

NOTICE OF ORDINARY MEETING OF COUNCIL DECEMBER 2019

To be held on

Wednesday 18 December 2019

Commencing at 5.00pm

Shire of Donnybrook Balingup Council Chambers, Donnybrook

Ben Rose
Chief Executive Officer

13 December 2019

Disclaimer

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

TABLE OF CONTENTS

1	DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS.....	4
2	ATTENDANCE	4
2.1	<i>APOLOGIES</i>	4
2.2	<i>APPROVED LEAVE OF ABSENCE</i>	4
2.3	<i>APPLICATION FOR A LEAVE OF ABSENCE</i>	5
3	ANNOUNCEMENTS FROM PRESIDING MEMBER.....	5
4	DECLARATION OF INTEREST	5
5	PUBLIC QUESTION TIME	5
5.1	<i>RESPONSES TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE</i>	5
5.2	<i>PUBLIC QUESTION TIME</i>	5
6	PRESENTATIONS	6
6.1	<i>PETITIONS</i>	6
6.2	<i>PRESENTATIONS</i>	6
6.3	<i>DEPUTATIONS</i>	6
6.4	<i>DELEGATE'S REPORTS</i>	6
7	CONFIRMATION OF MINUTES.....	7
7.1	<i>ORDINARY MEETING OF COUNCIL – 27 NOVEMBER 2019</i>	7
8	REPORTS OF COMMITTEES	7
9	REPORTS OF OFFICERS	8
9.1	<i>MANAGER DEVELOPMENT SERVICES</i>	8
9.1.1	PETITION TO REVOKE COUNCIL DECISION 141/19 TO RELOCATE MILLING EQUIPMENT FROM DONNYBROOK ARBORETUM TO KIRUP MILL PARK.....	8
9.1.2	REQUEST FOR COMMENT ON PROPOSED AMENDMENTS TO WALGA PREFERRED MODEL FOR THIRD PARTY APPEAL RIGHTS .	23
9.1.3	RECOMMENDATION TO WESTERN AUSTRALIAN PLANNING COMMISSION ON REVIEW OF LOCAL PLANNING SCHEME 7 AND LOCAL PLANNING STRATEGY	27
9.2	<i>STRATEGIC BUILT PROJECTS AND ASSETS</i>	34
9.3	<i>EXECUTIVE MANAGER OPERATIONS</i>	34
9.4	<i>MANAGER WORKS AND SERVICES</i>	34
9.5	<i>MANAGER AGED CARE SERVICES</i>	35

9.5.1	REQUEST TO INCREASE LOAN AMOUNT– TUIA LODGE FIRE SUPPRESSION SYSTEM.....	35
9.6	<i>CHIEF EXECUTIVE OFFICER</i>	37
9.6.1	ACCOUNTS FOR PAYMENT	37
9.6.2	MONTHLY FINANCIAL REPORT – OCTOBER 2019.....	37
9.6.3	MONTHLY FINANCIAL REPORT – NOVEMBER 2019.....	37
9.6.4	COUNCIL MEETING DATES 2020	38
9.6.5	BUNBURY GEOGRAPHE TOURISM PARTNERSHIP MEMORANDUM OF UNDERSTANDING	41
9.6.6	VC MITCHELL PARK PRECINCT (DONNYBROOK AND DISTRICTS SPORTS RECREATION AND EVENTS PRECINCT)	44
10	ELECTED MEMBER MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN .	49
11	QUESTIONS FROM MEMBERS.....	49
12	NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF THE MEETING	49
13	MEETINGS CLOSED TO THE PUBLIC	49
13.1	<i>MATTERS FOR WHICH THE MEETING MAY BE CLOSED</i>	49
13.2	<i>PUBLIC READING OF RESOLUTIONS THAT MAY BE MADE PUBLIC</i>	49
14	CLOSURE	49

SHIRE OF DONNYBROOK BALINGUP
NOTICE OF AGENDA BRIEFING

To be held at the Council Chambers
Wednesday, 11 December 2019 at 2.00pm

1 DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

Shire President – Acknowledgment of Country

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

The Shire Present to declare the meeting open and welcome the public gallery

Shire President - Public Notification of Recording of Meetings

The Shire President advises that the meeting is being digitally recorded to assist with minute taking in accordance with Council Policy 1.25. The Shire President further states the following:

If you do not give permission for your participation to be recorded, please indicate this at the meeting. Members are reminded that no other visual or audio recording of this meeting by any other means is allowed without the permission of the Chairperson.

2 ATTENDANCE

MEMBERS PRESENT

COUNCILLORS	STAFF
Cr Piesse (President)	Ben Rose – Chief Executive Officer
Cr Massey (Deputy President)	Steve Potter – Executive Manager Operations
Cr Atherton	Bob Wallin – Manager Development Services
Cr Lindemann	Damien Morgan – Manager Works and Services
Cr Mitchell	Maureen Keegan – Manager Executive Services
Cr Newman	Jaimee Earl – Administration Officer Executive Services
Cr Sercombe	
Cr Smith	
Cr Wringe	

PUBLIC GALLERY

2.1 APOLOGIES

2.2 APPROVED LEAVE OF ABSENCE

Cr Massey has an approved leave of absence from the December 2019 Ordinary Council Meeting, however, has advised the Chief Executive Officer she will attend the Meeting.

2.3 APPLICATION FOR A LEAVE OF ABSENCE

Nil.

3 ANNOUNCEMENTS FROM PRESIDING MEMBER

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 Wringe declared an impartiality interest in item 9.1.1. as she is a member of the Kirup Progress Association.

Cr Smith has declared a financial interest in item 9.5.1 as he has quoted for electrician work for the head contractor.

5 PUBLIC QUESTION TIME

5.1 RESPONSES TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Mr Simon McInness – Ordinary Council Meeting 19 November 2019

Question

What is the cost as a percentage of the total rates intake, of senior management to the level of department head and senior professional staff including those under contract, including super, allowances and private vehicle use?

Response

20.4% (this includes eight positions).

5.2 PUBLIC QUESTION TIME

6 PRESENTATIONS

6.1 PETITIONS

A Petition in relation to the Irishtown Arboretum was presented to the November 2019 Ordinary Council Meeting. A report addressing the petition is included in the Agenda at 9.1.1.

6.2 PRESENTATIONS

Nil.

6.3 DEPUTATIONS

Mr Angelo Logiudice, representing the Kirup Progress Association (KPA), has requested to present a Deputation in relation to the KPA's plans for rejuvenation of Mill Park, Kirup.

Mr Lex Miller has requested to present a Deputation in relation to item 9.1.1 regarding the Donnybrook Arboretum Mill Park equipment.

6.4 DELEGATE'S REPORTS

Nil.

7 CONFIRMATION OF MINUTES

7.1 ORDINARY MEETING OF COUNCIL – 27 NOVEMBER 2019

Minutes of the Ordinary Meeting of Council held 27 November 2019 are attached (*attachment 7.1*).

EXECUTIVE RECOMMENDATION

That the Minutes from the Ordinary Meeting of Council held 27 November 2019 be confirmed as a true and accurate record.

8 REPORTS OF COMMITTEES

Nil.

9 REPORTS OF OFFICERS

9.1 MANAGER DEVELOPMENT SERVICES

9.1.1 PETITION TO REVOKE COUNCIL DECISION 141/19 TO RELOCATE MILLING EQUIPMENT FROM DONNYBROOK ARBORETUM TO KIRUP MILL PARK

Location	Shire of Donnybrook Balingup
Applicant	Tony Scaffidi, 186 Grist Road Irishtown
File Reference	RES 01/9
Author	Maureen Keegan – Manager Executive Services Steve Potter – Executive Manager Operations
Responsible Officer	Ben Rose – Chief Executive Officer
Attachments	9.1.1(1) – Council Report – June 2019 9.1.1(2) – Council Report – September 2019 9.1.1(3) – KPA Letter – Advice of Council Decision (Sept 2019) 9.1.1(4) – Full copy of Petition and Signatures 9.1.1(5) – Letter received from Mr LOD Miller
Voting Requirements	Simple / Absolute Majority

Recommendation
<p>OPTION A:</p> <p>That Council:</p> <ol style="list-style-type: none"> 1. Acknowledges the petition received on 25 November 2019 from Mr Tony Scaffidi and the points raised in the petition. 2. Resolves not to revoke Council decision [141/19] from the Ordinary Council Meeting held on 25 September 2019 and reiterates its original decision. <p style="text-align: right;">[SIMPLE MAJORITY REQUIRED]</p> <p>OR</p> <p>OPTION B:</p> <p>That Council:</p> <ol style="list-style-type: none"> 1. Acknowledges the petition received on 25 November 2019 from Mr Tony Scaffidi and the points raised in the petition. <p style="text-align: right;">[SIMPLE MAJORITY REQUIRED]</p>

- 2. Pursuant to Clause 16.2(2) of the *Shire of Donnybrook Balingup Meeting Procedures Local Law 2017* and Part 10 of the *Local Government (Administration) Regulations 1996* revokes Council decision [141/19] from the Ordinary Council Meeting held on 25 September 2019.**

[ABSOLUTE MAJORITY REQUIRED]

- 3. Adopts the Executive Recommendation contained within Item 9.7.1 considered at the September 2019 Ordinary Council Meeting as follows:**

3.1 Reaffirms that Council's strategic direction for the Donnybrook Arboretum site is to perform the function of a low-key tourist rest stop (without bathroom / toilet or any extended or overnight-stay facilities);

3.2 Commits to the following improvements to the Arboretum site which shall be included in future revisions of the Parks and Reserves Asset Management Plan from 2020/21 onwards for consideration in future budgets.

Year	Item	Cost
2020/21	Safety Fencing (Shed structure only)	\$12,936
2020/21	2 x Bench Seats and 2 x Picnic Tables	\$9,652
2021/22	Sandblasting / Painting Machinery (Steam Engine)	\$8,000
2021/22	Interpretive Signage (Trees and Machinery)	\$5,000
2022/23	Gravel Path	\$18,135
2023/24	Information Bay	\$20,000

3.3 Commits to considering the following allocation in the Shire's Annual Budget, from 2020/21 onwards, for the ongoing maintenance of the Arboretum site:

3.3.1 Annual Tree Maintenance (\$10,000 p/a);

3.3.2 Quarterly Site Maintenance (\$4,000 p/a).

3.4 Requests the Chief Executive Officer liaise with community groups (with Incorporation status, or otherwise) that may provide voluntary assistance or co-contribution (financial, in-kind, materials or other) to Council in improving the site with regard to machinery restoration, tree maintenance and interpretive signage.

3.5 Advises the Kirup Progress Association that it is not supportive of the Association's request to re-locate historical milling equipment from the Donnybrook Arboretum to Kirup Mill Park for the following reason:

3.5.1 The milling equipment is considered to have social heritage significance to the Donnybrook community due to the involvement of community members in installing it in 1979 and its ongoing contribution to Donnybrook's sense of place.

3.6 Instructs the Chief Executive Officer to liaise with the Kirup Progress Association to:

3.6.1 Investigate alternative opportunities for developing Mill Park to create added interest and underpin economic activity support for businesses in Kirup;

3.6.2 Explore external funding opportunities for designing, planning and constructing concepts for developing Mill Park.

[SIMPLE MAJORITY REQUIRED]

STRATEGIC ALIGNMENT

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

Outcome	4.1	A strategically focused, open and accountable local government.
Strategy	4.1.2	Continue to enhance communication and transparency
Action	4.1.2.1	Ongoing meaningful communication and engagement with residents, ratepayers and stakeholders.

EXECUTIVE SUMMARY

- Council has received a petition requesting it revoke a decision made at the September 2019 Ordinary Council meeting, in which Council provided 'in-principle' support for the Kirup Progress Association (KPA) to re-locate historical milling machinery from the Donnybrook Arboretum to Kirup Mill Park.
- There are specific statutes applicable to both the processing of petitions and the revocation of previous Council decisions that will need to be complied with in dealing with this matter.
- Staff have provided two options for Council to consider in dealing with this matter, which cover both options (revoking / not revoking the original decision).

BACKGROUND

At the September 2019 Ordinary Council Meeting Council considered a report entitled '*Strategic Direction for Donnybrook Arboretum Site and Response to Kirup Progress Association Request to Relocate Historical Milling Equipment*'.

Council was requested to:

- a) consider possible scenarios to establish its long term strategic vision for the Donnybrook Arboretum; and
- b) determine the Kirup Progress Association's request to relocate historical milling machinery from the Arboretum to Mill Park in Kirup.

Officers recommended the Arboretum site be improved and maintained to a standard reflective of its use, with a dedicated annual budget allocation, and the existing milling equipment be retained at the Arboretum site.

Contrary to the Executive Recommendation, Council resolved the following:

COUNCIL DECISION 141/19

That Council:

1. ***Reaffirms that Council's strategic direction for the Donnybrook Arboretum site is to perform the function of a low-key tourist rest stop (without bathroom / toilet or any extended or overnight-stay facilities);***
2. ***Commits to the following improvements to the Arboretum site which shall be included in future revisions of the Parks and Reserves Asset Management Plan from 2020/21 onwards for consideration in future budgets:***

Year	Item	Cost
2020/21	2 x Bench Seats and 2 x Picnic Tables	\$9,652
2020/21	Signage (Trees)	\$3,000
2021/22	Gravel Path (310m)	\$18,135
2022/23	Information Bay	\$20,000

3. ***Commits to considering the following allocation in the Shire's Annual Budget, from 2020/21 onwards, for the ongoing maintenance of the Arboretum site:***
 - 3.1 ***Annual Tree Maintenance (\$10,000 p/a)***
 - 3.2 ***Quarterly Site Maintenance (\$4,000 p/a).***
4. ***Requests the Chief Executive Officer to liaise with community groups (with Incorporation status, or otherwise) that may provide voluntary assistance or co-contribution (financial, in-kind, materials or other) to Council in improving the site with regard to tree maintenance and interpretive signage.***

5. ***Approves ‘in-principle’ the Kirup Progress Association’s request to relocate all historical milling machinery and associated equipment currently located at the Donnybrook Arboretum to Mill Park in Kirup, subject to the following conditions:***
 - 5.1 ***Prior to any works being undertaken the KPA is to submit a detailed ‘Relocation and Refurbishment Management Plan’ to the satisfaction of the Chief Executive Officer outlining the following:***
 - 5.1.1 ***Proposed method of relocation taking into account any constraints identified***
 - 5.1.2 ***Details of any interim storage of the equipment whilst it is being restored, prior to installation at Mill Park;***
 - 5.1.3 ***Details of how the KPA intends to refurbish the equipment to an acceptable standard for public display;***
 - 5.1.4 ***Details of any relevant skills, expertise or equipment at the KPA’s disposal to support the re-location and refurbishment of the machinery;***
 - 5.1.5 ***Details of the KPA’s long-term commitment to the ongoing maintenance of the machinery once installed;***
 - 5.1.6 ***Details of any safety measures that will be implemented at Mill Park to prevent injury to members of the public.***
6. ***Subject to the ‘Relocation and Refurbishment Management Plan’ referred to in Point 5 being approved by the Chief Executive Officer, a formal agreement is to be prepared and signed by the Chief Executive Officer / Shire President and the Kirup Progress Association, outlining the responsibilities of each party, with any contentious issues to be brought back to Council for further consideration.***
7. ***Subject to the formal agreement referred to in Point 6 being entered into by both parties, authorises the Kirup Progress Association to commence works involving the re-location of the equipment from the Arboretum to Mill Park.***

Carried 6/3

The September report was preceded by another report on this same matter which was considered by Council in June 2019. Full copies of both reports (and resolutions of Council) are provided in Attachments 9.1.1(1) and 9.1.1(2).

Action undertaken so far in the implementation of the September resolution has been a letter sent to the Kirup Progress Association advising of Councils decision (Attachment 9.1.1.(3)) and a meeting held with the Executive Manager Operations and KPA to review the requirements of the resolution.

The machinery remains insitu at the Irishtown Arboretum.

Presentation of Petition

Council at the November 2019 Ordinary Council Meeting received a petition presented by Mr Tony Scaffidi containing the following wording:

“To: The Shire President of the Donnybrook Balingup Shire Council

We the undersigned, being the supporters of Donnybrook/Irishtown (Western Australia) Arboretum respectfully request the Donnybrook Balingup Shire Council to:

Immediately revoke the decision made by Council at its 2019 September Council meeting that “approves the relocation of all historic milling machinery and associated equipment from the Donnybrook Arboretum”.

We the undersigned believe Council erred in its decision making on the following grounds:

- 1. 6 Councillors ignored the Executive Managers advice recognizing the historical importance of the display since the exhibits were placed with the Arboretum during a special celebration to make the 150th years some 40 years ago in 1979.*
- 2. Council did not consult with the original owners and donors (the Miller Family of Brookhampton) prior to the decision being made to remove the equipment.*
- 3. The 6 councillors who voted to remove the equipment were ignorant to the fact that the old milling equipment holds local social heritage significance and represents pioneers of a bygone era with the localities of Donnybrook, Irishtown, Brookhampton and Argyle.*
- 4. The decision to remove the equipment from its present location is disrespectful to the past services groups Rotary and Apex who installed and maintained the equipment up until 1994 and who passed the equipment onto council in good faith that it would be maintained accordingly.*
- 5. The Council has failed in its responsibility to maintain the Arboretum exhibits in reasonable condition given that it forms part of the ‘Irishtown Road Precinct Area’ as considered in the Donnybrook Townscape Plan 2012-17.*
- 6. The decision to remove is divisive and will cause community angst for many years to come.”*

Based on information provided by the petitioners the petition contains a total of 438 signatures of which 370 are on the Shire’s electoral roll which is currently being verified by Shire staff.

A full copy of the petition inclusive of the signatures received is provided in Attachment 9.1.1(4).

Due to the nature of the petition which requests Council revoke an earlier decision there are two discreet aspects which are dealt with separately in the applicable statutes which are:

- Process for dealing with a submitted petition; and
- Process for revoking a Council decision.

For clarity, this report will address each separately, inclusive of the relevant statutes that are applicable to each under 'Statutory Compliance'.

By way of a summary of events related to this matter to date, the following table is provided:

Date	Event
January 2019	KPA approach Shire to consider relocating milling equipment
Feb-March 2019	Shire undertake public advertising / consultation on concept of relocating milling equipment (Preston Press etc)
April 2019	OCM item drafted (late withdrawal from OCM agenda as a result of 'Friends of Arboretum' presenting new information)
May 2019	Agenda item presented to OCM (Council resolved to defer decision pending more information regarding costs of refurbishing Irishtown Arboretum rest stop area)
September 2019	Agenda item presented to OCM (Council resolved to approve relocation of milling equipment to Kirup, subject to conditions including a 'Relocation and Refurbishment Management Plan' being prepared by KPA first)
October-November 2019	Petition circulates amongst community for signing
November 2019	Petition presented to OCM (seeking revocation of September 2019 OCM decision)
December 2019	Agenda item presented to OCM to consider petition and process/implications for revocation

FINANCIAL IMPLICATIONS

Not applicable.

POLICY COMPLIANCE

Not applicable.

STATUTORY COMPLIANCE

Dealing with a Petition

The provisions relevant to receiving and dealing with a petition are outlined under Clause 6.10 of the *Shire of Donnybrook Balingup Meeting Procedures Local Law 2017* (Local Law). Section 1 of the clause outlines the form a petition should take with Sections 2 and 3 outlining how a petition should be dealt with as follows:

6.10 Petitions

- (1) *A petition is to—*
 - a) *be addressed to the President;*
 - b) *be made by electors of the district;*
 - c) *state the request on each page of the petition;*
 - d) *contain the name, address and signature of each elector making the request, and the date each elector signed;*
 - e) *contain a summary of the reasons for the request; and*
 - f) *state the name of the person to whom, and an address at which, notice to the petitioners can be given.*
- (2) *Upon receiving a petition, the local government is to submit the petition to the relevant officer to be included in his or her deliberations and report on the matter that is the subject of the petition, subject to subclause (3).*
- (3) *At any meeting, the Council is not to vote on any matter that is the subject of a petition presented to that meeting, unless—*
 - a) *the matter is the subject of a report included in the agenda; and*
 - b) *the Council has considered the issues raised in the petition.*

Revocation of Previous Council Decision

Based on the above, it would appear that the next stage of the process would be for an officer to prepare a report on the matter that is the subject of the petition at a convened Council meeting. However, as the subject of the petition is for a proposed revocation of an earlier decision, in determining the appropriate path forward Council must also consider provisions relevant to the revocation of decisions which are contained in both the *Local Government (Administration) Regulations 1996* and the *Shire of Donnybrook Balingup Meeting Procedures Local Law 2017* as follows:

Local Government (Administration) Regulations 1996

10. Revoking or changing decisions (Act s. 5.25(1)(e))

- 1) *If a decision has been made at a council or a committee meeting then any motion to revoke or change the decision must be supported —*
 - a) *in the case where an attempt to revoke or change the decision had been made within the previous 3 months but had failed, by an absolute majority; or*
 - b) *in any other case, by at least 1/3 of the number of offices (whether vacant or not) of members of the council or committee, inclusive of the mover.*
- (1a) *Notice of a motion to revoke or change a decision referred to in sub-regulation (1) is to be signed by members of the council or committee numbering at least 1/3 of*

the number of offices (whether vacant or not) of members of the council or committee, inclusive of the mover.

(2) If a decision has been made at a council or a committee meeting then any decision to revoke or change the first-mentioned decision must be made —

(a) in the case where the decision to be revoked or changed was required to be made by an absolute majority or by a special majority, by that kind of majority; or

(b) in any other case, by an absolute majority.

(3) This regulation does not apply to the change of a decision unless the effect of the change would be that the decision would be revoked or would become substantially different.

Shire of Donnybrook Balingup Meeting Procedures Local Law

In addition to the above, Part 16 of the Shire's Meeting Procedures Local Law is relevant and states:

PART 16—REVOKING OR CHANGING DECISIONS

16.1 Requirements to revoke or change decisions

The requirements to revoke or change a decision made at a meeting are dealt with in regulation 10 of the Regulations.

16.2 Limitations on powers to revoke or change decisions

(1) Subject to subclause (2), the Council or a committee is not to consider a motion to revoke or change a decision—

(a) where, at the time the motion is moved or notice is given, any action has been taken under clause 16.3 to implement the decision; or

(b) where the decision is procedural in its form or effect.

(2) The Council or a committee may consider a motion to revoke or change a decision of the kind described in subclause (1)(a) if the motion is accompanied by a written statement of the legal and financial consequences of carrying the motion.

16.3 Implementing a decision

(1) In this clause—

(a) "authorisation" means a licence, permit, approval or other means of authorising a person to do anything;

(b) "implement", in relation to a decision, includes—

- (i) communicate notice of the decision to a person affected by, or with an interest in, the decision; and*
 - (ii) take any other action to give effect to the decision; and*
- (c) “valid notice of revocation motion” means a notice of motion to revoke or change a decision that complies with the requirements of the Act, Regulations and the local law and may be considered, but has not yet been considered, by the Council or a committee as the case may be.*
- (2) Subject to subclause (4), and unless a resolution is made under subclause (3), a decision made at a meeting is not to be implemented by the CEO or any other person until the afternoon of the first business day after the commencement of the meeting at which the decision was made.*
- (3) The Council or a committee may, by resolution carried at the same meeting at which a decision was made, direct the CEO or another person to take immediate action to implement the decision.*
- (4) A decision made at a meeting is not to be implemented by the CEO or any other person—*
 - (a) if, before commencing any implementation action, the CEO or that person is given a valid notice of revocation motion; and*
 - (b) unless and until the valid notice of revocation motion has been determined by the Council or the committee as the case may be.*
- (5) The CEO is to ensure that members of the public attending the meeting are informed by an appropriate notice that a decision to grant an authorisation—*
 - (a) is to take effect only in accordance with this clause; and*
 - (b) cannot be acted upon by the person who has been granted the authorisation unless and until the decision has been implemented in accordance with this clause.*

Functions of CEO in Council Decision-making

LG Act 1995 S5.4.1 (A,B)

The CEO’s functions are to —

- (a) advise the council in relation to the functions of a local government under this Act and other written laws; and*
- (b) ensure that advice and information is available to the council so that informed decisions can be made;*

OFFICER COMMENT

In light of the above, Council is required to comply with the provisions relevant to both dealing with petitions and revoking decisions. To this effect the following will need to occur in order to reach a Council position on the matter that complies with the relevant requirements:

1. In accordance with Clause 6.10 of the Local Law, officers need to address the points raised in the petition and have done so in this report;
2. Pursuant to Regulation 10 of the Regulations, Council will need to consider whether to consider a motion to revoke its previous decision (must be supported by a minimum of 1/3 of the number of offices inclusive of the mover in order to proceed);
3. If less than 1/3 of the number of offices are supportive of considering a motion to revoke Council's previous decision then the original decision stands;
4. Pursuant to Clause 16.2(2) of the Local Law, if Council is supportive of considering a motion to revoke its decision as per Point 2 above, the motion is to be accompanied by a written statement of the legal and financial consequences of carrying the motion and this is provided in this report;
5. If a motion to revoke is moved and seconded, the matter enters open debate and Council can make an alternative decision.

The following information is provided to address the requirements as outlined above:

- Officer responses to points raised in the petition (Cl. 6.10 of Local Law);
- Officer comment regarding legal and financial consequences of carrying a motion to revoke (Cl. 16.2(2) of Local Law).

Responses to Points in Petition

The submitted petition contained six points and officer responses are provided for each.

Point 1. 6 Councillors ignored the Executive Manager's advice recognising the historical importance of the display since the exhibits were placed within the Arboretum during a special celebration to mark the 150th year some 40 years ago in 1979.

Response:

Council's original decision was contrary to the Executive recommendation, however this is permitted within the local government decision-making framework. It needs to be acknowledged that this is a complex matter and that there were a range of views expressed at the Council meeting. Whilst the Executive recommendation was based largely on the heritage significance of the milling equipment items at the present location, the discussion that ensued at the Council meeting raised other considerations including ongoing costs to the Shire and tourism opportunities for Kirup. It is possibly fair to suggest that there is no absolute right or wrong decision with regard to this matter, as it largely depends on which considerations are important to individual decision-makers which may or may not align with staff.

Point 2: Council did not consult with the original owners and donors (the Miller Family of Brookhampton) prior to the decision being made to remove the equipment.

Response:

Staff were unaware of who the original owner was until such time as a letter signed by Mr LOD Miller (Attachment 9.1.1(5)) was submitted to the Shire by supporters of the milling equipment remaining in its present location in October 2019, which was after the decision to relocate the equipment had been made by Council. The submission of this letter at this late stage was somewhat surprising as the matter had been under consideration for a number of months, with the first report being presented to Council for consideration in June 2019.

Notwithstanding the timing of this information, Council will need to determine the weight it gives to the submitted letter. Whilst it claims that the donation of the equipment was made 'on the promise that it must remain at the present site' it is noted that the original donation was made to the Rotary Club and the Shire was not party to this arrangement. Further, as indicated in Point 5 below, responsibility for the equipment was then passed by Rotary to the Shire in 1994 and therefore it could be concluded that at this point the equipment became Shire property and that the Shire does not have (and never did have) a formal agreement with the original owners.

As far as staff are aware there was never a formal written agreement between the parties and no documentation has been presented, other than the letter from Mr Miller, to indicate that any agreement existed with regard to the equipment.

Shire staff have examined Shire records dating back to the period when responsibility for the site was handed from Rotary to the Shire, however have not been able to locate any records of any formal agreements made.

Point 3: The 6 Councillors who voted to remove the equipment were ignorant to the fact that the old milling equipment holds local social heritage significance and represents pioneers of a bygone era within the localities of Donnybrook, Irishtown, Brookhampton and Argyle.

Response:

The September report addressed matters relevant to the heritage significance of the site and therefore this will not be further addressed in this report. It is considered that Council made its original decision with the knowledge that there were those who considered that the equipment had local heritage significance, however made its decision to approve the re-location.

Point 4: The decision to remove the equipment from its present location is disrespectful to the past service groups Rotary and Apex who installed and maintained the equipment up until 1994 and whom passed the equipment onto Council in good faith that it would be maintained accordingly.

Response:

Officers are unable to comment on this point, however note the comment made. Further comment regarding the maintenance of the site is provided under Point 5 below.

Point 5: Council has failed in its responsibility to maintain the Arboretum exhibits in reasonable condition given that it forms part of the 'Irishtown Road Precinct Area' as considered in the Donnybrook Townscape Plan 2012-17.

Response:

As present staff and Councillors were not employed/elected at the Shire in 1994, it is uncertain what arrangements were put into place. Staff are aware that a group known as 'Friends of the Arboretum' managed the site for a time, however were unable to continue in this capacity. It is possibly the case that when the volunteer effort ceased that a corresponding increase in Shire resources was not allocated to maintaining the site and therefore it has over time fallen into a state of disrepair.

It is acknowledged that the Shire is responsible for managing the site and therefore needs to make decisions in this regard. It is understood the management responsibilities (and associated costs) formed part of the original decision to re-locate the equipment as the Kirup Progress Association proposed to re-locate and refurbish the equipment at no cost to the Shire. The alternative was for the Shire to expend a considerable sum undertaking similar works at the present site.

The Donnybrook Townscape Development Plan 2012-17 referred to was originally adopted in 2006 and reviewed in 2011 and identified the Arboretum within the 'Irishtown Road Heritage Precinct'. Due to the extent of time since the 2011 review, the document is considered somewhat out of date however contained the following recommendations for the future development of the precinct, much of which did not occur within the life of the plan. It is also noted that the 'Friends of the Arboretum' are no longer in existence.

Recommendations:

- a) Support Donnybrook Friends of the Arboretum group in management and promotion of the Arboretum, including priority projects such as:*
 - low fuel and weed management;*
 - protection of arboretum timber species through installation of bollard and re-installation of timber species signage;*
 - removal of existing benches and barbeques and installation of new benches;*
 - safety and security upgrades to machinery and timber display;*
 - improved Harvest Highway signage to replace existing, encouraging visitors into Donnybrook.*
- b) Lobby Main Roads Western Australia to prioritise the planned Tourist Information Bay. Consideration should be given to parking for caravans and campers, tourist information and directional signage.*

The September Council decision does include provision for future budgets to include a maintenance budget for the Arboretum site and to undertake some improvements including signage and pathways.

Point 6: The decision to remove is divisive and will cause community angst for many years to come.

Response:

The role of Council as a decision-making body means that Councillors sometimes have to make difficult decisions. This is considered to be a complex matter that involves a range of considerations.

Financial and Legal Consequences of Carrying a Motion to Revoke a Decision

As per Clause 16.2(2) of the Local Law, should Council support the consideration of a motion to the original decision, it is required to be accompanied by a written statement of the legal and financial consequences of carrying the motion.

It is noted that since Council's decision staff have held a single meeting with the Kirup Progress Association, to 'walk through' the conditions of in-principle approval granted by Council to re-locate the equipment. The purpose of the meeting was to clarify the expectations of the Shire as to what the KPA needed to submit to address the conditions satisfactorily.

It was evident at this meeting that whilst there was considerable work being undertaken by the KPA members, this was generally of a volunteer nature and that most of the information that needed to be prepared was not of a highly technical nature and therefore could be undertaken by the volunteers. As such, it is staff's understanding that considerable amounts of funds have not to date been expended on re-locating the equipment, with the majority of the costs involved being in the actual re-location and refurbishment processes which are planned for the future. In the event that Council determined to revoke its decision and was required to reimburse the KPA for costs incurred to date, it is anticipated this would be of a relatively modest scale.

In terms of legal ramifications, the equipment is considered Shire property and therefore the Shire has the capacity to determine its fate, subject to complying with the processes outlined in this report.

In light of the above, it is the position of staff that from financial and legal perspectives the risks are relatively low. However, Council may wish to also consider reputational risk which may manifest in different ways, depending on Council's preferred path forward. Should it determine to revoke its original decision, this may be perceived as Council being inconsistent in its decision-making and may establish a precedent in which Council is presented with an increased number of petitions to overturn decisions that may not be satisfactory to a particular group or individual.

In considering the request to revoke the decision, staff consider the question that needs to be considered is whether any of the points raised in the petition provide additional information that may have changed the original decision if presented at the time, or alternatively, would now warrant Council re-considering its original decision and making an alternative decision. Staff consider that this is a personal judgement that needs to be made at an individual Councillor level and therefore is presenting two options for Council's consideration which are summarised as follows:

Option A

- Council notes the points raised in the petition, however resolves not to revoke the original decision.

Note: This is also the recommended approach if 1/3 of Councillors do not support a motion to revoke the original decision.

Option B

- Council notes the points raised in the petition and determines that is it is willing to consider a motion to revoke supported by one-third of Councillors. Subject to the motion being moved, Council is to revoke the original decision from 25 September 2019 and make an alternative decision.
- In terms of the above point, the original Executive recommendation from the September meeting is provided under this option as it is considered to represent the logical alternative to the original decision, if Council resolves to revoke the original decision.

CONSULTATION

Advice has been sought from WALGA in relation to the revocation of a Council decision.

CONCLUSION

Council will need to determine whether it is willing to consider the revocation or amendment of its original decision in line with the information provided in this report. Two options are presented in the Executive recommendation to address each eventuality.

9.1.2 REQUEST FOR COMMENT ON PROPOSED AMENDMENTS TO WALGA PREFERRED MODEL FOR THIRD PARTY APPEAL RIGHTS

Location	Shire of Donnybrook Balingup
Applicant	Western Australian Local Government Association
File Reference	DEP 22/40
Author	Bob Wallin - Manager Development Services
Responsible Manager	Bob Wallin - Manager Development Services
Attachments	9.1.2(1) – WALGA request 9.1.2(2) – Previous Council Report (2018)
Voting Requirements	Simple Majority

Recommendation
<p>That Council advises the Western Australian Local Government Association that it is supportive of the proposed amendments to WALGA's <i>Third Party Appeals Process Preferred Model</i> as follows:</p> <ol style="list-style-type: none"> 1. That there be an amendment to the <i>Third Party Appeals Process Preferred Model</i>, being that third parties in addition to Local Governments are able to appeal decisions made by Development Assessment Panels. 2. That there be an amendment to the <i>Third Party Appeals Process Preferred Model</i>, being that closely associated third parties in addition to Local Governments are able to appeal decisions made by the Western Australian Planning Commission and the State Administrative Tribunal, in addition to Development Assessment Panels.

STRATEGIC ALIGNMENT

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

Outcome	4.1	A strategically focused, open and accountable local government
Strategy:	4.1.1	Provide accountable and strategic leadership
Action:	4.1.1.5	Support initiatives to nurture local civic, social and community leadership

EXECUTIVE SUMMARY

- WALGA has requested Council's consideration of a proposed amendment to WALGA's existing 'preferred model' with regard to 'third-party appeal rights' to include the ability of other parties to appeal a decision made by a Development Assessment Panel, rather than Local Governments being the only party able to appeal a decision as is currently the case.
- In addition, WALGA is also proposing to amend the 'preferred model' to include decisions made by the Western Australian Planning Commission (WAPC) and the State Administrative Tribunal (SAT) as representing appealable decisions.
- It is recommended that the proposed amendments be supported.

BACKGROUND

Council has received a request from the Western Australian Local Government Association (WALGA) to gauge its level of support for two proposed amendments to WALGA's *'Preferred Model – Third Party Appeal Rights for decisions made by Development Assessment Panels'* (Attachment 9.1.2(1)).

The current request follows a previous request on the same topic in 2018 when local governments were requested to express their level of support for the introduction of third party appeal rights in Western Australia.

Third party appeal rights relate to the ability for a party (not the applicant) to appeal a decision. It is presently the case in Western Australia that third parties are unable to appeal any planning decision made at any level, however this option does exist in other States of Australia and there is varying levels of support for introducing a similar process in W.A.

When Council considered the original request in 2018 it resolved the following:

"That Council supports the introduction of Third Party Appeal rights for decisions made by Development Assessment Panels." (Attachment 9.1.2(2)).

The collective response from Western Australian local governments informed the creation and adoption of the WALGA 'preferred model' which is the subject of this report. It is important to note that this represents WALGA's advocacy position on the matter, however to date has not been supported by the State Government.

WALGA is now seeking comments for the following amendments to its 'preferred model' which take into account feedback received from WALGA zone meetings and WALGA's State Council. The proposed amendments are as follows:

1. *That there be an amendment to the Third Party Appeals Process Preferred Model, being that third parties in addition to Local Governments are able to make an appeal.*
2. *That there be an amendment to the Third Party Appeals Process Preferred Model, being that closely associated third parties in addition to*

Local Governments are able to appeal decisions made by the Western Australian Planning Commission and the State Administrative Tribunal, in addition to Development Assessment Panels.”

The Department of Planning, Lands and Heritage website describes the role of DAP's as follows:

“DAPs were introduced into the WA planning system in July 2011 and are decision making panels that are intended to enhance planning expertise in decision making by improving the balance between technical advice and local knowledge. The role of DAP members is to determine development applications within a certain type and value threshold through consistent, accountable and professional decision making.”

Council has nominated members for the Southern JDAP which would be involved in the decision-making process if an application over the threshold value was received (over \$10 million) or optional for developments valued between \$2 million and \$10 million. However, it is noted that the Shire has never required a DAP assessment/decision since the system was introduced.

FINANCIAL IMPLICATIONS

Nil. At this stage, the proposal is only seeking the Shire's response to the proposed amendments.

POLICY COMPLIANCE

Not applicable.

STATUTORY COMPLIANCE

Nil. At this stage, the proposal is only seeking the Shire's response to the proposed amendments.

CONSULTATION

Nil.

OFFICER COMMENT

Council has previously indicated it is supportive of third party appeal rights for decisions made by Development Assessment Panels, however it will need to determine whether it is supportive of the proposed expansion of the model to enable other third parties (other than Local Government) to also appeal decisions. In addition, Council has been requested to provide its response to a proposal to amend the 'preferred model' to expand the types of decision-making bodies whose decisions can be appealed.

In light of Council's decision in 2018, it is evident that there is a level of support for third party appeals generally. With regard to DAP applications it is noted that the Shire has never received a DAP application and therefore has not had to deal with this process to date. However, there may come a time in the future when an applicant wishes to propose a development of a scale

that would warrant a DAP application. Such an application may involve a development that has a significant impact on nearby landowners and which may not be acceptable to the local community, however would largely be determined outside the local Council decision-making process. It is in this circumstance that the proposed amendments as suggested would come into play because if implemented, they provide the opportunity for both the Shire and impacted residents to appeal decisions made by a DAP, the WAPC and/or the SAT, within the parameters outlined in the preferred model.

CONCLUSION

It is recommended that Council advises WALGA it is supportive of the proposed amendments.

9.1.3 RECOMMENDATION TO WESTERN AUSTRALIAN PLANNING COMMISSION ON REVIEW OF LOCAL PLANNING SCHEME 7 AND LOCAL PLANNING STRATEGY

Location	Shire of Donnybrook Balingup
Applicant	Not applicable
File Reference	TP 03
Author	Bob Wallin - Manager Development Services
Responsible Manager	Bob Wallin - Manger Development Services
Attachments	9.1.3(1) – Report of Review
Voting Requirements	Simple Majority

Recommendation	
<p>That Council:</p> <ol style="list-style-type: none"> Pursuant to Part 6, Division 1, Sections 66(1)(b) and (c) of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> approves the “Report of Review” (Attachment 9.1.3(1)) and provides a copy to the Western Australian Planning Commission; Pursuant to Part 6, Division 1, Section 66(3)(a) of the <i>Planning and Development (Local Planning Schemes) Regulations</i> recommends to the Western Australian Planning Commission that Local Planning Scheme 7 be amended; Pursuant to Part 6, Division 1, Section 66(3)(b) of the <i>Planning and Development (Local Planning Schemes) Regulations</i> recommends to the Western Australian Planning Commission that the Local Planning Strategy be reviewed. 	

STRATEGIC ALIGNMENT

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

Outcome:	1.2	Available land for residential, industrial and commercial development.
Strategy:	1.2.1	Support and promote appropriate development of land within the district.
Action:	1.2.1.3	Undertake major review of Local Planning Strategy and Scheme.

EXECUTIVE SUMMARY

- Pursuant to Part 6, Division 1 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, the local government is required to review its Local Planning Scheme at five year intervals.
- The review process commences with the local government preparing a “Report of Review” and making recommendations to the Western Australian Planning Commission (WAPC) on how to proceed.
- In particular, the report must make recommendations on the following:
 - Whether the scheme:
 1. is satisfactory in its existing form; or
 2. should be amended; or
 3. should be repealed and a new scheme be prepared in its place.

and

- Whether the local planning strategy for the scheme:
 1. is satisfactory in its existing form; or
 2. should be reviewed; or
 3. should be repealed and a new strategy prepared in its place.
- It is recommended that Council resolves to approve the “Report of Review” recommending that Local Planning Scheme 7 be amended and the Local Planning Strategy be reviewed and provides the approved “Report of Review” to the Western Australian Planning Commission for further consideration.

BACKGROUND

Pursuant to clause 65(1) of the *Planning and Development (Local Planning Schemes) Regulations 2015* (Regulations), the local government must carry out a review of its Local Planning Scheme every five years. This review process starts with preparing a “Report of Review”. The “Report of Review” is required to be approved by Council resolution and forwarded to the Western Australian Planning Commission (WAPC).

The Shire’s Local Planning Scheme No.7 (LPS7) was gazetted 19 September 2014 and the fifth year therefore commenced on 19 September 2018. On this basis, the review was required to be complete prior to 19 September 2019, with the report to be approved by Council and forwarded to the WAPC within six months of the end of fifth year. The review was finalised by the required date and is now presented to Council for approval. A copy of the “Report of Review” is provided in Attachment 9.1.3(1).

Clause 66 of the Regulations describes the manner and form of the “Report of Review” as well as defining the specific recommendations required by the local government.

In summary, the process includes the following steps:

- 1) Shire reviews LPS7 within fifth year;
- 2) Shire prepares a 'Report of Review';
- 3) Council makes recommendations to the Western Australian Planning Commission (WAPC);
- 4) WAPC makes a decision (within 90 days of receiving report) and informs Shire; and
- 5) Shire publishes 'Report of Review' and notice of WAPC decision.

Presently, steps 1 and 2 have been completed.

The 'Report of Review' can make one of following three recommendations regarding LPS7:

1. it is satisfactory in its existing form;
2. it should be amended; or
3. it should be repealed and a new scheme prepared in its place.

Where a local government also has an adopted local planning strategy (LPS), the 'Report of Review' must make recommendations about the LPS.

The Shire's LPS was adopted at the same time as LPS7. The 'Report of Review' can make one of the following recommendations in relation to the LPS:

1. it is satisfactory in its existing form;
2. it should be reviewed; or
3. it should be repealed and a new strategy prepared in its place.

FINANCIAL IMPLICATIONS

A review of LPS7 may be undertaken using internal officer resources. However, if mapping changes are required, it will be necessary to allocate funding for external drafting which can be undertaken by the Department of Planning Lands and Heritage.

In respect of the LPS, there is likely to be a need to allocate funds for external specialists, advice and assistance. Funds may need to be set aside for the next financial year to assist with preparing supporting documents.

POLICY COMPLIANCE

Not applicable.

STATUTORY COMPLIANCE

Part 5 of the *Planning and Development Act 2005* (the Act) provides local governments with the power to make and review local planning schemes. Division 5 of Part 5 of the Act specifically addresses matters associated with the review of local planning schemes.

The Act is supported by the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations). Attachment 2 provides details of Part 6, Division 1 – *Review and consolidation of local planning schemes*.

In summary, the Regulations define:

- a) timelines for undertaking a review of Local Planning Schemes (in the 5th year after published in the *Gazette*);
- b) matters the review must consider;
- c) format for the review which requires a 'report of review';
- d) defining three possible options for a recommendation;
- e) the process and approvals required (which includes a decision from the WAPC) and timelines required by the local government to submit the "Report for Review".

In this instance, Clause 66(1) of the Regulations requires the local government to submit its recommendation by the 19 March 2020.

CONSULTATION

The Regulations do not require public consultation during the preparation of a 'Report for Review'. However, clause 67 (2) of the Regulations does require the advertising of the decision by the WAPC and making the "Report of Review" available for inspection at its office.

Depending on the direction approved by the WAPC, future stages of the review process will require comprehensive advertising/consultation with government agencies and the community.

OFFICER COMMENT

The Regulations requires the local government to review its Local Planning Scheme and Strategy every five years to ensure that the documents are current and reflect the requirements and directions of the State Planning Framework.

LPS7 provides the legal framework for assessing planning proposals while the LPS provides a longer term strategic vision for how the Shire could develop. The intent is to allow LPS7 to be amended from time to time to accommodate development and land uses that align with settlement patterns shown in the LPS.

The following section provides a summary of the "Report of Review" (Attachment 9.1.2(1)) and is divided into two main sections, addressing LPS7 and LPS.

Summary of Local Planning Scheme 7 (LPS7) - Report of Review

In respect to the 'report of review', Regulation 66 (2) outlines the content details required, including:

- a) the date on which LPS7 was published in the *Gazette*;
- b) date on which each amendment made to the scheme was published in the *Gazette*;
- c) the date on which the LPS7 was last consolidated (n/a);
- d) an overview of the subdivision and development activity, lot take up and population changes in the scheme area since LPS7 gazetted;

- e) an overview of the extent to which the scheme has been amendment to comply with requirements of any relevant legislation, region scheme or State planning policy;
- f) a recommendation as to whether LPS7 is satisfactory in its existing form, should be amended or repealed and a new scheme prepared;
- g) a recommendation as to whether the LPS is satisfactory in its existing form, should be reviewed or should be repealed and a new strategy prepared.

The “Report of Review” (Attachment 1) has been prepared reflecting the format and details required in the Regulations.

The following provides a summary of points addressed:

- a) There have been eight amendments to LPS7 that have been gazetted. Of these, four have been omnibus amendments prepared by the Shire to ensure that LPS7 is contemporary. The most significant was Amendment 3 which ensured that the scheme text reflects the deemed provisions included in the Regulations.
- b) There has been limited subdivision and development activity during the life of LPS7. This includes the creation of:
 - 1. 205 new dwellings (average 41 per year); and
 - 2. 52 new lots, most being infill development (27 traditional residential lots and 23 rural residential). It is noted that the most significant subdivision to occur is a “greenfield” subdivision of 95 residential lots (Meldene West - Stage 2). This was approved in 2018 and site works for Stage 1 is nearing completion.
- c) Population data is limited, however, it shows a consistent positive trend.
- d) There is opportunity to undertake a further omnibus amendment to ensure that the scheme text aligns with Model Scheme Text provisions with regard to:
 - 1. Introducing objectives for reserves into a Reserves objectives table. Presently, LPS7 does not include any guidance on this;
 - 2. Reformatting zoning objectives into a Zone objectives table;
 - 3. Reformatting additional uses into the main body of the scheme text;
 - 4. Updating subdivision standards for Agricultural land to reflect State Planning Policy 2.5 and Development Control Policy 3.4;
 - 5. Reformatting restricted uses into the main body of the scheme text;
 - 6. Reformatting Special Use zones into the main body of the scheme text;
 - 7. Reformatting Environmental Conditions into the main body of the scheme text; and
 - 8. Reviewing definitions to ensure they are up to date.

It is noted that most of these elements primarily relate to formatting and do not result in material changes in purpose and intent.

Summary of Local Planning Strategy (LPS) – Report of Review

The “Report of Review” includes the need to assess if the LPS is satisfactory in its existing form, reviewed or repealed and a new strategy prepared.

Overall, the LPS has provided appropriate strategic guidance and is generally acceptable in its current format based on the following observations:

- a) There has been limited development during the life of the LPS; and
- b) There is a suitable supply of land available for expansion.

In summary, the “Report of Review” (Attachment 1) shows that:

- a) there is a suitable supply of residential land;
- b) the settlement patterns for the Shire’s townsites have provided adequate guidance for future planning; and
- c) there is appropriate guidance for land use controls and direction on zoning intensions.

Notwithstanding the above, a review would provide scope to investigate the following strategic issues:

Availability of Industrial land

In May 2015, Council adopted a “*Growing Donnybrook Balingup Growth Plan*” (Growth Plan) which provided a strategic vision for the Shire (year 2050). This Growth Plan consisted of the following three stages:

1. Analysis of potential growth drivers and development of a sustainability framework and growth scenarios;
2. A gap analysis of existing capacity of townsites with opportunities and constraints; and
3. Formulating plans.

The Growth Plan highlighted several strategic issues that need action. It is considered that one of the key and most pressing relates to the availability of “Industrial” land. An audit of existing “General Industry” zoned land shows that there are no vacant lots available. The Growth Plan shows that land presently “zoned” for “General Industry” is constrained due to topography, vegetation and lack of native title resolution. A review of the LPS is required to address availability of alternative sites for “Industrial” land uses.

Review of Special Control Area 4 (SCA4) control mechanisms

Several requests have been received to review the extent and need of SCA4. The requests highlight the competing interests between quarry activity that plays a very limited role in the local economy but generates off-site impacts and limits potential growth opportunities for the Donnybrook townsite.

A review of the LPS has potential to re-visit the effectiveness in controlling land use conflict through a special control area and if there are alternatives that limit potential to sterilise adjoining land.

Potential to explore low density residential expansion

A scan of LPS maps show that there is significant zoned land available for traditional residential development. However, the majority of this land is constrained due to servicing (lack of reticulated sewer). This effectively sterilises land availability due to significant upfront costs, combined with low land values and relatively slow sales rates.

There is opportunity to explore potential for expansion of low density residential land options in proximity to the Donnybrook townsite. This can be undertaken in a manner that will not impact on the overall supply of good quality agricultural land or create long term sustainability issues generally associated with “sprawl”.

A review of the LPS has potential to consider opportunities for a range of housing/lot types and servicing arrangements near the Donnybrook townsite. There is opportunity to explore this as part of the current review of the Bunbury Geographe Sub-regional Strategy.

CONCLUSION

The “Report of Review” has been prepared in a format and includes content to satisfy the requirements of the Regulations. The “Report of Review” shows that that LPS7 and the LPS are generally satisfactory, however, would benefit from an amendment and review.

9.2 *STRATEGIC BUILT PROJECTS AND ASSETS*

Nil.

9.3 *EXECUTIVE MANAGER OPERATIONS*

Nil.

9.4 *MANAGER WORKS AND SERVICES*

Nil.

9.5 MANAGER AGED CARE SERVICES

9.5.1 REQUEST TO INCREASE LOAN AMOUNT– TUIA LODGE FIRE SUPPRESSION SYSTEM

Location	Tuia Lodge
Applicant	Not applicable
File Reference	
Author	Bob Lowther – Manager Aged Care Services
Responsible Manager	Bob Lowther – Manager Aged Care Services
Attachments	Nil
Voting Requirements	Simple Majority

Recommendation
<p>That Council:</p> <ol style="list-style-type: none"> 1. Authorises the Chief Executive Officer to loan a maximum amount of \$320,000 to cover all costs associated with the installation of the Tuia Lodge Fire Suppression System as follows: <ol style="list-style-type: none"> 1.1 Approved Tender (RFT01/1920) – Control Fire Systems (\$254,699.50) 1.2 Sound attenuation (\$9,000) 1.3 North Point Consulting Services (\$15,070) 1.4 BDA Tree Services (\$3,916) 1.5 Associated works (\$37,314.50) 2. Instructs the Chief Executive Officer to provide Council with a cost breakdown of all expenditure incurred under ‘Associated Works’ at the completion of the project.

BACKGROUND

In the 2018/19 and subsequently the 2019/2020 budgets Council included \$500,000 via a loan facility to retrofit a fire suppression system into Tuia Lodge. The project will allow the building to comply with a 9C classification which is a requirement of the recent Commonwealth grant for extensions to be undertaken.

At the Special Council Meeting of the 19th November 2019, Council resolved in part to

“Instruct the Chief Executive Officer to activate the pre-approved loan facility for the Fire Suppression System (Account 104450 within the 2019/20 Shire Budget) up to a maximum of the tendered value.”

This resolution failed to recognise the total costs of the project. Funds have already been expended towards this project. Current spend for the project is approximately \$20,000; \$15,070 for North Point Consulting Service, and \$3,916 for BDA tree services. With the agreed location

of the pump house and tank some fencing relocation and minor ground works will be required to be completed as part of this project.

In all the tenders received (circulated to Council as pre-reading for the Special Council Meeting) all contractors indicated certain exclusions that were deemed reasonable and included any potential relocation of existing services, installation of any storm water requirements, permit costs, sands, blue metal or other fillers required in ground works, security lighting and bollards.

The Tender amount for Control Fire Systems is \$254,699.50, plus a further \$9,900 for sound attenuation; which means \$283,585.50 has been spent/committed to date.

The additional works listed above will be required to be costed somewhere – if the loan was to be constructed purely for the amount in the tender quote, there will be no accounting for these potential costs.

FINANCIAL IMPLICATIONS

The fire suppression system project will not be able to stay within budget if the loan amount equates to purely the preferred tender submission. Current costs incurred and additional costs that may be incurred will exceed those stipulated in the resolution from the Special Council Meeting. Even with the additional funds requested, the total project costs will be significantly less than the originally budgeted amount.

POLICY COMPLIANCE

Not applicable.

STATUTORY COMPLIANCE

Not applicable.

CONSULTATION

Nil.

OFFICER COMMENT/CONCLUSION

Whilst reflecting the tendered amount, the original resolution did not include provision for associated works that would normally be associated with a project of this nature. The recommended resolution will ensure that suitable funds are available for associated works to deliver this project to a high standard.

9.6 CHIEF EXECUTIVE OFFICER

9.6.1 ACCOUNTS FOR PAYMENT

The Schedule of Accounts Paid (to be provided) under Delegation (No 3.1) is presented to Council for information.

9.6.2 MONTHLY FINANCIAL REPORT – OCTOBER 2019

The Monthly Financial Report for October 2019 is attached (attachment 9.6.2(1)).

EXECUTIVE RECOMMENDATION

That the monthly financial report for the period ended October 2019 be received.

9.6.3 MONTHLY FINANCIAL REPORT – NOVEMBER 2019

The Monthly Financial Report for November 2019 is attached (to be provided).

EXECUTIVE RECOMMENDATION

That the monthly financial report for the period ended November 2019 be received.

9.6.4 COUNCIL MEETING DATES 2020

Location	Shire of Donnybrook Balingup
Applicant	Not applicable
File Reference	-
Author	Maureen Keegan – Manager Executive Services
Responsible Manager	Ben Rose – Chief Executive Officer
Attachments	Nil
Voting Requirements	Simple

Recommendation		
That Council:		
1. Adopts the 2020 Ordinary Council Meeting Dates as follows:		
<u>Date</u>	<u>Venue</u>	<u>Time</u>
26 February 2020	Council Chamber	5pm
25 March 2020	Council Chamber	5pm
22 April 2020	Noggerup Hall	5pm
27 May 2020	Council Chamber	5pm
24 June 2020	Council Chamber	5pm
22 July 2020	Council Chamber	5pm
26 August 2020	Council Chamber	5pm
23 September 2020	Council Chamber	5pm
28 October 2020	Balingup Town Hall	5pm
25 November 2020	Council Chamber	5pm
16 December 2020	Council Chamber	5pm
2. Requests the Chief Executive Officer to undertake all statutory advertising in this regard.		

STRATEGIC ALIGNMENT

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

Outcome	4.2	A respected, professional and trusted organisation.
Strategy	4.2.1	Effective and efficient operation and service provision.
Action	4.2.1.4	Demonstrate sound financial planning and management, including revenue/expenditure review and revenue diversification strategies and long term financial planning.

EXECUTIVE SUMMARY

Item 9.7.1 Agenda Briefing and Council Meeting (OCM) Dates 2020 was deferred at the November 2019 OCM to allow further discussion regarding the Agenda Briefing and Concept Forum timetable and format.

Regulation 12(1) of the Local Government (Administration) Regulations 1996 requires local governments to give public notice of the dates on which it intends to hold its Ordinary Council meetings for the ensuing 12 month period.

As such Council is requested to adopt the 2020 calendar for Ordinary Council meetings as presented below:

Ordinary Council	Venue	
26 February 2020	Council Chamber Donnybrook	5pm
25 March 2020	Council Chamber Donnybrook	5pm
22 April 2020	Noggerup Hall	5pm
27 May 2020	Council Chamber Donnybrook	5pm
24 June 2020	Council Chamber Donnybrook	5pm
22 July 2020	Council Chamber Donnybrook	5pm
26 August 2020	Council Chamber Donnybrook	5pm
23 September 2020	Council Chamber Donnybrook	5pm
28 October 2020	Balingup Town Hall	5pm
25 November 2020	Council Chamber Donnybrook	5pm
16 December 2020	Council Chamber Donnybrook	5pm

To allow Councillors and Officers to take extended leave throughout December/January it is proposed that no Ordinary Council meeting be held in January 2020. The last meeting of 2019 is 18 December and the first meeting for 2020 is 26 February.

No public holidays occur on the dates recommended.

Meetings are held in the Shire Chambers at Donnybrook, it is recommended the April meeting be held in Noggerup and the October meeting in Balingup to allow greater community participation.

BACKGROUND

Council currently conducts one ordinary meeting on the 4th Wednesday of each month commencing at 5.00pm, a process which was adopted on 19th 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, the format of the Agenda Briefings and Concept Forums will be workshopped by Councillors to ensure that a format is devised that is beneficial to Councillors to ensure best practice.

FINANCIAL IMPLICATIONS

All costs incurred with Ordinary Meetings are provided for in the 2019/20 Budget.

POLICY COMPLIANCE

Nil.

STATUTORY COMPLIANCE

Regulation 12(1) of the Local Government (Administration) Regulations 1996
Shire of Donnybrook Balingup Meeting Procedures Local Law 2017

CONSULTATION

Nil.

OFFICER COMMENT/CONCLUSION

Nil.

9.6.5 BUNBURY GEOGRAPHE TOURISM PARTNERSHIP MEMORANDUM OF UNDERSTANDING

Location	Shire of Donnybrook Balingup
Applicant	Not applicable
File Reference	Not applicable
Author	Maureen Keegan – Manager Executive Services
Responsible Officer	Ben Rose – Chief Executive Officer
Attachments	9.6.5(1) - Signed Memorandum of Understanding
Voting Requirements	Simple Majority

Recommendation	
<p>That Council:</p> <ol style="list-style-type: none"> 1. Endorses an extension of the Bunbury Geographe Tourism Partnership (BGTP) Memorandum of Understanding from 12 December 2019 to 30 June 2020. 2. Subject to item 1, Council notes: <ol style="list-style-type: none"> 2.1 The extension is to allow the completion of a review of the MOU and consideration by all member local governments of their continuing involvement and investment into BGTP by March 2020. 2.2 The outcomes of the March 2020 MOU review will be presented to each Council for consideration and confirmation on their position on the BGTP involvement post 30 June 2020. 2.3 The financial provision of 30% of the Shire's annual contribution by invoice from the City of Bunbury, to enable the ongoing engagement of the Tourism Marketing and Development Manager for the extended period of the MOU. 3. Approve the expenditure of \$1500.00 to be taken from account 110820 Resource Sharing. 	

STRATEGIC ALIGNMENT

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

Outcome: 1.3 an attractive visitor and tourist destination

Strategy: 1.1.1 actively promote the district as an attractive destination

Action: 1.3.1.3 continue to support local and regional tourism bodies and initiatives

EXECUTIVE SUMMARY

In 2016, a Memorandum of Understanding (MOU) was entered into between the Shires of Donnybrook Balingup, Dardanup, Collie, Harvey, Capel and Boyup Brook as well as the City of Bunbury to deliver outcomes listed within the Regional Tourism Development Strategy. A copy of the signed MOU is provided in Attachment 9.6.5(1).

The MOU was developed in cooperation with the Bunbury Wellington Group of Councils to create a unified approach to the management of tourism development, marketing and infrastructure.

The current MOU is being reviewed by each member, and as such, it is requested to seek Council's support to extend the end date of the MOU to 30 June 2020.

It is considered that the continuation of the MOU will provide a coordinated approach to the development of tourism and marketing of the region that will see reduced competition between towns and a pooling of resources that will increase reach and effectiveness of tourism marketing campaigns.

BACKGROUND

In 2012 a tourism working group comprising of the Bunbury Wellington Group of Councils, South West Development Commission and Regional Development Australia came together to develop a sub-regional tourism strategy that would complement the Tourism Futures South West plan and the South West Regional Blueprint. As a result of the strategy, a Memorandum of Understanding was developed and entered into in 2016, with this MOU due to conclude on 12 December 2019.

The purpose of the MOU is to create a unified approach to the management of tourism development, marketing and infrastructure and continue the relationship with the members and identify and promote key areas of focus including:

- Identifying tourism opportunities, priorities and gaps;
- Developing a unified tourism brand for the region;
- Marketing, governance and product development; and
- Identifying infrastructure and product priorities.

Member Councils have commenced a review of the MOU which to date, is not yet finalised.

A meeting was held on 13 November 2019 where members of the Bunbury-Geographe Steering Committee and Bunbury-Geographe Tourism Advisory Working Group, agreed to approach each member Council for support in extending the current MOU by a further six months to 30 June 2020.

FINANCIAL IMPLICATIONS

The MOU contained provision for the Operation/Marketing Budget of \$100K per year over the three years. During the 2016/17 financial year, there was no expenditure which resulted in \$100K being available for the current financial year (2019-2020).

The Tourism Marketing and Development Manager was employed on 18 April 2017. It was proposed by the member local governments, to each provide a pro-rata payment being 30% of each member's annual contribution to enable the ongoing engagement of the Tourism Marketing and Development Manager for the extended period of the MOU.

This will result in the following contributions:

Boyup Brook	\$600.00
Bunbury	\$47,055.90
Capel	\$3,000.00
Collie	\$1,500.00
Dardanup	\$3,000.00
Donnybrook – Balingup	\$1,500.00
Harvey	\$3,000.00

The Shire's contribution would be drawn from account 110820 Resource Sharing, with a mid-year budget amendment of \$1500.00.

POLICY COMPLIANCE

Not applicable.

STATUTORY COMPLIANCE

Not applicable.

CONSULTATION

Not applicable.

OFFICER COMMENT/CONCLUSION

Council originally agreed to the signing of the Memorandum of Understanding. The outcome of the review to be undertaken in March will be presented back to Council to enable a decision to be made in April 2020 for potential roll out beyond 1 July 2020.

9.6.6 VC MITCHELL PARK PRECINCT (DONNYBROOK AND DISTRICTS SPORTS RECREATION AND EVENTS PRECINCT)

Location	Shire of Donnybrook Balingup
Applicant	Not applicable
File Reference	
Author	Mr Ben Rose – Chief Executive Officer
Responsible Manager	Mr Ben Rose – Chief Executive Officer
Attachments	9.6.6(1) - November OCM Item 9.7.4 – Shire Borrowing Capacity 9.6.6(2) - Draft updated Shire Borrowings Plan 2019/20 – 2033/34
Voting Requirements	Simple Majority

Recommendation
<p>That Council:</p> <ol style="list-style-type: none"> 1. Approve, in principle, loan funding towards the Donnybrook and Districts Sports, Recreation and Events Precinct Project on the basis of: <ol style="list-style-type: none"> 1.2 One-third funding from the Shire of Donnybrook Balingup; 1.3 Two-thirds funding from the State Government; and 1.4 The Shire of Donnybrook Balingup capital contribution via loan being capped at a maximum of \$3,000,000. 2. Instruct the Chief Executive Officer to seek project funding from the State Government as per resolution 1, above. 3. Approve the addition of the in principle loan funding amount to the Shire's Borrowings Plan 2019/20 – 2033/34 (as attached).

STRATEGIC ALIGNMENT

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

Outcome:

- 3.2 Well supported community groups and facilities.
- 3.3 A safe and healthy community environment for all ages.
- 4.2 A respected, professional and trusted organisation.

Action:

- 3.3.3.1 Within resource capacity, maintain and develop sport and recreation facilities in line with sport and recreation masterplans.
- 3.3.3.2 Review and implement the VC Mitchell Park and Balingup Recreation Centre Masterplans.

- 4.2.1.4 Demonstrate sound financial planning and management, including revenue/expenditure review and revenue diversification strategies and long term financial planning.
- 3.2.1.2 Maintain community facilities within resource capacity.

EXECUTIVE SUMMARY

To meaningfully progress the Donnybrook and Districts Sports, Recreation and Events Precinct Project (DDSREPP), direction from the Council is required in relation to project funding. An in-principle funding decision is recommended to Council, based on loan funding capped at \$3M and requested two-thirds co-contribution from the State Government.

BACKGROUND

A MasterPlan for the multi-purpose, multi sporting code redevelopment of the VC Mitchell Park Precinct was prepared by the Shire in 2009, however, was not progressed for a variety of reasons (lack of Shire funding commitment, insufficient stakeholder engagement, competing project priorities). The 2009 MasterPlan also included plans and costings for redevelopment of the Balingup Recreation Centre; similarly, these plans were never substantially funded or implemented.

The requirement to re-visit the project recently has been driven through the Shire's Corporate Business Plan, which includes an action to specifically review and implement the previous Masterplan. In addition, separate Council resolutions from 2019 have driven the establishment of a Working Group to assist in developing the project.

With one-third funding for the cost of the review of the MasterPlan (and preparation of a Business Case to the State Government) coming from the Department of Local Government, Sport and Cultural Industries, the final MasterPlan and Business Case is required to be presented to the Local Member Hon. Mick Murray MLA by April 2020 in order to meet government timelines for consideration for capital funding for the 2021/22 financial year (State election is in March 2021).

In order to deliver a robust and realistic MasterPlan and Business Case (that can actually be delivered-on, unlike the 2009 version), an approximate project budget is required to be resolved now (at least in-principle), which includes proportionate cost-sharing between key funding bodies.

Once resolved, the project budget will be instrumental in guiding development of the MasterPlan and Business Case.

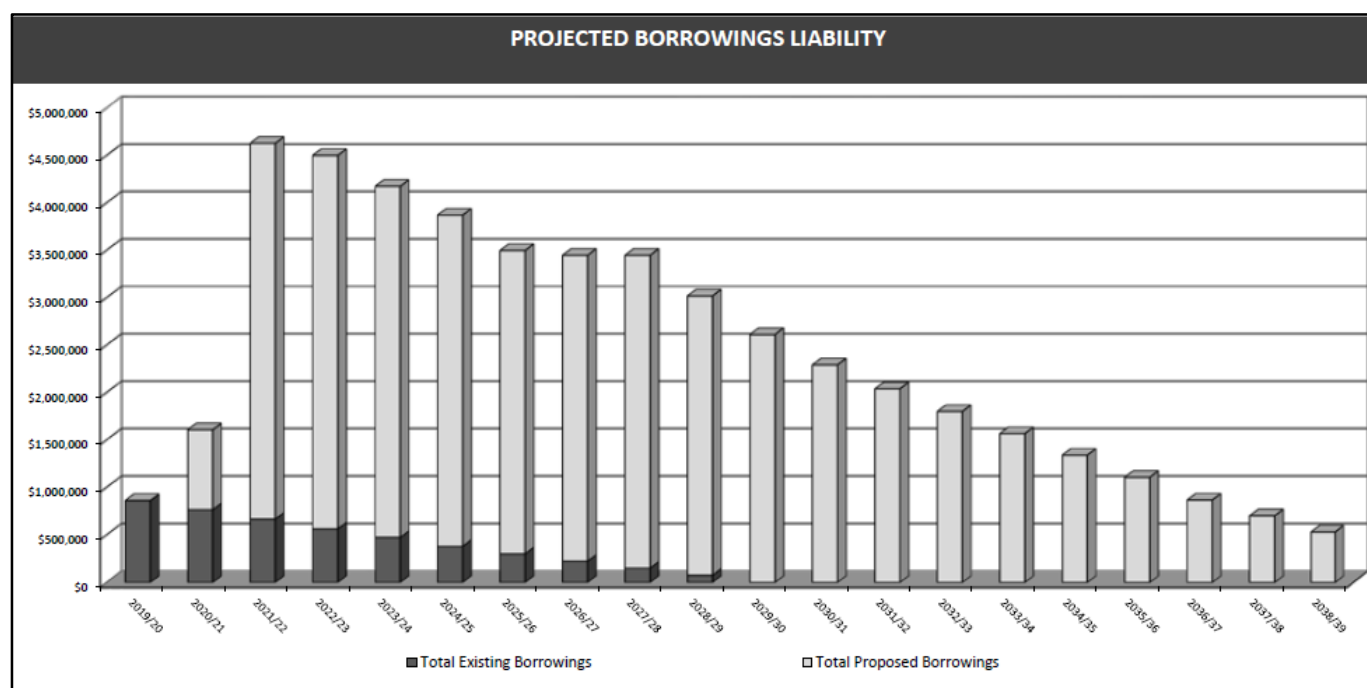
FINANCIAL IMPLICATIONS

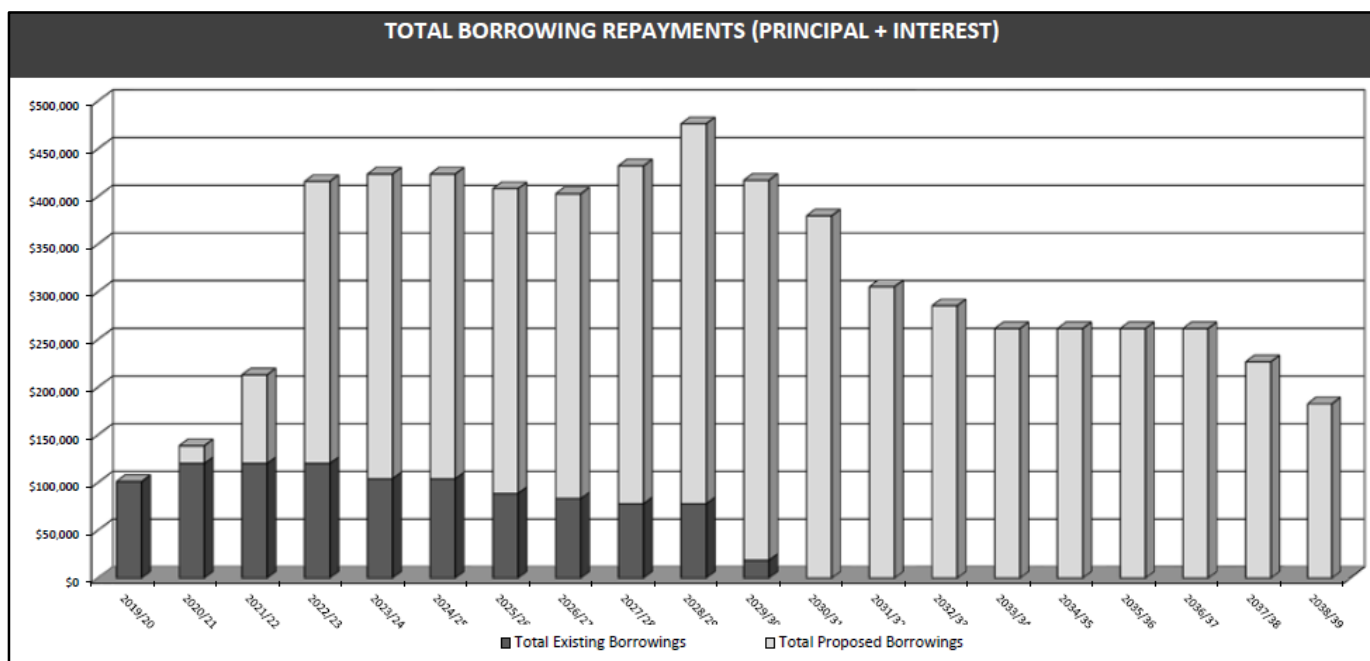
Given the DDSREP project aligns with Council's Finance Policy on Debt Management and the Intergenerational Equity principle (both addressed below), and the Shire's very low present and planned loan funding, it is recommended that Council make an in-principle decision to apply loan funding for this capital project, with a sliding scale approach capped at a maximum Shire contribution of \$3M, examples as follows:

	Shire capital funding (one-third)	State capital funding (two-thirds)	TOTAL
Example 1	\$2M	\$4M	\$6M
Example 2	\$2.5M	\$5M	\$7.5M
Example 3	\$3M (capped maximum contribution)	\$6M	\$9M

At its November 2019 Ordinary Meeting, Council considered the Shire's present loan funding ratio and recognised that the Shire has the capacity to loan an additional ~\$11M towards key community infrastructure projects (on the presumption of an interest rate of 1.91% per annum over a term of 20 years, where every \$1M in loan facility requires an annual repayment of ~\$61K (i.e. a ~1.2% increase in the general rate in the dollar)). This significant borrowing capacity available to the Shire is driven by very low interest rates and an almost negligible present loan liability.

As an example, the following graphs depict the projected borrowings liability and the projected borrowings repayments (principal and interest) on the presumption that the maximum capped Shire borrowings of \$3M is approved to commence from the 2021/22 financial year.





The attached draft revised Shire Borrowings Plan 2019/20 – 2033/34 provides specifically itemised (approved and proposed) details for loan funding borrowings and repayments (including the above graphs). It is recommended that Council approve the revised Shire Borrowings Plan at its December 2019 Ordinary Meeting (refer Attachment 9.6.8(1)) to support the project moving forwards. In approving the Shire Borrowings Plan, the Council is not actually authorising the proposed loan; rather, it is requiring the Executive to prepare future draft budgets (for Council deliberation) with consideration to the proposed borrowings.

At its November 2019 Ordinary Meeting, Council resolved (refer Attachment 9.6.8(2)):

“Council:

1. *Receives the content of this report and acknowledges the present borrowing capacity of the Shire of Donnybrook Balingup for the purposes of future capital works projects.*
2. *Acknowledges that the content of this report is based on the draft (as yet unaudited) 2018/19 Annual Financial Report.*
3. *Acknowledges that the Debt Service Cover Ratio in any one financial year is subject to variation due future Operating Expenditure and Operating Revenue variables used in the ratio calculation.”*

Whilst it is certainly not the recommendation of the Executive to loan this full amount towards this project (or any project), the Shire’s loan capacity calculations, above, are provided for context to the Council in considering this matter.

In addition to Shire and State funding, this project could attract funding from other sources such as Lotterwest. Additionally, while the sporting clubs represented on the Working Group generally do not have funding to contribute, there is opportunity for in kind assistance and volunteer assistance.

POLICY COMPLIANCE

Council Finance Policy 3.8 - *Debt Policy*, is relevant to this matter. The policy sets out the conditions of raising debt:

4.2 Conditions for Debt Raising

- *Debt funding may be used for capital works and the purchase of development of assets and infrastructure assets.*
- *Debt funding may not be used to finance operating activities or recurrent expenditure.*
- *Before borrowing funds, the Shire would generally consider using existing surplus funds in the first instance.*

With particular reference to ‘inter-generational equity’, applying borrowings funding for community infrastructure-based projects is recommended as the most appropriate funding model. This enables the generation of the community most advantaged by the development and use of the subject infrastructure/project to bear the funding cost for it.

STATUTORY COMPLIANCE

It is recommended that Council consider an in-principle (i.e. directive, but not binding) loan funding decision at this stage, which will require:

- Inclusion of the proposed loan facility (capped at \$3M) into the Shire Borrowings Plan from 2021/22 onwards; and
- Detailed consideration through the 2020/21 Shire budget deliberations.

CONSULTATION

The Project Working Group with representatives from Council and individual sporting groups has met on three occasions, in addition to an organised site visit (bus tour) to various multi-purpose sporting precincts (Katanning, Narrogin and Pingelly). In addition, the CEO and Shire President have been on a site visit to Narambeen, Bruce Rock and Corrigin centres.

With each of these multi-purpose sports/events centres being delivered chiefly through State R4R funding and Shire contribution (typically one-third), the project budgets (completed or predicted) have generally ranged from \$6M - \$10M.

OFFICER COMMENT/CONCLUSION

In order to ‘drive’ the project forward with certainty, a project budget is required to be established. This will enable budget to drive project scope and design through the MasterPlan and Business Case, rather than project scope and design driving the budget (a shortcoming of the 2009 MasterPlan process).

10 ELECTED MEMBER MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil.

11 QUESTIONS FROM MEMBERS

Nil.

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

13 MEETINGS CLOSED TO THE PUBLIC

13.1 MATTERS FOR WHICH THE MEETING MAY BE CLOSED

Nil.

13.2 PUBLIC READING OF RESOLUTIONS THAT MAY BE MADE PUBLIC

14 CLOSURE

The Shire President to advise that the next Ordinary Council Meeting will be held on Wednesday 26 February 2020 commencing at 5.00pm in the Shire of Donnybrook Balingup Council Chamber.