



NOTICE OF ORDINARY MEETING OF COUNCIL

To be held on

Wednesday 23 November 2022

Commencing at 5.00pm

Balingup Hall, Balingup

Ben Rose
Chief Executive Officer

18 November 2022

Disclaimer

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

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SHIRE OF DONNYBROOK BALINGUP
NOTICE OF ORDINARY COUNCIL MEETING

To be held at the Balingup Hall
Wednesday, 23 November 2022 at 5.00pm

1 DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

Shire President – Acknowledgment of Country

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

The Shire President to declare the meeting open and welcome the public gallery.

The Shire President to advice that the meeting is being live streamed and recorded in accordance with Council Policy EM/CP-2. The Shire President 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.”

2 ATTENDANCE

MEMBERS PRESENT

COUNCILLORS	STAFF
Cr Leanne Wringe (President)	Ben Rose – Chief Executive Officer
Cr Lisa Glover (Deputy President)	Steve Potter – Director Operations
Cr Shane Atherton	Kim Dolzadelli – Director Corporate and Community
Cr Peter Gubler	Archana Arun – Admin. Officer Executive Services
Cr Phil Jones	
Cr Jackie Massey	
Cr Fred Mills	
Cr Chaz Newman	
Cr Chris Smith	

PUBLIC GALLERY

2.1 APOLOGIES

2.2 APPROVED LEAVE OF ABSENCE

2.3 APPLICATION FOR A LEAVE OF ABSENCE

3 ANNOUNCEMENTS FROM PRESIDING MEMBER

To be provided.

4 DECLARATION OF INTEREST

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.

Cr Massey has declared a Proximity Interest in item 9.1.1 South West Native Title Settlement – Shire advice to the Department of Planning, Lands and Heritage – Land List 939.

5 PUBLIC QUESTION TIME

5.1 RESPONSES TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Question: Mr Simon McInnes

Is there a lease fee for the Goods Shed (Park Café) payable this year?

CEO Response

Yes.

Question: Mr Shane Sercombe

How many views did last month's OCM live stream get on YouTube?

CEO Response

The livestream peaked at 26 viewers.

5.2 PUBLIC QUESTION TIME

6 PRESENTATIONS

6.1 PETITIONS

6.2 PRESENTATIONS

6.3 DEPUTATIONS

Ms Trow – President, Balingup Progress Association

7 CONFIRMATION OF MINUTES

7.1 ORDINARY MEETING OF COUNCIL – 26 OCTOBER 2022

Minutes of the Ordinary Meeting of Council held 26 October 2022 are attached (attachment 7.1(1)).

EXECUTIVE RECOMMENDATION

That the Minutes from the Ordinary Meeting of Council held 26 October 2022 be confirmed as a true and accurate record.

8 REPORTS OF COMMITTEES

8.1 BUSHFIRE ADVISORY COMMITTEE MEETING

Minutes of the Bushfire Advisory Committee Meeting held 10 November 2022 are attached (attachment 8.1(1)).

EXECUTIVE RECOMMENDATION

That Council receive and endorse the minutes of the Bushfire Advisory Committee, inclusive of any recommendations contained therein.

9 REPORTS OF OFFICERS

9.1 DIRECTOR OPERATIONS

9.1.1 SOUTH WEST NATIVE TITLE SETTLEMENT – SHIRE ADVICE TO THE DEPARTMENT OF PLANNING, LANDS AND HERITAGE – LAND LIST 939

Location	Shire of Donnybrook Balingup
Applicant	Department of Planning, Lands & Heritage
File Reference	DEP 61C
Author	Kira Strange, Principal Planner
Responsible Officer	Steve Potter, Director Operations
Attachments	9.1.1(1) – Location Map Land List 939 9.1.1(2) – Officer Response to DPLH Land List 939
Voting Requirements	Simple majority

Recommendation
<p>That Council:</p> <ol style="list-style-type: none"> 1. Acknowledges the officer response with regard to Land List 939 provided to the Department of Planning, Lands and Heritage as per Attachment 9.1.1(2); 2. With regard to Land List 939, advises the Department of Planning, Lands and Heritage that: <ol style="list-style-type: none"> 2.1 Council acknowledges and supports the endeavours of the Department of Planning, Lands and Heritage (DPLH) and the Noongar people in progressing the South West Native Title Settlement; 2.2 Council has no comment to make on private land tenure matters between the Crown and the Noongar People as part of the South West Native Title Settlement, however recommends that the DPLH ensure such arrangements and/or agreements are consistent with the parameters of the local Statutory and Strategic planning frameworks; 2.3 The Shire is reviewing the Local Planning Strategy and Local Planning Scheme which may or may not impact the Strategic and/or Statutory frameworks applicable to any subject land parcels. 3. Notes that there are likely to be a number of similar referrals made to the Shire in the future for Crown land subject to the SWNTS process. 4. Authorises the Chief Executive Officer to directly respond to all future SWNTS referrals received from the DPLH consistent with this resolution, without the requirement for individual referrals to be brought to Council

for consideration, subject to the details of such responses being reported to Councillors on a quarterly basis.

STRATEGIC ALIGNMENT

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

Outcome 1 A diverse and growing population

Objective 1.4 Encourage recognition and respect for all cultures

EXECUTIVE SUMMARY

Council has received correspondence from the Department of Planning, Lands and Heritage (DPLH) seeking information and comment on the potential allocation of four parcels of Crown land (List 939) located in the Balingup townsite to the Noongar People as part of the South West Native Title Settlement (SWNTS). Depending on future decisions by the State, the proposed parcels may form part of the Noongar Land Estate (NLE), held by the Noongar Boodja Trust (NBT), as part of the South West Native Title Settlement.

Council has thus far received three of these requests over the past two years, each involving different land parcels from throughout the Shire.

Due to time constraints based on the response timeframes imposed by the DPLH, Shire officers have already provided an officer level response to the current referral for Land List 939 (as per Attachment 9.1.1(2)) containing land and planning information only.

Since receiving the referral for List 939, the Shire has received an additional three Land List requests (139, 944 and 938) and staff have been advised the Shire will continue to receive more for the duration of the SWNTS proceedings (which may take several years). In order to meet the requests of the DPLH in an efficient and timely manner, it is recommended that Council authorises the CEO to provide a standard response in line with the officer recommendation the subject of this report (which also reflects previous Council decisions on the matter).

BACKGROUND

The SWNTS is the largest and most comprehensive agreement to settle Aboriginal interests over land in Australia. The SWNTS area, involving six Noongar Native Title Agreement Groups, is illustrated below.



Figure 1 – Map of the South West Native Title Settlement Area and the six Noongar Native Title Agreement Groups that form the six Indigenous Land Use Agreements (ILUAs).

The State of Western Australia has committed to allocating up to 300,000 hectares of land allocated as reserve or leasehold and 20,000 hectares of land allocated as freehold for cultural or economic development use within the SWNTS area.

The land will form part of the Noongar Land Estate (NLE) which will be held by the Noongar Boodja Trust (NBT). The Trustee must manage the land in accordance with the Trust Deed of each of the six Indigenous Land Use Agreements (ILUAs) which were registered at the Native Title Tribunal on 17 October 2018. The registration of the ILUAs occurred on 27 January 2021 and the SWNTS formally commenced on 25 February 2021.

As part of the SWNTS process, the DPLH is responsible for undertaking the identification and assessment process for potential land parcels within the boundaries of the SWNTS area. Part of the assessment process includes referral of land parcels to the relevant agencies, including Local Government, for comment. The DPLH has provided the Shire with a list of parcels which are likely to be considered as the settlement progresses over the next few years.

Council have previously considered several requests of this nature, including most recently, Land List 356, where at the Ordinary Meeting held 22 September 2021 it was resolved:

“That Council:

- 1. Advises the Department of Planning, Lands and Heritage (DPLH) that the Shire has no comment to make on private land tenure matters between the Crown and the Noongar People as part of the South West Native Title Settlement, however recommends that the DPLH ensure such arrangements and/or agreements are consistent with the parameters of the local Statutory and Strategic planning frameworks.*

2. *Provides responses as per Attachment 9.1.1(1) in response to the queries presented by the Department of Planning, Lands and Heritage.*
3. *Advises the Department of Planning, Lands and Heritage that the Shire may review the Local Planning Strategy and Local Planning Scheme in the near future which may or may not impact the Strategic and/or Statutory frameworks of the subject land parcel.*
4. *Request that, prior to resolving a decision on this matter, consultation is undertaken with the neighbouring landowner of Lot 62 who is understood to utilise the land for grazing purposes.”*

Similarly, at the Ordinary Meeting held 28 April 2021, Land List 1244 was considered and it was resolved:

“That Council:

1. *Acknowledges and supports the formal commencement of the South West Native Title Settlement including the transfer of land deemed appropriate by the DPLH and as agreed by the Noongar People.*
2. *Advises the DPLH that the Shire has no comment to make on private land tenure matters between the Crown and the Noongar People as part of the South West Native Title Settlement, however recommends that the Department of Planning, Lands and Heritage ensure any arrangements and/or agreements are consistent with the parameters of the local Statutory and Strategic frameworks.*
3. *Provides responses as per Attachment 9.1.1(1) in response to the queries presented by the Department of Planning, Lands and Heritage.*
4. *Advises the Department of Planning, Lands and Heritage that the Shire may review the Local Planning Strategy and/or Local Planning Scheme in the near future which may or may not impact the Strategic and/or Statutory frameworks of the subject land parcels.”*

Current Proposal

The Shire received a request for information regarding four lots (Attachment 9.1.1(1)) that include:

1. Lot 49 (45) Steere Street, Balingup
2. Lot 50 (41) Steere Street, Balingup
3. Lot 51 (37) Steere Street, Balingup
4. Lot 138 Roberts Street, Balingup (Reserve 20545)



Figure 2 and 3 – Extract of Attachment 9.1.1(1) showing Lot 49 - 51 Steere St and Lot 138 Roberts St, Balingup.

Shire officers requested an extension to the timeframe set by the DPLH in order to bring a report to Council for consideration, however, staff were advised that the information was required prior to the October OCM, which meant an interim response was necessary.

As such, officers provided a response to the DPLH with statutory information only as it related to each parcel, however specifically stipulated that it did not in any way represent the position of Council regarding the extent of its support for the transfer of land as this would require a Council resolution.

In summary, the four lots have been proposed as “Reserves with the Power to Lease”. The proposed ‘purpose’ indicated on the management order that will apply to the land is “Noongar, social, cultural and economic benefit”, which is consistent with all other proposed reserves under the SWNTS process. A full copy of the officer response is provided in Attachment 9.1.1(2) however, a summary of the information is as follows:

	Lot 49	Lot 50	Lot 51	Lot 138
Plan No.	DP222062	DP222062	DP222062	DP222062
Size	5,957m ²	4,397m ²	4,503m ²	1,820m ²
LPS7 Zoning	Local Reserve – Parks and Recreation	Residential R10	Residential R10	Residential R10
Other	Densely vegetated and wholly within a designated bushfire prone area			Approx. half the lot is densely vegetated

In addition, the DPLH posed the following questions relating to each parcel of land:

1. *Is the Shire supportive of the transfer of this land to the Noongar People under the Settlement?*
2. *Does the Shire have any interest in the land?*

3. *Does the Shire have existing or planned infrastructure within the land parcel that requires protection? If yes, please provide details and advise if access to this infrastructure will need to be maintained.*
4. *Is the land parcel subject to any mandatory connection to services?*
5. *Are any future proposals for the land identified? Please provide detail of what is proposed and in what timeframe?*
6. *Are there any future proposals for adjoining land that may affect the land identified in the spreadsheet? If so, in what timeframe?*
7. *Please advise of any proposed planning scheme amendments that may affect the zoning of this land at a State or Local government level. If a scheme amendment is to occur, what is the change proposed and when will it come into effect?*
8. *Please advise of any known land management issues such as site contamination, hazards, debris or rubbish dumping, unauthorised land use and environmental considerations (such as inundation or similar site constraints).*
9. *Please provide any additional comments on the proposed transfer of this land as part of the Settlement.*

With the exception of Question 1, responses to each of the questions were able to be provided at officer level as they relate to factual information relevant to the land as per Attachment 9.1.1(2). However, as Question 1 relates to the position of the Shire on the proposed land transfers, it is considered appropriate to seek a Council resolution on this question.

FINANCIAL IMPLICATIONS

Nil.

POLICY COMPLIANCE

Nil.

STATUTORY COMPLIANCE

Nil.

CONSULTATION

The DPLH assessment process includes referral of land parcels to a range of relevant agencies, including Local Government, for comment.

As the transfer of land ownership / tenure is considered a private matter between the parties involved and is a process that is not normally subject to external comment, it is not considered appropriate to undertake further consultation by the Shire.

OFFICER COMMENT

The referrals from DPLH under the SWNTS process have thus far comprised of two parts:

1. Request for factual property-related information regarding land use and development potential (local Statutory and Strategic frameworks, land interests, possible site constraints, future development, zoning, bushfire status, etc.); and;
2. Request as to whether Council supports the proposed transfer of land (land tenure) as part of the SWNTS.

Council is responsible for the local Statutory and Strategic frameworks that control and guide the way in which land parcels are used and developed within the Shire (i.e. Point 1 above). Land ownership, management and/or leasing arrangements (i.e. land tenure as per Point 2) holds minimal bearing on the way in which the land is permitted or not permitted to be used or developed under the local Statutory and Strategic framework. All land use and development within the Shire is subject to the same Statutory and Strategic framework, regardless of the party (private or public) who is responsible for and/or who owns the land (i.e. land tenure).

Officers therefore consider that proposed transfer of land is a private land tenure matter between the owner (the Crown) and the beneficiary (Noongar people). In saying this, it is recommended that the DPLH consider whether proposed land tenure arrangements and/or agreements will be consistent with the local Statutory and Strategic framework as provided to avoid any future potential land use and/or development conflict.

CONCLUSION

The Shire will continue to receive requests from the DPLH regarding parcels of land within the Shire for the duration of the negotiations of the SWNTS. When a request of this nature is received, officers conduct an internal referral to other departments including Works and Services; Environmental Health; and Governance.

In this regard, since receiving the referral the subject of this report, the Shire has received three further requests from the DPLH for additional parcels of land that are currently being reviewed by officers as follows:

- Land List 139 (2 lots - Mullalyup);
- Land List 944 (10 lots - Noggerup);
- Land List 938 (18 lots - Mullalyup).

In order to meet the response timeframes set by the DPLH and noting that Council's response has been consistent for the previous three referrals, it is recommended that Council authorises the CEO to respond to any future referrals of this nature (including for

Land Lists 139, 944 and 938) by providing advice regarding the Statutory and Strategic frameworks relevant to the subject land and responding to the question concerning the Shire's support in the following manner:

- Council acknowledges and supports the endeavours of the Department of Planning, Lands and Heritage (DPLH) and the Noongar people in progressing the SWNTS;
- Council has no comment to make on private land tenure matters between the Crown and the Noongar People as part of the South West Native Title Settlement, however recommends that the DPLH ensure such arrangements and/or agreements are consistent with the parameters of the local Statutory and Strategic planning frameworks;
- The Shire is reviewing the Local Planning Strategy and Local Planning Scheme which may or may not impact the Strategic and/or Statutory frameworks applicable to any subject land parcels.

Such a response reflects the Council's position (as per previous Council resolutions) that proposals of this nature represent a private land tenure arrangement between the owner (the Crown) and the beneficiary (the Noongar people).

9.1.2 SHIRE OF DONNYBROOK BALINGUP - WASTE COLLECTION CONTRACTS

Location	Shire of Donnybrook Balingup
Applicant	Shire of Donnybrook Balingup
File Reference	HLT 08/1
Author	Steve Potter, Director Operations
Responsible Manager	Steve Potter, Director Operations
Attachments	Nil
Voting Requirements	Simple Majority

Executive Recommendation
<p>That Council:</p> <ol style="list-style-type: none"> 1. Acknowledges the Shire’s participation to collectively undertake the procurement process with other local governments from the South West Regional Waste Group (SWRWG) for the renewal of waste collection contracts from 1 July 2023; 2. Acknowledges the appointment of Talis Consultants by the SWRWG to coordinate the collective procurement process in conjunction with the participating local governments. 3. Acknowledges the timeline outlined in this report for undertaking the procurement process for waste collection services; 4. Notes that a further report will be brought back to Council at the conclusion of the tender evaluation process for Council’s further consideration and the awarding of contracts.

STRATEGIC ALIGNMENT

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

Outcome	5	A sustainable, low-waste, circular economy.
Objectives:	5.1	Reduce waste generation
	5.2	Increase material recovery and recycling
	5.3	Reduce landfill
Priority Project	5.3.2	Collaborate with neighbouring councils to review regional waste options to reduce landfill (such as waste to energy facilities).

EXECUTIVE SUMMARY

At the Ordinary Council Meeting of 25 May 2022, Council resolved to commit funds in the 2022/23 Budget to engage a waste management consultant to provide support to the Shire in reviewing its existing waste contracts and preparing tender documents, noting that a number are due to expire on 30 June 2023.

Whilst at the time of preparing the May report and Annual Budget, Shire staff were of the understanding that this would be undertaken individually at the local level, there has been an increased level of collaboration at a regional level over recent months in this regard. This is due to there being a number of other local governments who are in a similar position to the Shire of Donnybrook Balingup with expiring kerbside collection contracts and therefore it represented an opportunity to work together as a collective.

The purpose of this report is to provide Council with an update of progress made in this regard and outline the intended path ahead for the waste collection contract renewal process over the coming months.

BACKGROUND

The Shire of Donnybrook Balingup has a number of individual waste management contracts which cumulatively fulfill the Shire's responsibilities for providing waste services to the community. A number of these contracts are due to expire on 30 June 2023. Of relevance to this report are the following contracts involving the collection / processing of household waste:

Kerbside Collection of Waste – Municipal / Recycling / FOGO

<u>Contractor:</u>	Cleanaway
<u>Commencement date:</u>	1 July 2018
<u>Expiry Date:</u>	30 June 2023

Processing of Recycling

<u>Contractor:</u>	SUEZ
<u>Commencement date:</u>	1 July 2013
<u>Expiry Date:</u>	30 June 2023

Supply and Maintenance of Bins for Kerbside Collection

<u>Contractor:</u>	Cleanaway
<u>Commencement date:</u>	1 July 2018
<u>Expiry Date:</u>	30 June 2023

Provision of Bins for Balingup Waste Transfer Station

<u>Contractor:</u>	Cleanaway
<u>Commencement date:</u>	1 July 2021
<u>Expiry Date:</u>	30 June 2023* (includes 2 x 2-year options)

In September 2022, the SW Regional Waste Group (SWRWG), comprising of CEOs from local governments across the south-west, met to discuss whether there may be an opportunity to work as a collective in procuring new waste collection contracts due for expiry on 30 June 2023.

This resulted in the formation of a working group consisting of senior operational staff who have met on a regular basis in the interim to determine the viability of achieving a collaborative outcome. The findings of the working group were presented back to the CEO group in October 2022, who were ultimately supportive of a collaborative approach.

A commitment was sought from potential local governments with the following CEOs agreeing to their local governments participating:

- City of Bunbury
- Shire of Harvey
- Shire of Capel
- Shire of Bridgetown Greenbushes
- Shire of Nannup
- Shire of Collie
- Shire of Donnybrook Balingup

It was determined that to meet strict contractual deadlines and handle the level of complexity arising from the involvement of a number of local governments, it would require the services of a suitably qualified waste consultant with expertise and experience in procurement and development of waste contracts to coordinate the process.

The working group established a scope of works which was used to seek quotes from suitably qualified consultants with the key deliverables summarised as follows:

1. Review the structure of the waste services required individually and collectively of participating local governments by:
 - 1.1 Engaging with participating Councils to understand their current circumstances, waste management arrangements, and expectations in entering into a new contract;
 - 1.2 Conducting a SWOT Analysis on current regional waste contracts to identify the key successes within those contracts which should be retained in any new contract;

- 1.3 Identifying significant changes within the disposal element of waste management over the past 10 years since the previous contract was executed;
- 1.4 Quantifying the current service delivery metrics for each of the Councils, including:
 - Annual tonnage by waste stream
 - Number of bins by type and size
 - Frequency of collections
 - Kilometres travelled (if relevant)
 - Disposal locations (preferred / alternative)
 - Other potential improvements
 - Variations to standard delivery
2. Make recommendations to the SWRWG CEOs as to the preferred model of collective waste service delivery including (but not limited to) preferred approaches to collection and disposal, pricing structure, frequency of collection (based on waste stream), length of contract and providing flexibility to enable other councils to join at a later stage;
3. Subject to endorsement of the SWRWG, formulate the tender scope and relevant documentation, including:
 - 3.1. Seeking consistency within the pricing structure and methodology, such as:
 - Per lift Rate
 - Rate per Kilometre
 - Lump Sum
 - 3.2. Standardising the terminology and specifications of the contractual arrangements;
 - 3.3. Identifying opportunities for efficiency and future innovations through new and emerging technologies, alternative waste disposal locations and collection optimization;
 - 3.4. Addressing the management of Household Hazardous Waste streams and items that are challenging to process such as mattresses and other specified hazardous waste;
 - 3.5. Identifying and allowing for emerging waste disposal requirements such as solar panels;
 - 3.6. Assessing the individual requirements and best practice methods for Bulk Waste Collection (Hard Waste, E-Waste and Green Waste);
4. Conduct the tender process through to evaluation stage with consideration for opt-in (committed) Council volumes and potential for additional or future volumes from uncommitted Councils;

5. Assist the SWRWG with contract negotiations with tenderers as required up to the point of contract execution.

A number of consultants were approached, with Talis Consultants ultimately being identified as the most suitable, due to their significant local government experience in waste services procurement. The CEOs of the seven participating LGAs have endorsed the appointment of Talis Consulting to undertake the works which has recently commenced.

The following represents a timeline of the key milestones involved in the process over the coming months:

Indicative Date	Stage
Oct 2022	Appointment of Consultant
Oct-Dec 2022	Review of existing contracts
Dec 2022 – Jan 2023	Tender documentation finalised
Jan-Feb 2023	Tender advertised
Mar-Apr 2023	Evaluation of tender and presentation to individual Councils
Apr-Jun 2023	Award and execution of contracts

This is further broken down as follows:

Stage 1: Existing Contract Review

- Project Inception Meeting
- Desktop Review
 - Waste Service Contracts
 - Waste tonnage and any audit data reports
 - Waste collection schedules and registers
 - Draft Waste Plans
 - Relevant Council Minutes
 - Any other relevant documentation supplied by each LGA
- Regional Procurement Workshop with participating LGAs

Stage 2: Tender Pack Documentation

- Draft Tender Pack and Contract Document
- Key Clauses
- Pricing Elements
- Rise and Fall Clause

- Key Performance Indicators
- Draft tender Pack Workshop
- Finalisation of Tender Pack

Stage 3: Tender Evaluation Process

- Tender Administration
- Evaluation Methodology Workshop
- Review of Submissions
- Tender Evaluation Workshops
- Evaluation Report

FINANCIAL IMPLICATIONS

The participating local governments all previously contributed to the appointment of a Regional Waste Officer (based out of the City of Busselton) who was engaged to explore regional waste solutions. However, in early 2022 the officer, who had been employed for several years, vacated the position and after several rounds of advertising proving unsuccessful in identifying a suitable replacement, it was determined by the SWRWG to not proceed with the position. It was collectively agreed by the SWRWG that it was appropriate for the funds allocated for this position to be re-directed to appointing the consultant overseeing the waste collection procurement process.

It is noted that contributions under the arrangement are based on the relative size of participating LGAs and therefore the larger LGAs will contribute more than the smaller ones as outlined in the following table:

Local Government	Contribution	% of total contribution
Bridgetown - Greenbushes	\$ 11,399.50	8%
Bunbury	\$ 37,427.99	36%
Capel	\$ 17,757.11	14%
Collie	\$ 12,794.27	9%
Donnybrook - Balingup	\$ 11,556.45	8%
Harvey	\$ 24,922.68	21%
Nannup	\$ 8,922.98	5%
TOTAL	\$124,781.00	100%

With regard to the source of the Shire's contribution, the 2022/23 Annual Budget allocates \$4,602 for 'Regional Waste Management', with an additional \$40,000 allocated for 'Waste Strategic Planning' which incorporated the appointment of a consultant by the Shire to locally undertake much of the work that will now be undertaken by the regionally appointed consultant. It is noted that it was originally estimated that the appointment of a consultant directly by the Shire would cost in the region of \$20,000-\$30,000 and therefore the revised contribution amount is considered to represent excellent value.

As a result of the Shire's regional waste allocation being re-directed to this project, it will require the Shire to only 'top up' an additional \$6,954 of the 'Waste Strategic Planning' funds to meet the Shire's overall contribution. Whilst there are other initiatives identified for the 'Waste Strategic Planning' funds in this financial year, including the commencement of a Shire Waste Strategy, the Shire's participation at a regional level may result in additional funds being available to complete more of the Strategy in this financial year and/or alternatively require a lower contribution in the next financial year.

Due to the time that has transpired since the expiring contracts were originally entered into, it is anticipated that contract costs may increase significantly when re-tendered, however it is hoped that this can be reduced as much as possible by being part of the regional approach.

POLICY COMPLIANCE

Nil.

STATUTORY COMPLIANCE

Waste management is governed by a range of legislation with two of the most significant being the *Waste Avoidance and Resource Recovery Act 2007* and the *Environmental Protection Act 1986*.

The Chief Executive Officer has delegated authority (Delegation 1.2.14 – *Tenders for Goods and Services*) to establish tender criteria and call tenders.

CONSULTATION

Due to the complexity of dealing with multiple local governments and the existing time constraints to achieve the contract deadlines, there is limited opportunity to undertake community consultation at this time within any of the participating local government areas. It is therefore anticipated that the procurement process will be based on the continuing delivery of existing services for each of the local government areas consistent with previous Council decisions and allocation of resources in each municipality.

With regard to the Shire's existing waste collection regime including frequency of collections and service areas, a review of the Shire records indicates that extensive community consultation was undertaken at the time of Council making such decisions to introduce new services such as FOGO. At that time there were a range of views expressed, including a number of residents who objected, however Council made decisions that resulted in significant investment by the Shire in purchasing receptacles for the various waste streams (over \$200,000 was spent on introducing the organics collection system).

The existing system has been in operation for a number of years and whilst not all residents may agree with every aspect of it, it is now considered to be largely accepted by the community and the Shire receives very little negative feedback.

Further, it is important to note some of the outcomes of such Council decisions and a good example of this is the organics (FOGO) waste which was introduced at the commencement of the 2015/16 financial year and therefore has been in operation now for over seven years. Based on the 2021/22 financial year 780 tonnes of organic waste was re-directed from going into the Shire's landfill and was otherwise processed and recycled. This represents over 33% of all of the Shire's waste, which, if combined with the other recyclables (16.25%) means that nearly 50% of the Shire's waste is being diverted from landfill. Based on the 2021/22 figures, it is estimated that a total of over 5,000 tonnes of FOGO waste alone has been diverted since the program was introduced.

As the Shire's landfill is significantly constrained, this means that the current waste collection system effectively doubles the life of the landfill when compared to not having recycling / FOGO services. As disposal costs are likely to soar for the Shire and its ratepayers when the landfill's capacity is reached, largely due to waste needing to be transported to alternative sites, the existing collection services are considered critical to extend the life of the pit for as long as possible which is reflected in the Landfill Closure Management Plan as adopted by Council.

It is also noted under the State Government's Waste Strategy that targets have been set for material recovery of 70% of all waste by 2025 and 75% by 2030. The State Government is increasing pressure on local governments to assist in achieving such targets by mandating that all LGAs in the Perth and Peel regions offer a three-bin service by 2025.

One of the primary goals of the development of the Shire's Local Waste Strategy will therefore be to identify measures to further increase the level of material recovery currently sitting at about 50%, which will involve community input to identify ways and means to reduce waste at a community level and a strong education / communication campaign.

OFFICER COMMENT / CONCLUSION

The regional approach as outlined in this report is considered to be an attractive option for the Shire for two main reasons:

- The upfront costs of engaging a consultant are shared between local governments and based on the cost apportionment model being used means that the Shire is contributing only 8% of the overall cost. The extent of works being undertaken by the consultant under the shared contract is considered over and above what the Shire would have been able to afford locally and therefore this represents very good value for money from the Shire's perspective. The Shire was envisaging spending \$20,000 - \$30,000 on this process, however such an amount was likely to have resulted in a reduced scope to what is now being achieved.
- The resulting contract prices are likely to be more favourable than what the Shire would be able to access if operating independently. This is because the cost of delivering services to more densely populated areas is cheaper per household than rural areas (including rural townsites) as there are greater distances to be travelled by waste vehicles and lower populations. The collective approach

therefore largely favours the smaller local governments who are in effect partially subsidised by the larger local governments.

In addition to the above, there are a range of benefits to be gained from approaching waste collection at a regional level, some of which are outlined below:

Competitive Pricing

When all participating LGAs' services are presented simultaneously, it typically creates greater demand than any one LGA presenting individually. This in turn makes these services more attractive to the market and creates a more competitive pricing environment.

Standardised Service and Communications

Coordination of services and communications can assist with maintaining consistency across the region. This is especially beneficial in the event of residents moving between neighbouring LGAs and can result in cost savings across the region.

Regional Problem Solving

The regional tender provides a summary of all waste service specification requirements across the region. This process can facilitate a lessons-learned between participating Shire members which can assist resolving issues across the region.

Investment in the Region

Presenting the market with waste services across a region incentivises investment in the region. This can result in tenderers developing new waste service depots and recycling infrastructure within regions.

Future Proofing of Waste Service Contracts

While the simultaneous development of specifications has long term benefits to all involved, the regional tendering process can be used to request pricing for a range of additional services that LGAs may wish to obtain in the future, typically in the form of Discretionary Services.

As these are long term contracts, the LGA can lose competitive advantage if they need to tender additional or new services during the term. Discretionary prices allow participating LGAs to obtain competitive market rates for such services which can form the basis of discussions with the contractor in the future if these services are to be brought on. These rates can also assist with the development of business cases for future services.

Improved Environmental Outcomes

While consistent waste education across a region is likely to result in improved use of the recycling and waste services, there is also environment benefits in the form of vehicle emissions. The engagement of a single contractor throughout the region would likely result in more efficient vehicle use compared to multiple operators.

Shared Tendering Costs

By conducting a regional tendering process, each LGA avoids the need to undertake its own tendering process in isolation. By coordinating the tendering process, each Shire can share the costs borne through the tendering process and reduce the time frame spent conducting evaluations.

Contractual Arrangements

There is a common misconception that this regional tendering process results in a regional contractual agreement amongst the various LGAs. The result is typically one in which each participating LGA of the tender finishes with own standalone waste service contract with its preferred tenderer.

In light of the above, it is recommended that Council acknowledges and supports the regional approach to renewing the Shire's waste contracts from 1 July 2023 in accordance with the officer recommendation and as outlined in this report.

9.2 DIRECTOR CORPORATE AND COMMUNITY

9.2.1 ACCOUNTS FOR PAYMENT

The Schedule of Accounts Paid under Delegation (No 3.1) is presented for public information (attachment 9.2.1(1)).

9.2.2 MONTHLY FINANCIAL REPORT – OCTOBER 2022

The Monthly Financial Report for October 2022 is attached (*attachment 9.2.2(1)*).

EXECUTIVE RECOMMENDATION

That the monthly financial report for the period ended October 2022 be received.

9.3 CHIEF EXECUTIVE OFFICER

9.3.1 H.J. (JACK) DENNING FUNDS – TUIA LODGE

Location	Shire of Donnybrook Balingup
Applicant	Shire of Donnybrook Balingup
File Reference	CSV 01/2
Author	Ben Rose, Chief Executive Officer
Responsible Officer	Ben Rose, Chief Executive Officer
Attachments	Nil
Voting Requirements	Simple Majority

Recommendation
<p>That Council:</p> <ol style="list-style-type: none"> 1. Authorise the Chief Executive Officer to engage Jackson McDonald Solicitors to prepare a Trust Deed to enable the transfer of remaining H.J. (Jack) Denning funds to an appropriate Charitable Trust (with associated costs deductible from the Denning funds). 2. Authorise the transfer of \$203,686.21 (minus Trust Deed costs) to the abovementioned Charitable Trust. 3. Request related amendments to the Annual Budget to be recognised via the 2022-23 Budget Review.

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

It is recommended to engage Jackson McDonald Solicitors to facilitate transfer of funds from the previous Jack Denning Trust – Tuia Lodge to a Charitable Trust comprising of previous signatories to the Jack Denning Trust.

BACKGROUND

In January 2016, funds from the Jack Denning Trust for Tuia Lodge were passed from the Trust signatories to the Shire. The Shire has held the funds since 2016, with \$203,686.21 (includes accrued interest) now held.

With the previous Trustees passing the funds from the Trust to the Shire (in 2016), the Shire is not bound by the terms of the previous Trust instrument; that is, the Shire could use the funds for any purpose it sees fit. However, in good faith, the Shire has not allocated the funds for any purpose, and has ensured the funds are accruing interest.

With the management of Tuia Lodge transitioning to Hall and Prior in 2021, there was consideration by the Shire and by previous Trust signatories for use of the funds towards expansion of Tuia Lodge (specifically towards a 'Jack Denning Palliative Suite'), however, Hall and Prior have insisted they will not accept previously bequeathed funds for this purpose (or other purposes).

Earlier this year, previous Trust signatories (Mr Neil Foale and Mr Lui Tuia) approached the Chief Executive Officer to seek return of the funds to them, for use on initiatives/projects at Tuia Lodge. One example cited was the purchase and fit-out of a bus for Tuia Lodge resident outings.

In order to determine an expedient, lawful path forward, the Shire sought advice from Slee Anderson and Pidgeon (SAP) Solicitors, who have a detailed history on the Trust dating back to 2015. Preliminary advice from SAP was that the matter was especially complicated and required advice from solicitors with substantial experience in charities law. SAP recommended that the Shire seek advice from Jackson McDonald Solicitors, who coincidentally, acted for the Shire in developing the Business Sale Agreement and Lease Agreement for Hall and Prior at Tuia Lodge. Advice from Jackson McDonald Solicitors is as follows:

We confirm that the Shire would like to return the funds to the original signatories of the bank account (who are still living) for those persons to hold the funds on the terms of a charitable trust (most likely a trust established for the relief of the needs of the aged).

This will involve:

- 1. Preparing a trust deed to be established as a charitable trust.*
- 2. Preparing an application to the Australian Charities and Not-for-profits Commission (ACNC) to register the trust as a charity (this will ensure that the trust pays no tax and also ensure that the trust and the trustees are under the authority and jurisdiction of the ACNC (and the Attorney General) and are subject to the ACNC's governance standards).*

As part of preparing the trust deed, we will also consider how limited the purposes of the trust can be and in particular, if it can be limited to assisting the residents of Tuia Lodge. Charity law imposes a "public benefit test" which requires that the charity provide benefits to the public or a sufficient section of the public and it could be that limiting the trust purposes to the residents may infringe this rule.

Please note that the trust deed and the ACNC application will be prepared on the basis that the trust will seek registration as a charity only and these documents will not be prepared so that the trust qualifies for public benevolent institution status (which would allow the trust to have deductible gift recipient endorsement and fringe benefits tax

exemption endorsement). To prepare the documents for public benevolent institution status would increase the cost and time quite substantially.

In order to undertake the above items and inclusive of existing work done to date in reviewing the brief from Slee Anderson Pidgeon, we would estimate costs of \$7,500 (excluding GST).

Please let me know if you are happy to proceed as outlined above.

FINANCIAL IMPLICATIONS

To undertake the requirements of the transfer, it is estimated to cost \$7,500 (excluding GST). All costs will be deducted from the 'Jack Denning funds'. A modest amount of staff time will be required to support this process.

POLICY COMPLIANCE

Nil.

STATUTORY COMPLIANCE

Australian Charities and Not-for-profits Commission.

CONSULTATION

Stakeholders consulted have included:

- Mr Neil Foale and Lui Tuia – several face-to-face meetings, phone calls and emails.
- Solicitors – SAP and Jackson McDonald.
- Hall and Prior.
- Elected Members – Concept Forums.

Previous trustees of the funds have expressed some dissatisfaction with the recommended course of action (establishing a Charitable Trust) due to time and cost implications, however, recognise that it is the most appropriate process for a local government to follow.

OFFICER COMMENT/CONCLUSION

Previous discussion via a Concept Forum with Elected Members has identified the need for the H.J. (Jack) Denning funds to be returned to an appropriate body capable of carrying out the originally bequeathed purpose of the funds. Whilst the need for legal advice and the establishment of Trust Deed / Charitable Trust may appear overly 'bureaucratic' to the original signatories of the trust account, it is the most expedient, lawful way of 'returning' the funds for their original purpose.

9.3.2 AGENDA BRIEFING AND COUNCIL MEETING DATES 2023

Location	Shire of Donnybrook Balingup
Applicant	N/A
File Reference	N/A
Author	Archana Arun – Administration Officer Executive Services
Responsible Manager	Ben Rose – Chief Executive Officer
Attachments	Nil
Voting Requirements	Simple

Recommendation		
That Council:		
1. Adopt the 2023 Agenda Briefing and Ordinary Council Meeting dates as follows:		
Agenda Briefing	Ordinary Council Meeting	Venue
15 February (2pm)	22 February (5pm)	<ul style="list-style-type: none"> • Council Chamber Donnybrook
15 March (5pm)	22 March (5pm)	<ul style="list-style-type: none"> • Kirup Hall (Agenda Briefing - note: no livestreaming/ video recording) • Council Chamber Donnybrook (OCM)
19 April (2pm)	26 April (5pm)	<ul style="list-style-type: none"> • Council Chamber Donnybrook
17 May (2pm)	24 May (5pm)	<ul style="list-style-type: none"> • Council Chamber Donnybrook
21 June (2pm)	28 June (5pm)	<ul style="list-style-type: none"> • Council Chamber Donnybrook
19 July (2pm)	26 July (5pm)	<ul style="list-style-type: none"> • Council Chamber Donnybrook
16 August (2pm)	23 August (5pm)	<ul style="list-style-type: none"> • Council Chamber Donnybrook
20 September (5pm)	27 September (5pm)	<ul style="list-style-type: none"> • Yabberup Hall (Agenda Briefing - note: no livestreaming / video recording) • Council Chamber Donnybrook (OCM)
18 October (2pm)	25 October (5pm)	<ul style="list-style-type: none"> • Council Chamber Donnybrook
15 November (2pm)	22 November (5pm)	<ul style="list-style-type: none"> • Council Chamber Donnybrook (Agenda Briefing) • Balingup Hall (OCM) (note: no livestreaming / video recording)
6 December (2pm)	13 December (5pm)	<ul style="list-style-type: none"> • Council Chamber Donnybrook
2. Request the Chief Executive Officer to undertake audio recording of the above meetings, where Shire livestreaming / video recording infrastructure is not established.		
3. Instructs the Chief Executive Officer to undertake all statutory advertising in this regard.		

STRATEGIC ALIGNMENT

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

Outcome	11	Strong, visionary leadership
Objectives	11.1	Improve community consultation and engagement
Outcome	12	A well respected, professionally organisation
Objectives	12.1	Deliver effective and efficient operations and service provision

EXECUTIVE SUMMARY

Council is requested to adopt the 2023 calendar for Agenda Briefing and Ordinary Council meetings as presented below:

Agenda Briefing	Ordinary Council Meeting	Venue
15 February	22 February	Council Chamber Donnybrook
15 March	22 March	Kirup Hall (Agenda Briefing); Council Chamber Donnybrook (OCM)
19 April	26 April	Council Chamber Donnybrook
17 May	24 May	Council Chamber Donnybrook
21 June	28 June	Council Chamber Donnybrook
19 July	26 July	Council Chamber Donnybrook
16 August	23 August	Council Chamber Donnybrook
20 September	27 September	Yabberup Hall ((Agenda Briefing); Council Chamber Donnybrook (OCM)
18 October	25 October	Council Chamber Donnybrook
15 November	22 November	Council Chamber Donnybrook (Agenda Briefing); Balingup Hall (OCM)
6 December	13 December	Council Chamber Donnybrook

To allow Councillors to take leave throughout January, it is proposed that no Ordinary Council Meeting be held in January 2023. The last meeting of 2022 is Wednesday 14 December and the first meeting for 2023 is 22 February.

No public holidays occur on the dates recommended.

Meetings are usually held in the Shire Chamber at Donnybrook. To allow greater community participation, it is recommended that the March Agenda Briefing be held in Kirup, September Agenda Briefing be held in Yabberup and November Ordinary Council Meeting be held in Balingup.

BACKGROUND

Council currently conducts one ordinary meeting on the fourth Wednesday of each month commencing at 5.00pm, a process which was adopted on 19 December 2008.

Council also conducts regular Agenda Briefings and Concept Forums to keep Councillors abreast of current issues and to allow for informal discussion on matters of interest to Council, this occurs the Wednesday one (1) week prior to the Ordinary Council Meeting.

FINANCIAL IMPLICATIONS

The cost to hold the Ordinary Meetings are provided for in the 2022/23 Budget.

POLICY COMPLIANCE

Nil

STATUTORY COMPLIANCE

Local Government Act 1995 Section 5.3

Shire of Donnybrook Balingup Meeting Procedures Local Law 2017

CONSULTATION

Nil

OFFICER COMMENT / CONCLUSION

Nil.

10 ELECTED MEMBER MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil.

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

12 MEETINGS CLOSED TO THE PUBLIC

12.1 MATTERS FOR WHICH THE MEETING MAY BE CLOSED

12.1.1 CONFIDENTIAL – 2022 COMMUNITY CITIZEN OF THE YEAR AWARDS

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

(b) the personal affairs of any person

12.1.2 HISTORICAL BRIDGE 5224 – PROGRESS OF ACTIONS

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

(b) the personal affairs of any person

12.1.3 CHIEF EXECUTIVE OFFICER – EMPLOYMENT CONTRACT

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

(b) the personal affairs of any person

(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

13 CLOSURE

The Shire President to advise that the next Ordinary Council Meeting will be held on 14 December 2022 commencing at 5.00pm in the Shire of Donnybrook Balingup Council Chamber.