (Commissioner):</b> |   |
| <b>1.</b>                           | <b>Request the Chief Executive Officer to seek Expressions of Interest (EOI) in relation to leasing the building adjacent to the Donnybrook Pump Track.</b>   |
| <b>2.</b>                           | <b>Request the Chief Executive Officer to present all lodged EOI submissions to a future meeting of Council (Commissioner) for deliberation.</b>  |
| <b>3.</b>                           | <b>Acknowledge that the 2022-23 Budget Review makes expenditure provision for the development of ‘clubhouse’ facilities for local netball and basketball associations within the existing Donnybrook Recreation Centre.</b> |
| <b>4.</b>                           | <b>Acknowledge that Shire staff will continue consulting with the Donnybrook Ladies Hockey Club, seeking to identify and secure a clubhouse for that sporting association.</b>  |

### STRATEGIC ALIGNMENT

The following outcomes from the Council Plan relate to this proposal:

|                  |       |  |
|------------------|-------|--|
| Outcome          | 1     | A diverse and growing population   |
| Objective        | 1.1   | Attract and retain more families with children, and younger adults.  |
| Priority Project | 1.1.1 | Establish a Youth Leadership Group to develop a youth plan for Council’s consideration                         |
| Priority Project | 1.1.2 | Develop a campaign to promote the Donnybrook Adventure Zone with the Pump Track, Skate Park and Apple Fun Park |
| Outcome          | 13    | Increased community capacity.  |

|           |      |  |
|-----------|------|--|
| Objective | 13.1 | Enable community organisations and community champions to deliver services and projects to meet local needs. |
|-----------|------|--|

## **EXECUTIVE SUMMARY**

Officers seek approval to advertise an Expression of Interest (EOI) in relation to the vacant building adjacent to the Pump Track, which was previously occupied by local netball and hockey associations.

## **BACKGROUND**

The subject building was formerly occupied / used by the Donnybrook Junior Netball Association and the Donnybrook Ladies Hockey Club, with significant local fundraising required to originally establish (and subsequently maintain) the building. During development of the Pump Track, adjacent to the building, junior netball fixtures were permanently shifted to the indoor multi-purpose courts at the Recreation Centre and a new synthetic hockey training turf (i.e. not full size) was purpose-built at VC Mitchell Park. Clubhouse facilities for netball and hockey are presently being considered through the broader VC Mitchell Park project.

Various local community groups have expressed an interest in occupying the vacant building. Given the interest in the building, Shire staff recommend an open EOI process to identify potential tenants with operations/objectives that match the Shire's overall community vision. A 'commercial' outcome for the building is not envisaged; rather, a 'community' outcome.

## **FINANCIAL IMPLICATIONS**

Financial implications of an EOI process are minimal, with the only attributable costs be advertising and staff time.

## **POLICY COMPLIANCE**

There are no specific policies in relation to advertising an EOI. The Shire is presently developing a Property Management Framework, which will guide this sort of process into the future.

## **STATUTORY COMPLIANCE**

### ***Land Administration Act 1997***

The Shire is responsible for the care, control and management of certain property within the Shire's boundaries which have been reserved by the Minister for Lands under the *Land Administration Act 1997*.

The Shire manages this land in accordance with a Management Order made under Section 46 of the Act which may include a power to lease or licence the whole or a part of the land. Any proposal to lease or licence land may not proceed without prior written approval from the Minister.



### **Local Government Act 1995**

The Shire is bound by specific conditions under the *Local Government Act 1995* about the disposal of property. Section 3.58 of the Act provides that a local government can only dispose of property by public auction, public tender or by undertaking the local public notice procedure set out in section 3.58(3). In this context, disposing of property means to 'sell, lease or otherwise dispose of, whether absolutely or not' (does not include licensing).

### **Local Government (Functions and General) Regulations 1996**

*Regulation 30 - Dispositions of property excluded from Act s. 3.58*

*(1) A disposition that is described in this regulation as an exempt disposition is excluded from the application of section 3.58 of the Act.*

*(2) A disposition of land is an exempt disposition if —*

*(a) the land is disposed of to an owner of adjoining land (in this paragraph called the transferee) and —*

*(i) its market value is less than \$5 000; and*

*(ii) the local government does not consider that ownership of the land would be of significant benefit to anyone other than the transferee;*

*or*

*(b) the land is disposed of to a body, whether incorporated or not —*

*(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;*

Also, this EOI process is not an EOI for the purposes of Regulation 21 of the Local Government (Functions and General) Regulations 1996 (i.e. an EOI to restrict a tender field).

### **CONSULTATION**

Conversations including a Community Conversation Café in 2021 have been had with the following community groups in relation to this proposed EOI:

1. Friends with Disability
2. The Donnybrook Veteran Cars Club
3. Donnybrook District High School
4. Blackwood Youth Action Inc
5. Community Resource Centre (CRC)
6. Women's Leadership Group
7. Donnybrook Town Team

## 8. Food Pantry Initiative (CRC)

These groups have either expressed interest in the space or been strong advocates for the subject Building being utilised as a space for youth and/or other community groups.

Development of the Pump Track has displaced junior netball and ladies hockey associations from the existing clubhouse at Egan Park. Whilst a purpose-built synthetic turf training facility (with lighting) has been developed at VC Mitchell Park for the ladies hockey association, the club will likely still require a clubhouse. Staff are exploring the opportunity to resolve this as part of the broader VC Mitchell Park Project, and will continue consulting with the Donnybrook Ladies Hockey Club in more detail regarding this through the next design hold point for that project. One opportunity identified is for the shared use of the existing tennis club building (i.e. by tennis and hockey), however, this will need to be discussed with both the tennis and hockey associations before being investigated or progressed.

Resolving the lack of a clubhouse for Donnybrook netball and basketball associations has been the matter of review for Shire staff, including consultation with these sporting associations. In consultation with these groups a solution has been identified, through adapting existing space at the Recreation Centre. The Budget Review identifies an allocation of \$20K to adapt underutilised space at the Recreation Centre into a fit-for-purpose space for both netball and basketball.

### **OFFICER COMMENT / CONCLUSION**

Having community groups use the subject Building will bring many benefits to the community.

1. It is a resource that will be useful to various clubs and associations to use as a base for meetings. This may increase the activities the clubs can engage in. It may also increase club membership which has benefits pertaining to connection and wellbeing.
2. Donnybrook needs a welcoming space for youth. The building's proximity to the Pump Track and the Apple Fun Park makes it an appropriate choice for a youth space.
3. Having people in this building will ensure that it is kept maintained and will protect the asset.
4. Having this building populated will increase the safety of the surrounding area for people using the Pump Track facility.

The Shire has received complaints from community members concerned about the safety of the Pump Track area as there have been reported incidences of bullying. Subsequently the Shire is investigating the costs associated with obtaining CCTV for the area. Whilst this will address one aspect of safety, having a well populated building will likely reduce incidences of anti-social behaviour.

A youth space will help nurture the young people of Donnybrook. It has the potential to serve to reduce isolation, enhance wellbeing and improve the mental health outcomes for the young people of Donnybrook. It also has the potential to provide educational, leadership and vocational opportunity. If other groups share the space, it will create the potential for crossover projects, links between generations and the ongoing maintenance, vitality, and safety of the building and its surrounding environment.

### 9.2.5 COMPLIANCE AUDIT RETURN 2022

|                            |  |
|----------------------------|--|
| <b>Location</b>            | Shire of Donnybrook Balingup                       |
| <b>Applicant</b>           | Shire of Donnybrook Balingup                       |
| <b>File Reference</b>      | N/A  |
| <b>Author</b>              | Loren Clifford – Acting Manager Executive Services |
| <b>Responsible Manager</b> | Kim Dolzadelli - Director Corporate and Community  |
| <b>Attachments</b>         | 9.2.5(1) 2022 Compliance Audit Return              |
| <b>Voting Requirements</b> | Simple Majority                                    |

| Committee Recommendation  |
|---|
| <p><b>That:</b></p> <ol style="list-style-type: none"> <li><b>1. The 2022 Compliance Audit Return for the Shire of Donnybrook Balingup for the period 1 January 2022 to 31 December 2022 be adopted by Council (Commissioner).</b></li> <li><b>2. Notes that the Audit and Risk Management Committee has no recommendations to the Council (Commissioner) on this matter given the extensive information included in the Compliance Audit Return documentation attached.</b></li> </ol> |

### STRATEGIC ALIGNMENT

The following outcomes from the Council Plan relate to this proposal:

- Outcome 12 A well respected, professionally run organisation.
- Objective 12.1 Deliver effective and efficient operations and service provision.

### EXECUTIVE SUMMARY

A Local Government Compliance Audit Return (CAR) is required to be undertaken in accordance with the *Local Government (Audit) Regulations 1996*, Reg. 14(1).

The Audit was conducted by staff for the period 1 January to 31 December 2022, within the scope and in the format required by the Department of Local Government, Sport and Cultural Industries (DLGSCI).

After reviewing the audit findings, the 2022 CAR contains a positive compliance response of 93 out of the 94 compliance items (98.9%) with a non-compliance response for one item set out below.

| <b>Topic</b>           | <b>Item Number</b> | <b>Matter</b>   |
|------------------------|--------------------|---|
| Disclosure of Interest | 5                  | Was an annual return in the prescribed form lodged by all relevant persons by 31 August 2022? |

**Officer Comment:**

The following ‘relevant persons’ failed to return their Annual Return by 31 August 2022 after several reminders from the administration. These returns have now been received and acknowledged by the Chief Executive Officer.

| <b>Relevant Person</b> | <b>Return Received</b> |
|------------------------|------------------------|
| Cr Atherton            | 15 September 2022      |
| Cr Glover              | 24 September 2022      |
| Cr Gubler              | 19 September 2022      |
| Cr Massey              | 15 September 2022      |
| Cr Newman              | 15 September 2022      |
| Cr Smith               | 8 September 2022       |

**BACKGROUND**

The DLGSCI requires local governments to conduct an annual assessment of their compliance with key components of the *Local Government Act 1995* (the Act) and associated Regulations. The 2022 CAR is to be submitted to DLGSCI by 31 March 2023.

**FINANCIAL IMPLICATIONS**

Nil.

**POLICY COMPLIANCE**

Nil.

**STATUTORY COMPLIANCE**

Under Regulation 14 of the Local Government (Audit) Regulations 1996 the 2022 CAR is to be reviewed by Council’s Audit and Risk Management Committee and then report the findings to Council (Commissioner) for adoption.

The Audit and Risk Management Committee considered the 2022 CAR at its meeting 8 March 2023 and made the following resolution:

**COMMITTEE RESOLUTION**

***That the Audit and Risk Management Committee review the Compliance Audit Return for the Shire of Donnybrook Balingup for the period 1 January 2022 to 31 December 2022.***

**CARRIED 3/0**

## COMMITTEE RESOLUTION

***That the Audit and Risk Management Committee recommends to Council (the Commissioner) that:***

- 1. The 2022 Compliance Audit Return for the Shire of Donnybrook Balingup for the period 1 January 2022 to 31 December 2022 be adopted.***
- 2. Makes any recommendations to Council (the Commissioner) regarding the review as it considers appropriate.***

**CARRIED 3/0**

Following presentation to Council (Commissioner), a certified copy of the 2022 CAR, along with an extract of the minutes of the meeting at which the CAR was adopted by Council, and any additional information, is to be submitted to the DLGSCI by 31 March 2023.

## CONSULTATION

An internal review of the 94 compliance requirements were reviewed by seven key responsible officers.

## OFFICER COMMENT / CONCLUSION

The 2022 CAR contains 94 questions grouped in relation to various compliance areas.

The result of the 2022 CAR was a positive compliance response or not applicable response to 93 of those requirements and one negative response as set out below:

- Was an annual return in the prescribed form lodged by all relevant persons by 31 August 2022?** No, the following 'relevant persons' failed to return their Annual Return by 31 August 2022. These returns have now been received and acknowledged by the Chief Executive Officer.

| <b>Relevant Person</b> | <b>Return Received</b> |
|------------------------|------------------------|
| Cr Atherton            | 15 September 2022      |
| Cr Glover              | 24 September 2022      |
| Cr Gubler              | 19 September 2022      |
| Cr Massey              | 15 September 2022      |
| Cr Newman              | 15 September 2022      |
| Cr Smith               | 8 September 2022       |

*Local Government Regulations Amendment Regulations (No. 2) 2020* introduced changes to the *Local Government (Administration) Regulations 1996* to provide greater transparency and accountability by requiring local governments to publish on their

websites, a register of Primary and Annual Returns lodged by each Council Member, and the position of each employee pursuant to Regulation 29C(2)(d) & (e).

The Shire of Donnybrook Balingup has a register of Primary and Annual Returns published on its website and provides mandatory training to Council Members. The training provides an overview of the statutory environment relating to declarations of interest and clarifies, and the personal responsibilities of Council Members to comply with their obligations.

### 9.2.6 STATUTORY BUDGET REVIEW – 2022-23 ANNUAL BUDGET

|                            |   |
|----------------------------|---|
| <b>Location</b>            | Shire of Donnybrook Balingup                      |
| <b>Applicant</b>           | Shire of Donnybrook Balingup                      |
| <b>File Reference</b>      | FNC 10/4  |
| <b>Author</b>              | Kim Dolzadelli – Director Corporate and Community |
| <b>Responsible Manager</b> | Kim Dolzadelli – Director Corporate and Community |
| <b>Attachments</b>         | 9.2.6(1) Statutory Budget Review 2022-23          |
| <b>Voting Requirements</b> | Absolute Majority                                 |

| Recommendation  |
|---|
| <p><b>That Council (Commissioner) adopts the Budget Review 2022-23 as provided at Attachment 9.2.6(1), resulting in a projected surplus position of \$14,317 at 30 June 2023.</b></p> |

#### STRATEGIC ALIGNMENT

The following outcomes from the Corporate Business Plan relate to this proposal:

|           |        |   |
|-----------|--------|---|
| Outcome   | 11     | Strong, visionary leadership  |
| Objective | 11.1   | Provide strategically focused, open and accountable governance  |
| Action    | 11.1.1 | Provide an annual review of key informing strategies to the Integrated Planning and Reporting Framework to inform the Annual Budget |

#### EXECUTIVE SUMMARY

The budget review has been prepared to include information required by the *Local Government Act 1995*, *Local Government (Financial Management) Regulations 1996* and *Australian Accounting Standards*.

The attached Statutory Budget Review document (Attachment 9.2.6(1)) details all proposed amendments culminating in a balanced amended Budget position.

#### BACKGROUND

Council adopted its 2022-23 Municipal Budget at its Council Meeting held 24 August 2022. As required under legislation, the Budget Review is presented to Council for consideration.

#### FINANCIAL IMPLICATIONS

The 2022/23 Budget Review projects a surplus position of \$14,317 at year-end.

## **POLICY COMPLIANCE**

Nil applicable.

## **STATUTORY COMPLIANCE**

The following statute applies:

- *Local Government Act 1995 - Section 6.2 Municipal Budget.*
- *Local Government (Financial Management) Regulations 1996 - Regulation 33A.*

### ***Regulation 33A. Review of budget***

(1) *Between 1 January and 31 March in each financial year a local government is to carry out a review of its annual budget for that year.*

(2A) *The review of an annual budget for a financial year must —*

- a) consider the local government's financial performance in the period beginning on 1 July and ending no earlier than 31 December in that financial year; and*
- b) consider the local government's financial position as at the date of the review; and*
- c) review the outcomes for the end of that financial year that are forecast in the budget.*

(2) *Within 30 days after a review of the annual budget of a local government is carried out it is to be submitted to the council.*

(3) *A council is to consider a review submitted to it and is to determine\* whether or not to adopt the review, any parts of the review or any recommendations made in the review.*

*\*Absolute majority required.*

*Within 30 days after a council has made a determination, a copy of the review and determination is to be provided to the Department*

## **CONSULTATION**

Direct consultation has occurred with the Chief Executive Officer and other appropriate staff.

## **OFFICER COMMENT**

Key changes of note are as follows:

- The net improvement to Operations (excluding Capital Grants) is \$249K, principally due to anticipated increased Interest Earnings of \$172K and increased Operating Grant, Subsidies and Reimbursements of \$241K.



- Non-Operating Grants show a reduction of \$1.786M, however this is offset with the reduction in Capital works for Bridges of \$1.9M - Main Roads WA have advised that they will not be able to complete these works this year.
- There is a net reduction of Capital Expenditure of \$1.58M. Excluding the \$1.9M reduction in Bridge Works, this is a \$377K increase to capital works. Some of this has been offset with increased road grant funding and the balance managed via amendments to operations. Besides providing for additional road works, this will also provide for after-hours access to the Donnybrook Recreation Centre to users (primarily netball and basketball) and create dedicated wall space, lockable storage cupboards and lockable glass display shelves. Furthermore, it will allow for replacement of the sand filter systems and chemical dosing system in the pool plant room.
- There is also a reduction in transfer from Council Reserves of \$75,162.
- It is recommended that the Council (Commissioner) adopts the Budget Review 2022-23 as attached, resulting in a Budget surplus position of \$14,317.

### 9.3 CHIEF EXECUTIVE OFFICER

#### 9.3.1 VC MITCHELL PARK PROJECT - PROCUREMENT

|                            |   |
|----------------------------|---|
| <b>Location</b>            | Shire of Donnybrook Balingup  |
| <b>Applicant</b>           | Shire of Donnybrook Balingup  |
| <b>File Reference</b>      | PWF18T2   |
| <b>Author</b>              | Ross Marshall, Principal Project Manager  |
| <b>Responsible Officer</b> | Ben Rose, Chief Executive Officer   |
| <b>Attachments</b>         | 9.3.1(1) VC Mitchell Park Project - Schematic Design Report<br>9.3.1(2) RCH Consulting 'Peer Review' Proposal and Quote |
| <b>Voting Requirements</b> | Simple Majority   |

| Recommendation  |
|---|
| <p><b>That Council (Commissioner):</b></p> <ol style="list-style-type: none"> <li>1. Approves the completion of contractual Hold Point 1 for the VC Mitchell Park Project.</li> <li>2. Approves the commencement of contractual Hold Point 2 for the VC Mitchell Park Project.</li> <li>3. Notes the Shire procurement of RCH Consulting already undertaken, up to a maximum contract value of \$20,000 (GST incl.), via the 2022-23 Budget GL 141480 Consultancy / Contractors Projects, to: <ul style="list-style-type: none"> <li>• Review further opportunities to achieve best value for money, including where cost savings may be achieved.</li> <li>• Review opportunities to further refine the design to maximise the multi-purpose nature of the facility in line with the Master Plan, Financial Assistance Grant obligations and Stakeholder aspirations.</li> <li>• Develop a consultation / governance model to support improved stakeholder consultation and engagement.</li> <li>• Review opportunities to optimise the use of shared facilities.</li> </ul> </li> </ol> <p><b>Including services as follows:</b></p> <ul style="list-style-type: none"> <li>• Conduct a desktop review of the project to date, including advice on the Shire's ability to finance and manage the project.</li> <li>• Assist in finalising a business plan for the project.</li> <li>• Identify future opportunities to develop the multi-purpose, multi-user precinct.</li> </ul> |

## STRATEGIC ALIGNMENT

The following outcome from the Council Plan relate to this proposal:

|                  |       |  |
|------------------|-------|--|
| Outcome          | 2     | A safe and healthy community.  |
| Objective        | 2.1   | Improve access to facilities and services to support community health and wellbeing.                     |
| Priority Project | 2.1.2 | Implement the Donnybrook Community, Sporting, Recreation and Events Precinct (VC Mitchell Park) Project. |

## EXECUTIVE SUMMARY

In accordance with the VC Mitchell Park Contract with Perkins Builders (Contractor), the Contractual 'Hold Point 1 – Schematic Design' milestone has been completed, and the Council (Commissioner) is requested to consider progressing to Hold Point 2. In addition, Council (Commissioner) noting of a 'peer review' process for the project is requested.

## BACKGROUND

At its 16 November 2022 Special Meeting, Council approved a 'Design and Construct' contract with Perkins Builders, as follows:

*That Council:*

1. *Authorise the Chief Executive Officer to:
  - 1.1 *Execute the attached (Confidential) Contract documentation, including minor contract modifications required to reflect Building and Construction (Securities of Payment) Act 2021;*
  - 1.2 *Apply to the WA Treasury Corporation for a loan of up to \$2.9m for the VC Mitchell Park Project; and*
  - 1.3 *Execute the Project Financial Assistance Agreement with the State Government for \$5,750,000.**
2. *Request the Chief Executive Officer to secure project funding from the Donnybrook Football Club to the value of \$250,000.*
3. *Request the Chief Executive Officer to secure project funding from the WA Football Commission / Australian Football League to the value of \$120,000.*
4. *Request the Chief Executive Officer to secure the ongoing project management services of Shape Management for the duration of the design and construction phases acting in the capacity of Superintendent under the Contract.*
5. *Request the Chief Executive Officer to provide a project update to relevant stakeholders, including sporting clubs.*

6. *Re-affirm its support for the ‘Blended Management Model’ as recommended in the Anna Dixon Consulting report.*
7. *Thank Shire staff and engaged contractors/consultants for their diligent, robust and professional approach to the Project.*
8. *Release this resolution in the meeting Minutes.*

As part of the contract, three ‘Hold Points’ were included, as a mechanism to control project risk, as follows:

|                                 |  |
|---------------------------------|--|
| <b>\$481,451.00 (ex. GST)</b>   | <b>Hold Point 1:</b> Schematic Design  |
|                                 | <b>Hold Point 2:</b> Detailed Design   |
|                                 | <b>Hold Point 3:</b> Issued for Construction Documentation                                       |
| <b>\$8,032,314.40 (ex. GST)</b> | <b>Construction Phase:</b> Demolition and construction (with 12 months defects liability period) |

In accordance with the contract, at the completion of each Hold Point, the Shire (via Council / Commissioner) is required to formally consider completion of the that Hold Point, and authorisation to move to the next Hold Point, noting there is neither any obligation or financial commitment to proceed past the each Hold Point.

In addition, noting the commencement of a ‘project peer review’ process is recommended, to include:

- Review further opportunities to achieve best value for money, including where cost savings may be achieved.
- Review opportunities to further refine the design to maximise the multi-purpose nature of the facility in line with the Master Plan, Financial Assistance Grant obligations and Stakeholder aspirations.
- Develop a consultation / governance model to support improved stakeholder consultation and engagement.
- Review opportunities to optimise the use of shared facilities.

Including services as follows:

- Conduct a desktop review of the project to date, including advice on the Shire's ability to finance and manage the project.
- Assist in finalising a business plan for the project.
- Identify future opportunities to develop the multi-purpose, multi-user precinct.

## **FINANCIAL IMPLICATIONS**

The overall project budget is as follows:

| <b>TOTAL PROJECT BUDGET BREAKDOWN</b>  |                     |                           |
|--|---------------------|---------------------------|
| <b>Funding</b>   | <b>Total Budget</b> | <b>Actual expenditure</b> |
| Borrowings   | 2,900,000           | 0.00                      |
| Grants   | 6,000,000           | 250,000.00                |
| Reserve - Land Development Reserve   | 250,000             | 0.00                      |
| Council - Own Source (Over Budget)   | 0                   | 11,703.62                 |
| Land sale (Bridge Street lots x 2)<br>(As per previous Council Resolution) (Loan reduction co-contribution ) | 100,000             |                           |
| Hockey Pitch - Insurance Claim   | 41,229              | 28,310.63                 |
| Hockey Pitch - Trust Fund - Cash in Lieu of POS - Donnybrook (Mead St)                                       | 188,457             | 188,457.00                |
| Hockey Pitch - Trust Fund - Cash in Lieu of POS - Donnybrook (General)                                       | 20,314              | 20,314.00                 |
| <b>Sub-Total:</b>  | <b>9,500,000</b>    |                           |
| WAFC (female ablution fitout grant)  | 120,000             |                           |
| Donnybrook Football Club co-contribution   | 250,000             |                           |
|  | <b>9,870,000</b>    | <b>498,785</b>            |
| Total Remaining budget:  |                     | <b>9,371,215</b>          |

In accordance with Contract between the Shire and Perkins Builders, the following expenditure has been incurred/committed:

- Hold Point 1 – \$122,662 + GST – this amount has been claimed by the Contractor.
- Project Management / Superintendent fees for Shape Management have been realised for the month of February 2023 and will be incurred for March 2023 – (\$6,818.00 x 2) \$13,636 +GST.

Approval to progress the project to Hold Point 2, commits to the following additional costs:

Perkins Builders: \$268,540 +GST  
 Shape Management: \$13,636 +GST  
**Total: \$282,176 +GST**

The following table illustrates the Hold Point 1 budget overview:

| PERKINS CONTRACT BUDGET OVERVIEW                             |                        |
|--|------------------------|
| VC Mitchell Park Pricing Schedule - Rev B                    |                        |
| STAGE 1 - DESIGN PHASE                                       |                        |
| Professional Fees - SD to Hold Point 3 + Perkins Design Fees | \$ 481,451.00          |
| STAGE 2 - CONSTRUCTION PHASE                                 |                        |
| Construction Total   | \$ 8,032,314.40        |
| <b>TOTAL - PERKINS CONTRACT AWARD VALUE</b>                  | <b>\$ 8,513,765.40</b> |
| SHIRE PROJECT FUNDING ALLOCATIONS                            |                        |
| Additional Fees (Ongoing SD to PC - PM & QS Shire Managed)   | \$ 150,000.00          |
| Shire Contingency  | \$ 500,000.00          |
| Shire Provisional Sum (Fitout, Furniture, Av Hardware)       | \$ 200,000.00          |
| <b>TOTAL - FUNDING ALLOCATIONS</b>                           | <b>\$ 850,000.00</b>   |
| <b>TOTAL - PROJECT TOTAL VALUE</b>                           | <b>\$ 9,363,765.40</b> |

The Hold Point 1 Cost Plan has been assessed by Shire staff, and the Project Superintendent, as satisfactory for progressing to Hold Point 2.

The loan application for \$2.9M (dated 17 February 2023) has been lodged with WA Treasury Corporation and is presently being assessed.

On 10 March 2023, the approved Financial Assistance Agreement (dated 2 March 2023) for \$5.75M was provided from DLGSCI to the Shire.

The procured Project ‘peer review’ is estimated to cost \$20K, and is to be attributed to 2022-23 Budget GL 141480 Consultancy / Contractors Projects. This project cost will be absorbed by the Shire outside of the allocated project budget (i.e. in addition to the project budget).

**POLICY COMPLIANCE**

In relation to the Project ‘peer review’, Council Policy FIN/CP-4 Purchasing requires the Administration to seek three written quotes for costs between \$20K-\$40K. Quotes were sought from three suitably qualified consultants, with only one consultant (RCH Consulting) electing to submit a quote, as follows (in part):

### 1.3.2 Price Schedule

| No | Service Description   | Offer                                   | Price Offered (ex GST) | GST | Price Offered (inc GST) |
|----|---|---|------------------------|-----|-------------------------|
| 1  | Service as per Scope of Service included in this RFQ.   |   |                        |     |                         |
| 1. | Initial Stage- document review, meetings with Commissioner/ CEO/ Principal Project Officer/ Community Consultation/ report writing; 30 hours @ \$250 per hour<br><br><i>*rchconsulting turnover is below \$75,000 threshold and is not registered for GST</i> | \$7,500                                 | \$7,500*               |     |                         |
| 2  | Travel (as per State Government Schedule F Motor Vehicle Allowance)<br><br>Accommodation (State Government Schedule I)  | \$0.91 per km<br><br>\$208.55 per night |                        |     |                         |
| 3  | Second Stage- meetings and consultation as required. Hours to be documented and charged at hourly rate.<br><br>Travel and accommodation rates applicable.   | \$250 per hour                          |                        |     |                         |

### 1.3.3 Price Variation Mechanism

| No | Service Description  | Offer Unit                                     | Price Offered (ex GST) | GST | Price Offered (inc GST) |
|----|--|--|------------------------|-----|-------------------------|
| 1  | Hourly rates for additional Services as requested and accepted by the Principal in writing.<br><br><i>*rchconsulting turnover is below the \$75, 000 threshold and is not registered for GST</i>   | \$250 per hour                                 | \$250 per hour*        |     |                         |
| 2  | Travel & Accommodation Costs for attendance at Council Meetings in Donnybrook as requested and accepted by the Principal in writing.<br><br>Travel (as per State Government Schedule F Motor Vehicle Allowance)<br><br>Accommodation (State Government Schedule I) | \$0.91 per kilometre<br><br>\$208.55 per night |                        |     |                         |

RCH Consulting’s proposal (and credentials) have been reviewed by the Administration and determined as appropriate for the allocated tasks. Noting the ‘second’ stage of the contract is proposed at \$250/hr, the contract cost has been capped at \$20K.

### STATUTORY COMPLIANCE

There is no specific statutory compliance considerations outside of the contractual considerations with Perkins Builders and/or RCH Consulting.

Deliverables under the Hold Point 1 arrangements are outlined below:

| Item  | Completed | Superintendent's Comments  |
|---|-----------|--|
| <b>Schematic Design Report.</b>   | Yes       | CCN Schematic Design Report provides narrative regarding project information, design approach, context and character, critical issues and battery limits to project. The Schematic Design Report meets the objectives and requirements for Hold Point 1.   |
| <b>Site and code analysis.</b>  | Yes       | <p>The Schematic Design Report meets the objectives and requirements for Hold Point 1. Critical Issues identified being:</p> <ul style="list-style-type: none"> <li>• Lot alignment and power to be distributed to site via separate lots - Recreation Centre can have one supply with Pavilion 1, 2 and ovals being separate supply.</li> <li>• Confirmed that water pressure sufficient and that additional tanks and pumps are not required.</li> <li>• design considers requirements for DDA compliance in gaining access to all areas.</li> <li>• FESA [DFES] consulted regarding access for fire fighting.</li> </ul>  |
| <b>Schematic Design Documentation:</b>  |           |  |
| <ul style="list-style-type: none"> <li>• <b>Architectural</b></li> </ul>      | Yes       | CCN Schematic Design Report provided meets the requirements of the Contract and is consistent with Schematic Design on typical projects. Comments have been provided to Perkins regarding the Schedule of Accommodation which will be addressed during the Design Development phase however do not impact the conclusion of Schematic Design being minor in nature.  |
| <ul style="list-style-type: none"> <li>• <b>Structural / Civil</b></li> </ul> | Yes       | <p>Schematic Design Report and Drawings generally meet the requirements of the Contract and are consistent with Schematic Design deliverables on typical projects. Note the following items to be considered during the Design Development phase:</p> <ul style="list-style-type: none"> <li>• Safety In Design to be further developed.</li> <li>• Value Management opportunities provided to be investigated further during Design Development.</li> <li>• Drainage solution to be further developed during Design Development phase.</li> <li>• Value Management opportunity to remove operable wall structural steel to be confirmed during Design Development phase.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• <b>Mechanical</b></li> </ul>         | Yes       | <p>Schematic Design Report and Drawings generally meet the requirements of the Contract and are consistent with Schematic Design deliverables on typical projects. Note the following still to be considered:</p> <ul style="list-style-type: none"> <li>• Safety In Design to be further developed during Design Development phase.</li> <li>• Vent to kitchen through roof - investigating alternative being through horizontal facade and can be assessed during Design Development phase.</li> <li>• Mechanical solution to Function Room to be developed during Design Development phase and considering opportunity for architectural solution to ceilings.</li> <li>• Opportunities for passive solar / ventilation solutions to reduce use of mechanical exhaust and to be developed during Design Development phase.</li> </ul> |



|   |     |   |
|---|-----|---|
| <ul style="list-style-type: none"> <li><b>Electrical</b></li> </ul>                   | Yes | <p>Schematic Design Report and Drawings generally meet the requirements of the Contract and are consistent with Schematic Design deliverables on typical projects. Note the following still to be considered:</p> <ul style="list-style-type: none"> <li>Safety In Design to be further developed.</li> <li>Options for power supply solution presented with development during Design Development phase to confirm preferred.</li> </ul>   |
| <ul style="list-style-type: none"> <li><b>Hydraulic</b></li> </ul>                    | Yes | <p>Schematic Design Drawings generally meet the requirements of the Contract and are consistent with Schematic Design deliverables on typical projects. Note the following still to be considered:</p> <ul style="list-style-type: none"> <li>Safety In Design to be further developed.</li> </ul>  |
| <ul style="list-style-type: none"> <li><b>Site services Infrastructure</b></li> </ul> | Yes | <p>Part of Electrical and Hydraulic Schematic Design Reports and considered to be sufficiently documented to support Schematic Design.</p>  |
| <ul style="list-style-type: none"> <li><b>Other</b></li> </ul>                        | N/A |   |
| <b>Safety In Design Report / Design Reports</b>                                       | Yes | <p>Safety In Design provided as part of individual reports and to be developed further during Design Development phase consistent with typical design process.</p>  |
| <b>Cross reference to Functional Brief</b>  | Yes | <p>Provided a Schedule of Accommodation (SOA) which details room by room areas based on Functional Brief, MCG Architects Room Data Sheets, MCG Initial Design and then CCN Design. Design has been reviewed by sporting group stakeholders and commentary being the design is largely consistent with their requirements as documented in the Functional Brief. Commentary has been provided to Perkins regarding SOA however generally minor in nature and with final areas confirmed during the Design Development phase.</p> |
| <b>Revised Cost Plan</b>  | Yes | <p>Cost Estimate prepared by Perkins is consistent with Cost Estimates provided as part of the Perkins Contract and overall Project Budget. This takes into account opportunities for Value Management which will be developed and agreed during the Design Development phase.</p>  |
| <b>Value management opportunities</b>   | Yes | <p>Perkins, CCN and consultants provided opportunities for value engineering being a combination of scope reductions and design optimisation. Shire and Perkins to review during Design Development phase and continue design, cost plan and Value Engineering to agree final scope ahead of agreement on Lump Sum.</p>   |
| <b>Contractor advice on early works early procurement opportunities</b>               | N/A |   |
| <b>Project programme</b>  | Yes | <p>Programme remains consistent with original Contract Programme - no changes noted.</p>  |
| <b>Risk analysis</b>  | Yes | <p>Critical Issues and Risk identified as part of Schematic Design report with Risk Workshop scheduled during Design Development phase to continue assessment and mitigation process.</p>   |

## CONSULTATION

- Consultation with individual sports clubs (particularly tennis and football) has been continuing as part of the development process for the Schematic Design Report.
- Perkins Builders delivered a presentation to the Commissioner and key staff on 22 February 2023 regarding the draft Schematic Design Report.
- A comprehensive Project Community Information Package was uploaded to the Shire website (and promoted via social media) on 7 March 2023.
- The Schematic Design report was uploaded to the Shire website (and promoted via social media) on 9 March 2023.

## OFFICER COMMENT

The contract deliverables for Hold Point 1 have been reviewed by Shire staff, the Commissioner and the Project Superintendent. The Project Superintendent has advised that all deliverables for Hold Point 1 have been satisfactorily achieved, and that the project can proceed to Hold Point 2, upon formal resolution by the Council (Commissioner). Hold Point 2 will incur costs of \$282,176 (plus GST) to achieve the following deliverables:

- Detailed Design Report.
- Analysis of Nett Lettable Areas and Gross Floor Areas.
- Specific Detailed Design documentation with detailed requirements including:
  - Architectural (including finishes schedules and 3D renders as applicable)
  - Furniture, Fittings and Equipment Schedules and requirements for samples or selections to be approved.
  - Structural / Civil engineering.
  - Mechanical engineering.
  - Electrical / communications / security / dry fire engineering.
  - Hydraulics / wet fire engineering.
  - Vertical transport engineering.
  - Acoustics engineering.
  - BCA / DDA compliance.
  - Site services infrastructure including electrical, water, wastewater, drainage, fire and others.
  - Any others as required to inform Detailed Design.
- Update to Safety In Design Report.
- Cross reference to Functional Brief. This should highlight any non-conformances with Brief including mitigation rationale.
- Cost Plan – population / update of cost plan based on Detailed Design to ensure that design is in alignment with budget.
- Value Management opportunities.
- Contractor advice on early works / procurement opportunities.
- Project Programme.
- Risk analysis – to be facilitated by Shire representatives with input required from Contractor and appointed consultants.

Concurrent to the recommended commencement of Hold Point 2, a Project 'peer review' process is being undertaken, seeking to add value to the project across the elements of; scope, governance and stakeholder engagement. This consultant service has been procured at a contract value capped at \$20K.

### 9.3.2 PROPERTY MANAGEMENT FRAMEWORK

|                            |  |
|----------------------------|--|
| <b>Location</b>            | Shire of Donnybrook Balingup   |
| <b>Applicant</b>           | Shire of Donnybrook Balingup   |
| <b>File Reference</b>      | N/A  |
| <b>Author</b>              | Loren Clifford – Acting Manager Executive Services   |
| <b>Responsible Manager</b> | Ben Rose – Chief Executive Officer   |
| <b>Attachments</b>         | 9.3.2(1) Property Management Framework<br>9.3.2(2) DRAFT EXE/CP-11-Property Management Policy<br>9.3.2(3) DRAFT EXE/CP-1-Commercial Lease<br>9.3.2(4) Tenant Category Classification Flowchart<br>9.3.2(5) Subsidy Matrix based on Annual Health Check<br>9.3.2(6) Annual Community Group Health Check<br>9.3.2(7) Delegation 1.2.20 Disposing of Property<br>9.3.2(8) Property Lease Management Workshop<br>Consultation feedback<br>9.3.2(9) Occupancy Agreement Process Flowchart |
| <b>Voting Requirements</b> | Absolute Majority  |

| Executive Recommendation   |
|--|
| <p><b>That Council (Commissioner):</b></p> <ol style="list-style-type: none"> <li><b>1. Endorse the Draft Property Management Framework and Attachments for the purpose of further community consultation.</b></li> <li><b>2. Note that the Shire Administration will undertake further community consultation on the Draft Property Management Framework.</b></li> <li><b>3. Instruct the Chief Executive Officer to consider feedback from consultation and report recommended changes to Council (Commissioner) for consideration.</b></li> </ol> |

### STRATEGIC ALIGNMENT

The following outcomes from the Council Plan relate to this proposal:

|                  |        |  |
|------------------|--------|--|
| Outcome          | 13     | Increased community capacity.  |
| Objective        | 13.1   | Enable community organisations and community champions to deliver services and projects to meet local needs. |
| Priority Project | 13.1.1 | Fund community organisations through the Community Grants Funding Scheme.                                    |

### EXECUTIVE SUMMARY

To seek Council (Commissioner) endorsement of the Property Management Framework, (Attachment 9.3.2(1)), the overarching Property Management Policy (Attachment

9.3.2(2)), the amended Commercial Lease Policy (Attachment 9.3.2(3)) and the amended delegation 1.2.20 Disposing of Property, (Attachment 9.3.2(7)) to be presented to the community for consultation and feedback and to be reported back to Council (Commissioner) at the May 2023 Ordinary Council Meeting.

## BACKGROUND

The Shire currently has lease arrangements with a range of community organisations, sport and recreation clubs, government agencies and commercial entities. Commercial arrangements are dealt with under the Shire’s existing Policy EXE/CP-1-Commercial Leases.

There is presently no policy in place to provide guidance on its approach to dealing with the not-for-profit community organisations, sport and recreation clubs, government agencies and other ‘non commercial’ entities.

The Shire has experienced issues in managing its leases as there is no clarity on the terms of the lease arrangement, and potential variations of those terms based on the type of organisation, type of activity, or value to the community. This has led to historically inconsistent outcomes across the lease portfolio.

The Shire presently hosts 29 leases as follows:

| COMMERCIAL LEASES   |   | (COUNT 7) |
|---|---|-----------|
| Lessee  | Land  |           |
| Dental Corporation Pty Ltd (BUPA)                                 | Portion of Lot 20, 116A South Western Highway, Donnybrook WA 6239   |           |
| Donnybrook & Capel Districts Community Financial Services Limited | 70 (Lot 58) South Western Highway, Donnybrook   |           |
| Donnybrook Medical Centre   | 41 Bentley Street, Donnybrook WA - Lot 501 on Deposited Plan 72099 being the whole of the land comprised in Crown Title LR3025 Folio 517, being Reserve 52021         |           |
| Great Southern Care Company Pty Ltd (Hall & Prior)                | Lot 502 on Deposited Plan 72099, being the whole of the land in Certificate of Crown Land Title Volume LR3025 Folio 518 and known as 30 Allnutt Street, Donnybrook WA |           |
| Ruso Pty Ltd  | Reserve 37474 known as Lot 5343 on Deposited Plan 184608 Title LR3080 Folio 495   |           |
| Sonic Healthcare Limited  | Lot 501 on Deposited Plan 72099 being the whole of the land comprised in Crown Land Title LR3025 Folio 517, being Reserve 52021                                       |           |
| Windy Arbor Pty Ltd   | Lot 597 Collins Street, Donnybrook (Reserve 47814)  |           |

| <b>COMMUNITY GROUP LEASES</b>  |  | <b>(COUNT 14)</b> |
|--|--|-------------------|
| <b>Lessee</b>  | <b>Land</b>  |                   |
| Balingup Progress Association  | Portion of Lot 101 P001986, Brockman Street, Balingup WA 6253 [Arc Infrastructure Lease area 3006] |                   |
| Brookhampton Progress Association  | Reserve 48112 [Lot 399 Brookhampton Rd, Brookhampton]  |                   |
| Donnybrook Community Garden  | Portion of Lot 592 P36353, [Reserve 17521], Egan Park, Reserve Street, Donnybrook WA 6239          |                   |
| Donnybrook Community Resource Centre Inc   | Portion of Lot 598 South Western Highway, Donnybrook (DP38225)                                     |                   |
| Donnybrook Community Workshop (Mensheds) Inc   | Portion of Lot 13 Victory Lane, Donnybrook   |                   |
| Donnybrook Historical Society  | Lot 18 D69686, Emerald Street, Donnybrook  |                   |
| Donnybrook Play Centre Incorporated  | Portion of 10 (Lot 3) Allnutt Street, Donnybrook   |                   |
| Donnybrook Regional Tourism Association Inc.   | Portion of Lot 598 South Western Highway, Donnybrook (DP38225)                                     |                   |
| Kirup Hall Association   | Reserve 13539, South Western Highway, Kirup  |                   |
| Lions Club of Donnybrook   | Portion of 10 (Lot 3) Allnutt Street, Donnybrook   |                   |
| Newlands Hall Social Club Inc.   | Lot 359, South West Highway, Newlands WA 6251 [Reserve 21365]                                      |                   |
| Noggerup Hall Association  | Lot 49 & Lot 50, MacQuarie St, Noggerup WA 6225 (Portion of Reserve 18567)                         |                   |
| The Scout Association of Australia, Western Australian Branch (Donnybrook Scout Group) | Lot 20 DP56383 Bentley Street, Donnybrook WA 6239  |                   |
| Yabberup Community Association   | Lot 6 P223067 Chapman Street, Yabberup, WA 6239 (Reserve 2883)                                     |                   |
| <b>COMMUNITY SPORT AND RECREATION LEASES</b>   |  | <b>(COUNT 7)</b>  |
| <b>Lessee</b>  | <b>Land</b>  |                   |
| Balingup & Districts Sports Association  | Lot 100 on Diagram 75738, 21569 South Western Highway, Balingup                                    |                   |
| Balingup Golf Club   | Reserve No. 14719, Lots 13656 and Lot 13801  |                   |

|   |  |
|---|--|
| Donnybrook District Cricket Association | Portion of Reserve 17521, Lot 592 P36353, Reserve Street Donnybrook  |
| Donnybrook Football & Sporting Club     | Reserve No. 23890, Donnybrook  |
| Donnybrook Tennis Club                  | Portion of Reserve 23890, Lot 493 Steere Street, Donnybrook WA 6239  |
| The Donnybrook Country Club Inc.        | Reserve 22174, Lots 152P222389, 470P168394, 153P222389, 154P222389, 481P31524, 471P168394, 421P82212, 420P82212, 422P82212, 423O82212, 419P82212, 385P135061, 384P135061, 386P135061, 387P135061, 502P413621 and 500P54505 |
| Wellington Districts Pony Club          | Lot 3122 D12025 Frontino Road, Beelerup  |
| <b>GOVERNMENT AGENCY</b>                |  |
| <b>(COUNT 1)</b>                        |  |
| <b>Lessee</b>                           | <b>Land</b>  |
| South West Health Board                 | Portion of 10 [Lot 3 Diagram 14421] Allnut Street, Donnybrook  |

**FINANCIAL IMPLICATIONS**

Currently 2022/2023 Rents range from \$0.10 pa to \$3,529.90 pa (excludes commercial leases). Current commercial lease rental will not be affected.

Based on the 2022/2023 minimum GRV being \$1,421, rents will range from \$71.05pa (including the maximum 95% subsidy) up to \$1,421.00pa. These amounts are variable based on each groups annual subsidy awarded.

Council’s 2022/2023 budget includes an annual hall maintenance allowance of \$1,530 to the following community groups:

- Brookhampton Hall Association; and
- Kirup Hall Association; and
- Newlands Social Club; and
- Noggerup Hall Association; and
- Yabberup Community Association.

This hall maintenance allowance will no longer be given to these groups under the new framework.

An indicative quote for the professional fees to draft the standard lease templates is a on off payment of \$4,000.

**POLICY COMPLIANCE**

Draft EXE/CP-11-Property Management Framework  
 EXE/CP-1-Commercial Lease

## EXE/CP-8-Policy Framework

### **STATUTORY COMPLIANCE**

#### ***Land Administration Act 1997***

The Shire is responsible for the care, control and management of certain property within the Shire's boundaries which have been reserved by the Minister for Lands under the *Land Administration Act 1997*.

The Shire manages this land in accordance with a Management Order made under section 46 of the Act which may include a power to lease or licence the whole or a part of the land. Any proposal to lease or licence land may not proceed without prior written approval from the Minister. The Shire is also responsible for the care and control of roads dedicated under this Act.

#### ***Local Government Act 1995***

The Shire is bound by specific conditions under the *Local Government Act 1995* about the disposal of property. Section 3.58 of the Act provides that a local government can only dispose of property by public auction, public tender or by undertaking the local public notice procedure set out in section 3.58(3). In this context, disposing of property means to 'sell, lease or otherwise dispose of, whether absolutely or not' (does not include licensing).

However, there are a number of exemptions to these requirements set out in regulation 30 of the *Local Government (Functions & General) Regulations 1996*. These include:

- where property is to be disposed to not-for-profit charitable, benevolent, religious, cultural, educational, recreational, or sporting organisations; and
- if the property is to be leased for a period of less than two years and the lease does not give exclusive possession of the property.

Section 3.59 of the *Local Government Act 1995* outlines the procedure for acquiring and disposing of property greater than one million dollars in value, including the preparation of a Business Plan, issuing of a Public Notice and a period of consultation. In addition to acquisition and disposal, under Part 6 of the *Local Government Act 1995*, the Shire is able to charge a fee for the hiring of property. Fees and charges set by Council under the Act are adopted yearly as part of the *Annual Budget* process.

Section 2. 7(2)(b) of the *Local Government Act 1995* provides Council with the power to determine policies.

Section 5.42 of the *Local Government Act 1995* provides that a local government may delegate powers and duties to the Chief Executive Officer.

Section 3.58 of the *Local Government Act 1995* provides the power to dispose (lease) of property.

#### ***Local Government and Property Local Law 2015***

The Shire's *Local Government and Public Property Local Law 2015* was enacted under the *Local Government Act 1995*. This Local Law provides for the regulation, control and management of activities and facilities on Shire owned and managed property. The Local

Law also describes the conditions which relate to public usage of Shire property, including prohibitions on smoking, alcohol consumption, anti-social behaviour, refuse and firearms etc.

## **CONSULTATION**

To guide development of the draft Property Management Framework, four community consultation sessions were held, as detailed below:

| <b>Date</b>                        | <b>Location</b>                             | <b>Attendees</b> |
|------------------------------------|---|------------------|
| Monday, 10 October 2022, 9am-12pm  | Donnybrook Recreation Centre, Function Room | 14               |
| Tuesday, 11 October 2022, 9am-12pm | The olde Shed café, Balingup                | 4                |
| Monday, 17 October 2022, 5pm-7pm   | Council Chamber, Donnybrook                 | 13               |
| Tuesday, 18 October 2022, 5pm-7pm  | Balingup Town Hall, Balingup                | 7                |

The 38 attendees were from 31 different community groups. Feedback from these groups has been reviewed and considered and (where appropriate) incorporated into the draft Framework. See the attached Property Lease Management Workshop Consultation feedback notes (Attachment 9.3.2(8)).

## **OFFICER COMMENT / CONCLUSION**

After a review of the management of the Shire's lease arrangements, a revised and structured leasing and licensing framework (Framework) has been developed for Council (Commissioner) consideration. The Framework will ensure the Shire is meeting the demands and needs of the community, and the Framework will be supported by a policy containing the overarching objectives. The Framework provides a classification for leases and licences, along with an equitable methodology for calculating annual lease and licence fees.

The Shire's properties are leased or licenced to a range of community groups, sport and recreation clubs or associations, government agencies and commercial entities.

The Framework establishes general terms and conditions that the Shire will use as the basis for negotiating all leases and licences, along with a detailed Maintenance Responsibility Guide to ensure clarity for the tenants and the Administration. The Framework provides community groups and sporting clubs in categories One and Two with a Community Benefit Subsidy if they demonstrate their use of the property benefits the community.

## **POLICY**

Council Policy EXE/CP-11-Property Management (Attachment 9.3.2(1)) has been drafted to be the overarching document that outlines the primary objectives with regards to the management of Shire properties being used by external parties.



The policy upholds Council's commitment made at the Special Council Meeting held on 12 July 2021 to the Sporting groups associated with the Donnybrook Community, Sporting, Recreation and Events Precinct Project to not increase (except for CPI increments) fees for a period of five (5) years from practical completion. These associated groups are:

1. Donnybrook Football Club; and
2. Donnybrook Tennis Club; and
3. Donnybrook Men's Hockey Club; and
4. Donnybrook Ladies Hockey Club; and
5. Donnybrook Netball Club; and
6. Donnybrook Amateur Basketball Association.

Guidance has been provided around the Rental Subsidy offered to tenants, its methodology and implementation including a maximum subsidy threshold.

The policy requires that existing tenants move over to the new Framework to ensure consistency and equity between all leases, except for the existing Commercial leases this is due to the complexities surrounding each individual arrangement. Once the current agreement and all further terms have expired, they will be required to move under the new Framework.

The policy provides appropriate authorisations to the Administration to implement, oversee and report on the Framework.

The policy and Framework will be set for review in 2026, this will allow for time to ensure land administration compliance is met and transition tenants.

Council Policy EXE/CP-1-Commercial Lease has been amended to include a sunset clause to allow for all existing Commercial leases to be based on this policy until such time as the agreements expire, including any further terms as detailed in the lease. (Attachment 9.3.2(3))

## PROPERTY MANAGEMENT FRAMEWORK

### Classification of Tenant

Under this framework, all tenants of Shire properties will fall into one of four (4) categories. Tenants are classified using the Tenant Category Classification Flowchart as per (Attachment 9.3.2(4)).

The categories are:

- |                       |  |
|-----------------------|--|
| <b>Category One</b>   | Small Community Groups   |
| <b>Category Two</b>   | Sporting Clubs, Community Groups and Organisations                                       |
| <b>Category Three</b> | Commercial Entities, State and National Clubs, Associations, and Community Organisations |
| <b>Category Four</b>  | Government Agencies  |

The Tenant Category Classification Flowchart steps through questions about prospective tenants' individual organisational structure, which will determine their Tenant Classification.

#### Existing and Future Tenancy Arrangements

Existing tenants will be required to move over to the new Framework to ensure consistency and equity between all leases. Tenants will not be able to take advantage of the rent subsidy offered unless they are categorised under this Framework.

Existing Commercial leases are not required to change until such time as their agreements expire.

The process for each scenario has been mapped out to be included in the Operational Procedure to guide the Administration. See the Occupancy Agreement Process (Attachment 9.3.2(9)). Processes have been planned for the following scenarios:

- Existing Tenant, Existing Building, Existing Agreement (Transitioning)
- Existing Occupant, Existing Building, New Agreement
- New Tenant, Existing Building, New Agreement
- New Tenant, New Building, New Agreement

#### Annual Tenancy Fee Methodology

The Shire is committed to providing access to property for the benefit of the Donnybrook Balingup community. The Shire does not seek to derive profit from leases in categories one or two.

The annual fee methodology is based on the minimum Gross Rental Value (GRV) of the property. The Gross Rental Value, or GRV, represents the gross annual rental that a property might reasonably be expected to earn annually if it were rented, including rates, taxes, insurance and other outgoings.

Rent for category three and four tenants is negotiated by reference to a current Market Rental Valuation for the property.

A rent subsidy will be applied to category one or two tenants based on a community benefit matrix.

#### Community Benefit Subsidy Matrix

To make Shire properties accessible and readily available, subsidies will be made available to tenants within categories one and two.

#### Subsidy Formula

The Shire will credit a category one or two tenant with the appropriate percentage reduction based on the community benefit matrix. For community groups and clubs to be assessed for the community benefit subsidy, the tenant must provide the required documentation via the Annual Health Check.

#### Annual Community Group Health Check

The Annual Community Health Check has been designed to capture information from community groups and sporting clubs in categories one and two. Information such as

contact details, committee contacts, committee information, membership, and financial management.

This information will need to be supplied to the Shire on an annual basis to provide the most current data for the Administration to base its analysis against the Community Benefit Subsidy Matrix to derive the group's annual rental subsidy.

The Annual Health Check will be provided to the groups and must be completed and returned to the Shire, along with the required supporting information.

### Management Agreements

A management agreement is a contractual arrangement between the Shire and a tenant that will outline terms and conditions associated with usage. The terms and conditions will be negotiated between the two parties to suit the individual requirements surrounding the tenants intended use of the building/facility. As part of the Administrations internal review process each occupancy application will review the need for a Management Agreement. All Management Agreements will require a specific resolution of Council regardless of the building and proposed tenant.

### DELEGATION

Delegation 1.2.20 Disposing of Property (Attachment 9.3.2(7)) will allow the Chief Executive Officer to have delegated authority to dispose of property by private treaty only in accordance with section 3.58(3) and prior to the disposal, to consider any submissions received following the giving of public notice [s.3.58(3)]. The following relevant conditions will be placed on this delegation.

- a. In accordance with Council policies.
- b. Any disposals under this delegation are to be reported to Council quarterly.
- c. Disposal of land or building assets is limited to matters specified in the Annual Budget and in any other case, a Council resolution is required.
- d. The Chief Executive Officer is authorised to approve and execute any new lease and licence agreements, or variation, extension, assignment, or sub-lease in respect to a *Category One (1) – Small community groups* or *Category Two (2) - Sporting clubs, community groups and organisations* tenant, pursuant to the adopted Property Management Framework, where:
  - i. The community/sporting group or organisation is currently occupying a Shire building, or building on Shire owned or managed land; and
  - ii. The terms and conditions of any lease or licence agreement must be in accordance with the terms and conditions approved by Council as set out in the Property Management Framework.

Any new applications for *Category One (1) – Small community groups, or Category Two (2) - Sporting clubs, community groups and organisations*, not currently occupying a Shire building, or building on Shire owned or managed land, will require a specific resolution of Council.

The delegation does not extend to *Category Three (3) - Commercial entities, state and national clubs, associations, and community organisations*, or *Four (4) - Government agencies*, pursuant to the adopted Property Management Framework. Any leases or licences in accordance with *Category Three (3)* or *Four (4)* will require a specific resolution of Council.

- e. The Chief Executive Officer is authorised to approve and execute the renewal of Commercial leases in place between Council and third parties, where:
  - i. There is no significant change proposed to the terms and conditions of the lease/agreement; and
  - ii. The lease/agreement has provided for the further term within the document; and
  - iii. The lease has not been transitioned to the adopted Property Management Framework.

### IMPLEMENTATION

The commercial leases as listed below will remain outside the Framework until the last further term has expired, in accordance with Council Policy EXE/CP-1-Commercial Lease.

| <b>Lessee</b>   | <b>Property Address</b>   | <b>Expiry of last Further Term</b> |
|---|---|------------------------------------|
| Dental Corporation Pty Ltd (BUPA)                                 | Portion of Lot 20, 116A South Western Highway, Donnybrook WA 6239   | 31 May 2026                        |
| Donnybrook & Capel Districts Community Financial Services Limited | 70 (Lot 58) South Western Highway, Donnybrook   | 30 June 2023                       |
| Donnybrook Medical Centre   | 41 Bentley Street, Donnybrook WA - Lot 501 on Deposited Plan 72099 being the whole of the land comprised in Crown Title LR3025 Folio 517, being Reserve 52021         | 30 June 2026                       |
| Great Southern Care Company Pty Ltd (Hall & Prior)                | Lot 502 on Deposited Plan 72099, being the whole of the land in Certificate of Crown Land Title Volume LR3025 Folio 518 and known as 30 Allnutt Street, Donnybrook WA | 27 June 2042                       |
| Ruso Pty Ltd  | Reserve 37474 known as Lot 5343 on Deposited Plan 184608 Title LR3080 Folio 495   | 12 August 2024                     |
| Sonic Healthcare Limited  | Lot 501 on Deposited Plan 72099 being the whole of the land comprised in Crown Land Title LR3025 Folio 517, being Reserve 52021                                       | 30 September 2024                  |

|                     |   |             |
|---------------------|---|-------------|
| Windy Arbor Pty Ltd | Lot 597 Collins Street, Donnybrook<br>(Reserve 47814) | 7 June 2031 |
|---------------------|---|-------------|

A number of existing and newly identified leases are on land not owned, but managed by the Shire, such as Reserves and Rail Corridor. Administrative changes/approvals/licences are required prior to the Shire approving and executing any occupancy agreements. Due to the nature of these changes, the time it will take before these leases/licences can be approved is unknown.

This framework does not include residential lease agreements for Preston Retirement Village, Langley Villas and Minninup Cottages.

### FURTHER CONSULTATION

Now that a draft Framework and associated documents have been drafted, it is important that we seek feedback via consultation from the wider community, as well as present 'lessees'.

**9.3.3 POLICY AMENDMENT – EXE/CP-7-WORK HEALTH AND SAFETY**

|                              |   |
|------------------------------|---|
| <b>Location</b>              | Shire of Donnybrook Balingup  |
| <b>Applicant</b>             | Shire of Donnybrook Balingup  |
| <b>File Reference</b>        | ADM 11/4  |
| <b>Author</b>                | Loren Clifford, Acting Manager Executive Services   |
| <b>Responsible Manager</b>   | Loren Clifford, Acting Manager Executive Services   |
| <b>Attachments</b>           | 9.3.3(1) EXE/CP-7-Work Health and Safety<br>9.3.3(2) EXE/CP-7-Work Health and Safety with tracked changes |
| <b>Voting Requirements</b>   | Simple Majority   |
| <b>Conflicts of Interest</b> | N/A   |

| <b>Recommendation</b>   |
|---|
| <p><b>That Council (Commissioner) adopt the amended Council Policy <i>EXE/CP-7-Work Health and Safety</i> as per Attachment 9.3.3(1).</b></p> |

**STRATEGIC ALIGNMENT**

The following outcomes from the Council Plan relate to this proposal:

Outcome 11 Strong, visionary leadership.

Objective 11.1 Provide strategically focused, open and accountable governance.

**EXECUTIVE SUMMARY**

For Council (Commissioner) to consider and adopt the proposed changes to Council Policy EXE/CP-7-Work Health and Safety, as attached.

**BACKGROUND**

The initial adoption of the Occupational Safety and Health policy was in February 2014 and has been updated numerous times over the past nine years, to ensure its compliance with the *Occupational Safety and Health Act 1984* and subsidiary legislation.

The most recent change required the policy to be renumbered to align the policy with the newly adopted Policy Framework at the Special Council Meeting on 21 December 2021.

**FINANCIAL IMPLICATIONS**

Nil.

**POLICY COMPLIANCE**

EXE/CP-8-Policy Framework

Document Classification: Council Policy

Aligns with the guiding principles in the framework ensuring it's concise, clear, consistent and compliant.

Minor amendment means changes to language, style, formatting, etc. that do not impact on the application of the policy.

## **STATUTORY COMPLIANCE**

### *Local Government Act 1995*

Section 2.7(2)(b) of the Act prescribes one of the roles of Council as being to determine the local government's policies.

Section 5.41(c) of the Act prescribes that a function of the Chief Executive Officer is to cause Council's decisions to be implemented and this includes giving effect to Council's Policies.

### *Work Health and Safety Act 2020*

### *Work Health and Safety (General) Regulations 2022*

## **CONSULTATION**

Consultation with internal staff members and informing those mentioned in the Scope of the policy by publishing on the Shire's website.

## **OFFICER COMMENT / CONCLUSION**

The *Occupational Safety and Health Act 1984* (OSH Act) has been supported by other legislation around specific health and safety measures related to mines and petroleum. The *Work Health and Safety Act 2020* (WHS Act) replaces all of these and has brought all WA workplaces under the single *Work Health and Safety Act 2020*.

The new laws are generally based on the national model WHS Act and regulations used in other states and territories, except Victoria. This means a policy response is required due to the introduction of the *Work Health and Safety Act 2020*.

The most significant changes are new definitions to "workers" and "workplace", duties in the OSH Act were primarily based on the employer-employee relationship. There are now a greater variety of workplace relationships in the modern workplace that do not readily fall into traditional concepts of employment. The WHS Act introduces the 'person conducting a business or undertaking' (PCBU) as the person with the primary duty of care. The concept of PCBU is expected to cover a broader range of workplace relationships.

Another big change is the introduction of a penalty provision for industrial manslaughter (s. 30A). This forms one element of provisions in the WHS Act which are intended to focus workplace participants on their duties to eliminate hazards or minimise risks in the workplace.

It is intended that introducing industrial manslaughter provisions in the WHS Act will have a strong deterrence effect and completely confers with community expectations that every worker has the right to come home safely after a day at work.

The Government has introduced these provisions to ensure that deaths at the workplace, caused by the conduct of PCBUs and their officers, are met with substantial penalties, including imprisonment.



**9.3.4 COUNCIL PLAN - BIENNIAL PROGRESS REPORT: JULY 2022- MARCH 2023**

|                            |   |
|----------------------------|---|
| <b>Location</b>            | Shire of Donnybrook Balingup  |
| <b>Applicant</b>           | Not applicable  |
| <b>File Reference</b>      | CNL16   |
| <b>Author</b>              | Loren Clifford – Acting Manager Executive Services                          |
| <b>Responsible Manager</b> | Ben Rose – Chief Executive Officer  |
| <b>Attachments</b>         | 9.3.4(1) Council Plan 2022/2023 Biannual Update 1 July 2022 – 31 March 2023 |
| <b>Voting Requirements</b> | Simple Majority   |

| Recommendation  |
|---|
| <p><b>That Council (Commissioner):</b></p> <ol style="list-style-type: none"> <li><b>1. Receives the Council Plan 2022/2032 – Bi-annual Update (July 2022 – March 2023) as shown in Attachment 9.3.4(1).</b></li> <li><b>2. Instructs the Chief Executive Officer to publish the Council Plan Bi-annual Update on the Shire’s website.</b></li> </ol> |

**STRATEGIC ALIGNMENT**

The following outcome from the Council Plan relate to this proposal:

|            |      |   |
|------------|------|---|
| Outcome    | 11   | Strong, visionary leadership                                    |
| Objectives | 11.1 | Provide strategically focused, open and accountable governance. |

**EXECUTIVE SUMMARY**

Council adopted its Council Plan 2022-2032 on 25 May 2022 at its Ordinary Council Meeting. The Council Plan outlines the Shire’s operational and capital project priorities to meet the aspirations of the community as outlined in the Strategic Community Plan 2040.

It is best practice for the Administration to provide an update on the progress of these priority projects to Council and the community. Council chose for this to be completed on a bi-annual basis.

This bi-annual update outlines the progress made on each priority project between July 2022 and March 2023 for the 2022-23 financial year. Ordinarily, this update would be presented at the February Council Meeting each year, however, the Administration was addressing other organisational priorities during this period and this report is being presented in March. Council (Commissioner) is requested to receive the update as shown in Attachment 9.3.4(1), and to instruct the CEO to publish the update on the Shire’s website.

## **BACKGROUND**

Under the State Government Integrated Planning and Reporting Framework (the Framework), local governments in Western Australia must deliver reports such as Corporate Business Plans, Strategic Community Plans and Annual Reports. The aim of the Framework is to ensure local government's plan responsibly and sustainably, via a process of community consultation.

To understand local needs and priorities, the Shire of Donnybrook Balingup commissioned an independent review in 2019, where 441 community members completed a MARKYT® Community Scorecard. This feedback was used to inform the Shire's Strategic Community Plan.

In 2021, the Shire embraced elements of the FUTYR® approach to strategic planning. This is a community-led, integrated and streamlined approach designed specifically for local government. As part of this approach, the Shire's Strategic Community Plan and the Corporate Business Plan were merged into one plan known as the Council Plan. Merging the two plans is more efficient in staff time and Shire resources, and delivers a simpler, more easily understood Plan to the community. Additionally, upcoming local government reforms identify the need to 'merge' the Strategic Community Plan and the Corporate Business Plan and the Shire was keen to 'get ahead' of the upcoming reforms.

The Department of Local Government, Sport, and Cultural Industries (DLGSC) confirmed this is acceptable, provided the elements required by the *Local Government Act 1995* were included. Under the Framework, Corporate Business Plans undergo a statutory review each year and Strategic Community Plans every four years, with minor reviews every two years.

To make sure the new Plan stays relevant to community goals and aspirations it will have desk top reviews annually, with major reviews every four years in line with the Framework schedule.

At its Ordinary Meeting 25 May 2022, Council resolved:

*That Council:*

- 1. Acknowledges the renaming of the Corporate Business Plan to Council Plan.*
- 2. Adopts the reviewed Shire of Donnybrook Balingup Council Plan, as attached.*
- 3. Requests the Chief Executive Officer to reference objectives and/or priority project numbers from the Donnybrook Balingup Council Plan in Ordinary Council Meeting Agenda items, in order to clearly articulate the Strategic Alignment, focus of each agenda item.*
- 4. Instructs the Chief Executive Officer to undertake bi-annual reporting on the Council Plan to Council and the community.*

## **FINANCIAL IMPLICATIONS**

The actions and projects which are detailed in the Council Plan are aligned with the Shire's Annual Budget and Long Term Financial Plan.

Items flagged in this report as red (deferred) or yellow (monitor) will continue to be monitored and addressed through budget review processes and reporting.

## **POLICY COMPLIANCE**

Nil.

## **STATUTORY COMPLIANCE**

Section 5.56 (1) of the *Local Government Act 1995* requires local governments to have in place a “plan for the future”.

## **CONSULTATION**

External consultation is not required as part of the bi-annual update. Internally, the Executive Leadership Team, Business Unit Managers and Coordinators were consulted, and have provided feedback on the priority projects they have been assigned.

## **OFFICER COMMENT/CONCLUSION**

### KEY ASPECTS OF THE COUNCIL PLAN

The Shire’s Council Plan expresses the community’s vision for the future through five focus areas of; People, Planet, Place, Prosperity and Performance.

The Council Plan details the Current Situation, a list of services and facilities that the Shire will strive to continuously improve, and an overview of recent achievements relevant to each focus area.

To ensure that Council allocates resources to meet the current and changing community needs, overarching outcomes were developed for each focus area, then broken down into objectives with several priority projects. These projects have been prioritised over a 10-year period (2022 – 2032). Of the 165 priority projects, 57 have been allocated to 2022/2023.

### REPORTING REQUIREMENTS ON PLAN

Although not legislatively required, it is considered best practice for Council to receive updates on progress against the Council Plan.

At its Ordinary Council Meeting 25 May 2022 Council resolved that the Chief Executive Officer undertake bi-annual reporting on the Council Plan to Council and the community.

### BI-ANNUAL UPDATE

The Council Plan Update includes an update against the 57 projects and Milestones adopted by Council for 2022/2023.

Of the 57 priority projects adopted in the Council Plan 2022-2032, 8 have been Achieved, 42 are in progress, 2 Not started, but still to be delivered on time, 4 require monitoring and 1 has been marked for deferment.

**2022/2023 Projects / Milestones Status**



Details have below outlined below relating to the priority projects with a status of Monitor or Defer.

| Defer | Priority Project   | Officer Comment  |
|-------|--|--|
|       | 3.2.3 Partner with peak community organisations to provide triennial recovery coordination training. | Request deferral to 2023-24 due to staff vacancy and recovery response priority for January fires. |

| Monitor | Project/Milestone   | Officer Comment  |
|---------|---|--|
|         | 1.1.2 Develop a campaign to promote the Donnybrook Adventure Zone with the Pump Track, Skate Park and Apple Fun Park. | <ul style="list-style-type: none"> <li>• Researching funding availability for marketing/promotion.</li> <li>• Planning marketing campaign.</li> <li>• Planning Shire-wide marketing campaign using available platforms with stakeholders (Website, Facebook, Instagram, LinkedIn, Preston Press, local groups and businesses). Developing marketing concepts and workflows organisation wide, incorporating community engagement and economic growth wherever possible.</li> <li>• Contact made with a marketing agency to assist with audio-visual material.</li> <li>• Focusing on a main campaign that incorporates the Adventure Zone alongside other aspects that can improve tourism. Guidelines have been drafted to narrow the criteria and plan.</li> </ul> |
|         | 1.3.1 Review the Disability Access and Inclusion Plan.  | <ul style="list-style-type: none"> <li>• A sub-committee was formed after the conversation cafe, called Friends with Disability. This group will be one of the stakeholder groups consulted for the DAIP.</li> <li>• Meetings with the Balingup Progress Association have highlighted key accessibility issues in Balingup. This will form part of the DAIP. Initial research has been conducted and a draft commenced.</li> </ul>   |

|  |  |   |
|--|--|---|
|  |  | <ul style="list-style-type: none"> <li>• Relevant stakeholders have been identified and contacted for consultation. Consultation will be held to identify key themes for the DAIP.</li> <li>• Joined the South West Regional Access and Inclusion network to inform the DAIP process.</li> </ul>      |
|  | <p>4.2.2 Provide energy efficient lighting across the Shire, in line with the Shire’s Cities Power Partnership pledge.</p>   | <ul style="list-style-type: none"> <li>• Quotes sought for lighting options.</li> <li>• Review priorities with CEO. Consider mid-year budget allocation. Seek quotes in accordance with priorities and procure if feasible.</li> <li>• Grant application opportunities to be investigated.</li> </ul> |
|  | <p>10.1.3 Support the local backpacker industry (possibly through the Donnybrook Balingup Chamber of Commerce and Industry) to host events and community BBQs to attract, engage with, and retain backpackers.</p> | <ul style="list-style-type: none"> <li>• Met with a number of backpackers lodges - establishing and working through a list of issues raised by the industry prior to commencing any initiatives.</li> </ul>   |

Full details of the progress for the period 1 July 2022 to 31 March 2023 for each priority project can be found in Attachment 9.3.4(1).

**10 ELECTED MEMBER MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

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

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In accordance with Section 5.4 of the Shire of Donnybrook Meeting Procedures Local Law, in cases of extreme urgency or other special circumstances, matters may, on a motion by the Presiding Member that is carried by the meeting, be raised without notice and decided by the meeting. ‘Cases of extreme urgency or other special circumstances’ means matters that have arisen after the preparation of the agenda that are considered by the Presiding Member to be of such importance and urgency that they are unable to be dealt with administratively by the local government and must be considered and dealt with by the Council before the next meeting.

**Recommendation**

**That Council (Commissioner) agrees to receive item 11.1 Donnybrook Community Sporting, Recreation and Events Precinct (VC Mitchell Park) Project – Loan Application Approval as new business of an urgent nature.**

**11.1 DONNYBROOK COMMUNITY SPORTING, RECREATION AND EVENTS  
PRECINCT (VC MITCHELL PARK) PROJECT - LOAN APPLICATION  
APPROVAL**

|                            |   |
|----------------------------|---|
| <b>Location</b>            | Shire of Donnybrook Balingup                            |
| <b>Applicant</b>           | Not applicable  |
| <b>File Reference</b>      | FNC 06  |
| <b>Author</b>              | Loren Clifford – Acting Manager Executive Services      |
| <b>Responsible Manager</b> | Kim Dolzadelli – Acting Chief Executive Officer         |
| <b>Attachments</b>         | 11.1(1) WA Treasury Corporation Advice of Loan Approval |
| <b>Voting Requirements</b> | Simple Majority   |

| Recommendation  |
|---|
| <p><b>That Council (Commissioner):</b></p> <ol style="list-style-type: none"> <li><b>1. Receives the Western Australian Treasury Corporation’s (WATC) loan approval for the amount of \$2,900,000, to be utilised as part of the Shire’s contribution to the Donnybrook Community, Sporting, Recreation and Events Precinct Project (VC Mitchell Park), and</b></li> <li><b>2. Note that the approval will lapse upon the expiry of the 3 months period (from 15 March 2023) and the Shire of Donnybrook Balingup will be required to reapply for lending.</b></li> </ol> |

**STRATEGIC ALIGNMENT**

The following outcome from the Council Plan relate to this proposal:

- |            |     |  |
|------------|-----|--|
| Outcome    | 2   | A safe and healthy community.  |
| Objectives | 2.1 | Improve access to facilities and services to support community health and wellbeing. |

**EXECUTIVE SUMMARY**

A formal Loan application was submitted on 17 February 2023 to the Western Australian Treasury Corporation (WATC) for \$2,900,000, to be utilised as part of the Shire’s contribution to the Donnybrook Community, Sporting, Recreation and Events Precinct Project (VC Mitchell Park).

Formal approval of the Loan was received on 15 March 2023.

**BACKGROUND**

Since January 2021, 3 formal loan applications have been submitted to the WATC with respect to the Donnybrook Community, Sporting, Recreation and Events Precinct Project (VC Mitchell Park).

The first application was lodged on 15 January 2021 for the amount of \$2,500,000 with actual funding requested to be available in April 2022. WATC responded to this application stating that as the funding was not required until April 2022 the application could not be progressed.

The second application was lodged on 9 December 2021 for the amount of \$2,500,000 and written approval was issued by WATC that same day.

The third application was lodged on 17 February 2023 for the amount of \$2,900,000 and written approval was issued by WATC 15 March 2023.

The following provides a more detailed summary of the timeline of events in respect to this.

| <b>Date</b>       | <b>Summary</b>  |
|-------------------|---|
| 15 January 2021   | The Shire sent an email request to the Western Australian Treasury Corporation (WATC) for a \$2,500,000 Loan with a 20-year term to be funded in be April 2022.   |
| 25 January 2021   | A response was received informing the Shire that because the funding was not required until April 2022 that a Loan Application would not be progressed.   |
| 28 September 2021 | An email request was sent to the WATC for a loan Interest rate schedule for a \$2,500,000 loan with a 20-year term.   |
| 28 September 2021 | The WATC email the Shire an indicative loan and guarantee fee schedule.   |
| 20 October 2021   | An email request was sent to the WATC requesting a Local Government Borrowing Kit.  |
| 20 October 2021   | WATC emailed the borrowing kit and offered to draft an application on their behalf, however the following information would be required: <ul style="list-style-type: none"> <li>• Adopted Budget 2021/2022,</li> <li>• Audited annual report 2020-21 (Draft or unaudited annual report 2020-21 if not available),</li> <li>• Latest monthly financials (August or Sept 2021),</li> <li>• Loan amount,</li> <li>• Loan term; and</li> <li>• Loan Purpose.</li> </ul> |
| 26 October 2021   | The Shire accepted the offer to have an application drafted based on the following: the loan amount be for \$2.5m, to be taken over a 20-year period. The purpose of the loan be to Co-fund a \$9m redevelopment of the Shire’s VC Mitchell Park precinct to provide a Multi-Purpose Clubroom and Function Centre.  |
| 1 November 2021   | WATC emailed the draft application to be reviewed and signed, the application was based on the adopted Budget 2021-22, the draft Annual Report 2020-21 and August 2021 monthly financials. The WATC   |



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|                  | <p>advised it would progress the application over to their risk office for assessment.</p>  |
| 1 November 2021  | <p>WATC emailed the Shire with a new copy of the loan application as they had referenced the wrong Annual Report and Budget on the previously provided draft loan application.</p>  |
| 11 November 2021 | <p>The Shire received an email notifying them that the loan had been approved based on the following:</p> <ul style="list-style-type: none"> <li>• Loan amount: \$2,500,000</li> <li>• Loan term: 20 years</li> <li>• Loan Purpose: VC Michelle Park Project</li> </ul> <p>Further requesting the signed loan application, a firm quote date, a funding date and a loan number when ready to proceed with the loan.</p>   |
| 24 November 2021 | <p>At the Ordinary Council Meeting held on 24 November 2021 Council resolved the following:</p> <p>That Council:</p> <ol style="list-style-type: none"> <li>1. Receive the Draft Loan Application for the amount of \$2,500,000, as attached.</li> <li>2. Request the Chief Executive Officer to formally lodge the application, as attached, with WA Treasury Corporation.</li> <li>3. Direct the Chief Executive Officer not to proceed with entering into a Loan Agreement with WA Treasury Corporation until such time that broader discussion and final approval of the Council is given with respect to the Donnybrook Community Sporting, Recreation and Events Precinct (VC Mitchell Park) Project.</li> </ol> <p>CARRIED 5/3</p> |
| 9 December 2021  | <p>The signed loan application including, the minutes of the Council meeting held 24 November 2021 was sent to the WATC.</p>  |
| 9 December 2021  | <p>The Shire received an email reply from the WATC stating that when the Shire was ready to proceed it would need to provide a firm quote date (the day WATC sets the interest rate. The Shire would have approximately an hour to return the signed quote to WATC), the Funding date and the loan number.</p> <p>Their email outlined that the Shire had up to the 11 February 2022 to receive a firm quote. Once the 11 February 2022 had passed the Shire would need to reapply for the loan and WATC would complete a new credit assessment based on the latest financial information at that time.</p>   |
| 23 February 2022 | <p>Council resolved to adopt the 2021/2022 Annual Budget Review which included the loan amount of \$2,500,000 for the VC Mitchell Park project.</p>   |

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| 11 March 2022    | <p>The Shire requested a new approval from the WATC to reflect the current borrowing rates, due to the expiry of the previous approved loan application. The Shire requested 2 quotes for:</p> <ol style="list-style-type: none"> <li>1. Loan amount is \$2.5m to be taken over a 20-year period, and</li> <li>2. Loan amount is \$3m to be taken over a 20-year period.</li> </ol> <p>These two quotes were requested to provide Council with another option for discussion.</p> |
| 11 March 2022    | The WATC provided the Indicative quotes and guarantee fees.   |
| 21 March 2022    | The Shire emailed the WATC to request a new quotation for a \$2,500,000 loan amount over a term of 20-years and requested it be progressed to their assessment/approvals Teams.   |
| 23 March 2022    | A draft application was received from the WATC for the reviewing and signing. The application was drafted based on the Shires audited Annual Report, adopted Budget and January 2022 Financials. The request was for \$2.5m over 20-years.  |
| 12 April 2022    | WATC emailed the Shire following up on the draft applications sent for review.  |
| 24 August 2022   | At the Ordinary Council Meeting held on 24 August 2022 Council resolved to adopt the loan funding for the VC Mitchell Park project for \$3,000,000 into the 22/23 Statutory budget.   |
| 16 November 2022 | At the Special Meeting of Council held on 16 November 2022 Council resolved to authorise the CEO to apply to WATC for a loan up to \$2.9m for the VC Mitchell Park Project.   |
| 17 February 2023 | A revised application form signed by the Chief Executive Officer was sent to the WATC as per Councils resolution on 16 November 2022. The revised application included further information with respect to Cash and Cash Equivalents reduction from 2021/22 to Budgeted 2022/23, lease liabilities, and a copy of the Financial Assistance Agreement for the \$6m Grant Funding.  |
| 15 March 2023    | The Shire received an official loan approval notification for the \$2,900,000 VC Mitchell Park project loan. The email requests the Shire now provides a firm quote date, funding date (funding date can be any day after the firm quote date) and loan number.   |

**FINANCIAL IMPLICATIONS**

Nil.

**POLICY COMPLIANCE**

Nil.

**STATUTORY COMPLIANCE**

Nil.

**CONSULTATION**

Nil.

**OFFICER COMMENT/CONCLUSION**

A formal Loan application was submitted on 17 February 2023 to WATC.

Formal approval from WATC for \$2,900,000, to be utilised as part of the Shire's contribution to the Donnybrook Community, Sporting, Recreation and Events Precinct Project (VC Mitchell Park) was received on 15 March 2023.

It should be noted the approval will lapse upon the expiry of the 3 months period (from 15 March 2023) and the Shire of Donnybrook-Balingup will be required to reapply for lending.

## **12 MEETINGS CLOSED TO THE PUBLIC**

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### ***12.1 MATTERS FOR WHICH THE MEETING MAY BE CLOSED***

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#### **12.1.1 RFT 03-2223 – COLLINS STREET ROAD AND PATH UPGRADE**

This report is confidential in accordance with Section 5.23 (2) (c) of the Local Government Act 1995, which permits the meeting to be closed to the public.

*(c) a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting.*

### ***12.2 PUBLIC READING OF RESOLUTIONS THAT MAY BE MADE PUBLIC***

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## **13 CLOSURE**

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The Commissioner to advise that the next Ordinary Council Meeting will be held on 24 May 2023 commencing at 5.00pm in the Shire of Donnybrook Balingup Council Chamber.