



## Minutes of Ordinary Council Meeting

Held on 26 June 2024 and commenced at 5:00pm

Held at the Council Chambers in Donnybrook

*(1 Bentley Street, Donnybrook)*

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**Authorised:**

A handwritten signature in black ink, appearing to be "Tim Clynn", is positioned to the right of the "Authorised:" label.

Tim Clynn, Chief Executive Officer (Temporary)

**Prepared:**

1 July 2024

## REPORTING ON RISK IN COUNCIL AGENDA ITEMS – JUNE 2024

Risk reporting has been incorporated into Council agenda items this month. This is the first time such reporting has occurred.

It is noted that the tables used in this risk reporting (see Attachment 0.1) are contained in the draft (new) Organisational Risk Management Policy being considered by Council at its June 2024 Ordinary meeting.

Although that new policy is yet to be adopted, the Chief Executive Officer, having regard to s4.1 (Functions of CEO) of the *Local Government Act 1995*, has determined that this information should be provided to the council in each agenda item, to assist Council in informed decision making. The tables in the Attachment titled as “Measures of Consequence”, ‘Measures of Likelihood’, ‘Risk Matrix’ and ‘Risk Acceptance Criteria’ are contemporary risk assessment/management tools used by the majority of local government authorities in Western Australia.

Providing the information in the June 2024 agenda items also allows Council to test the principles contained in the draft policy prior to it being adopted. This allows Council to determine whether any changes to the draft policy should be considered.

In the event that the draft policy is changed future risk reporting in agenda items would reflect those changes.

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## 1. Declaration of Opening / Announcement of Visitors

### **Acknowledgement of Country:**

The Shire President acknowledged the continuing connection of Aboriginal people to Country, culture and community, including traditional custodians of this land, the Wardandi and Kaneang People of the Noongar Nation, paying respects to Elders, past and present.

The Shire President declared the meeting open at 5:01pm and welcomed the public gallery.

The Shire President advised that the meeting is being live streamed and recorded in accordance with Council Policy EM/CP-2. The President further stated 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

### **Councillors Present:**

Cr Vivienne MacCarthy	Cr Lisa Glover	Cr John Bailey
Cr Alexis Davy	Cr Peter Gubler	Cr Anita Lindemann
Cr Anne Mitchell	Cr Grant Patrick	Cr Deanna Shand

### **Staff Present:**

Garry Hunt, Chief Executive Officer (Temporary)	Ross Marshall, Director Operations
Tim Clynn, Acting Director Finance & Corporate	Loren Clifford, Manager Corporate Services
Samantha Farquhar, Administration Officer	Michelle Dennis, Manager Development Services
Corporate Services	
Belinda Richards, Manager Financial Services	

### **Other Members Present:**

Public Gallery:	20 members	Livestream Viewers:	82
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#### 2.1. Apologies

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Nil.

#### 2.2. Approved Leave of Absence

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Cr Patrick has a leave of absence for the next Ordinary Council Meeting being held on the 24 July 2024. Resolution number 29/24 from the 27 March 2024 Ordinary Council Meeting.

#### 2.3. Application for Leave of Absence

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Nil.

### 3. Announcements from the Presiding Member

Nil.

### 4. Declarations 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.

Chief Executive Officer (Temporary) Garry Hunt declared an impartiality interest regarding item 9.1.1 as the applicant is known to him from his role as CEO – City of Perth. He left the role in March 2002.

Cr Gubler declared a financial interest regarding item 9.2.5, due to NK & PG Gubler multiple land locations.

Cr Mitchell declared an impartiality interest regarding item 9.2.5 as she is related to Mr Fry.

Cr Mitchell declared an impartiality request regarding item 9.2.3 as her mother is a resident at Tuia Lodge.

Cr Bailey declared an indirect financial interest regarding item 9.2.5, as he is now in control of the land.

## 5. Public Question Time

### 5.1. Responses to previous public questions that were taken on notice

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Nil.

### 5.2. Public Question Time

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Question from: John Fry

*How many other farmer ratepayers with adjoining lots would be eligible for a group valuation should it be available?*

Response from: Director Finance and Corporate

It isn't possible to determine the number of ratepayers that would be eligible for a group valuation, for the following reasons:

- Without specific details from the land holders the Shire is unable to ascertain whether adjoining land holders with common names manage the properties as a single unit.
- Where land is owned in a company name the Shire is unaware if the directors of the company also own contiguous land in non-company names.

Even if Shire staff conducted a manual check of ownership details of all rate assessments (which would incur significant resources) a determination of what rate assessments would be eligible for group rating would be incomplete due to the reasons stated above.

In many cases where rural land is contiguous and in identical ownership, Landgate already imposes a group rating value as the ownership structure meets their policy on group valuation.

It is also noted that the number of contiguous land holdings eligible for group rating will be influenced by the content of any relevant policy adopted by the Council. An item is contained in this month's Council agenda on this subject matter and its content provides Council with two versions of a policy for consideration, one being a requirement for group rated land to be in "identical ownership" and the other for the land to be in "common ownership". The number of eligible properties for group rating would be expected to differ under each policy option.

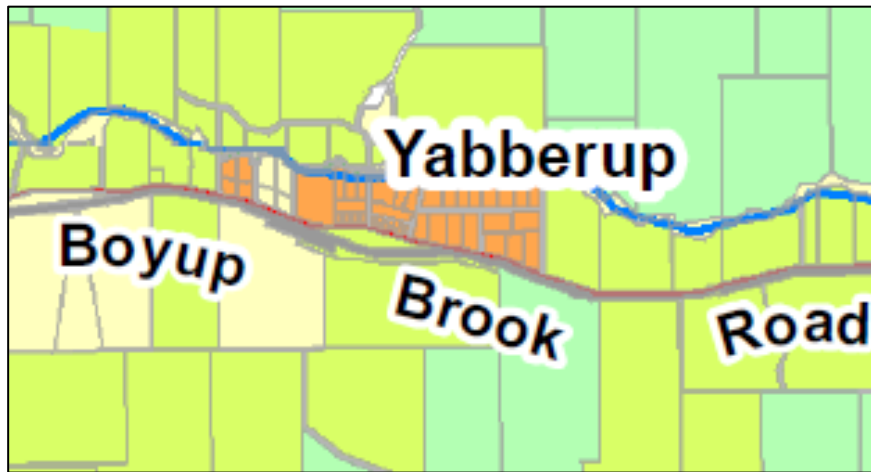
Question from: Julieanne Hilbers

*The Shire of Donnybrook-Balingup's Local Planning Strategy recommends that the Yabberup Hamlet be rezoned as a Rural townsite. How will having two major gravel extraction sites within 1-3 kms of a rural townsite impact the mental, social and physical health and wellbeing of this community?*

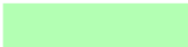






Response from: Manager Development Services

The Shire's draft Local Planning Strategy proposes the Rural townsite zoning to reflect the historic townsite area and differentiate these smaller (2000m<sup>2</sup> - 1.8 hectare) rural lifestyle lots from the surrounding larger lots included within the Priority and General Agriculture areas and used for

intensive and extensive agriculture. This builds on the current strategy provisions that identified the same area as rural smallholdings:



Excerpt: Figure 3 – Shire of Donnybrook-Balingup Local Planning Strategy (2014)

Land Uses	
	General agriculture
	Priority agriculture
	Rural residential
	Rural residential investigation
	Rural smallholdings
	Tourism
	Conservation / Recreation

As with all extractive industries, the extraction of gravel will create noise and dust during operations, and this is acknowledged by the applicant that has included management measures to address and minimise these impacts on surrounding land.

The proposed extraction activity is not considered a major extraction activity (such as the long-term Donnybrook Stone quarry operations) and is not expected to have any adverse health or wellbeing impacts on Yabberup residents on the basis that:

- The extraction activity is approx. 2.2km east of Yabberup townsite boundary with the closest off-site dwelling being 500m from the boundary of the extraction site which is considered an acceptable buffer to address noise and dust impacts given the type/scale of the proposal.
- The proposal has a limited lifespan of 5-years with a total extraction area of 14.6 hectares and individual extraction areas confined to a 2 ha – 2.4 ha maximum cleared area at any one time with the pits progressively rehabilitated prior to a new pit being opened.



- Transport of the gravel involves a max. of 13 trucks per day using the main Donnybrook-Boyup Brook Road (dependent on demand) which is minor increase to the current traffic using the road.
- The trucks will not operate during school bus hours.
- The extraction activity (including crushing/screening) will only operate Monday-Friday 8am-5pm and will not operate on the weekend/public holidays.
- No blasting is required.
- The proposal includes adequate management measures to be implemented during operations to limit noise and dust impacts on surrounding properties including:
  - When the site is not in operation, the dust management plan will continue to be implemented by the Operations Manager.
  - Operations will not occur during high wind events and will halt if dust leaves the property until the situation is clearly resolved.
  - Crushing and screening activities will not occur outside of winter months.
  - Use of hydro mulching, polymer sprays and plastic cover on stockpiles to address potential dust creation and aid in establishing vegetative cover.
- In addition to any development approval, the proposal also requires an Extractive Industry Licence under the Shire's Extractive Industry Local Law 2016 and may require Department of Water and Environmental works approval/licensing as a prescribed premises which will also place conditions to control operations.
- The land will be returned to pasture or planted with other horticultural crops.

Question from: Julieanne Hilbers

*How will the introduction of a major gravel extraction industry at Preston Vale across 27.2 hectares for a minimum of five years impact the work currently being undertaken by Promote Preston who are leading the Preston River Valley 'Live, Work and Explore' promotional strategy which has received funding from the Shire of Donnybrook-Balingup?*

Response from: Manager Development Services

The extraction activities are being considered for approval of a short time period (up to 5 years only). With the land then being returned to agriculture, including as pasture and horticulture crops, there is not expected to be any conflict with the long-term promotion of the local area for other uses including living and tourism.

Question from: Vivien Keelty

*The Preston River Valley has some of the State's best food producing soils. These areas are classified as Priority Agriculture. A report by DPIRD says they DO NOT approve gravel extraction at Lot 130 as the soil will be irreversibly damaged for future FOOD production. How will Councillors make sure these areas are protected by not allowing activities or developments which may damage these precious resources?*

Response from: Manager Development Services

The Department's standard policy position is to not support the extraction of gravel on any land zoned 'Priority Agriculture' as removing the free draining gravel part of the soil will have a negative impact on the capability of the land for viticulture and perennial horticulture. They also comment *"It is therefore doubtful that the rehabilitated soil will be able to support vineyards to the same extent as it currently does"*.

The Department's advice did not advise that the soil resource will be irreversibly damaged or that it will be unusable for future agriculture. Their response supported the current viticulture use and considered that following the gravel extraction, if similar grape vines were to be replanted, they would not be expected to grow as well.

The Shire is required to balance the Department's purely agricultural position against the planning requirements for this area which supports a variety of agricultural pursuits including gravel extraction. The rehabilitated areas will return to productive land, either as pasture (available for livestock) or planted with other horticultural crops which could include annual/seasonal varieties or different perennial crops to grapes.

In regard to the permissibility of extractive industries generally, whilst the community may support prohibiting extractive industries within priority agricultural areas, the WA Planning Commission's (WAPC) State Planning Policy 2.5 'Rural Planning' advises *"Basic raw materials are essential for the construction of buildings, roads and other infrastructure, and also for the sustainability of agricultural production"* and requires that local planning schemes not generally prohibit the extraction of basic raw material resources. Given this, the WAPC would not support a prohibition on extractive industries in the priority agriculture or general agriculture zones.

The WAPC required the Shire to modify one of its proposed actions under Resource Management in its original draft Local Planning Strategy, where it proposed a general prohibition of extractive industries within the priority agriculture zone, before being able to advertise for public comment to ensure it was consistent with State Planning Policy 2.5.

Question from: Maria Radovanovic

*How will any complaints be resolved, and outcomes communicated to the complainant and in what time frame?*

Response from: Manager Development Services

For any complaint within the Shire, residents are encouraged to liaise directly with a person/business considered to be causing a complaint. This is reflected in the following conditions proposed regarding complaints for this current application:

**ONGOING COMPLIANCE AND MONITORING**

15. A complaints register is to be established including:
  - a) Details of the subject of the complaint;
  - b) Actions undertaken by the applicant/landowner to rectify the complaint; and
  - c) The on-site publication of appropriate contact details where complaints are to be directed (in the first instance).
16. A suitable report is to be prepared and submitted to the Shire of Donnybrook Balingup every 3 months including information relating to:
  - a) A copy of the complaints register as per Condition 15; and
  - b) Any other information as deemed necessary by the Shire of Donnybrook Balingup.

The outcome of any complaint would be communicated to the complainant and the timeframe to resolve complaints such as noise or dust would be expected to be immediately acted upon (same day) by the applicant/site operator.

Notwithstanding the above, residents may lodge complaints directly with the Shire. The complaint would be handled in accordance with the Shire's Customer Service Charter which includes timeframes as follows:

Method of receipt	Customer Service Charter
In person or via telephone	Response within two working days to acknowledge receipt of a complaint/gather additional information.
In writing	Response within five working days to acknowledge receipt of a complaint/gather additional information.

Question from: Maria Radovanovic

*Why has the Donnybrook-Balingup Shire made no provisions to charge the applicant if it has to make site visits for any compliance breaches?*

Response from: Manager Development Services

The undertaking of any site visits to address a compliance breach or resident complaint is a routine part of the Shire's operations and no fee is payable.

There are provisions under the legislative framework regarding enforcement should further action be required by the Shire as follows:

- Under the Planning and Development Act/Regulations, if it was found the extractive industry operations were contravening a condition of development approval, the Shire could apart from requiring the development to stop, and not recommence, issue a modified penalty of \$500 per offence.
- Under the Planning and Development Act 2005, the courts may impose penalties for planning offences which includes prosecution for non-compliance with a condition of development approval of up to \$200,000 (for individuals) and a daily fine of up to \$25,000 and for companies \$1,000,000 with a potential daily fine of up to \$125,000. In addition, for a successful prosecution, the court would ordinarily order the Shire costs in bringing the case be paid.
- Should a compliance breach be committed against the Shire's Extractive Industries Local Law, then modified penalties of \$250-\$500 per offence apply.

Question from: Christopher John Amey

*Unnecessary and Unacceptable Risk to Ratepayers*

*At the agenda briefing session held on 19 June 2024 Cr Davy asked how this proposal was an improvement on the previously approved licence.*

*The matters demonstrating improvement outlined by the council officer are presented below.*

*Alot of the previous conditions were difficult for council officers to assess;  
Decision to shift responsibility to applicant to demonstrate compliance; and  
"Hopefully" this would result in a better outcome than the previous proposal.*

*The above indicates that Shire of Donnybrook Balingup ratepayers (the Ratepayers) are being asked to accept unnecessary risk attendant with this proposal, if approved, with minimal benefit. The Ratepayers are also being asked to accept a precedent for self-regulation of operations. Please discuss the above council officer response and how this approach benefits the Ratepayers?*

Response from: Manager Development Services

The conditional approval issued for the adjoining lot required considerable changes to submitted documentation that was then required to be reassessed by Shire officers. It is considered that the current application contains all of the applicants' commitments, up front, addressing many of the submissions raised in the previous application. The applicant further refined their application in response to concerns raised specific to their current application.

The applicant/landowner has the responsibility to comply with all conditions of approval including the development approval and extractive industry licence to the satisfaction of the Shire. Any person receiving an approval from the Shire is required to meet their conditions of approval i.e. this is routine practice when considering applications lodged with the Shire.

The development approval is not self-regulating, nor is it for the applicant/landowner to determine if they are compliant, this remains the Shire or State Administrative Tribunal if the applicant/landowner were to request a review of a decision/condition or notice issued by the Shire.

Question from: Christopher John Amey

*Need for Gravel*

*The Shire of Donnybrook Balingup ratepayers (The Ratepayers) through the Council have and will continue to expend operational and therefore financial resources in managing this project, if approved.*

*When asked by a Councillor, the Director Operations said there was an industry need for gravel. Nothing was stated regarding the Shire of Donnybrook Balingup's need for gravel.*

*If the council approves this proposal the Ratepayers will lose the following:*

*12.7 hectares of high-quality priority agricultural land (against DPIRD advice);  
operational and attendant financial resources to manage the project over its duration;  
visual, environmental, social amenity; and  
future opportunity.*

*The above list is not exhaustive.*

*Why should the Ratepayers lose the above and provide operational and attendant financial resources to facilitate this proposal when there is no immediate need for gravel and no commensurate cost benefit?*

Response from:                      Manager Development Services

The determination of an application for extractive industry should in no way be influenced by the demand/need for gravel by the Shire. It is assumed that any applicant of a commercial orientated development application (such as an extractive industry proposal) would do their own due diligence on the commercial viability of their proposal. This isn't a matter that is relevant to determining a development application. Just as a local government can't limit the number of cafes or shops on the grounds of commercial viability it can't limit extractive industries for that reason. If a commercial extractive industry proposal obtains its necessary approvals and supplies a product that meets the Shire's specifications/needs, it becomes a possible source of supply. If not, the Shire has access to alternative sources.

The applicant has commented that the extraction activity will be demand driven and therefore should the gravel demand be limited, it is expected that the activity would be confined to one of the single 2-2.4-hectare areas which would in itself reduce the overall impacts. If there is no demand/market for the gravel resource, which is not expected, then it will remain in the ground.

The extraction activities do not permanently remove the land from agriculture use, including as pasture and horticulture crops. It is accepted that extractive industries in general have the potential to create adverse visual amenity impacts and it is acknowledged there will be a short-term impact on the visual amenity and local landscape from the extractive industry.

However, when the extraction activity ceases in 5-years, the land will have been returned to a pastured hillside consistent with the existing rural landscape in the area and will not affect the long-term amenity and visual character of the valley area or adjacent land.

The environmental attributes of the proposal have been assessed by the Department of Biodiversity, Conservation and Attractions and Department of Water and Environmental Regulation with no concerns raised.

In accordance with the Shire of Donnybrook Balingup Fees and Charges (Year ending 30 June 2024), for an extractive industry proposal, the applicant/landowner is required to pay the following fees:

- \$739 for the development application to be considered.
- \$525 for the initial Local Law licence.
- \$825 thereafter for the annual renewal of the Local Law Licence.

These fees cover the planning assessment of the proposal and the administrative costs associated with managing the local law requirements. Most development approvals only generate the initial planning assessment fee.

Question from: Hilary Tripp

*Has the Shire been advised by the Applicant of all results from sampling and laboratory testing pertaining to the quality and viability of the gravel within the proposed extraction site?*

Response from: Manager Development Services

No, the Shire has not been provided with results of any sampling or testing results. The Shire does not require these as part of an application for development approval for an extractive industry and it is expected that the applicant has undertaken sufficient testing to prove the resource quality and extent etc.

The Shire would not expect that poor quality gravel resources would be useful for civil works or be financially viable to be extracted and it would be unlikely in that case that an application would be received.

Question from: Hilary Tripp

*It has been stated by council, many times, that each and every application for extractive industries must be considered in isolation of each other. Why then, is the noise compliance conditions for crushing and screening for development application - extractive industry - Lots 130 Donnybrook-Boyup Brook Rd, Yabberup & development application P22022: extractive industry (gravel) – Lot 10 Donnybrook-Boyup Brook Rd, Yabberup, been assessed together, and not separated, as have all other conditions?*

Response from: Manager Development Services

The cumulative impacts of adjoining extractive industry operations were raised through the submissions. As the applicant's supporting documents consider only with the lot the subject of consideration proposed condition 18 i.e:

No crushing and/or screening is to occur on Lot 130 for the duration of the crushing and /or screening campaign when in process on Lot 10  
removes the potential for cumulative impacts from the crushing and screening operations.

Question from: Julie Quan

*The first Gravel Pit application was approved against huge community objection and a large amount of scientific evidence. Apparently strong restriction and conditions were placed on the applicant to protect the environment and alleviate community concerns.*

*At the briefing meeting last Wednesday, we were told that the restrictions for Gravel Pit Two have been downgraded to basically self-monitoring. The reason given was to alleviate pressure on the council regulating these conditions. My question is "Why is this application not held to the same standard set in the first and why it is now less important for Yabberup Community and the environment to be protected".*

Response from: Manager Development Services

Each application is required to be considered on its merits with ongoing compliance with other conditions being the responsibility of the applicant. The applicant has prepared various management plans demonstrating how the extractive industry is to be operated in order to minimise any offsite impacts. As per the recommended conditions these plans will form part of the approval, if granted. The extraction operation would need to align with the management measures set out in each of the management plans to ensure ongoing compliance.

Compliance will not occur via self-monitoring. Compliance monitoring can occur in four ways:

- Shire monitoring in the course of day-to-day activities
- Interrogation of the quarterly complaints register compiled by the operator
- Annual licence renewal process
- Complaint direct to the Shire

If the extraction operation does not comply with the management measures contained in the management plans, then compliance action will be taken under the Planning and Development Act and / or the Local Law depending on the nature of the breach.

Compliance assessment of extractive industry operations is typically triggered in 2 ways, being in response to complaints received from members of the public or Government agencies, or via the annual licence renewal process.



Question from: Julie Quan

*Self-monitoring and reporting have been found to be ineffective. If the Council cannot adequately monitor restrictions and conditions to ensure that our Local community and Environment are protected, then why should this application not be rejected outright?*

Response from: Manager Development Services

As above compliance will not occur via self-monitoring. Compliance monitoring can occur in four ways:

- Shire monitoring in the course of day-to-day activities,
- Interrogation of the quarterly complaints register compiled by the operator,
- Annual licence renewal process, and
- Complaint direct to the Shire.

While conditional development approval has been issued, the applicant does not have any existing Extractive Industries operating within the Shire, so the Shire does not have any compliance history with this applicant. Notwithstanding, all development applications lodged within the Shire need to be considered on their individual merit, having regard to the Local Scheme provisions as well as the prescribed matters to be considered under the regulations (refer to Attachment 9.1.1(4)). An applicant's compliance history is not a consideration under either of these planning tools. However, Council may include conditions having regard to demonstrated previous performance.

Question from: Jay MacCormack

*Can the Council please explain why, for extractive industries application P22022, the executive recommended refusing the application, and have now recommended approving application P23002. What are the fundamental differences between the two applications that changed the executive position?*

Response from: Manager Development Services

As outlined in the Minutes of Special Council (Commissioner) Meeting – 30 August 2023 where Development Application P22022 was considered the executive recommendation was changed for the following reason:

Pursuant to Part 2, Regulation 11(da) of *the Local Government (Administration) Regulations 1996*, the decision by Council (the Commissioner) to approve this application is made, on balance, based on the matters raised being able to be reasonably managed through appropriate conditions of approval.

The current application before Council is considered, by the executive, to be capable of being conditionally approved based on the applicant demonstrating, through various management plans, how the extractive industry is to be operated in order to minimise any offsite impacts.

Question from: Jay MacCormack

*The report states that the extractive operation is essentially self regulated. Annual audits will be conducted by the council. Regular auditing would ensure that in the event of a breach of conditions. How will breaches be resolved and communicated in a timely manner.*

Response from: Manager Development Services

As outlined in the response to a similar question from Maria Radovanovic, for any complaint within the Shire, residents are encouraged to liaise directly with a person/business considered to be causing a complaint. This is reflected in the following conditions proposed regarding complaints for this current application:

#### ONGOING COMPLIANCE AND MONITORING

15. A complaints register is to be established including:
  - a) Details of the subject of the complaint;
  - b) Actions undertaken by the applicant/landowner to rectify the complaint; and
  - c) The on-site publication of appropriate contact details where complaints are to be directed (in the first instance).
16. A suitable report is to be prepared and submitted to the Shire of Donnybrook Balingup every 3 months including information relating to:
  - a) A copy of the complaints register as per Condition 15; and
  - b) Any other information as deemed necessary by the Shire of Donnybrook Balingup.

The outcome of any complaint would be communicated to the complainant and the timeframe to resolve complaints such as noise or dust would be expected to be immediately acted upon (same day) by the applicant/site operator.

Notwithstanding the above, residents may lodge complaints directly with the Shire. The complaint would be handled in accordance with the Shire's Customer Service Charter which includes timeframes as follows:

Method of receipt	Customer Service Charter
In person or via telephone	Response within two working days to acknowledge receipt of a complaint/gather additional information.
In writing	Response within five working days to acknowledge receipt of a complaint/gather additional information.

Question from: Dr Wietske Van der Velden Schuijling

*Will the Business Plan focus on the sale to myself, or will it focus on sale to anyone? Does this business plan encompass the social aspects of our community's needs and existing resources.*

Response from: Chief Executive Officer (Temporary)

The Business Plan needs to take into account more than just the existing lessee which is yourself. The Business Plan will take in to account matters outside of just the financial interests of the proposal.

Question from: Dr Wietske Van der Velden Schuijling

*When can I expect to hear the Shire's expectations regarding the sale of 41 Bentley Street? Specifically, do you intend to sell the property to me, and if so, at what price? Understanding the Council's intentions will help me prepare for the future.*

Response from: Chief Executive Officer

The first issue was raised in January this year and it has taken some time to get to the position we are now so I can't tell you how quickly this might go. I have met with you on a number of occasions to keep you aware of where we are up to. Whoever follows me will be briefed on the need to continue the communication on the status of the project.

Question from: Dr Wietske Van der Velden Schuijling

*Is there any idea how long the business drawing might take and what would follow after that?*

Response from: Chief Executive Officer

That shouldn't take longer than 2 months. Then it is a matter for the Council to determine what action if any it's going to take in relation to the proposal.

Question from: Maureen Wallace

*With the gravel extraction application, does the approval and the licence transfer to any new landowners should the land be sold.*

Response from: Director Operations

Yes, it will be transferrable.

## 6. Presentations

### 6.1. Petitions

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Cr Shand presented a petition.

Petition to: The Shire of Donnybrook Balingup Councillors assembled. We undersigned, being the residents (and friends) of Preston River Valley respectfully request the Donnybrook Balingup Shire Council to not approve application P23002 Extractive Industry – Gravel Lots 130 and 3671 (2038) Donnybrook-Boyup Brook Road, Yabberup WA 6239

<b>COUNCIL RESOLUTION:</b> 87/24		
<b>MOVED BY:</b>	Cr Deanna Shand	<b>SECONDED BY:</b> Cr Lisa Glover

That Council acknowledge the receipt of the petition.

<b>For:</b> Cr MacCarthy, Cr Davy, Cr Mitchell, Cr Glover, Cr Bailey, Cr Gubler, Cr Lindemann, Cr Patrick, Cr Shand
<b>Against:</b> Nil.
<b>Carried: 9/0</b>

### 6.2. Presentations

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Nil.

### 6.3. Deputations

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Mr Jay MacCormack and Dr Julieanne Hilbers in relation to Extractive industry at Lot 130 Donnybrook Boyup Brook Road, Yabberup (P23002).

Mr Ivan Rose in relation to Extractive Industry at Lot 130 Donnybrook Boyup Brook Road, Yabberup (P23002).

### 6.4. Delegates' Reports

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Nil.

## 7. Confirmation of Minutes

### 7.1. Ordinary Council Meeting held on 22 May 2024

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Minutes of the Ordinary Council Meeting held 22 May 2024 are attached as [Attachment 7.1\(1\)](#).

#### **Executive Recommendation:**

**That the Minutes from the Ordinary Council Meeting held 22 May 2024 be confirmed as a true and accurate record.**

<b>COUNCIL RESOLUTION:</b> 88/24		
<b>MOVED BY:</b>	Cr Anne Mitchell	<b>SECONDED BY:</b> Cr Anita Lindemann

**That the Minutes from the Ordinary Council Meeting held 22 May 2024 be confirmed as a true and accurate record.**

<b>For:</b> Cr MacCarthy, Cr Davy, Cr Mitchell, Cr Glover, Cr Bailey, Cr Gubler, Cr Lindemann, Cr Patrick, Cr Shand
<b>Against:</b> Nil.
<b>Carried: 9/0</b>

7.2. Special Council Meeting held on 15 May 2024

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*Minutes of the Special Council Meeting held 15 May 2024 are attached as Attachment 7.2(1).*

**Executive Recommendation:**

**That the Minutes from the Ordinary Council Meeting held 15 May 2024 be confirmed as a true and accurate record.**

<b>COUNCIL RESOLUTION:</b> 89/24			
<b>MOVED BY:</b>		Cr Grant Patrick	<b>SECONDED BY:</b> Cr Deanna Shand

**That the Minutes from the Ordinary Council Meeting held 15 May 2024 be confirmed as a true and accurate record.**

<b>For:</b> Cr MacCarthy, Cr Davy, Cr Mitchell, Cr Glover, Cr Bailey, Cr Gubler, Cr Lindemann, Cr Patrick, Cr Shand
<b>Against:</b> Nil.
<b>Carried: 9/0</b>

## 8. Reports of Committees

### 8.1. Local Emergency Management Committee Meeting held on 14 May 2024

Minutes of the Local Emergency Management Committee Meeting held 14 May 2024 are attached as Attachment 8.1(1).

#### Executive Recommendation:

**That the Minutes from the Local Emergency Management Committee Meeting held 14 May 2024 be received.**

<b>COUNCIL RESOLUTION:</b> 90/24	
<b>MOVED BY:</b> Cr John Bailey	<b>SECONDED BY:</b> Cr Deanna Shand

**That the Minutes from the Local Emergency Management Committee Meeting held 14 May 2024 be received.**

<b>For:</b> Cr MacCarthy, Cr Davy, Cr Mitchell, Cr Glover, Cr Bailey, Cr Gubler, Cr Lindemann, Cr Patrick, Cr Shand
<b>Against:</b> Nil.
<b>Carried: 9/0</b>

## 8.2. Audit and Risk Management Committee Meeting held on 21 May 2024

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Minutes of the Audit and Risk Management Committee Meeting held 21 May 2024 are attached as Attachment 8.2(1).

### **Executive Recommendation:**

**That the Minutes from the Audit and Risk Management Committee Meeting held 21 May 2024 be received.**

<b>COUNCIL RESOLUTION:</b> 91/24		
<b>MOVED BY:</b>	Cr John Bailey	<b>SECONDED BY:</b> Cr Grant Patrick

**That the Minutes from the Audit and Risk Management Committee Meeting held 21 May 2024 be received.**

<b>For:</b> Cr MacCarthy, Cr Davy, Cr Mitchell, Cr Glover, Cr Bailey, Cr Gubler, Cr Lindemann, Cr Patrick, Cr Shand
<b>Against:</b> Nil.
<b>Carried: 9/0</b>



## 9. Reports of Officers

### 9.1. Director Operations

#### 9.1.1. Development Application - Extractive Industry - Lots 130 Donnybrook Boyup Brook Road, Yabberup

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##### Report Details:

**Prepared by:** Principal Planner, Planning Officer

**Manager:** Manager Development Services

**Applicant:** E Stroud

**Location:** Lot 130 (No. 2038) Donnybrook – Boyup Brook Road, Yabberup

**File Reference:** A4781 (P23002)

**Voting Requirement:** Simple Majority

##### Attachment(s):

9.1.1(1) Amended Development Application Extractive Industries Licence Application and Environmental Management Plan Rev 3 dated May 2024.

9.1.1(1.1) Weed Management Plan

9.1.1(1.2) Water Management Plan

9.1.1(1.3) Noise Management Plan

9.1.1(1.4) Dust Management Plan

9.1.1(1.5) Rehab Management Plan

9.1.1(1.6) Dieback Brochure

9.1.1(1.7) Visual Impact Assessment

9.1.1(1.8) Agronomist Report (June 2024)

9.1.1(1.9) Complaints Register

9.1.1(2) Submissions

9.1.1(3) Agency submissions

9.1.1(4) Assessment under Clause 67

#### Executive Recommendation

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##### That Council:

- A. Pursuant to Schedule 2, Part 9, Clause 68(2)(b) of the Planning and Development (Local Planning Schemes) Regulations 2015 and the provisions of the Shire of Donnybrook Balingup Local Planning Scheme No. 7 (LPS7), approves the Development Application P23002 for an Extractive Industry (Gravel) on Lot 130 Donnybrook-Boyup Brook Road, Yabberup, subject to the following conditions and advice:**

##### CONDITIONS:

##### VALIDITY

- 1. This approval is valid for a period of five (5) years after the date of issue or within any extended period as determined, in writing, by the Shire.**

#### **APPROVED PLANS**

2. The layout of the site and location of crusher, stockpiles, access route and works permitted must always accord with Figure 3 in the “Extractive Industries Licence Application and Environmental Management Plan” 2038 Donnybrook-Boyup Brook Road Yabberup Rev3 (Date: May 2024) and the conditions of approval and must not be altered or modified without the further written consent of the Shire.
3. In the event of an inconsistency between the approved plan and a requirement of the conditions of this development approval, the requirement of the conditions prevail.

#### **DUST MANAGEMENT**

4. Dust is to be appropriately managed on site at all times in accordance with the approved Dust Management Plan 9.1.1(1.4) and the Shire of Donnybrook Balingup Animals, Environment and Nuisance Local Law 2017 to the satisfaction of the Shire.
5. A suitable supply of water for the purposes of all site management operations is to be provided to the satisfaction of the Shire.
6. Crushing and/or screening is to occur in winter months only, and the applicant is to inform nearby residence within 1000m of the extraction site prior to the commencement of these activities.

#### **WEED AND DIEBACK MANAGEMENT**

7. Weed management is to be undertaken in accordance with the approved Weed Management Plan 9.1.1(1.1) to the satisfaction of the Shire. Any declared weeds found to be within the site need to be appropriately treated and removed prior to any further excavation works.
8. Dieback measures in accordance with the approved Dieback Brochure 9.1.1(1.6) and contained in the application details to reduce the spread of dieback are to be undertaken to the satisfaction of the Shire.
9. A minimum 10m buffer is to be provided between all proposed extraction areas and adjacent existing native vegetation. The 10m exclusion area is to be clearly demarcated to ensure vehicles, extraction works, detention pond and stockpile areas are located outside the 10m buffer zone to the satisfaction of the Shire.

#### **FIRE MANAGEMENT**

10. Suitable fire management as contained in the application details to be undertaken to the satisfaction of the Shire and the Shire of Donnybrook Balingup Bush Fire Brigades Local Law and Bush Fires Act 1954, or superseding standard(s).

#### **STORMWATER MANAGEMENT**

11. Water management is to be undertaken in accordance with the approved Water Management Plan 9.1.1(1.2) to the satisfaction of the Shire.

12. All stormwater from the proposed development shall be managed by the landowner in perpetuity, in accordance with the Animals, Environment and Nuisance Local Law 2017 and the approved Water Management Plan to the satisfaction of the Shire.
13. Any erosion and/or sedimentation issues that occur due to insufficient drainage and/or stormwater management from the proposed development, including any driveway or accessway, is to be rectified, so as not to impact any surrounding waterways and/or properties, including any infrastructure, to the satisfaction of the Shire. As heavy machinery will be traversing the crossing over the waterway, measures are to be undertaken to ensure the waterways is not impacted by erosion/ground disturbance.
14. Extraction works are not to exceed a depth of 1m below the existing natural ground level unless otherwise approved, in writing, by the Shire, in consultation with the Department of Water and Environmental Regulation.
15. No groundwater is to be exposed on the surface of the pit floor. Should groundwater be exposed during excavation works, all works are to cease, and the Shire is to be notified. Any remedial works, as required by the Shire, in consultation with the Department of Water and Environmental Regulation, are the responsibility of the operator to rectify. No dewatering is permitted.
16. Any refuelling and/or activities that carry a risk of spills are not to be undertaken in close proximity to the detention basins or stormwater flow paths.

#### NOISE MANAGEMENT

17. Noise management is to be undertaken in accordance with the approved Noise Management Plan 9.1.1(1.3) to comply with the Environmental Protection (Noise) Regulations 1997 to the satisfaction of the Shire.
18. No crushing and/or screening is to occur on Lot 130 for the duration of the crushing and/or screening campaign when in process on Lot 10.

#### ONGOING COMPLIANCE AND MONITORING

19. A complaints register is to be established including:
  - a) Details of the subject of the complaint;
  - b) Actions undertaken by the applicant/landowner to rectify the complaint; and
  - c) The on-site publication of appropriate contact details where complaints are to be directed (in the first instance).A copy of the complaints register is to be submitted to the Shire every 3 months.

#### REHABILITATION AND PIT CLOSURE MANAGEMENT

20. The Proposed Rehabilitation Measures, Monitoring and Maintenance and Completion Criteria as contained in the application details to be undertaken to the satisfaction of the Shire in accordance with the requirements of works outlined within the Shire of Donnybrook Balingup Extractive Industry Local Law 2016.
21. Extraction Site rehabilitation of each stage is to be substantially completed prior to extraction occurring on the next stage to the satisfaction of the Shire.

22. Pit closure works, and rehabilitation of the entire site is to be completed within two (2) years of the end of extraction works or the expiration of this approval (whichever is sooner) unless otherwise extended, in writing, by the Shire.
23. A \$20,000 bond (cash or unconditional bank guarantee in favour of the Shire) is required for the works identified by the Proposed Rehabilitation Measures, Monitoring and Maintenance and Completion Criteria as contained in the application details.

#### OPERATING HOURS

24. Operating hours of the extractive works are restricted to 8:00 am to 5:00 pm Monday to Friday (excluding Public Holidays) unless otherwise agreed, in writing, by the Shire.
25. Trucks are not to operate between the following hours on any given school day on a school bus route between 7:30 am to 8:40 am and 3:20 pm to 4:20 pm.

#### VEHICULAR MANAGEMENT

26. Prior to the commencement of works, the crossover onto Donnybrook – Boyup Brook Road and 100m along the access road is to be designed, constructed, sealed, and drained to the satisfaction of the Shire in consultation with Main Roads Western Australia and the Public Transport Authority. The applicant is to thereafter maintain the crossover and driveway for the life of extraction operations to the satisfaction of the Shire.
27. The cost to relocate and/or remove any services/infrastructure that may be required for the purposes of meeting Condition 25, are the responsibility of the landowner/applicant.
28. No access or egress via Chapman Road for gravel extraction activities is permitted.

#### OTHER

29. Prior to the commencement of works, a copy of a current public liability insurance policy taken out in the joint names of the licensee and the local government indemnifying the licensee and the local government for a sum of not less than \$20,000,000 in respect of any one claim relating to any of the excavation operations.
30. Prior to the commencement of works, suitable safety fencing and warning signage is to be installed on the perimeter of the extraction area, and thereafter maintained, to the satisfaction of the Shire.

#### ADVICE NOTES

- a. This development approval is not an Extractive Industry Licence. No works are to be undertaken until such time as all conditions of the Development Approval have been satisfied and an Extractive Industry Licence has been granted under the Extractive Industry Local Law 2016.
- b. The operations are likely categorised as a Prescribed Premises, as per Schedule 1 of the Environmental Protection Regulations 1987 (EP Regulations). The applicant is advised to refer to the information and Industry Regulation Guide to Licensing available at <http://www.der.wa.gov.au/our-work/licences-and-works-approvals>.

- c. The Department of Water and Environmental Regulation have advised that although the property is not within a proclaimed surface water area under the Rights in Water and Irrigation Act 1914 (RIWI Act), it should be noted that the waterways located to the east and west of the proposed extraction are proclaimed tributaries of the Preston River under the Act and any interference with the bed and banks of these watercourses or take of water will be subject to the RIWI Act.
  - d. With regards to the rehabilitation bond, return of the bond will be measured against the works identified within the Proposed Rehabilitation Measures, Monitoring and Maintenance and Completion Criteria as contained in the application details as determined by the Shire.
  - e. Management of all activities involving hazardous chemicals (including plant refuelling and/or servicing) shall be in accordance with the Department of Water and Environmental Regulation's WQPN 56 'Toxic and Hazardous Substance Storage and Use' (Dec 2018). Contingencies for spills should be in accordance with WQPN 10 'Contaminant spills - emergency response plan' (May 2020).
  - f. The applicant is responsible to ensure obligations are met under the Aboriginal Heritage Act 1972 with regards to undertaking a due diligence assessment and obtaining all relevant approvals.
  - g. Where an approval has so lapsed, no development must be carried out without the further approval of the Shire having first been sought or obtained.
  - h. If an applicant or owner is aggrieved by this determination there is a right of review by the State Administrative Tribunal in accordance with Part 14 of the Planning and Development Act 2005. An application must be made within 28 days of the determination.
- B. Authorises the Chief Executive Officer to issue an Extractive Industry License for the extraction of gravel at Lot 130 Donnybrook-Boyup Brook Road, Yabberup upon complying with the conditions of development approval P23002 and subject to the following conditions:
- a. The extractive operation shall comply with the Shire of Donnybrook Balingup Extractive Industries Local Law at all times.
  - b. This Extractive Industry License is valid for a period of 5 years from the date of issue.
  - c. Compliance with all approved plans and any recommendations contained in Development Approval P23002 at all times during the life of the extractive industry to the satisfaction of the Shire.
  - d. A licensee shall pay to the local government the annual licence fee in accordance with the Schedule of Fees and Charges adopted each year in the Shire of Donnybrook-Balingup annual budget prior to the commencement of extraction.
  - e. The operator is required to submit to the Shire an annual 'Progress Report' on the 31 December, detailing progress of the pit over the previous 12-month period. The Report should provide details on the following:
    - i. Extent of extraction undertaken (volume and area);

- ii. **Completion of stages;**
- iii. **Rehabilitation of completed stages.**
- iv. **Site survey plan.**

### **Strategic Alignment**

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

- Outcome:** 6 - The built environment is responsibly planned and well maintained.
- Objective:** 6.1 - Ensure sufficient land is available for residential, industrial and commercial uses.
- Item:** Nil.

### **Executive Summary**

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The purpose of this report is for Council to consider an application for development approval for an Industry-Extractive for gravel extraction and an extractive industry license from Lot 130 Donnybrook – Boyup Brook Road, Yabberup.

Officers do not have delegation to determine applications for development approval where concerns/objections are received. Officers note the significant number of submissions and community interest and concerns raised in the submissions received. Officers consider that the proposal may proceed and recommend it be granted approval subject to conditions/advice. The conditions/advice on the approval address the matters raised in the public/government agency submissions.

### **Background**

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The property has been the subject of a previous application for development approval for Industry-Extractive for gravel extraction at Lots 10, 3671, 2064 and 2061 Donnybrook-Boyup Brook Road, Yabberup. The proposal under development application P22022 was amended to relate to Lot 10 only. Figure 1 below illustrates the land bound by the red line, which is owned by the same landowner, it also shows the location of the approved pit P22022 and the proposed pit P23002.





Figure 1 – Approved application P22022 and proposed application P23002

Most recently, the Council (the Commissioner) at its 30 August 2023 Special Council (Commissioner) Meeting (Resolution 106/23) approved Development Application P22022 Extractive Industry (Gravel) at Lot 10 Donnybrook-Boyup Brook Road, Yabberup, subject to conditions to address the matters raised in the submissions objecting to the proposal.

Development Application P23002 was received on 9 January 2023 and processed in accordance with the requirements under the *Planning and Development (Local Planning Schemes) Regulations 2015*. This application was subject to many submissions objecting to the proposal proceeding. In May 2024 the applicant lodged an amended application which aims to address submissions received from public and agencies during the consultation period.

The following excerpt of original proposal P23002 (Lots 130 and 3671) dated January 2023 illustrates the proposed four extraction stages over two lots:



Figure 2 – Initial application area over two lots





Application Details	
	completion of extraction activities and before moving to the next stage
Extraction Volume	228,600 tonnes total (dependent on demand) 45,700 tonnes annually (approx.)
Extraction Depth	1m
Truck Haulage Volume	Max.13 trucks per day (dependent on demand).
Haulage Route	Access will be shared with the extractive industry approved under P22022 on Lot 10 Donnybrook-Boyup Brook owned by the same landowner. The access road will be upgraded to include bitumen sealing of the first 100m as per MRWA and Shire specifications.

### Proposal

The applicant advises the proposal will involve the following activities on the lot:

- a. The proposed extraction area will be cleared of vine plantation in stages, with only the stage being worked on, being cleared, limiting the disturbed area exposed at any time to a practical minimum.
- b. Extraction of gravel from an area of 12.7 hectares in six stages and involve extraction of 228,600 tonnes of gravel in total dependent on demand.
- c. Topsoil will be removed from the extraction area prior to the commencement of each stage, with only the area targeted for immediate extraction being open. Topsoil will be stockpiled separately along the edges of the extraction area, with stockpiles being 2m high and 12m wide, with batter of 1:3 metres.
- d. Within each current stage of extraction, a bulldozer will rip and blade material to a raw material stockpile. This material is loaded into the crusher and a product stockpile is created. The product stockpile will be no more than 9m high and 50m wide, with batter of 1:3 metres.
- e. A mobile crushing and screening plant will process the material for approximately three to four weeks per year on site.
- f. Product stockpiles will be placed in such a way, that they will act as a noise buffer between the crusher and the sensitive receptors.
- g. Extraction activity will result in the lowering of the ground level by approximately one metre.
- h. At a time, only one stage of up to 2 hectares will be extracted and will be progressively rehabilitated back to pasture after completion of extraction activities and before moving to the next stage. This will ensure that the area of disturbed land is stabilized, and the disturbed area exposed at any time is kept to a practical minimum.
- i. Measures to limit noise and dust from the operations are discussed separately in 5.6 and 5.7 of the "Extractive Industries Licence Application and Environmental Management Plan".
- j. Rehabilitation and stormwater management measures will be implemented.
- k. There will be no blasting in this operation.
- l. Extraction on Lot 130 will occur up to the boundary of Lot 3671 as depicted on Figure 3 - Proposed Extraction.

- Batters of 1:6 metres will be maintained throughout the operation. Where possible, topsoil will be replaced and seeded with pastures on a progressive basis, in fully extracted areas, prior to the commencement of winter.

The applicant provided the following plan to illustrate the six extraction stages.

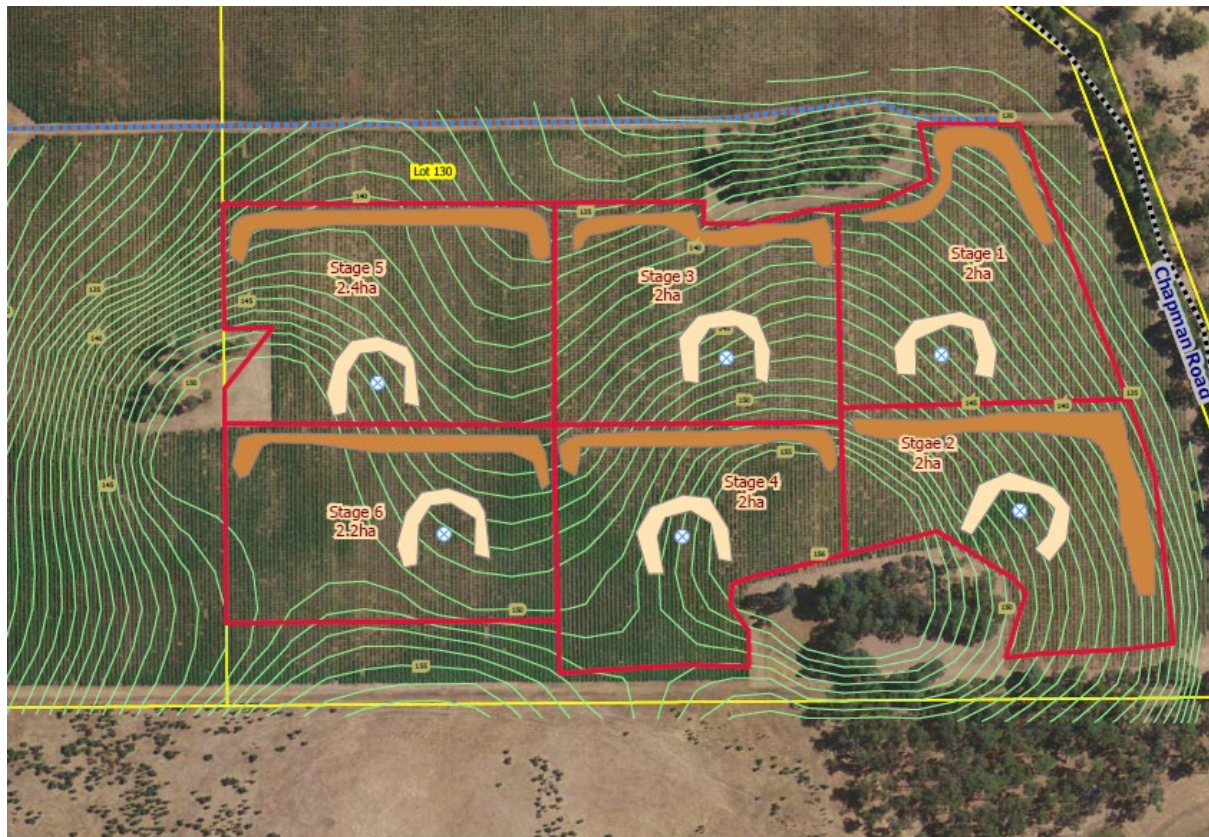


Figure 4 – Excerpt from application

The applicant submitted supporting documents that include a:

- Weed Management Plan
- Water Management Plan
- Noise Management Plan
- Dust Management Plan
- Rehab Management Plan
- Dieback Brochure
- Visual Impact Statement
- Agronomist Report
- Complaints Register

#### Location Plan

Lot 130 is bounded by Donnybrook – Boyup Brook Road to the north and located within the agricultural area on the southern side of the main road and approx. 2.2km east of Yabberup townsite.



Donnybrook - Boyup Brook Road is identified within the Shire's Local Planning Framework as a key tourist route and the Local Planning Strategy identifies the importance of protecting the landscapes associated with these identified tourist routes.

The lot sits within the Preston River valley and the extraction site is on the hillside which slope down towards the north and north east towards Donnybrook – Boyup Brook Road.

The surrounding land is generally occupied by rural uses used for viticulture or general agricultural pursuits with many of the lots north of Donnybrook Road – Boyup Brook Road containing single dwellings.

The lot is zoned Priority Agriculture under the Shire of Donnybrook Balingup Local Planning Scheme No. 7 (LPS7). The development will obtain access via Lot 3671 from an existing road that links the development with Donnybrook-Boyup Brook Road. This access will be shared with the extractive industry approved in August 2023 under Development Approval P22022 on Lot 10 owned by the same landowner.

The blue dotted line in the image below shows the proposed access route.



Figure 5 – Internal access route

## Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Environment	Possible	Moderate	Moderate (5)
Risk Description:	Approval of the extractive industry may have environmental impacts such as noise, dust and impacts from unmanaged stormwater.		
Mitigation:	Environmental impacts can be mitigated by the imposition of conditions that the development is to be managed in accordance with approved noise and dust and water management plans.		

## Financial Implications

All relevant application fees have been paid by the applicant.

If the application is refused by Council the applicant may exercise the right to have the decision reviewed by the State Administrative Tribunal. If that is the case, then it may be likely that there will be additional resourcing required (staff time and/or the cost of appointing a consultant to represent the Shire).

## Policy Compliance

TPP 9.7 Interpretation (Extractive Industry)

The Policy exempts landowners from requiring an Extractive Industry Licence when the activity is for use on the property and not for commercial gain.

The proposal is for a commercial operation extracting gravel for off-farm use and is therefore not exempt under the Policy.

## Statutory Compliance

The application has been assessed against the relevant and applicable statutory Shire of Donnybrook Balingup Local Planning Scheme No.7 (LPS7) provisions as follows:

### Part 3 – Zones and the Use of Land

The lot is zoned Priority Agriculture under LPS7, and the purpose and objectives of the zone are as follows:

#### *Purpose*

*The purpose of the Priority Agriculture zone is to provide for the sustainable use of high-quality agricultural land, particularly where water resources exist, preserving existing agricultural production and allowing for new agricultural production by securing suitable land and water resources. To provide for intensive agricultural and horticultural production; including orchards, market gardens and*

*vineyard enterprises. To also allow, where appropriate, limited forms of non-agricultural development that support, are compatible with and complement agricultural production.*

#### *Objectives*

- *Require the protection of the rural infrastructure and agricultural land resources;*
- *Planning to avoid the introduction of land uses and subdivision not related to agriculture including rural residential proposals;*
- *Support the improvement of resource and investment security for agricultural and allied industry production;*
- *Require protection and enhancement of biodiversity;*
- *Encourage value-adding opportunities to agricultural products at source;*
- *Support a wide variety of productive agricultural and rural activities;*
- *Support subdivision; where it provides for boundary adjustments, realignments, farm restructuring and new lot creation which promotes effective land management practices, environmental and landscape enhancement, and infrastructure provision;*
- *Support sensible use and management of resources, and the proper direction and control of development;*
- *Promote the existing intensive agricultural land use; and*
- *Encourage other similar or complementary activities.*

The proposed extractive industry is considered complementary to the existing majority use of the property for viticulture and surrounding area and does not generally conflict with the objectives of the Priority Agriculture zone as it would enable the gravel resource to be extracted with the land then being returned to pasture and reused for grazing when completed.

However, the proposal does not comply with objective (ix) as it will reduce the existing viticulture operations undertaken on the lot by 12.7 hectares or approx. 36.9%.

#### *Land Use Permissibility*

The proposed development is considered consistent with the definition of 'Industry – Extractive' within LPS7 which means:

*An industry which involves the extraction, quarrying or removal of sand, gravel, clay, hard rock, stone, or similar material from the land and includes the treatment and storage of those materials or the manufacture of products from those materials on, or adjacent to, the land from which the materials are extracted, but does not include industry-mining.*

'Industry – Extractive' is an 'A' advertised discretionary land use in the Priority Agriculture zone which means.

*The use is not permitted unless the local government has exercised its discretion by granting development approval after giving special notice in accordance with clause 64 of the deemed provisions.*

As such, any application for an extractive industry on Priority Agriculture zoned properties within the Shire requires advertising/referral and consideration of submissions prior to considering refusal/approval of the application by the Shire.

#### Part 4 – General Development Requirements

##### 4.8 Clearing native vegetation.

The Scheme allows the Shire to limit and control the clearing of native vegetation associated with development proposals.

The applicant advises:

- *There will be no clearing of native vegetation since the entire area proposed for gravel extraction is currently planted with grapes; and*
- *The native vegetation near the proposed extraction areas will not be disturbed and will be protected by a buffer of 10m from the extractive activities.*

This achieves the requirements of Cl.4.8. The protection of the existing native vegetation is recommended to form part of the conditions of approval, if granted.

##### Clause 4.17 General Appearance of Buildings and Preservation of Amenity

The Scheme requires the Shire ensure the development is in harmony with surrounding developments and allows the Shire to place conditions on approvals to ensure the development will not have an adverse impact on the character of the area or the amenity and landscape quality of the locality.

The site and extractive industries in general have the potential to create adverse visual amenity impacts. The applicant has considered the concerns raised in the submissions relating to this matter and amended the proposal to exclude Lot 3671 based on his assessment of the visual impact. The applicant provided a visual impact statement for the amended proposal.

The measures proposed by the applicant in the visual impact statement including the staging of pit, progressive rehabilitation, use of topsoil bunds and planting with grasses achieves the requirements of Cl.4.17. These items are recommended to form part of the conditions of approval, if granted.

##### Clause 4.32 Vehicle Crossovers/Entrances

The Scheme allows the Shire to set standards on the position and development of crossovers onto roads.

The approval under P22022 was conditioned subject to the bitumen sealing of the first 100m of the road access as per MRWA and Shire specifications. The proposal under P23002 proposes to use the same access and will be subject to the same condition.

##### Clause 4.42 Bush Fire Hazard and Fire Management Plans

The Scheme requires the Shire assess applications for development approval where the land is a bushfire risk and ensure that development complies with relevant State and local government policy on bushfire protection.

Parts of the extraction area are designated as bushfire prone areas. These areas will be cleared of vines and maintained as bare/pastured before commencement of extractive operation.

The development is considered exempt from the requirements of State Planning Policy 3.7 Planning in bushfire prone areas. Notwithstanding, the applicant has provided operating procedures for times of bushfire risk.

#### 4.55 Priority Agriculture Zone

The Shire's policies in controlling development and influencing subdivision within the Priority Agriculture zone are to:

- (i) *Seek to protect the economic viability of land for rural use given its importance to the economy of the district;*
- (ii) *Seek to protect the area from uses which will reduce the amount of land available for rural purposes; and*
- (iii) *Recognise the aesthetic and tourism importance of the scenic landscape, realise the need to retain the rural scenic character of a site and of the district and by ensuring, through siting and landscaping provisions, that any development does not detrimentally change the scenic rural character.*

Under Cl.4.55.2 of LPS7, the development standards for the General Agriculture zone apply to the Priority Agriculture zone as follows:

##### Setbacks

##### Front Setback – Minimum 30 metres

The proposed extraction area is approx. 480m from the front boundary to Donnybrook – Boyup Brook Road and approx. 35m from the eastern side boundary to Chapman Road.

##### Side Setback – Minimum 20 metres

Extraction on Lot 130 will occur up to the boundary of Lot 3671 as depicted on Figure 3 - Proposed Extraction. Lots 130 and 3671 are owned by the same landowner and although the relaxation of the 20m setback will not impact any other landowner all works would need to be contained on Lot 130 with no encroachment onto the adjoining lot.

##### Rear Setback – Minimum 20 metres

The proposed extraction area is over 20m from the rear boundary to Lot 2062 used for general agriculture purposes and achieves the required setback.

Under Cl.4.54.8.7 of LPS7, in assessing applications for development approval for extractive industries, the Shire shall ensure that the setbacks assist in maintaining environmental and landscape qualities of the locality, so they are not detrimentally affected.



In this instance, given the proposal has a lifespan of 5-years and extraction areas will be confined to a 2ha maximum cleared area at any one time, with the pit progressively rehabilitated prior to a new pit being opened, the proposed setbacks combined with operation measures and the land to be used for pasture in the future will assist in maintaining the long-term environmental and landscape qualities of the locality.

Under Cl.4.54.8.8 of LPS7, in assessing applications for development approval within the Priority Agriculture zone, the Shire will consider the following:

- *The availability of services required to support the proposed development and the economic impact of the provision of, extension or upgrading of those services that may be required;*
- *The adequacy of the roads, existing or proposed in the area which may be needed to support the amount of road traffic expected to be generated by the development; and*
- *The need to enforce such conditions as the local government deems appropriate, in order to minimise any adverse effect, the development may have on the general environment of the area.*

The proposal is considered to comply with these requirements on the basis that:

- Water supply will be sourced from existing dams owned by applicant.
- No on-site effluent disposal is required.
- The applicant has advised the proposal will involve a maximum of 13 truck trips per day (dependent on demand) using Donnybrook-Boyup Brook Road and that Chapman Road will not be used as a haulage route.
- The proposal will be subject to conditions, if approval is granted, to ensure the activity is managed to minimise any potential adverse impacts.

Cl.4.54.10 of LPS7, the Shire can refuse an application for development approval where in its opinion the proposed development will:

- *Adversely affect the rural landscape;*
- *Adversely impact upon the agricultural use of the land and adjacent/nearby areas;*
- *Cause detrimental environmental impacts;*
- *Result in unacceptable fire management risk;*
- *Place unacceptable servicing requirements which have not been appropriately addressed by the applicant;*
- *Result in the impacts of the proposed use/development not being adequately contained on the application site;*
- *In the opinion of the local government, result in an undesirable planning outcome.*

The proposal is not considered to warrant a refusal on the basis that:

- a. There will be a short-term impact on the visual amenity and local landscape from the extractive industry. However, the pit will be limited to 2 hectares in size at any one time and when the

activity ceases in 5-years, the land will be returned to pasture consistent with the surrounding rural landscape.

- b. The extraction of the gravel resource will not impact the ability of the land or surrounding area to continue to be used for agriculture. DPIRD does not support the proposal and has indicated that it is doubtful that the rehabilitated soil will be able to support vineyards to the same extent as it currently does. The applicant intends to return the land to pasture instead.
- c. The proposal does not provide a fire management risk.
- d. There are no new servicing requirements needed.
- e. The proposal includes measures to be implemented during operations to address and manage potential noise and dust impacts on adjoining properties.

#### Part 5 – Special Control Area

The area at the front of the lot along the Donnybrook – Boyup Brook Road is located within Special Control Area (SCA) 7 – Road Protection Area of LPS7.

Cl.5.8.1 of LPS7 states:

*The purpose of the Road Protection Area Special Control Area is to protect the function of the key travel routes within the Scheme area and the amenity and visual character of adjacent land and to apply special land use and development controls to meet this objective.*

The provisions relate to signage, access points and building setbacks and the proposal is considered to comply with these requirements on the basis that:

- No signs (other than Site Supervisor contact details/regulatory signs at pit entrance) are required;
- The proposal will utilise the existing approved Main Roads WA access onto Donnybrook – Boyup Brook Road (to be upgraded); and
- No buildings are proposed.

There will be a short-term impact on the visual amenity and local landscape from the extractive industry. However, when the activity ceases in 5-years, the land will be rehabilitated to be used for pastured consistent with the rural landscape in the area and will not affect the amenity and visual character of adjacent land and is therefore considered to be consistent with SCA7.

#### Local Planning Strategy

The lot is identified as Priority Agriculture under the Shire of Donnybrook-Balingup Local Planning Strategy (LPS).

The LPS (Cl.5.4.1) states:

*In the consideration of development proposals within the “General Agriculture” and “Priority Agriculture” areas, the local government will take into account the following:*

- (a) Discourage land uses unrelated to agriculture from locating on agricultural land (unless the proponent suitably demonstrates there are exceptional circumstances and that these can be compatible with agricultural uses to the satisfaction of the local government);*
- (b) Provide adequate separation distance between potential conflicting land uses;*
- (c) Introduce management requirements that protect existing agricultural land uses;*
- (d) Discourage development that may result in land or environmental degradation; and*
- (e) Appropriate land management and consideration of sequential land use change.*

The use of land for extractive industries has been included as a use that require approval by the local government within the Priority Agriculture zone and the proposal is considered consistent with the LPS requirements. The gravel resource will be progressively extracted, and the land returned to pasture.

#### Shire of Donnybrook-Balingup Extractive Industries Local Law 2016

The Shire's Local Law requires a person carrying out an extractive industry, in addition to a development approval, to hold a valid and current extractive industry licence. The criteria within the Local Law are generally assessed through the planning process.

The Local Law deals with the operational aspects of the extractive industry that include licensing requirements, licence fees, transfer/cancellation/renewal of licence (including the power for the Shire to cancel a licence for non-compliance with this Local Law), payment of bonds for restoration and reinstatement works, limitations on excavation near boundaries/setbacks, blasting controls, public liability insurances required, compliance with Mines Safety and Inspection Act and Environmental Protection Act, ceasing operations/works to be carried out on cessation of operations, objections & appeals and modified penalties/fines for non-compliance.

The Extractive Industry Licence issued under the Local Law, complements the development approval and the recommended conditions, to ensure the proposal operates without generating adverse impacts on the surrounding area.

#### Public consultation

Development Application P23002 was advertised as follows:

- Letter notification to all properties within a 2km radius of the subject lot boundaries allowing five weeks for comment to be made.
- The Shire's internal Development Control Unit.
- Notice on the Shire website.
- Notice in Preston Press.
- Referral to relevant government agencies.

In total, 86 public submissions were received at the conclusion of the public advertising period (85 submissions objecting/concerned and 1 submission supporting). The Submissions are contained in [Attachment 9.1.1\(2\)](#).

A summary of key issues/concerns raised within the submissions and Officer response is provided below.

Issue Raised in Submission	Response
Visual Amenity	
<p>A number of objections received were based on the negative visual impact expected from the extractive industry including:</p> <ul style="list-style-type: none"> <li>• The appearance of the extraction in general.</li> <li>• The appearance of bunds, stockpiles.</li> <li>• The topography in the local area (i.e. the lot slopes upwards from the road making the extraction prominent in the landscape) would ensure that the extraction area is visible.</li> <li>• The proposal will have a negative impact on the landscape of the Preston River Valley which is an area noted for its visual appearance.</li> </ul>	<p>The visual impact of the proposal has been considered through the assessment process. The site and extractive industries in general have the potential to create adverse visual amenity impacts.</p> <p>The applicant acknowledges that the proposal will have a visual impact on the area. The measures proposed by the applicant including staging of the pit, progressive rehabilitation, use of topsoil bunds and planting with grasses achieves the Scheme requirements (Cl.4.17).</p> <p>It is acknowledged there will be a short-term impact on the visual amenity and local landscape from the extractive industry. However, when the activity ceases in 5-years, the land will be returned to a pastured hillside consistent with the rural landscape in the area and will not affect the amenity and visual character of adjacent land.</p>
Noise	
<p>A number of objections relate to the negative impact of noise from extractive industry operations and truck movements.</p> <p>Concern was raised regarding the ability for the extraction operation to comply with the Environmental Protection Noise Regulations.</p> <p>Concern was also raised over the potential cumulative impact of noise from other approved extractive industries. Comments included that compliance with the noise regulations did not necessarily mean no noise would be experienced, which would introduce a negative impact to the general amenity and liveability of the area.</p>	<p>The applicant has provided a Noise Management Plan. The actions proposed to address noise are considered reasonable and consistent with general practice that is undertaken for extractive industries.</p> <p>The Noise Management Plan and expected noise impacts from the proposal have been assessed by DWER's Environmental Noise Branch and they advised the proposed management measures are considered effective noise control measures that are likely able to reduce the noise from the operation to comply with the Noise Regulations when they are in place.</p>

Issue Raised in Submission	Response
Dust	
<p>A number of objections were received with relation to dust generation and its impact from the proposal including:</p> <ul style="list-style-type: none"> <li>• Dust blowing from extraction operations (crusher/screening) and gravel stockpiles.</li> <li>• Dust contributing to air pollution.</li> <li>• Dust contamination of waterways.</li> <li>• Dust from trucks.</li> <li>• Dust impact to surrounding flora/fauna.</li> </ul>	<p>The applicant has provided a Dust Management Plan. The actions proposed to address dust generation are considered reasonable and consistent with general practice that is undertaken for extractive industries.</p> <p>The Dust Management Plan has been reviewed by DWER and they determined that the measures should ensure there is no external dust impacts from the operations, provided they are implemented.</p>
Traffic Impact and Vehicular Access	
<p>A number of submissions noted the potential of the extractive industry proposal to increase traffic and negatively impact the road network.</p> <p>Other objections were based on the impact of the proposed trucks on the existing access (degrading the crossover) and the inadequacy of the relevant section for egress/entering, particularly as it relates to safety.</p>	<p>The proposed vehicular access and impact of traffic have been considered through the assessment process.</p> <p>Both Main Roads WA and the Shire's Works and Services department have not objected to the proposal and determined that upgrading of the crossover onto the Donnybrook - Boyup Brook Road and access road is required.</p> <p>The Shire can include limits on vehicle operating hours including during school bus times through the imposition of conditions as recommended if approval is granted.</p>
Impact to Present and Future Character of Area	
<p>A number of submissions were concerned with the potential loss of rural character if the development was to proceed including:</p> <ul style="list-style-type: none"> <li>• Impact on quality of life enjoyed.</li> <li>• Impact on the surrounding tourist hotspot.</li> <li>• Impact on community.</li> <li>• It is inconsistent with the surrounding area.</li> </ul> <p>Some submissions commented on the future character of the area and how approving the proposal could set a precedent for future extraction operations to be approved in the area in the future.</p>	<p>As noted previously, it is acknowledged there will be a short-term impact on the visual amenity and local landscape from the extractive industry. However, when the activity ceases in 5-years, the land will be returned to a pastured hillside consistent with the rural landscape in the area and will not affect the long-term amenity and visual character of the valley area or adjacent land.</p> <p>With regards to precedence, extractive industries are common in rural areas and each proposal must be assessed on its individual</p>

Issue Raised in Submission	Response
	<p>merits, and the Scheme provisions, and Local Laws etc. that apply at the time.</p> <p>Industry Extractive is an A use in the Priority Agriculture zone and when considering development in this zone due regard needs to be given to State Planning Policy 2.5 'Rural Planning'. This policy seeks to protect and preserve rural land for a broad range of rural purposes including for basic raw materials and requires that local planning schemes not prohibit the extraction of basic raw material resources in rural zones.</p>
Stormwater Impact	
<p>A number of objections were received on the potential for stormwater runoff to be improperly controlled causing erosion/sedimentation problems and potential impact on surrounding infrastructure, properties, and waterways.</p>	<p>The applicant has provided a Stormwater Management Plan. The actions proposed details how the proposal would retain/control stormwater to ensure that erosion and sedimentation does not impact surrounding properties/infrastructure. These are consistent with general practice that is undertaken for extractive industries.</p> <p>The Stormwater Management Plan has been reviewed by DWER and the Shire. It was determined that the measures should ensure there is no stormwater impacts from the operations, provided they are implemented.</p>
Environmental Impact	
<p>Potential environmental impacts to fauna from extraction operations.</p>	<p>The proposal does not involve clearing any native vegetation and the existing native vegetation areas will be retained and protected by a 10m-wide buffer from all activities.</p> <p>The proposal has been assessed by DBCA and DWER with no concerns raised.</p>
<p>Impacts to groundwater/drinking water resources.</p>	<p>The proposal will extract gravel to a depth of 1m below natural ground level.</p> <p>The proposal and potential impacts to groundwater have been assessed by DWER and they have advised that a maximum of 1m</p>

Issue Raised in Submission	Response
	extraction is acceptable based on the high topography of the extraction area and the depth of the extraction.
Impacts to roadside vegetation.	The proposal will not impact any roadside vegetation.
Negative impact on soil quality.	<p>DPIRD have reviewed the proposal and have objected based on potential impacts to soil quality that would reduce the land capability for perennial horticulture (such as grape vines).</p> <p>The applicant proposes to return the land to pasture. The applicant provided an Agronomist report that indicated that there will be sufficient topsoil available to be placed back after extraction is completed to support agricultural activities.</p>
Insufficient rehabilitation plan.	<p>The applicant has provided a Proposed Rehabilitation Measures, Monitoring and Maintenance and Completion Criteria in the application details that outlines the actions proposed on how the land will be rehabilitated.</p> <p>These are consistent with general practice that is undertaken for extractive industries.</p>
Potential impact to the local ecosystem, especially adjacent waterways.	The proposal does not affect native flora/fauna habitats and is sufficiently setback from local waterways to address potential impacts. The proposed stormwater management methods are deemed acceptable and will minimise any potential adverse impacts on local waterways.
Zoning	
A number of submitters objected that the proposal was inconsistent with the Priority Agriculture zone, deemed provisions of the <i>Planning and Development (Local Planning Scheme) Regulations</i> , as well as the Shire's strategic planning for the area.	<p>The use of land for extractive industries is an advertised use that may be considered in the Priority Agriculture zone under LPS7.</p> <p>The proposed use is considered consistent with State Planning Policy 2.5 'Rural Planning'.</p>
Bushfire	
Several submitters noted the potential for the operations to generate or be impacted by bushfire.	The proposed extractive industry operations are exempt from the provisions of State

Issue Raised in Submission	Response
	<p>Planning Policy 3.7 Planning in bushfire prone areas.</p> <p>The applicant has provided sufficient information regarding management of operations particularly during bushfire season.</p>
Ongoing Monitoring and Compliance	
<p>Some submitters raised concern regarding how ongoing compliance and monitoring would occur for the operations (particularly to ensure that noise, dust, water management etc. are all complied with).</p> <p>They also questioned what mechanisms would be in place for breaches/complaints.</p>	<p>The applicant has noted that monitoring will take place for different aspects of the proposal and have also noted that a complaints register will be implemented.</p> <p>In the case of a development approval with conditions, ongoing compliance is the responsibility of the applicant/landowner to manage during the life of the proposal.</p> <p>The Shire's current monitoring procedure for such extractive industry operations is an annual compliance review prior to the issue of the annual extraction licence and a bond is taken to cover rehabilitation works.</p> <p>Enforcement action can be taken under the Planning and Development Act/Regulations and the Local Law by the Shire for breaches or non-compliance with the conditions of approval which can include fines, stop work and/or compliance notices or court action.</p>
Impact to Heritage	
<p>Submitters raised concerns regarding the potential of the proposal to impact on Aboriginal cultural heritage sites and on surrounding heritage buildings (such as the Sunnyvale building).</p>	<p>The proposal was referred to the DPLH for consideration of the potential impacts to Aboriginal cultural heritage sites under the Aboriginal Heritage Act (AHA).</p> <p>The DPLH have advised that Lot 3671 intersects with Aboriginal site ID 19795 (Preston River) and approvals maybe required under the AHA for this lot. They acknowledge that the application mentions the Aboriginal site will not be disturbed or impacted by the operations. Lot 3671 has since been excluded from the proposal.</p>



Issue Raised in Submission	Response
	<p>The DPLH confirm that the location of Lot 130 does not affect any reported Aboriginal heritage sites or place and no approvals under the AHA are required for this lot.</p> <p>Regardless of any development approval from the Shire, this does not negate any approval required from the DPLH under the AHA.</p> <p>In regards on the impacts to other local heritage places, there are locally identified heritage structures within the locality (the closest being 'Sunnyvale' located at 1885 Donnybrook-Boyup Brook Road) and the proposal will not affect these places.</p>
Impact to Land Use Productivity	
<p>A number of submissions noted the potential of the proposal to impact on the land use productivity of the subject lot.</p>	<p>As noted above, DPIRD have raised concerns regarding the impact of the development on the long-term quality of the soil.</p> <p>The applicant provided an Agronomist report that indicated that there will be sufficient topsoil available to be placed back after extraction is completed to support agricultural activities.</p>

### Consultation with Government/Service Agencies

The proposal was referred to the Department of Mines, Industry Regulation and Safety, Department of Planning, Lands and Heritage (Aboriginal Heritage Conservation/Heritage and Property Services), Main Roads WA, Department of Biodiversity, Conservation and Attractions, Department of Primary Industries and Regional Development, Department of Water and Environmental Regulation, and the Public Transport Authority for comment. These are contained in [Attachment 9.1.1\(3\)](#).

The majority of the agencies advised of no objection or provided conditions/advice to be considered on the approval, if granted. The Department of Primary Industries and Regional Development does not support the extraction of gravel on land zoned 'Priority Agriculture'.

Agency submissions are summarised below along with Officer comments in response.

#### Department of Mines, Industry Regulation and Safety (DMIRS)

- The Department has determined that this proposal raises no significant issues with respect to mineral and petroleum resources, geothermal energy, and basic raw materials.
- The Department lodges no objections to the above development application.

#### Response

The Department's comments are noted.

#### Department of Planning, Lands and Heritage (DPLH)

- The Department confirmed that the location of Lot 130 Donnybrook-Boyup Brook Road Yabberup does not affect any reported Aboriginal heritage sites or place and no approvals under the AHA are required for this lot. However, the top northeast corner of the lot is near Aboriginal site ID 19795 (Preston River), and approvals under the AHA may be required if any proposed works impact the site.

#### Response

The Department's comments are noted.

#### Main Roads WA (MRWA)

- Advise that Main Roads has no objection to the proposed extractive industry subject to the following comments and condition.
- It is noted that the existing driveway / crossover shows signs of shoulder wear adjacent to the Donnybrook – Boyup Brook Road and to reduce impacts it is recommended that the crossover be upgraded including bitumen sealing the first 30 metres to prevent potential gravel spill onto the road which could create traffic safety issues.
- It is noted that the existing property access/ driveway is located within a local road reserve which is under the jurisdiction of the Local Authority and the driveway crosses the railway reserve which is the jurisdiction of the PTA. The road verge is narrow; hence the sealing will need to extend into part of the railway reserve which will require approval of the PTA.

- The following condition is requested:
  - *“The driveway/crossover to Donnybrook – Boyup Brook Road to be upgraded including bitumen sealing the first 30 metres to be designed and constructed to the specifications and satisfaction of Main Roads and the Local Authority.”*
- The applicant will need to submit detailed designs for the driveway/crossover upgrade and submit an application for minor works in the road reserve to be approved by Main Roads prior to any works being undertaken.

#### Response

The Agency's comments are noted and are recommended to form part of the conditions/advice of approval, if granted. It is to be noted that this access is to be shared with the extractive industry approval under P22022 on Lot 10 Donnybrook-Boyup Brook owned by the same landowner. P22022 was conditioned with a requirement for the access road to be upgraded to include bitumen sealing of the first 100m. While Main Roads WA requested the 30m crossover to be sealed, the Shire proposed the seal to be extended to traverse the crossover, PTA land and extend into the road reserve that provides access to ensure any potential gravel spill will be contained within the internally located road reserve.



Figure 6 - Bitumen seal of the first 100m of access road.

As each application is to be considered on its own merits and needs to stand alone, it is recommended that a similar condition be imposed on this extractive industry, if approval is granted.

#### Department of Biodiversity, Conservation and Attractions (DBCA)

- a. Lots 130 and 3671 contain the *Balingup (BL)* and *Queenwood (QW)* vegetation complexes. Approximately 29.38% of the *Balingup (BL)* vegetation complex's pre-1750 extent is remaining, which is below the nationally recommended 30% threshold for the retention of remnant vegetation. The current extent of the *Queenwood (QW)* vegetation complex is 542ha, with no *Queenwood* vegetation held in conservation reserves. Any further clearing of these vegetation types should be avoided.
- b. Section 3.6 of the application advises that no clearing of native vegetation is required for the proposed extraction works and that a 10-metre buffer will be provided between the retained

bushland and extraction works. DBCA supports a minimum 10 metre buffer being provided between proposed extraction areas and adjacent retained native vegetation, to protect the vegetation from accidental damage and vegetation root compaction. The 10-metre buffer should be demarcated to clearly identify the exclusion area to ensure vehicles, extraction works, detention pond and stockpile areas are located outside the 10-metre buffer zone.

#### Response

The Department's comments are noted and are recommended to form part of the conditions/advice of approval, if granted.

#### Department of Primary Industries and Regional Development (DPIRD)

- a. The Department does not support the extraction of gravel on land zoned 'Priority Agriculture' and all the proposed extraction areas are zoned 'Priority Agriculture'.
- b. All the land zoned 'Priority Agriculture' has a high to very high (A2) or moderate to very high (B1) capability for viticulture based on DPIRD Regional scale soil mapping as evident in Figure 1 (NRInfo).
- c. The land identified for gravel extraction is currently planted with grapes (vineyard) and the applicant proposed to replace the vineyard with pasture following the removal of gravel.
- d. The proposed extraction of gravel will remove the free draining part of the soil that is beneficial for viticultural and perennial horticultural production. The extraction of gravel will have a negative impact on the capability of the land for viticulture and perennial horticulture. It is therefore doubtful that the rehabilitated soil will be able to support vineyards to the same extent as it currently does.

#### Response

The Department's advice is noted that the proposal has the potential to impact the quality of the soil resource from the removal of the free draining (gravel) part of the soil. The applicant proposes to return the land to pasture. The applicant provided an Agronomist report that indicated that there will be sufficient topsoil available to be placed back after extraction is completed to support agricultural activities.

#### Department of Water and Environmental Regulation (DWER)

- Issue 1: The proposed operations may be categorised as Prescribed Premises under the *Environmental Protection Regulations 1987*

The applicant may need to lodge an application for a works approval (or licence) with DWER under the EPA Act for the proposed crushing and screening related to the extraction activity. It is to be noted that any works approval or licence issued under Part V of the EP Act will only regulate emissions associated with the crushing and screening operation (such as dust, noise, and contaminated stormwater).

- Issue 2: Potential stormwater, erosion and sedimentation risk to downstream neighbours, the Preston River/associated wetlands and infrastructure

The following is advised:

- The WMP is to be approved, implemented, and adhered to the satisfaction of the Shire, consistent with WQPN 15 – to ensure the surface flows during and post-extraction will not detrimentally impact downstream properties, the Preston River/associated wetlands, and the road/culvert infrastructure.
- The WMP shall include additional detail to manage the following:
  - a. Compliance with the *Rights in Water and Irrigation Act 1914*.
  - b. Management of road infrastructure (i.e. the crossing and haulage route) to ensure the waterway is not impacted by heavy machinery.

Ensuring the mitigation and maintenance measures committed to in the WMP are implemented is essential given the sloping nature of the land. In addition, it is noted the haulage route intersects the waterway measures should be in place to ensure the waterway is not impacted by erosion/ground disturbance.

- Issue 3: Water supply

The following is advised:

- a. The applicant is to quantify their water requirements for all aspects of the proposed extraction and provide evidence of a secure water source, to the satisfaction of the Shire.
- b. In the event the take of water is proposed from the on-stream dam, the applicant is advised to contact DWER's Bunbury Water Licensing branch on 97264111 regarding licensing matters under the *Rights in Water and Irrigation Act 1914*.

This proposal states that "When water is required for dust management, it will be abstracted from the existing farm dams on the property or off-site from the nearest available commercial (scheme) source." No details have been provided regarding the required quantities of water to support the extraction activities, nor has the viability of using the scheme source been demonstrated.

Although the property is not within a proclaimed surface water area under the *Rights in Water and Irrigation Act 1914* (RIWI Act), it should be noted that the waterways located to the east and west of the proposed extraction are proclaimed tributaries of the Preston River under the said act. Any interference with the bed and banks of these watercourses or take of water will be subject to the RIWI Act.

- Issue 4: Environmental risks

The proposed extraction is to be implemented in accordance with DWER's Water quality protection note (WQPN) no. 15 '*Basic raw materials extraction*' (July 2019) where appropriate to the site situation to ensure environmental risks are appropriately mitigated.

WQPN 15 provides recommendations on how to limit the impacts of their operations to the environment and water resources, to which the applicant is expected to adhere to where appropriate to the site situation.

- Dieback management plan

The Dieback Management measures provided in the EIL/EMP Report v0.1 is to be reviewed, approved, and implemented to the satisfaction of the Shire, in consultation with DBCA, consistent with the *Best Practice Guidelines for Management of Phytophthora Dieback in the Basic Raw Materials Industries*.

DWER notes that information related to the management of dieback have been provided in Section 5.8.2 of the EIL/EMP Report v0.1.

This information should be reviewed, approved, and implemented to the satisfaction of the Shire, in consultation with DBCA to ensure the risk of dieback is adequately mitigated.

- Issue 6: Staging Plan

Extraction must be undertaken in accordance with the agreed staging plan, as approved by the local government. Commencement of the subsequent extraction stage shall be subject to the previous extraction site having substantially commenced rehabilitation.

- Issue 7: Rehabilitation plan and final landform

The following is advised:

- a. The Rehabilitation Plan (RMP) is to be approved and implemented to the satisfaction of the Shire consistent with WQPN 15 and the Guidelines for Preparing Mine Closure Plans. The applicant is to adhere to the agreed intended staging and ensure successful rehabilitation to the final landform and land use. Management and compliance reporting shall be included to ensure successful implementation.
- b. A contour map of the final landform be provided to assist in the assessment of stormwater flows post-development.

Details on rehabilitation have been provided in the Rehabilitation Plan (RMP). It is noted the current vineyard land use, after extraction will be pasture. To ensure successful rehabilitation, further detail should be provided to the satisfaction of the Shire on management and compliance aspects to ensure successful implementation. Such detail may include but is not limited to roles/responsibilities of personnel/contactors and agreed compliance with the Shire's requirements. DWER suggests a contour map of the final landform be provided for greater clarity on stormwater flows post-development.

- Issue 8: Groundwater protection

The following is advised:

- Excavation shall be undertaken to a maximum depth of 1 m below the existing natural surface, unless otherwise approved by the LGA in consultation with the Department of Water and Environmental Regulation, following site specific groundwater monitoring being undertaken.
- No dewatering works are to be undertaken without DWER consultation. The Local Government is to be notified within 24 hours if the water table is intercepted.

As much of the extraction is within an upland area, where the extraction depth is 1 metre (as proposed), the interception of groundwater would be unlikely at the upper portions of the landscape. However, there may be a medium risk of groundwater interception at the lower parts of the landscape.

- Issue 9: Fuel and chemical management

Management of all activities involving hazardous chemicals (including plant refuelling and/or servicing) shall be in accordance with DWER's WQPN 56 – *'Toxic and Hazardous Substance Storage and Use'* (Dec 2018). Contingencies for spills should be in accordance with WQPN 10 – *'Contaminant spills — emergency response plan'* (May 2020)

DWER notes the Hydrocarbon Spill Management Plan contained within the WMP specifies for a range of preventative measures being implemented, including contingencies for spills which should be guided by DWER's:

WQPN 56 – *'Toxic and Hazardous Substance Storage and Use'* (Dec 2018)

WQPN 10 – *'Contaminant spills — emergency response plan'* (May 2020)

- Issue 10: Noise

Please refer to the attached assessment 'Noise - 2023-03-03 - Shire of DB - Technical Report - Lot 10 Donnybrook Rd Yabberup – FINAL.pdf'.

This advice refers to an approved gravel extractive industry on Lot 10 (adjoining Lot 3671 to the west) provided by the Environmental Noise Branch (ENB) of the Department of Water and Environmental Regulation. The report noted for the proposal on Lot 10:

- The most significant amendment, in terms of noise impact, is the relocation of the extractive area further to the east. Such relocation will reduce the number of neighbouring residences within 1000m of the closest extractive boundary from ten to five. Furthermore, it will also increase the shortest buffer distance from the closest residence to the pit boundary from 350 m to 500 m. These changes demonstrate that the amended proposal will lead to less noise impact on the neighbouring noise sensitive premises than that from the original proposal.



- ENB also notes the amended proposal now includes noise bunds made of topsoil (up to 2 m high and 12 m wide) along the edges of the proposed extractive area. The proposal also includes barriers in the form of product stockpiles (stated to be no more than 9 m high but modelled at 3 m) positioned in front of the crusher and screener.
  - These are considered effective noise control measures that are likely able to reduce the noise from the operation to comply with the Noise Regulations when they are in place. The acoustic consultant also amended the sound power level of the CAT 980 loaders from 102 dB(A) to 108 dB(A), which is a more realistic sound power level for such plant.
  - The modelled noise levels with all noise control measures implemented seem reasonable and reliable. The assessment results indicating the compliance with the Noise Regulations with the amended proposal also seem correct and reasonable.
- 
- Issue 11: Dust

Please refer to the attached assessment 'Final\_Dust advice to Shire - AQ1730.docx'

This report contains the following key points:

- The recommended separation distance for extractive industries without blasting (categories 5, 12 and 70), as per the WA EPA's *Guidance Statement No. 3: Separation Distances between Industrial and Sensitive Land Uses* (EPA, 2005) (GS3) is case by case, however for a Screening Works (Category 12), the distance is 500 metres.
- The applicant has nominated a 500m separation distance for gravel extraction. Five sensitive receptors have been identified within 1000m, with the closest being 502m away from the gravel extraction boundary. It should be noted that the separation distance should not be taken as 'absolute' lines to be adopted for planning purposes. The increased risk of health and amenity impacts is a graduation and cannot be specified as acceptable on one side of a line and unacceptable on the other side.
- DWER generally agrees with the risk rating of Medium as calculated by the applicant. Should dust impacts become evident, additional dust management measures should be considered in the context of the Dust Management Plan (DMP).
- DWER recommends that, as for all measures proposed in the DMP, compliance procedures are established by the approving authority for ensuring the nominated activities, including crushing and screening, do not occur outside of winter months.
- Given that the site is located in a rural area, with a small number of residences in the vicinity, DWER recommends that, if the development proceeds, then early and ongoing engagement with the adjacent residents should be included in the environmental management plan for the applicant.

#### Response

The Department's comments are noted and are recommended to form part of the conditions/advice of approval, if granted.

#### Public Transport Authority (PTA)

The Department advises that it has no objection or conditions for this proposal.



## Response

The Department's comments are noted.

## Officer Comment

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The proposal has been assessed in accordance with Schedule 2, Part 9, Clause 67 (2) of the deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*. A full assessment is contained in [Attachment 9.1.1\(4\)](#).

Nearby landowners do not support the proposal for various reasons outlined in the objections received. Whilst the proposal achieves adequate setbacks, the submitters see the extractive industry threatening the visual amenity (Impacts on Preston River valley landscape, the appearance of bunds/stockpiles, tourist values, Aboriginal heritage sites, etc.) and quiet rural lifestyle of the area (noise, dust, truck traffic etc.). Concerns are also raised about the accumulation of the impacts, considering that there is already approval for an extractive industry P22022 on Lot 10, owned by the same landowner.

### Dust and Noise

Crushing and screening activities have the potential to impact nearby residences. The EPA Guidelines Statement No.3 recommends a separation distance of at least 1000m due to the potential dust and noise associated with these activities. These impacts could affect at least five residences. The applicant has addressed the effects of dust and noise noted by the EPA Guidelines by preparing management plans referred to DWER for assessment.

The Environmental Noise Branch of the Department of Water and Environmental Regulation has reviewed the Noise Management Plan and concluded that the modelled noise levels with all noise control measures implemented seem reasonable and reliable.

The acoustic assessment by Herring Storer states that the facility would only operate during the day. Therefore, at the neighbouring residences, the applicable acoustic criteria for this assessment are the assigned LA10-day period noise level of 45 dB(A). The report indicates that if no noise control, such as earth bunding, is implemented, noise received at the nearest residential premises can exceed the assigned noise level. To comply with the requirements, management of the dozer and fixed plant noise levels requires operations behind a barrier (earth bund) for strategic locations throughout the staging. Below is an excerpt of Herring Storer's acoustic assessment, of the initial four stage proposal which demonstrates the indicative locations of the crusher and dozer.



Figure 7 Extract from acoustic assessment.

Officers generally agree with the acoustic assessment; however, note that with the amended proposal now consisting of 6 stages, the crusher location for stages 1, 3, and 5 is closer to some residences. The noise management plan shows the location of the topsoil and product stockpiles for each of the new stages, with the dozer and crusher behind a barrier (earth bund) to comply with the acoustic report criteria.

The excerpt from the noise management plan below shows the location of the stockpiles and crusher.

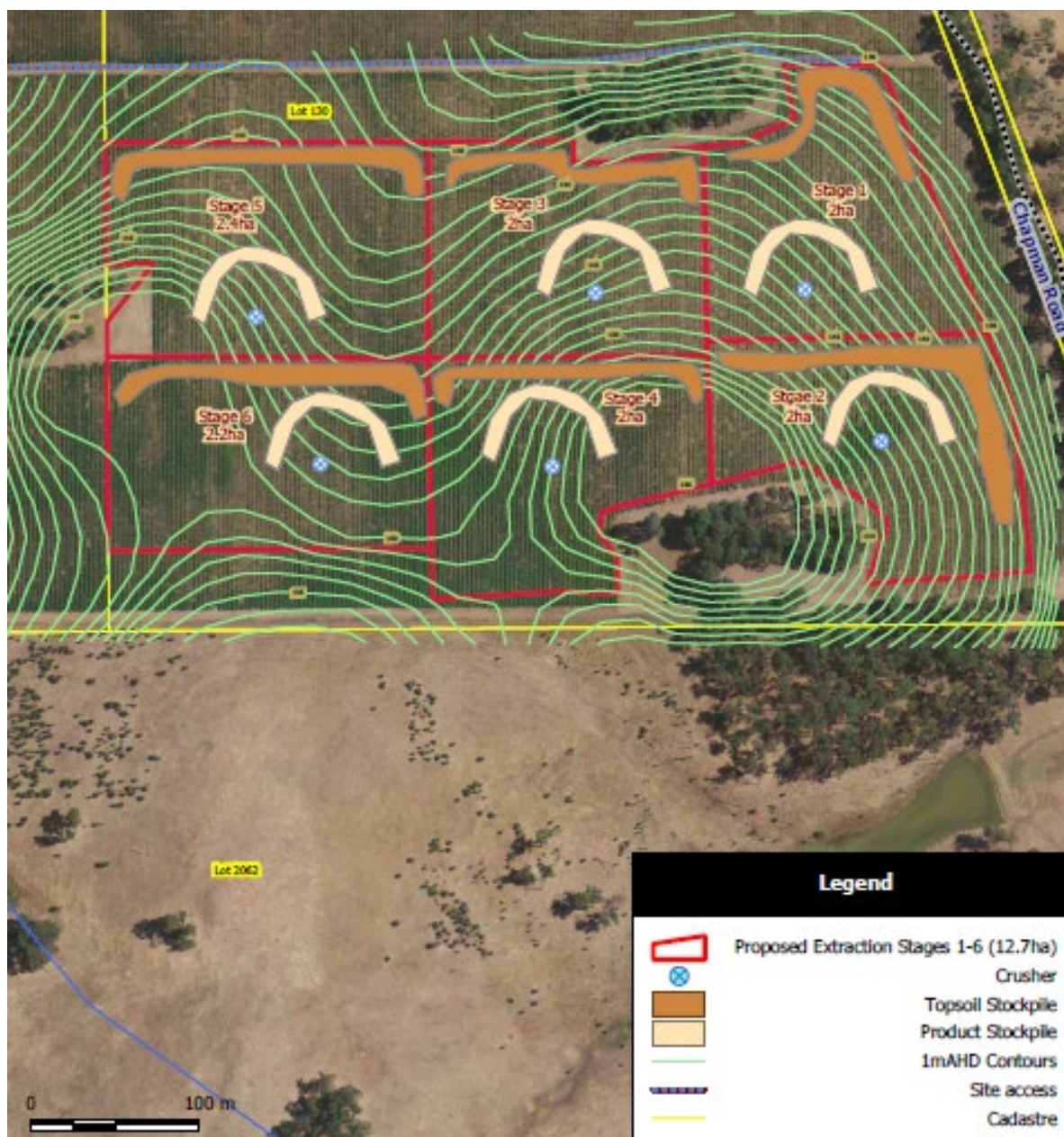


Figure 8 – Extract from noise management plan.

Submissions were also received raising concerns about noise accumulation with the two sites, Lot 10 and Lot 130, owned by the same owner, located in a rural environment and being elevated. The current acoustic assessment does not consider the impacts of accumulative noise impacts for both extractive industries. The proposal states that crushing and screening will be 3-4 weeks per annum. A condition that no crushing and screening is to occur on Lot 130 when crushing and screening are in process on Lot 10 is recommended if approval is granted. Residents will be exposed to crushing and screening activities for a longer period of time, 4-8 weeks per annum if both extractive industries operate at the same time.

The Department of Water and Environmental Regulation has reviewed the Dust Management Plan and generally agrees with the medium risk rating calculated by the applicant. The Department recommends that crushing and screening activities should not occur outside of winter months and



that the applicant should inform residences in the vicinity before these activities occur. A condition is recommended for crushing and screening to occur in winter months to align with the advice from DWER.

### Visual amenity

The applicant submitted a visual impact statement. Photos have been taken from four points along Donnybrook-Boyup Brook Road and Chapman Road. The position of the profile lines is shown in the excerpt below, with Google Earth photographs illustrating the position from which the photos were taken.

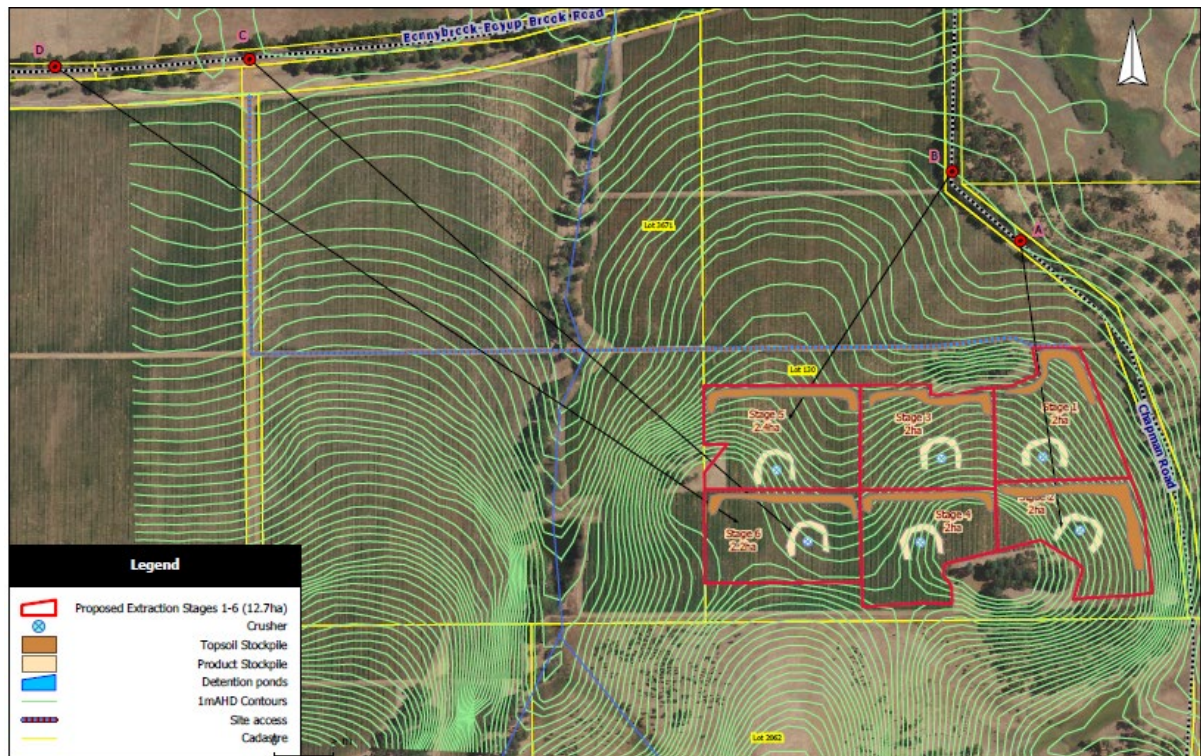


Figure 9 – Visual amenity overview



Figure 10 – View A



Figure 11 – View B



Figure 12 – View C



Figure 13 – View D



The photos show the position of the extraction area from various vantage points. The profiles in the visual impact statement show how the stockpiles are placed to limit the operation's visibility. As per the photos, the elevated part of the lot will be visible from a distance as you travel along Donnybrook – Boyup Brook Road. However, as you get closer, existing vegetation along the road will provide some screening, and the development will not appear as prominent in the landscape. The applicant has already amended the proposal to exclude Lot 3671 from the proposal due to concerns that extraction on this lot could not be screened with topsoil stockpiles. Officers consider that the information provided in the visual impact statement will satisfactorily address the concerns raised by submitters. Officers consider that the impact is temporary and the rehabilitation plan for the site seeks to return the land to pasture.

#### Development considerations

When considering a development application, clause 68 (2) of the Deemed Provisions outlines the following options for determination:

*The local government may determine an application for development approval by -*

- *Granting development approval without conditions; or*
- *Granting development approval with conditions; or*
- *Refusing to grant development approval.*

Staff have assessed the application, including the public submissions and advice from government agencies and other Shire service divisions. Staff consider the proposal capable of being approved and managed through reasonable and achievable conditions of approval.

#### Conclusion

The proposal is generally compatible with the purpose and objectives of the Priority Agriculture zone, the surrounding developments, and the area's amenity and character.

Matters raised during advertising have been appropriately addressed and can be managed by conditions/advice. Staff consider that the application complies with the requirement of orderly and proper planning and, therefore, recommend conditional approval.

<b>COUNCIL RESOLUTION:</b>		
<b>MOVED BY:</b>	Cr Anita Lindemann	<b>SECONDED BY:</b> Cr Grant Patrick

**That Council:**

- A. Pursuant to Schedule 2, Part 9, Clause 68(2)(b) of the Planning and Development (Local Planning Schemes) Regulations 2015 and the provisions of the Shire of Donnybrook Balingup Local Planning Scheme No. 7 (LPS7), approves the Development Application P23002 for an Extractive Industry (Gravel) on Lot 130 Donnybrook-Boyup Brook Road, Yabberup, subject to the following conditions and advice:

**CONDITIONS:**

**VALIDITY**

1. This approval is valid for a period of five (5) years after the date of issue or within any extended period as determined, in writing, by the Shire.

**APPROVED PLANS**

2. The layout of the site and location of crusher, stockpiles, access route and works permitted must always accord with Figure 3 in the "Extractive Industries Licence Application and Environmental Management Plan" 2038 Donnybrook-Boyup Brook Road Yabberup Rev3 (Date: May 2024) and the conditions of approval and must not be altered or modified without the further written consent of the Shire.
3. In the event of an inconsistency between the approved plan and a requirement of the conditions of this development approval, the requirement of the conditions prevail.

**DUST MANAGEMENT**

4. Dust is to be appropriately managed on site at all times in accordance with the approved Dust Management Plan 9.1.1(1.4) and the Shire of Donnybrook Balingup Animals, Environment and Nuisance Local Law 2017 to the satisfaction of the Shire.
5. A suitable supply of water for the purposes of all site management operations is to be provided to the satisfaction of the Shire.
6. Crushing and/or screening is to occur in winter months only, and the applicant is to inform nearby residence within 1000m of the extraction site prior to the commencement of these activities.

**WEED AND DIEBACK MANAGEMENT**

7. Weed management is to be undertaken in accordance with the approved Weed Management Plan 9.1.1(1.1) to the satisfaction of the Shire. Any declared weeds found to be within the site need to be appropriately treated and removed prior to any further excavation works.

8. Dieback measures in accordance with the approved Dieback Brochure 9.1.1(1.6) and contained in the application details to reduce the spread of dieback are to be undertaken to the satisfaction of the Shire.
9. A minimum 10m buffer is to be provided between all proposed extraction areas and adjacent existing native vegetation. The 10m exclusion area is to be clearly demarcated to ensure vehicles, extraction works, detention pond and stockpile areas are located outside the 10m buffer zone to the satisfaction of the Shire.

#### **FIRE MANAGEMENT**

10. Suitable fire management as contained in the application details to be undertaken to the satisfaction of the Shire and the Shire of Donnybrook Balingup Bush Fire Brigades Local Law and Bush Fires Act 1954, or superseding standard(s).

#### **STORMWATER MANAGEMENT**

11. Water management is to be undertaken in accordance with the approved Water Management Plan 9.1.1(1.2) to the satisfaction of the Shire.
12. All stormwater from the proposed development shall be managed by the landowner in perpetuity, in accordance with the Animals, Environment and Nuisance Local Law 2017 and the approved Water Management Plan to the satisfaction of the Shire.
13. Any erosion and/or sedimentation issues that occur due to insufficient drainage and/or stormwater management from the proposed development, including any driveway or accessway, is to be rectified, so as not to impact any surrounding waterways and/or properties, including any infrastructure, to the satisfaction of the Shire. As heavy machinery will be traversing the crossing over the waterway, measures are to be undertaken to ensure the waterways is not impacted by erosion/ground disturbance.
14. Extraction works are not to exceed a depth of 1m below the existing natural ground level unless otherwise approved, in writing, by the Shire, in consultation with the Department of Water and Environmental Regulation.
15. No groundwater is to be exposed on the surface of the pit floor. Should groundwater be exposed during excavation works, all works are to cease, and the Shire is to be notified. Any remedial works, as required by the Shire, in consultation with the Department of Water and Environmental Regulation, are the responsibility of the operator to rectify. No dewatering is permitted.
16. Any refuelling and/or activities that carry a risk of spills are not to be undertaken in close proximity to the detention basins or stormwater flow paths.

#### **NOISE MANAGEMENT**

17. Noise management is to be undertaken in accordance with the approved Noise Management Plan 9.1.1(1.3) to comply with the Environmental Protection (Noise) Regulations 1997 to the satisfaction of the Shire.
18. No crushing and/or screening is to occur on Lot 130 for the duration of the crushing and/or screening campaign when in process on Lot 10.



#### **ONGOING COMPLIANCE AND MONITORING**

**19. A complaints register is to be established including:**

- d) Details of the subject of the complaint;**
- e) Actions undertaken by the applicant/landowner to rectify the complaint; and**
- f) The on-site publication of appropriate contact details where complaints are to be directed (in the first instance).**

**A copy of the complaints register is to be submitted to the Shire every 3 months.**

#### **REHABILITATION AND PIT CLOSURE MANAGEMENT**

- 20. The Proposed Rehabilitation Measures, Monitoring and Maintenance and Completion Criteria as contained in the application details to be undertaken to the satisfaction of the Shire in accordance with the requirements of works outlined within the Shire of Donnybrook Balingup Extractive Industry Local Law 2016.**
- 21. Extraction Site rehabilitation of each stage is to be substantially completed prior to extraction occurring on the next stage to the satisfaction of the Shire.**
- 22. Pit closure works, and rehabilitation of the entire site is to be completed within two (2) years of the end of extraction works or the expiration of this approval (whichever is sooner) unless otherwise extended, in writing, by the Shire.**
- 23. A \$20,000 bond (cash or unconditional bank guarantee in favour of the Shire) is required for the works identified by the Proposed Rehabilitation Measures, Monitoring and Maintenance and Completion Criteria as contained in the application details.**

#### **OPERATING HOURS**

- 24. Operating hours of the extractive works are restricted to 8:00 am to 5:00 pm Monday to Friday (excluding Public Holidays) unless otherwise agreed, in writing, by the Shire.**
- 25. Trucks are not to operate between the following hours on any given school day on a school bus route between 7:30 am to 8:40 am and 3:20 pm to 4:20 pm.**

#### **VEHICULAR MANAGEMENT**

- 26. Prior to the commencement of works, the crossover onto Donnybrook – Boyup Brook Road and 100m along the access road is to be designed, constructed, sealed, and drained to the satisfaction of the Shire in consultation with Main Roads Western Australia and the Public Transport Authority. The applicant is to thereafter maintain the crossover and driveway for the life of extraction operations to the satisfaction of the Shire.**
- 27. The cost to relocate and/or remove any services/infrastructure that may be required for the purposes of meeting Condition 25, are the responsibility of the landowner/applicant.**
- 28. No access or egress via Chapman Road for gravel extraction activities is permitted.**

#### **OTHER**

- 29. Prior to the commencement of works, a copy of a current public liability insurance policy taken out in the joint names of the licensee and the local government indemnifying the**

licensee and the local government for a sum of not less than \$20,000,000 in respect of any one claim relating to any of the excavation operations.

30. Prior to the commencement of works, suitable safety fencing and warning signage is to be installed on the perimeter of the extraction area, and thereafter maintained, to the satisfaction of the Shire.

#### ADVICE NOTES

- i. This development approval is not an Extractive Industry Licence. No works are to be undertaken until such time as all conditions of the Development Approval have been satisfied and an Extractive Industry Licence has been granted under the Extractive Industry Local Law 2016.
  - j. The operations are likely categorised as a Prescribed Premises, as per Schedule 1 of the Environmental Protection Regulations 1987 (EP Regulations). The applicant is advised to refer to the information and Industry Regulation Guide to Licensing available at <http://www.der.wa.gov.au/our-work/licences-and-works-approvals>.
  - k. The Department of Water and Environmental Regulation have advised that although the property is not within a proclaimed surface water area under the Rights in Water and Irrigation Act 1914 (RIWI Act), it should be noted that the waterways located to the east and west of the proposed extraction are proclaimed tributaries of the Preston River under the Act and any interference with the bed and banks of these watercourses or take of water will be subject to the RIWI Act.
  - l. With regards to the rehabilitation bond, return of the bond will be measured against the works identified within the Proposed Rehabilitation Measures, Monitoring and Maintenance and Completion Criteria as contained in the application details as determined by the Shire.
  - m. Management of all activities involving hazardous chemicals (including plant refuelling and/or servicing) shall be in accordance with the Department of Water and Environmental Regulation's WQPN 56 'Toxic and Hazardous Substance Storage and Use' (Dec 2018). Contingencies for spills should be in accordance with WQPN 10 'Contaminant spills - emergency response plan' (May 2020).
  - n. The applicant is responsible to ensure obligations are met under the Aboriginal Heritage Act 1972 with regards to undertaking a due diligence assessment and obtaining all relevant approvals.
  - o. Where an approval has so lapsed, no development must be carried out without the further approval of the Shire having first been sought or obtained.
  - p. If an applicant or owner is aggrieved by this determination there is a right of review by the State Administrative Tribunal in accordance with Part 14 of the Planning and Development Act 2005. An application must be made within 28 days of the determination.
- B. Authorises the Chief Executive Officer to issue an Extractive Industry License for the extraction of gravel at Lot 130 Donnybrook-Boyup Brook Road, Yabberup upon

complying with the conditions of development approval P23002 and subject to the following conditions:

- a. The extractive operation shall comply with the Shire of Donnybrook Balingup Extractive Industries Local Law at all times.
- b. This Extractive Industry License is valid for a period of 5 years from the date of issue.
- c. Compliance with all approved plans and any recommendations contained in Development Approval P23002 at all times during the life of the extractive industry to the satisfaction of the Shire.
- d. A licensee shall pay to the local government the annual licence fee in accordance with the Schedule of Fees and Charges adopted each year in the Shire of Donnybrook-Balingup annual budget prior to the commencement of extraction.
- e. The operator is required to submit to the Shire an annual 'Progress Report' on the 31 December, detailing progress of the pit over the previous 12-month period. The Report should provide details on the following:
  - i. Extent of extraction undertaken (volume and area);
  - ii. Completion of stages;
  - iii. Rehabilitation of completed stages.
  - iv. Site survey plan.

<b>For:</b> Cr Mitchell, Cr Gubler
<b>Against:</b> Cr MacCarthy, Cr Davy, Cr Glover, Cr Bailey, Cr Lindemann, Cr Patrick, Cr Shand
<b>Lost: 2/7</b>

Alternate Motion: Cr Davy put the following alternate motion.

<b>COUNCIL RESOLUTION:</b> 92/24		
<b>MOVED BY:</b>	Cr Alexis Davy	<b>SECONDED BY:</b> Cr Deanna Shand

That Council:

1. Pursuant to Schedule 2, Part 9, Clause 68(2)(c) of the Planning and Development (Local Planning Schemes) Regulations 2015 refuse to grant development approval for Application P23002 for the extractive industry on Lot 130 Donnybrook Boyup Brook Road, Yabberup for the following reasons:
  - A. In relation to Part 3, clause 3.6.2 of LPS7 and clause 67(2)(a) of the Deemed Provisions the applicant has failed to sufficiently demonstrate that the proposed development will be consistent with, and not contrary to, the aims and objectives of the Priority Agriculture zone, specifically 3.6.2 subclauses as they relate to the protection and management of agricultural land resources, biodiversity, and the

promotion of intensive agricultural uses, particularly in regard to the following points:

- (i) require the protection of the rural infrastructure and agricultural land resources;
- (iii) support the improvement of resource and investment security for agricultural and allied industry production;
- (iv) require protection and enhancement of biodiversity;
- (v) encourage value-adding opportunities to agricultural products at source;
- (vi) support a wide variety of productive agricultural and rural activities;
- (viii) support sensible use and management of resources, and the proper direction and control of development; and
- (ix) promote the existing intensive agricultural land use.

- B. In relation to Part 3, clause 3.6.1 of LPS7, the applicant has failed to sufficiently demonstrate the proposed development will provide for the sustainable use of high-quality agricultural land and fails to sufficiently demonstrate that the development will preserve existing agricultural production.
- C. In relation to clause 67(2) (a), (c), (q) and (za) of the Deemed Provisions, the applicant has failed to sufficiently demonstrate that the proposed extraction will not jeopardise the future agricultural use of the land in relation to biodiversity, soil degradation and protection of the land as a long-term agricultural resource.
- D. It is noted the Department of Primary Industries and Regional Development (DPIRD) has provided comments opposing the development proposal as Lot 130 Donnybrook – Boyup Brook Road, Yabberup is zoned Priority Agriculture within LPS7. The DPIRD advice states that:
- (i) The Department does not support the extraction of gravel on land zoned ‘Priority Agriculture’ and all the proposed extraction areas are zoned ‘Priority Agriculture’.
  - (ii) All the land zoned ‘Priority Agriculture’ has a high to very high (A2) or moderate to very high (B1) capability for viticulture based on DPIRD Regional scale soil mapping as evident in Figure 1 (NRInfo).
  - (iii) The land identified for gravel extraction is currently planted with grapes (vineyard) and the applicant proposed to replace the vineyard with pasture following the removal of gravel.
  - (iv) The proposed extraction of gravel will remove the free draining part of the soil that is beneficial for viticultural and perennial horticultural production. The extraction of gravel will have a negative impact on the capability of the land for viticulture and perennial horticulture therefore making it doubtful that the rehabilitated soil will be able to support vineyards to the same extent as it currently does.
- E. In relation to clause 67(m) and (n) of the Deemed Provisions, the applicant has failed to sufficiently demonstrate that the proposed development won’t adversely affect the rural landscape of the locality.

**F. Approval of the proposed development would result in an undesirable planning outcome as evidenced by the significant public objection to the proposal, and the existing, and ensuing social impacts of such a decision.**

**2. Note the work done by the applicant and Shire planning staff to try to address matters raised in public submissions.**

<b>For:</b> Cr MacCarthy, Cr Davy, Cr Glover, Cr Bailey, Cr Shand
<b>Against:</b> Cr Mitchell, Cr Gubler, Cr Lindemann, Cr Patrick
<b>Carried: 5/4</b>

Reasons for Resolving Contrary to Executive Recommendation:

The Officer's report refers to State Planning Policy 2.5 'Rural Planning'. The purpose of this policy is to protect and preserve Western Australia's rural land assets due to the importance of their economic, natural resources, food production, environmental and landscape values. The policy notes the likelihood that increasing the population will increase pressure on rural land for food production and acknowledges the likelihood of competing land uses becoming a planning issue.

Priority agriculture land that is land that is considered high quality agricultural land is due to suitable soils, climate, the availability of water resources and access to services. The policy aims to preserve rural land, in general, for primary production and basic resource materials however contrary to the information provided by the senior planning officer in the agenda briefing, separate definitions are provided for primary production, which includes extractive industries, and priority agricultural land which has particular significance for food production purposes. The objectives clearly state that particular focus will be given to the protection of priority agricultural land for food production not for general primary production pursuits.

### 9.1.2. Revision of Local Emergency Management Committee (LEMC) Meeting Schedule

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#### Report Details:

**Prepared by:** Community Emergency Services Manager

**Manager:** Ross Marshall, Director Operations

**File Reference:** CSV 23

**Voting Requirement:** Simple Majority

**Attachment(s):**

Nil.

#### Executive Recommendation

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##### That Council:

1. Amends the frequency of Local Emergency Management Committee meetings from biannually to quarterly.
2. Updates the Shire of Donnybrook Balingup Local Emergency Management Arrangements to reflect to amended meeting frequency.

#### Strategic Alignment

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

- Outcome:** 3 - The natural environment is well managed for the benefit of current and future generations.
- Objective:** 3.2 - Develop community readiness to cope with natural disasters and emergencies.
- Item:** 3.2.4 - Provide support for emergency services volunteers.

#### Executive Summary

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It has been requested by the Local Emergency Management Committee (LEMC) that the Shire of Donnybrook Balingup review the frequency of its LEMC meetings.

This proposal has been endorsed by the Shire's LEMC at their meeting held on Tuesday 14 May 2024.

*That LEMC recommend Council:*

1. Amends the frequency of Local Emergency Management Committee meetings from biannually to quarterly.
2. Updates the Shire of Donnybrook Balingup Local Emergency Management Arrangements to reflect the amended meeting frequency.

*Moved: M Zwart*

*Seconded: G Davis*

## Background

At the November 2023 Local Emergency Management Committee (LEMC) meeting, concerns were raised that the current biannual LEMC meeting schedule is too infrequent to maintain continuity and also falls outside of State Emergency Management Committee (SEMC) recommendations. It was requested that the Shire of Donnybrook Balingup review this position.

At the August 2022 LEMC meeting, the Shire of Donnybrook Balingup recommended to the LEMC that their meeting frequency be reduced from quarterly to biannually primarily due to administrative resourcing constraints. This was accepted, although this resolution didn't go to Council to be endorsed:

*That the Local Emergency Management Committee recommends Council:*

1. *Amends the frequency of the current quarterly LEMC meetings to a bi-annual schedule with meetings to be held in May and November of each year;*
2. *Modifies the LEMC Terms of Reference to reflect the amended meeting frequency;*
3. *Authorises the Chief Executive Officer to call a LEMC meeting at any other time, if it is determined an additional meeting outside of the schedule outlined in Point 1 is warranted;*
4. *Supports the coordination of annual emergency response exercises to align with LEMC meeting dates, whenever possible"*

Since this resolution was adopted, a biannual meeting basis has been trialed, however it has been suggested by several LEMC members that this is not as beneficial as suggested in the officer's recommendations presented to the committee in August 2022.

## Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Service Interruption	Unlikely	Insignificant	Low (2)
Risk Description:	The Committee doesn't meet frequently enough to perform effectively and maintain continuity.		
Mitigation:	Increase frequency of meetings to align to SEMC recommendation.		

## Financial Implications

Nil.

## Policy Compliance

Nil.

## Statutory Compliance

Pursuant to Sections 38 – 40 of the *Emergency Management Act 2005*, (EM Act) Local Governments are required to establish and perform the functions of a LEMC. The EM Act does not specify the number of meetings required per annum, providing that certain requirements are fulfilled.



The State Emergency Management Committee recommends that “LEMCs should meet quarterly or more frequently if required.”

#### Consultation

- Shire of Donnybrook Balingup Local Emergency Management Committee.
- DFES District Emergency Management Advisor – South West .

#### Officer Comment

It is recommended that the Shire of Donnybrook Balingup LEMC endorse the Recommended Committee Resolution and return to a quarterly meeting schedule.

<b>COUNCIL RESOLUTION:</b> 93/24		
<b>MOVED BY:</b>	Cr Anita Lindemann	<b>SECONDED BY:</b> Cr John Bailey

#### That Council:

1. Amends the frequency of Local Emergency Management Committee meetings from biannually to quarterly.
2. Updates the Shire of Donnybrook Balingup Local Emergency Management Arrangements to reflect to amended meeting frequency.

<b>For:</b> Cr MacCarthy, Cr Davy, Cr Mitchell, Cr Glover, Cr Bailey, Cr Gubler, Cr Lindemann, Cr Patrick, Cr Shand
<b>Against:</b> Nil.
<b>Carried: 9/0</b>

### 9.1.3. Indigenous Yarning Circle Project

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#### Report Details:

<b>Prepared by:</b>	Community Development Officer		
<b>Manager:</b>	Manager Development Services		
<b>Applicant:</b>	Donnybrook District High School		
<b>Location:</b>	Corner Emerald and Bentley Streets, Donnybrook.		
<b>File Reference:</b>	A2083	<b>Voting Requirement:</b>	Simple Majority
<b>Attachment(s):</b>	Nil		

#### Executive Recommendation

**That Council notes the proposal to develop an indigenous yarning circle at the Donnybrook District High School and approves a contribution of \$6,000 towards the project with those funds being drawn from Account 127820 – indigenous mural project.**

#### 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.
- Item:** 1.4.1 - Enable development of a community-led Reconciliation Action Plan.
- Outcome:** 11 - Strong, visionary leadership.
- Objective:** 11.2 - Improve community consultation and engagement.

#### Executive Summary

Donnybrook District High School is developing infrastructure for an Indigenous yarning circle at the senior campus that will be available to the broader community. The Shire has been asked to provide funding support of \$6,000 to this project. This project strongly aligns with the Shire's current strategies of encouraging connection and participation with local Indigenous community members.

#### Background

In 2020 the Shire received a donation of \$5,000 from Perkins and in 2022 received a further \$5,000 from Talison to go towards an Aboriginal Participation and Art project to encourage cultural awareness and engagement in Donnybrook. The \$10,000 budget (account 127820) was originally planned to be used for an Indigenous mural. The parameters around requirements of the art project are broad and no specific acquittal is required for the funding received.

Locating an appropriate site for the planned artwork that could be identified as significant by our local elders and Indigenous community members has to date proved difficult. Settling upon a suitable

artwork that would represent the broader community and remain timeless was also a challenge and the project was delayed until a more organic plan was formed. This has resulted in the funding being carried forward during the Shire's budgeting process since 2021.

The Shire has been working with local youth and Indigenous people through various means of engagement and collaboratively came upon the Donnybrook District High School's proposed yarning circle. The proposed design has been based on the image below:



**Figure 1: Proposed Yarning Circle Design**

The proposed site (refer Figure 2) is located in an area that is accessible to the public and the school will be encouraging of public engagement at this site. The site, by the river, has been recognised as culturally significant by elder representatives. The purpose of the yarning circle is to create a safe space for engagement of all people in recognising Indigenous culture. The location is also in proximity to the local library which is frequently visited by community members.

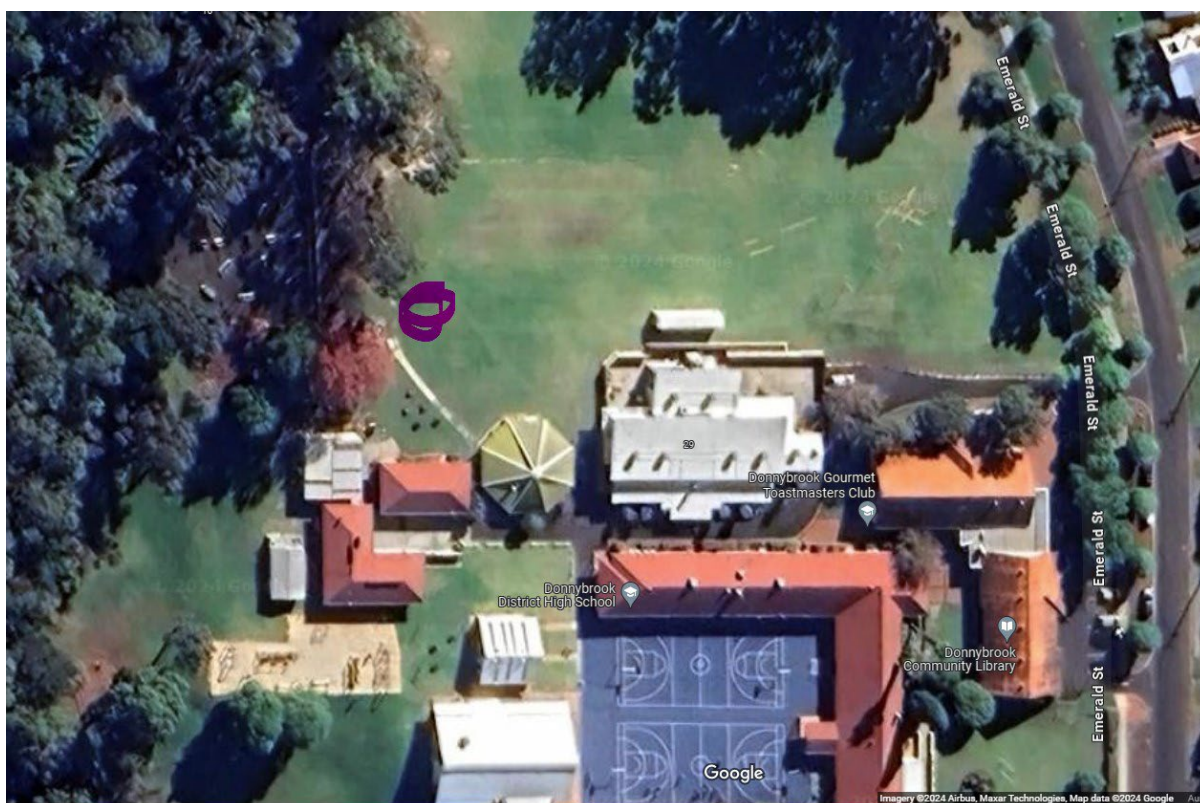


Figure 2: Selected site location (shown purple) – Donnybrook District High School

### Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Property	Unlikely	Minor	Low (2)
Risk Description:	Maintenance/vandalism		
Mitigation:	Location at the school mitigates this risk to the Shire as the school will maintain the site and will develop and facilitate programs to encourage ongoing use of the space.		

### Financial Implications

It is proposed that the \$6,000 request be allocated from account 127820 “Indigenous Mural Project”. This funding has been carried over since 2022 due to the inability to secure an appropriate project. It is considered that the proposed yarning circle meets the broad intent of the Perkins and Talison donations towards Aboriginal Participation and Art project as the yarning circle will encourage cultural awareness and engagement in Donnybrook.

### Policy Compliance

#### *Council Policy COMD/CP-3- Community Engagement Framework*

The development of a yarning circle within the Shire provides a safe space for Indigenous community members to participate in conversations. The availability of this space within the Shire will assist the Shire, and others, in engaging more effectively with these community members.

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## Statutory Compliance

### *Local Government Act 1995*

Section 6.8(1)(b) of the *Local Government Act 1995* enables consideration of a budget amendment for expenses related to an additional purpose, not previously identified within the adopted budget.

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## Consultation

This project has been collaboratively developed with the following stakeholder:

- Donnybrook District High School

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## Officer Comment

The Indigenous yarning circle project offers the community a space to recognise local Indigenous culture and create a place of connection. It is a living art space that facilitates connection and engagement. The recognition of the appropriateness of the proposed site and cultural significance of a yarning circle is a project that is considered to meet the parameters of the donated funding received by the Shire.

The benefits of the project being located on the school grounds are that programs and ongoing connection will be managed by the school supported by their Follow the Dream program. This will ensure that the space is regularly used and continues to build in significance and importance to the community. The school will also take responsibility for ongoing maintenance of the site and make it available for use by the broader public.

<b>COUNCIL RESOLUTION:</b> 94/24		
<b>MOVED BY:</b>	Cr John Bailey	<b>SECONDED BY:</b> Cr Alexis Davy

**That Council notes the proposal to develop an indigenous yarning circle at the Donnybrook District High School and approves a contribution of \$6,000 towards the project with those funds being drawn from Account 127820 – indigenous mural project.**

<b>For:</b> Cr MacCarthy, Cr Davy, Cr Mitchell, Cr Glover, Cr Bailey, Cr Gubler, Cr Lindemann, Cr Patrick, Cr Shand
<b>Against:</b> Nil.
<b>Carried: 9/0</b>



Michelle Dennis left the room at 6:14pm.

## 9.2. Director Finance and Corporate

### 9.2.1. Statement of Financial Activity report as at 31<sup>st</sup> May 2024

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#### Report Details:

**Prepared by:** Manager Financial Services

**Manager:** Tim Clynych, Acting Director Finance & Corporate

**File Reference:** Nil

**Voting Requirement:** Simple Majority

**Attachment(s):**

9.2.1(1) Statement of Financial Activity

#### Executive Recommendation

**That Council receive the Statement of Financial Activity report for the period ending 31 May 2023 as per Attachment 9.2.1(1).**

#### Strategic Alignment

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

**Outcome:** 12 - A well respected, professionally run organisation.

**Objective:** 12.1 - Deliver effective and efficient operations and service provision.

**Item:** Nil.

#### Executive Summary

Pursuant to Section 6.4 of the *Local Government Act 1995 (the Act)* and Regulation 34(4) of the *Local Government (Financial Management) Regulations 1996 (the Regulations)*, a local government is to prepare, on a monthly basis, a monthly financial report that reports on the Shire's performance in relation to its adopted/amended budget.

This report has been compiled to fulfil the statutory reporting requirements of the Act and associated Regulations, whilst also providing the Council with an overview of the Shire's financial performance on a year-to-year basis, for the period ending 31<sup>st</sup> May 2024.

#### Background

The Regulations detail the form and manner in which the monthly financial report is to be presented to the Council, and is to include the following:

- Annual budget estimates
- Budget estimates to the end of the month in which the statement relates
- Actual amounts of revenue and expenditure to the end of the month in which the statement relates
- Material variances between budget estimates and actual revenue/expenditure

- Net current assets at the end of the month to which the statement relates

Additionally, and pursuant to Regulation 34(5) of the Regulations, a local government is required to adopt a material variance reporting threshold in each financial year.

At its meeting on 30<sup>th</sup> August 2023, the Council adopted the following material variance reporting thresholds for the 2023/24 financial year:

*A material variance for reporting of \$10,000, for 2023/2024, pursuant to Regulation 34(5) of the Local Government (Financial Management) Regulations 1996.*

### Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Financial Impact	Unlikely	Moderate	Moderate (6)
Risk Description:	Monetary loss that may or may not be managed within existing budget or may not impact a program or services		
Mitigation:	Reporting financials monthly		
Compliance	Unlikely	Minor	Low (4)
Risk Description:	Meeting legislative requirement of financial reporting to the Council		
Mitigation:	Monthly reporting on financial reports.		

### Financial Implications

#### Budget

There are no financial implications relevant to this proposal.

#### Long Term

As no assets/infrastructure are being created, there are no long-term financial implications relevant to this proposal.

### Policy Compliance

Nil.

### Statutory Compliance

Section 6.4 of the *Local Government Act 1995* and Regulation 34 of the *Local Government (Financial Management) Regulations 1996* detail the form and manner in which a local government is to prepare financial activity statements.

### Consultation

The Shire's Executive Team, Department Managers and Finance staff monitor the Shire's monthly revenue and expenditure.

Approved budget amendments are recorded in the financial statements to always reflect the Shire's current budget and financial position.



### Officer Comment

To fulfil the statutory reporting requirements, the statement of financial activity report is provided in [Attachment 9.2.1\(1\)](#) and reports on the following information for the reporting period:

- Rate Setting Statement
- Material Variances
- Net Current Assets
- Statement of Comprehensive Income
- Capital Expenditure
- Plant Replacement Program
- Investments
- Statement of Reserves
- Borrowings and Leases
- Trust Funds
- Delegation Write Off
- Public Works and Plant Operation Costs

### May 2024 Financial Analysis Summary

The issuing of rates for 2023/24 was completed in the month of August 2023. Payment options were as follows:

- First instalment and due date for single full payment occurred 20<sup>th</sup> October 2023.
- Second rates instalment due date occurred 19<sup>th</sup> December 2023
- Third rates instalment due date occurred 19<sup>th</sup> February 2023.
- Fourth and final instalment date was 19<sup>th</sup> April 2024

The Rate Setting Statement for the year to date (YTD) shows an overall net current position of \$3,694,340 compared to the YTD budget of \$194,916. Detail of the variance totalling \$3,499,424 is provided in the material variance reporting note.

The Capital expenditure for the Actual YTD shows a total of \$9,280,892 compared to the YTD budget being \$12,241,871. This equates to \$2,960,979 less than year-to-date budget estimate. This was largely due to timing of the following construction projects:

- Social Housing Economic Recovery (SHERP) project under year-to-date budget \$457,900
- Various Hall building projects under year-to-date budget \$148,500
- VC Mitchell redevelopment under year-to-date budget \$966,600
- VC Mitchell supplementary works under year-to-date budget \$495,200
- Administration building works under year-to-date budget \$66,500
- Donnybrook Rec Centre building works under year-to-date budget \$94,100
- Road infrastructure projects under year-to-date budget \$336,794
- Bridge infrastructure projects under year-to-date budget \$90,248
- Plant purchases under year-to-date budget \$253,406

Other items that are positively affecting the end of year position are:

- Interest revenue \$341,064 – to 31<sup>st</sup> May actuals are \$28,816 ahead of the year-to-date budget.
- Transit Park revenue \$93,498 – to 31<sup>st</sup> May actuals are \$15,231 ahead of the year-to-date budget.
- Contribution to works revenue \$26,5047 – to 31<sup>st</sup> May actuals are \$41,609 ahead of year-to-date budget.

<b>COUNCIL RESOLUTION:</b> 95/24		
<b>MOVED BY:</b>	Cr Grant Patrick	<b>SECONDED BY:</b> Cr Anita Lindemann

**That Council receive the Statement of Financial Activity report for the period ending 31 May 2023 as per Attachment 9.2.1(1).**

<b>For:</b> Cr MacCarthy, Cr Davy, Cr Mitchell, Cr Glover, Cr Bailey, Cr Gubler, Cr Lindemann, Cr Patrick, Cr Shand
<b>Against:</b> Nil.
<b>Carried: 9/0</b>

## 9.2.2. Schedule of Accounts Paid as at 31<sup>st</sup> May 2024

### Report Details:

**Prepared by:** Manager Financial Services

**Manager:** Tim Clynych, Acting Director Finance & Corporate

**File Reference:** FNC

**Voting Requirement:** Simple Majority

### Attachment(s):

9.2.2(1) Schedule of Accounts Paid Under Delegation

### Executive Recommendation

**That Council receive the accounts for payment report for the period ended May 2024 as per Attachment 9.2.3(1).**

### Strategic Alignment

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

**Outcome:** 12 - A well respected, professionally run organisation.

**Objective:** 12.1 - Deliver effective and efficient operations and service provision.

**Item:** Nil.

### Executive Summary

That in accordance with Regulation 13 (3) of the *Local Government (Financial Management) Regulations 1996*, Council receive the Accounts for Payment report as per [Attachment 9.2.2\(1\)](#) covering the period 1 May 2024 to 31<sup>st</sup> May 2024, the schedule contains details of the following transactions:

<u>Payment Type</u>	<u>Payment Reference</u>
Credit Card payments	3542-3551
EFT Payments	EFT28525C – EFT28807A
Cheque Payments	53791 – 53794
Direct Debit payments	DD27722, 27723 & 27748
<b>Municipal Account – payments totalling \$2,830,851.30</b>	

### Background

In accordance with Delegation 1.2.23 – payments from the Municipal or Trust funds adopted by Council on 30 August 2023, the Chief Executive Officer is authorised to incur expenditure in accordance with the Annual Budget provisions and limited over-expenditure subject to subsequent budget amendments. In doing so, section 13 of the *Financial Management Regulations 1996* is to be adhered to with a list of accounts for approval to be presented to Council each month.

## Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Financial Impact	Unlikely	Minor	Low (2)
Risk Description:	Additional checks and balances of accounts paid by the Shire.		
Mitigation:	Monthly reporting on accounts paid.		
Compliance	Unlikely	Minor	Low (2)
Risk Description:	Meeting legislative requirement of financial reporting to the Council		
Mitigation:	Monthly reporting on accounts paid.		

## Financial Implications

All liabilities settled have been in accordance with the annual budget provisions.

## Policy Compliance

- FIN/CP-4 Purchasing
- FIN/CP-5 Regional Price Preference
- FIN/CP-7 Credit Card

## Statutory Compliance

*Local Government Act 1995*

*Local Government (Financial Management) Regulations 1996*

Where the local government has delegated the CEO the exercise of its power to make payments from the municipal fund or the trust funds, Regulation 13 requires that a list of accounts paid by the CEO is to be prepared each month showing for each account paid:

- The payee's name; and
- The amount of the payment; and
- The date of the payment; and
- Sufficient information to identify the transaction.

This list of accounts is to be:

1. Presented to Council at the next ordinary meeting of the Council after the list is prepared; and
2. Recorded in the minutes of that meeting.

## Consultation

Relevant staff have been consulted and have authorised the payments.

### Officer Comment

For a detailed listing of payments see [Attachment 9.2.2\(1\)](#). Please submit any queries before the meeting so that they can be investigated and addressed in a prepared response.

<b>COUNCIL RESOLUTION:</b> 96/24		
<b>MOVED BY:</b>	Cr Grant Patrick	<b>SECONDED BY:</b> Cr Peter Gubler

**That Council receive the accounts for payment report for the period ended May 2024 as per Attachment 9.2.3(1).**

<b>For:</b> Cr MacCarthy, Cr Davy, Cr Mitchell, Cr Glover, Cr Bailey, Cr Gubler, Cr Lindemann, Cr Patrick, Cr Shand
<b>Against:</b> Nil.
<b>Carried: 9/0</b>

### 9.2.3. Great Southern Care Company Pty Ltd- Lease Assignment

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#### Report Details:

**Prepared by:** Manager Corporate Services  
**Manager:** Tim Clynch, Acting Director Finance and Corporate  
**Applicant:** Great Southern Care Company Pty Ltd  
**Location:** Tuia Lodge Residential Aged Care Facility, 30 Allnut Street, Donnybrook  
**File Reference:** L107 **Voting Requirement:** Simple Majority

#### Attachment(s):

9.2.3(1) Draft Deed of Assignment of Lease - Confidential  
9.2.3(2) Lease - Confidential

#### Executive Recommendation

**That Council authorises the Chief Executive Officer and Shire President to execute the draft deed of assignment of Lease (Confidential Attachment 9.2.3(1)) and other appropriate documentation for the lease assignment from Great Southern Care Company Pty Ltd (GSC) to Fresh Fields Aged Care Pty Ltd (FFAC) for Tuia Lodge Residential Aged Care Facility, 30 Allnut Street, Donnybrook.**

#### Strategic Alignment

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

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

#### Executive Summary

The Shire's lawyers Jackson McDonald received an email from the Hall & Prior Aged Care Group, the parent entity to Great Southern Care Company Pty Ltd (GSC) to consider the lease assignment from Great Southern Care Company Pty Ltd (GSC) to Fresh Fields Aged Care Pty Ltd (FFAC) for Tuia Lodge Residential Aged Care Facility, 30 Allnut Street, Donnybrook.

Council is requested to consider the lease assignment from Great Southern Care Company Pty Ltd (GSC) to Fresh Fields Aged Care Pty Ltd (FFAC) for Tuia Lodge Residential Aged Care Facility, 30 Allnut Street, Donnybrook, authorising the Chief Executive Officer and Shire President to execute the deed of assignment of Lease (Confidential Attachment 9.2.3(1)) and related documentation.

## Background

Great Southern Care Company Pty Ltd the subsidiary of Hall and Prior Aged Care Group, operates the Tuia Lodge aged care business (AC Business).

GSC operates the AC Business from a leasehold property leased by GSC (Lessee) from the Shire of Donnybrook Balingup (Lessor) under a registered lease dated 17 June 2021 ([Confidential Attachment 9.2.3\(2\)](#)).

GSC proposes transferring the AC Business and assigning the Lease to FFAC as part of its current group restructure with the proposed transfer date no later than 30 June 2024.

On the 14 February 2024, the Shire's lawyers Jackson McDonald received an email from the Hall & Prior's General Counsel, to consider the lease assignment from Great Southern Care Company Pty Ltd (GSC) to Fresh Fields Aged Care Pty Ltd (FFAC) for Tuia Lodge Residential Aged Care Facility, 30 Allnut Street, Donnybrook.

## Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Reputational	Unlikely	Moderate	Moderate (6)
Risk Description:	The reputation of the assignee could reflect poorly on the Shire if they engage in undesirable activities.		
Mitigation:	Lawyers have conducted due diligence on the assignee's background and business practices.		

## Financial Implications

Nil.

## Policy Compliance

Nil.

## Statutory Compliance

Nil.

## Consultation

The Shire's lawyers, Jackson McDonald, have coordinated with Hall and Prior Aged Care Group's legal representatives, Corrs Chambers Westgarth, to ensure due diligence concerning the lease assignment. Jackson McDonald has advised that FFAC satisfy the requirements for the assignment to proceed.



## Officer Comment

### Reason for Assignment

The restructure is driven largely by a desire on the part of the Group directors to simplify and streamline the Group structure, considering the increased regulation of approved providers by the Commonwealth and the imminent introduction of a new Aged Care Act. The restructure will not result in a change in control of either GSC, FFAC or any other entity within the Hall & Prior Aged Care Group. FFAC is a well-established approved provider entity within the Hall & Prior Group, holding several assets in its own name.

### Lease Requirements

Under the Lease, the consent of the Lessor is not required to transfer the Lease to a Related Person, subject to the Lessee not being in default. The Hall and Prior Group's lawyers have demonstrated that they are not in default. FFAC is a Related Person of GSC, as defined in the Lease, and meets the fit and proper person test requirement within the lease. However, Hall & Prior Aged Care Group wish to seek the Shire's absolute release of GSC under the terms of the lease effective from the date of the assignment. The draft Deed of Assignment of Lease ([Confidential Attachment 9.2.3\(1\)](#)) sets out the details as per GSC's request.

The Minister of Lands will be required to approve the assignment under clause 13(b) of the Lease. It's recommended that Council consider the lease assignment from GSC to FFAC for Tuia Lodge Residential Aged Care Facility, 30 Allnut Street, Donnybrook, authorising the Chief Executive Officer and Shire President to execute the deed of assignment of Lease ([Confidential Attachment 9.2.3\(1\)](#)) and related documentation.

<b>COUNCIL RESOLUTION:</b> 97/24	
<b>MOVED BY:</b> Cr Anne Mitchell	<b>SECONDED BY:</b> Cr Peter Gubler

**That Council authorises the Chief Executive Officer and Shire President to execute the draft deed of assignment of Lease ([Confidential Attachment 9.2.3\(1\)](#)) and other appropriate documentation for the lease assignment from Great Southern Care Company Pty Ltd (GSC) to Fresh Fields Aged Care Pty Ltd (FFAC) for Tuia Lodge Residential Aged Care Facility, 30 Allnut Street, Donnybrook.**

<b>For:</b> Cr MacCarthy, Cr Davy, Cr Mitchell, Cr Glover, Cr Bailey, Cr Gubler, Cr Lindemann, Cr Patrick, Cr Shand
<b>Against:</b> Nil.
<b>Carried: 9/0</b>

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#### 9.2.4. Desktop Valuation for Lot 501 on Deposited Plan 72099 – 41 Bentley Street, Donnybrook

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##### Report Details:

**Prepared by:** Manager Corporate Services

**Manager:** Tim Clynn, Acting Director Finance and Corporate

**File Reference:** PRO 01/3A, A5047, L006      **Voting Requirement:** Simple Majority

**Attachment(s):**

9.2.4(1)      Desktop Valuation Report - Confidential

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#### Executive Recommendation

##### That Council:

1. Notes the desktop valuation report received from Landgate in confidential Attachment 9.2.4(1).
2. Defer any consideration of possible disposal of Lot 501 on Deposited Plan 72099 – 41 Bentley Street, Donnybrook until a business plan addressing the acquisition and sale of all or part of the property is prepared.
3. Authorises the Chief Executive Officer to prepare a business plan for the acquisition and sale of Lot 501 on Deposited Plan 72099 – 41 Bentley Street, Donnybrook for formal consideration.
4. Requests the Chief Executive Officer include \$10,000 for the preparation of the Business Plan, in the 2024/2025 Annual Budget for Council's consideration during Budget deliberations.

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#### Strategic Alignment

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

**Outcome:** 13 - Increased community capacity.

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

**Item:** Nil.

---

#### Executive Summary

Council is requested to note the indicative assessment undertaken by the Valuer General, Landgate (Confidential Attachment 9.2.4(1)), and to authorise the Chief Executive Officer to prepare a business plan for the acquisition of Lot 501 on Deposited Plan 72099, 41 Bentley Street, Donnybrook for formal consideration of Council.

## Background

A report was presented to Council on 28 February 2024 to consider a proposal to purchase the land and buildings at Lot 501 on DP 72099 Bentley Street, Donnybrook, Council resolved the following:

### *COUNCIL RESOLUTION 18/24*

1. *The Council acknowledges the request to purchase however given the inability for the property to be sold due to the property being on Crown land that Council defers this matter.*
2. *Requests the CEO to Initiate the process to acquire Reserve 52021 from the Crown*

Subsequently a request was submitted to the Department of Planning Lands and Heritage (DPLH) to initiate the process. DPLH requested a valuation from the Valuer General (Landgate) to provide Council with an indicative valuation of the land.

## Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Financial Impact	Rare	Minor	Low (2)
Risk Description:	Funding and Budget constraints		
Mitigation:	Secure funding sources. Maintain a reserve fund for unforeseen expenses.		
Risk:	Likelihood:	Consequence:	Risk Rating:
Compliance	Unlikely	Moderate	Moderate (6)
Risk Description:	Non-Compliance with regulations.		
Mitigation:	Ensure due process is followed and all relevant laws and regulations are adhered to.		

## Financial Implications

Council would need to consider the costs to prepare a Business Plan, estimated at \$10,000.

## Policy Compliance

Nil.

## **Statutory Compliance**

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### Local Government Act 1995

Section 5.39 of the *Local Government Act 1995* outlines the requirements for major land transactions. This section mandates that before entering into a major land transaction.

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

Regulation 8A of the *Local Government (Functions and General) Regulations 1996* specifies the thresholds for what constitutes a major land transaction.

## **Consultation**

---

DPLH gained consent from Landgate to release the Valuation report to the Shire for the use of this report only.

After the initial decision by the Council the Chief Executive Officer has had several one-on-one meetings with Dr Wietske van der Velden.

The purpose of the meetings was to identify the current requirements of the Donnybrook Medical Services and to determine the actions necessary to address those issues in the short term. Consequently, a solution acceptable to Dr. Wietske van der Velden, which can be implemented in the short term, has been identified. Meanwhile, the Council will continue negotiations with the Department of Planning, Lands and Heritage (DPLH).

## **Officer Comment**

### Land Valuation

Landgate's valuation report does not represent an offer of sale. Any offer of sale is dependent upon an application made by the Shire, and Minister for Lands approval under delegation.

### Business Plan

Pursuant to regulation 8A of the *Local Government (Functions and General) Regulations 1996* the total value of threshold for what constitutes a major land transaction would not trigger a Business Plan. Even when the total value of a land transaction falls below the regulatory threshold for a major land transaction, preparing a business plan remains a prudent and strategic practice.

Notwithstanding the above it is recommended a business plan be prepared. A comprehensive business plan provides a structured framework for evaluating the financial, operational, and social implications of the transaction. It facilitates thorough due diligence, ensuring that all potential risks and benefits are meticulously assessed and managed. By articulating clear objectives, expected outcomes, and risk mitigation strategies, the business plan serves as a critical tool for informed decision-making by Council.

The business plan would assert options for potential disposal of the property, including all of the land and improvements or a portion(s) of the property (either improved or unimproved).

<b>COUNCIL RESOLUTION:</b> 98/24		
<b>MOVED BY:</b>	Cr Grant Patrick	<b>SECONDED BY:</b> Cr Anne Mitchell

**That Council:**

1. **Notes the desktop valuation report received from Landgate in confidential Attachment 9.2.4(1).**
2. **Defer any consideration of possible disposal of Lot 501 on Deposited Plan 72099 – 41 Bentley Street, Donnybrook until a business plan addressing the acquisition and sale of all or part of the property is prepared.**
3. **Authorises the Chief Executive Officer to prepare a business plan for the acquisition and sale of Lot 501 on Deposited Plan 72099 – 41 Bentley Street, Donnybrook for formal consideration.**
4. **Requests the Chief Executive Officer include \$10,000 for the preparation of the Business Plan, in the 2024/2025 Annual Budget for Council's consideration during Budget deliberations.**

<b>For:</b> Cr MacCarthy, Cr Davy, Cr Mitchell, Cr Glover, Cr Bailey, Cr Gubler, Cr Lindemann, Cr Patrick, Cr Shand
<b>Against:</b> Cr Glover
<b>Carried: 8/1</b>

Cr Bailey and Cr Gubler Left the room at 6:32pm.

### 9.2.5. Group Valuation of Land Policy

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#### Report Details:

**Prepared by:** Rates Officer

**Manager:** Manager of Financial Services

**File Reference:** RAT 03/3

**Voting Requirement:** Simple Majority

#### Attachment(s):

9.2.5(1) Group Valuation of Land Policy – Identical Ownership - (Option 1)

9.2.5(2) Group Valuation of Land Policy – Common Ownership (Option 2)

9.2.5(3) Landgate Policy – 4.310 Group Valuations – Rural Unimproved Values

### Executive Recommendation

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#### That Council:

1. **Adopts the Group Valuation of Land Policy (Option 1 - Identical Ownership) as presented.**
2. **Notes that upon adoption of a Group Valuation of Land Policy the process for providing advice and recommendations to Landgate on applications for group valuation becomes an operational matter as staff will provide advice and recommendations in accordance with the applicable Council policy.**
3. **In accordance with Part 2 above, the application for group rating from Mr John Stephen Fry will be referred to Landgate with comments and recommendations on how the application adheres to the adopted Group Valuation of Land policy.**

### Strategic Alignment

---

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

**Outcome:** 12 - A well respected, professionally run organisation.

**Objective:** 12.1 - Deliver effective and efficient operations and service provision.

### Executive Summary

---

Council, at its March 2024 meeting requested a Group Rating policy be prepared for consideration. Two options of this proposed policy have been prepared, one with a requirement for group rated land to be in “identical ownership”, the other for the land to be in “common ownership”. The recommendation is for Council to adopt the “identical ownership” policy.

### Background

---

In October 2023, Council received a request from property owner, Mr John Stephen Fry, to consider a group valuation, for rating purposes, of multiple rural lots in his eight rate assessments.



Noting that two of the eight rate assessments weren't contiguous with the other six assessments, the recommendation to Council was to not endorse the group rating request. The basis for this recommendation was:

- The lots described did not meet the criteria of "same ownership" per Landgate Policy 4.310.
- That Lot 85 (A5425) and Lot 82 (A5426) are not adjoining or contiguous with the remaining lots in the application.

Council considered the request at its Ordinary Council meeting held 27<sup>th</sup> March 2024, and resolved the following:

**"COUNCIL RESOLUTION 42/24"**

That Council:

1. Defers making a decision on the request from Mr J S Fry in relation to his request for a group valuation for rating purposes of multiple rural lots; and
2. Request the Chief Executive Officer develop a Group Rating Policy to be presented to the Council at the June Ordinary Council Meeting for consideration.

### Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Service Interruption	Possible	Insignificant	Low (3)
Risk Description:	Lack of criteria or direction on what land can be considered for group rating		
Mitigation:	Adopt a policy containing sufficient criteria for applicants to understand and for staff to use when assessing applications for group rating		

### Financial Implications

Group valuation requests, that meet the policy guidelines, and are approved by Landgate will result, in the majority of cases, in a reduction to their valuation. This will lead to a reduction to Council's rate income, unless the new valuation is implemented as at the 1<sup>st</sup> of July on the next financial year. If the group valuation is implemented on the 1<sup>st</sup> of July, then it will not impact Council's rate income. Irrespective of the valuation date, any reduction in valuation and rates will income impact on other ratepayers within the Shire, in either the Unimproved Value or Gross Rental Value rating categories. It is very difficult to ascertain how many requests we will potentially receive, if the request will meet the policy guidelines and to what amount their valuations will be impacted by grouping and the final impact on rate revenue.

### Policy Compliance

There isn't currently a policy addressing the criteria for assessment of group rating applications.

## Statutory Compliance

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### *Local Government Act 1995*

Section 6.28(4) of the *Local Government Act 1995* sets the requirement for Council to use the valuation in force as determined by the Landgate (Valuer General):

#### **6.28. Basis of rates**

*(4) Subject to subsection (5), for the purposes of this section the valuation to be used by a local government is to be the valuation in force under the Valuation of Land Act 1978 as at 1 July in each financial year.*

### *Landgate Policy*

Landgate Policy 4.310 outlines the key principles used by the Landgate (Valuer General) when determining if a group valuation can be applied to multiple rural lots.

*“Rural land is to be valued as a single valuation entity if it can be demonstrated that:*

- The lots are contiguous and in common ownership;*
- The lots are used and occupied as one holding and would normally be expected to sell as one holding;*
- The current conjoint use will continue into the foreseeable future;*
- The basis of valuation is supported by sales evidence.”*

Council may endorse a group valuation where it does not comply with the “common ownership” requirement of Landgate Policy 4.310.

*“To satisfy the same ownership requirements, one of the following conditions must be met:*

- Locations or lots must have identical names as per Certificates of Title.*
- Common ownership or occupied as per the definitions under section 1.4 of Local Government Act 1995.*
- Where the names on the Certificates of Title for contiguous lots have common but not identical parties, the local governmental authority may endorse specific family names as being the “owner” for entry in the rate record and these will apply for entries on the valuation roll.”*

## Consultation

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Officers have requested information on group valuation policies and requests from surrounding and other local government authorities. The Shire’s of Dardanup, Manjimup and Wagin have all provided information pertaining to Group Valuation Policies and the treatment of group valuation requests.

### Officer Comment

---

The Valuer General (via Landgate) has a very clear policy on group valuing contiguous land, however the one area of the policy that they refer back to the local government is identification of common and/or identical ownership, as per the following:

*Where the names on the Certificates of Title for contiguous lots have common but not identical parties, the local governmental authority may endorse specific family names as being the “owner” for entry in the rate record and these will apply for entries on the valuation roll.”*

Two policies have been created, one based on land held in identical ownership and one based on land held in common ownership. Staff have also consulted other local government authorities, with some local governments allowing common ownership and some mandating identical ownership.

It is recommended that the ownership criteria for group valuing contiguous land must be identical ownership as per the Certificate of Title. This is based on the following:

1. Landgate’s Valuer General, is the independent arbitrator on property valuations throughout the state, Shire staff and Council should not be involved in determining the ownership status of a property as to whether the property is eligible to be group rated.
2. There are too many grey areas with common ownership of land. It is difficult for staff to determine whether land is farmed as one family unit.
3. Identical ownership will ensure there that the Shire’s rate record and valuation roll will match the property Certificate of Title.
4. If a landowner wishes to apply to group value and rate their individual rate assessments, then the onus is on the ratepayer to ensure each land Certificate of Title is in the same identical ownership name.

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<b>COUNCIL RESOLUTION:</b> 99/24		
<b>MOVED BY:</b>	Cr Alexis Davy	<b>SECONDED BY:</b> Cr Grant Patrick

**That Council:**

1. **Adopts the Group Valuation of Land Policy (Option 1 - Identical Ownership) as presented.**
2. **Notes that upon adoption of a Group Valuation of Land Policy the process for providing advice and recommendations to Landgate on applications for group valuation becomes an operational matter as staff will provide advice and recommendations in accordance with the applicable Council policy.**
3. **In accordance with Part 2 above, the application for group rating from Mr John Stephen Fry will be referred to Landgate with comments and recommendations on how the application adheres to the adopted Group Valuation of Land policy.**

<b>For:</b> Cr MacCarthy, Cr Davy, Cr Glover, Cr Lindemann, Cr Patrick, Cr Shand
<b>Against:</b> Cr Mitchell
<b>Carried: 6/1</b>

Cr Bailey and Cr Gubler returned to the room at 6:42pm.

### 9.2.6. Review of Policy EXE-CP-7 Organisational Risk Management

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#### Report Details:

**Prepared by:** Tim Clynch, Acting Director Finance and Corporate

**Manager:** Garry Hunt, Chief Executive Officer (Temporary)

**File Reference:** PRO 01/3A, A5047, L006      **Voting Requirement:** Simple Majority

#### Attachment(s):

9.2.6(1) – Draft (New) Policy EXE/CP-7 Organisational Risk Management

9.2.6(2) – Existing Policy EXE/CP-7 Organisational Risk Management

9.2.6(3) – Summary of Changes from Existing Policy to Draft New Policy EXE/CP-7 Organisational Risk Management

#### Committee Recommendation

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##### That Council:

1. **Adopts Policy EXE/CP-6 Organisational Risk Management, as shown in Attachment 9.2.6(1), to replace the existing policy of the same title; and**
2. **Notes information contained in this report on the intent to review the remaining suite of risk management documents.**

#### Strategic Alignment

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

**Outcome:** 12 - A well respected, professionally run organisation.

**Objective:** 12.1 - Deliver effective and efficient operations and service provision.

**Item:** Nil.

#### Executive Summary

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A review of Council's existing Policy EXE/CP-6 'Organisational Risk Management' has been completed by the Audit & Risk Management Committee. Substantial changes to the policy are recommended. Refer [Attachment 9.2.6\(1\)](#) for a copy of the draft revised (new) policy, [Attachment 9.2.6\(2\)](#) for a copy of the existing policy and [Attachment 9.2.6\(3\)](#) for a summary of the changes from the existing policy to the draft new policy.

## Background

A report was presented to the Audit & Risk Management Committee meeting held on 21 May 2024 to consider a review of Council's existing Policy EXE/CP-6 'Organisational Risk Management, resulting in the following Committee resolution:

### COMMITTEE RESOLUTION ARMC 4/24

*That the Audit and Risk Management Committee:*

- 1. Recommends to Council the adoption of the new Policy EXE/CP-6 Organisational Risk Management, as shown in Attachment 7.1(1), to replace the existing policy of the same title; and*
- 2. Notes information contained in this report on the intent to review the remaining suite of risk management documents.*

The objective of the draft policy is to ensure processes are in place to ensure effective management of risks that may impact the Shire from achieving its strategies, outcomes and objectives.

The policy is part of a suite of risk management documents that seek to create an environment where Council, management and staff accept direct responsibility and oversight of risk management, through development, implementation and improvement of effective risk management practices.

## Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Compliance	Likely	Moderate	High (12)
Risk Description:	A lack of organisational knowledge and expertise on the importance of risk management.		
Mitigation:	Clear policy direction		

## Financial Implications

Nil

## Policy Compliance

EXE/CP-8-Policy Framework



## Statutory Compliance

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Section 2.7(2)(b) of the *Local Government Act 1995* prescribes one of the roles of Council as being to determine the local government's policies.

Section 5.41(c) of the *Local Government Act 1995* prescribes that a function of the Chief Executive Officer is to cause Council's decisions to be implemented and this includes giving effect to Council's Policies.

## Consultation

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The internal review of Policy EXE/CP-6 'Organisational Risk Management' has had input from 3 officers with core responsibilities in organisational risk management.

## Officer Comment

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The existing policy was adopted in August 2014 and was last modified in December 2021.

This review is proposing substantial amendments, with the proposed and as such a track changed version has not been provided. Changes from the current policy are summarised in [Attachment 9.2.6\(3\)](#).

A demonstrable commitment to sound risk management is one of the hallmarks of good governance and defensible integrity.

Risk is inherent in all of the organisation's services and activities. Inadequate attention to managing risks can result in unwanted exposure to the community, Council assets, and the environment in which the organisation operates.

To manage all the risks that the Shire is exposed to requires the development of a risk culture and supporting risk framework directed towards the effective management of risks and potential opportunities to ensure the interests of the community, staff, contractors, volunteers, services and assets are managed and developed through the application of appropriate risk management principles and practices.

The policy is part of a suite of risk management documents, the others being:

- Risk Framework
- Risk Register
- Triennial review of risk management, internal controls and legislative compliance [as per Regulation 17 of the *Local Government (Audit) Regulations 1996*].
- Triennial review of the appropriateness and effectiveness of the local government's financial management systems and procedures in accordance with the *Local Government (Financial Management) Regulations 1996*

All the above documents are proposed for review in the next 6 months, as outlined below:

1. Risk Framework – a draft Risk Framework was prepared in 2021/22 but wasn't finalised. This framework is proposed to be reviewed following completion of the review of the Organisational Risk Management Policy and in conjunction with a review of the Risk Register. This review is proposed to be undertaken internally with assistance from LGIS, specifically its risk services division. Upon completion of the review, a Risk Framework document will be presented to the Audit and Risk Management Committee for consideration and recommendation to Council.
2. Risk Register – a Risk Register does exist but requires review. This review is proposed to be undertaken internally with assistance from LGIS, specifically its risk services division. Upon completion of the review, the Risk Register will be presented to the Audit and Risk Management Committee for consideration and recommendation to Council.
3. Triennial review of risk management, internal controls and legislative compliance – this review is overdue. A consultancy scope has been developed and a request for quote process is under way.
4. Triennial review of the appropriateness and effectiveness of the local government's financial management systems and procedures – this review is overdue. A consultancy scope has been developed and a request for quote process is under way.

<b>COUNCIL RESOLUTION:</b> Executive Recommendation lost, see alternate motion	
<b>MOVED BY:</b> Cr Grant Patrick	<b>SECONDED BY:</b> Cr Peter Gubler

**That Council:**

1. **Adopts Policy EXE/CP-6 Organisational Risk Management, as shown in Attachment 9.2.6(1), to replace the existing policy of the same title; and**
2. **Notes information contained in this report on the intent to review the remaining suite of risk management documents.**

<b>For:</b> Nil.
<b>Against:</b> Cr MacCarthy, Cr Davy, Cr Mitchell, Cr Glover, Cr Bailey, Cr Gubler, Cr Lindemann, Cr Patrick, Cr Shand
<b>Lost: 0/9</b>

**Alternate Motion:** Cr Davy

<b>COUNCIL RESOLUTION:</b> 100/24		
<b>MOVED BY:</b>	Cr Alexis Davy	<b>SECONDED BY:</b> Cr Grant Patrick

**That Council refer Policy EXE/CP-6 Organisational Risk Management back to the Audit and Risk Management Committee for further review.**

<b>For:</b> Cr MacCarthy, Cr Davy, Cr Mitchell, Cr Glover, Cr Bailey, Cr Gubler, Cr Lindemann, Cr Patrick, Cr Shand
<b>Against:</b> Nil.
<b>Carried: 9/0</b>

Reasons for Resolving Contrary to Executive Recommendation:

Further consideration of elements of the policy is required.

### 9.2.7. Proposed Redistribution of Western Australia into Electoral Divisions

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#### Report Details:

**Prepared by:** Tim Clynch, Acting Director Finance and Corporate

**Manager:** Garry Hunt, Chief Executive Officer (Temporary)

**File Reference:** CNL 04/1

**Voting Requirement:** Simple Majority

**Attachment(s):**

9.2.7(1) Draft Submission to Australian Electoral Commission

#### Executive Recommendation

**That Council endorse the draft submission to the Australian Electoral Commission (Redistribution Committee for Western Australia) as presented.**

#### 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

The Australian Electoral Commission (via a Redistribution Committee for Western Australia) is currently considering a redistribution of Western Australia into electoral divisions. This is the process where electoral divisions (i.e. Forrest) including their names and boundaries are reviewed. Boundaries may be altered to ensure, as near as practicable, that there are a similar number of electors in each electoral division for a given state or territory.

The Redistribution Committee for Western Australia has made a number of determinations, one of which is to transfer all the land within the Shire of Donnybrook Balingup from the electoral division of Forrest to the electoral division of O'Connor.

There remains an opportunity for interested members of the public and organisations to lodge a submission (objection or comment) on the determinations. A draft submission has been prepared for Council's consideration and is predicated on Council objecting to the proposal to transfer all the land within the Shire of Donnybrook-Balingup from the electoral division of Forrest to the electoral division of O'Connor. If Council was to determine that it doesn't object to this proposal it could resolve to that effect and no submission need be made.

#### Background

Western Australia has gained a new electoral division due to high population growth in the state. Of Western Australia's existing 15 electoral divisions, three fall within the acceptable numerical range for projected electors permitted by the Electoral Act.

This has resulted in several changes to boundaries of electoral divisions. Key changes include:

- removing high-growth areas from electoral divisions which exceed the maximum number of projected electors permitted by the Electoral Act,
- removing high-enrolment areas from fast growing outer suburban electoral divisions to allow for future population growth,
- rearranging boundaries across all 15 existing divisions to accommodate placement of a new electoral division, and
- improving communities of interests where possible.

In developing this proposal, the Redistribution Committee is required to adhere to two strict numerical requirements, as defined by the Electoral Act. These two numerical requirements provide an overall constraint to ensure that there are approximately equal numbers of electors in each electoral division so that each elector in Western Australia has equality of representation in the House of Representatives.

All proposed electoral divisions are required to be within the range of plus and minus 10 per cent of the redistribution quota. At the end of Wednesday 9 August 2023, the day on which the redistribution commenced, 1,816,126 electors were enrolled in Western Australia. The redistribution quota was therefore 113,508 electors. As the Electoral Act requires electoral divisions to be within plus or minus 10 per cent of this quota, the Redistribution Committee was required to construct electoral divisions which contain between 102,158 and 124,858 electors.

All proposed electoral divisions are also required to be within the range of plus and minus 3.5 per cent of the projected enrolment quota at the projection time of Friday 24 March 2028. As the number of electors projected to be enrolled in Western Australia at this time is 1,945,845, and the projected enrolment quota is 121,615, the Redistribution Committee was required to construct electoral divisions which are projected to contain between 117,359 and 125,871 electors on Friday 24 March 2028.

In relation to each proposed electoral division, the Redistribution Committee is also required by the Electoral Act to give due consideration to:

1. community of interests within the proposed electoral division, including economic, social and regional interests,
2. means of communication and travel within the proposed electoral division,
3. the physical features and area of the proposed electoral division, and
4. the boundaries of existing electoral divisions in Western Australia, with this factor being subordinate to the consideration of i, ii and iv.

The Redistribution Committee can only balance the different criteria against each other so far as they affect each of the electoral divisions in Western Australia and endeavour to achieve the best overall

balance. Given the primacy of the two numerical requirements, it is impossible to satisfy all the statutory criteria to the same extent in each electoral division.

The new (16<sup>th</sup>) electoral division is to be named 'Bullwinkel' and will encompass land to the east of Perth, containing land within the Cities of Armadale, Gosnells, Kalamunda, Swan, Mundaring and the Shires of Beverley, Northam, Toodyay and York. This will cause electors to be transferred from the existing divisions of Burt, Canning, Durack, Hasluck, O'Connor and Swan.

The proposed new boundaries for the electoral division of Forrest will see the removal of the whole of the Shire of Donnybrook-Balingup (4,837 projected electors) and the addition of the whole of the Shire of Waroona (3,393 projected electors).

The proposed new boundaries for the electoral division of O'Connor will see the removal of 7,263 projected electors to the electoral division of Durack (Shires of Cunderdin, Kellerberrin, Koorda, Merredin, Mount Marshall, Muckinbudin, Nungarin, Tammin, Trayning, Westonia and Wyalkatchem) and to the new electoral division of Bullwinkel (Shire of Beverley).

The Redistribution Committee considers the proposed redistribution of Western Australia (including the above) will result in electoral divisions which:

- more equitably balance elector numbers across Western Australia,
- can accommodate the differing rates of growth and decline across Western Australia,
- keep together or improve representation of existing communities of interest, in some cases uniting local government areas and suburbs within one electoral division, to the extent possible, and use strong and readily identifiable features, such as major roads, rivers or established administrative boundaries to define electoral division boundaries, to the extent possible.

All the details of the proposed redistributions can be found in the publication 'Proposed redistribution of Western Australia into electoral divisions May 2024.

As the document is 120 pages in length it hasn't been provided as an attachment but is accessible online at <https://www.aec.gov.au/redistributions/2023/wa/proposed-redistribution/files/Proposed-redistribution-of-Western-Australia-into-electoral-divisions-May-2024.pdf>

The closing date for submissions is Friday 28 June 2024.

## Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Reputational	Likely	Insignificant	Low (4)
Risk Description:	Electors in the Shire of Donnybrook-Balingup facing increased limitations in engaging with their Australian Government House of Representatives Member due to being transferred from the Forrest electorate to the O'Connor electorate.		
Mitigation:	Lodge a submission with the Western Australian Redistribution Committee of the Australian Electoral Commission requesting reconsideration of this proposal		

## Financial Implications

Nil.

## Policy Compliance

Nil.

## Statutory Compliance

The Electoral Act requires Western Australia to be divided into the same number of electoral divisions as the number of members of the House of Representatives to be chosen in Western Australia at a general election. As Western Australia is entitled to 16 members of the House of Representatives, the Redistribution Committee has proposed 16 electoral divisions for Western Australia.

## Consultation

Via the Shire President, one local community member has provided a copy of a submission sent to the Redistribution Committee and the contents of that submission were considered when preparing the draft Shire of Donnybrook-Balingup submission.

## Officer Comment

The redistribution process commenced in August 2023 with public advertising inviting submissions from interested individuals and organisations in October 2023. This advertising was quite minimal and perhaps is reflected in the small number (21) of submissions being received at that time. The current opportunity for individuals or organisations to comment is described as an opportunity to submit "objections" to the proposals.

Simply objecting to a proposal to transfer a specific area from one electoral division to another is unlikely to prove successful as the Redistribution Committee would have to assess the impact on redistribution quotas if a change to its new boundary proposals was to occur. Therefore, the basis of a submission (objection) is to address the matters (community of interests, means of communication/travel, physical features, existing boundaries) that the Redistribution Committee is required by legislation to give due consideration to when making changes to electoral divisions.



The electoral division of Forrest was created in 1922 and the Shire of Donnybrook-Balingup has been within that electorate since inception. Over time communities to the south of Donnybrook-Balingup have been transferred to other electoral divisions but the historical community of interest with Bunbury, Australind/Eaton, Harvey and Capel has been maintained.

The draft submission emphasises the close community of interest the Shire has with other communities within the Forrest electoral division, particularly Bunbury, and that the community of interest with the O'Connor electoral division is negligible. Similarly, communication links are linked to Bunbury and other nearby communities, such as Commonwealth and State Government offices/agencies, retail/commerce and transport links. Also land use patterns and physical characteristics of land within our Shire are more consistent with the land in the electorate of Forrest than O'Connor.

The submission states that it appears that balancing the elector numbers to fit into the redistribution quotas required under legislation has been the sole determination that has led to the proposal to transfer the Shire of Donnybrook-Balingup to the O'Connor electoral division.

The O'Connor electoral division is vast, currently encompassing land from Bridgetown in the west, Albany in the south, Esperance in the east and Ngaanyatjaraku (Warburton) in the north. It is a diverse area with a focus on agriculture and mining and whilst some areas have similar characteristics to Donnybrook-Balingup the majority do not. Electors within the Shire of Donnybrook-Balingup will have reduced access to their Member of Parliament. The Member for Forrest has her electorate office in Bunbury whereas the Member for O'Connor has a principal office in Kalgoorlie and secondary offices in Esperance, Albany and Manjimup.

The submission contains a statement to make it clear that the Shire's opposition to being transferred into the electoral division of O'Connor should not be interpreted as a view towards the current Member for O'Connor. That member is well known across the regions and has served his electorate well since first being elected to Parliament in 2013.

<b>COUNCIL RESOLUTION:</b> 101/24	
<b>MOVED BY:</b> Cr Anne Mitchell	<b>SECONDED BY:</b> Cr Lisa Glover

**That Council endorse the draft submission to the Australian Electoral Commission (Redistribution Committee for Western Australia) as presented.**

<b>For:</b> Cr MacCarthy, Cr Davy, Cr Mitchell, Cr Glover, Cr Bailey, Cr Gubler, Cr Lindemann, Cr Patrick, Cr Shand
<b>Against:</b> Nil.
<b>Carried: 9/0</b>

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## 9.2.8 Delegations Register Review

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### Report Details:

**Prepared by:** Governance Coordinator

**Manager:** Manager Corporate Services

**File Reference:** CNL 31

**Voting Requirement:** Absolute Majority

### Attachment(s):

9.2.8(1) 2024-2025 Delegations Register

9.2.8(2) Amended & Revoked Delegations

### Executive Recommendation

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#### That Council:

1. Notes completion by Council as the Delegator, of the 2024-2025 annual statutory review of the Delegations Register, in accordance with s.5.18 and s.5.46 of the *Local Government Act 1995*, s.47(2) of the *Cat Act 2011* and s.10AB of the *Dog Act 1976*.
2. Approves, by Absolute Majority, the following listed delegations, inclusive of amendments as detailed in Attachment 9.2.8(1), in accordance with s.5.17 and s.5.42 of the *Local Government Act 1995* and s.21 of the *Public Health Act 2016*:
  - 2.1. 8.1.6 Commence Proceedings and Issue Enforcement Orders;
  - 2.2. 9.2.1 Local Planning Scheme No. 7 - Development Applications.
3. Revokes, by Absolute Majority, the following listed delegation as detailed in Attachment 9.2.8(2), under the *Local Government Act 1995*:
  - 3.1. Entry and Inspection Powers.

### Strategic Alignment

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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.

**Item:** Nil.

### Executive Summary

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The purpose of this report is for Council to receive the annual statutory review of the Shire's Delegations Register, in accordance with s.5.18 and s.5.46(2) of the *Local Government Act 1995*, s.47(2) of the *Cat Act 2011* and s.10AB(2) of the *Dog Act 1976*. The 2024-2025 Delegations Register is at Attachment 9.2.8(1).

## Background

Local Governments have the responsibility for decision making assigned under a wide range of legislation. Each power or duty described in legislation requires Local Governments to fulfil a mandatory duty or use a discretionary power to make these decisions. Delegation is the process that enables Local Governments to assign its power or duties. Delegation enables efficient and effective strategic, financial, resource and operational management decisions to be made.

Council (Commissioner) last reviewed and adopted its Delegations Register on 28 June 2023. This included a comprehensive review and update, with the inclusion of six new delegations to assist the Shire in undertaking its duties in compliance with legislation.

## Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Compliance	Almost Certain	Moderate	High (15)
Risk Description:	Non-compliance with the statutory requirement for an annual review of delegations.		
Mitigation:	Notes completion of the 2024-2025 annual statutory of the Delegations Register.		

Risk:	Likelihood:	Consequence:	Risk Rating:
Reputational	Possible	Minor	Moderate (6)
Risk Description:	Impact on local community trust, and possible media item, due to non-compliance with legislation.		
Mitigation:	Notes completion of the 2024-2025 annual statutory review of the Delegations Register.		

## Financial Implications

Nil.

## Policy Compliance

Nil.

## Statutory Compliance

The delegations contained within the Delegations Register are made pursuant to the below listed legislation:

- *Local Government Act 1995* s.5.16 (delegation to Committees of Council) and s.5.42 (delegation to the Chief Executive Officer);
- *Building Act 2011* s.127(1) & (3);
- *Bush Fires Act 1954* s.48;

- *Cat Act 2011* s.44 & s.45;
- *Dog Act 1976* s.10AA;
- *Environmental Protection Act 1986* s.20;
- *Food Act 2008* s.118(2)(b);
- *Graffiti Vandalism Act 2016* s.16 & s.17;
- *Planning and Development Act 2005* s.16. & s.265;
- *Public Health Act 2016* s.21(1)(b).

#### *Local Government Act 1995*

Section 5.18. Register of delegations to committees requires a local government to keep a register of the delegations made under this Division and review the delegations at least once every financial year.

Section 5.46. Register of, and records relevant to, delegations to CEO and employees requires at least once every financial year, delegations made under this Division are to be reviewed by the delegator.

#### **Consultation**

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Shire officers, including those with delegated authority, have been consulted as part of the annual review of the Delegations Register. External advice has been provided by the Western Australian Local Government Association (WALGA) which has been considered.

#### **Officer Comment**

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The annual review of the Shire's Delegations Register has been undertaken to confirm the extent of powers and duties delegated and that the conditions and limitations specified are sufficient and appropriate. This year's review considered changes to legislation, responsibilities, continuity of service, the risks and sensitivities of decisions and the Shire's operational requirements.

The review has identified two (2) existing delegations requiring amendment, with one (1) delegation proposed to be revoked. A further existing delegation is also suggested for review and possible revocation by Council. No new delegations are proposed.

The changes for consideration are outlined below. This list excludes changes made in relation to minor edits, such as Officer titles and legislation updates, spelling and document formatting. Copies of the proposed amended and revoked delegations are as per [Attachment 9.2.8\(2\)](#).

Amendment	
Delegation	Description
8.1.6 Commence Proceedings	<p><b>Amendment 1:</b> Change delegation name to “Commence Proceedings and Issue Enforcement Orders”.</p> <p><b>Amendment 2:</b> Inclusion of additional applicable legislation in ‘Express Power or Duty Delegated’ section, <i>Public Health Act 2016</i></p> <p>“s.216 Issue of enforcement orders</p> <p>s.218 Extension of period of compliance with enforcement order;</p> <p>s.219 Enforcement agency may implement enforcement order”.</p> <p><b>Amendment 3:</b> Inclusion of two additional functions in ‘Function’ section, “Authority to issue an enforcement order and extend period of compliance with an enforcement order, under the <i>Public Health Act 2016</i> (s.216 &amp; s.218)”; and “Authority to implement an enforcement order under the <i>Public Health Act 2016</i> (s.219)”.</p> <p><b>Rationale:</b> Implementation of Phase 5A of the <i>Public Health Act 2016</i> commenced 4 June 2024, which provides for expanded legislative enforcement options available to Enforcement Agencies.</p>
9.2.1 Local Planning Scheme No. 7 - Development Applications (formerly 9.3.1)	<p><b>Amendment 1:</b> Inclusion of a Note in the ‘Function’ section, stating “Single house development, or any development associated with a single house such as additions, alterations, patios or carports, where not otherwise exempt, are to be determined by the Shire CEO, or other Shire staff authorised by the Shire CEO, in accordance with s.257C of the <i>Planning and Development Act 2005</i> &amp; Schedule 2 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>.”</p> <p><b>Rationale:</b> Planning reforms commence 1 July 2024 including changes to Local Government roles and responsibilities in decision making on development applications for single houses and associated development. These legislative changes require that certain types of development applications must be determined by officers of the local government, including the CEO, or other Shire employee authorised by the CEO. These changes have been advised by the Department of Planning, Lands and Heritage and confirmed with WALGA.</p> <p><b>Amendment 2:</b> Removal of ‘Council Conditions’ Local Development Plans, Exclusions to Delegated Authority: “Compliance with Local Planning Scheme provisions, Residential Design Codes and Local Planning Policies”.</p> <p><b>Rationale:</b> Enable staff to assess and consider Local Development Plan applications which have variations from the Local Planning Scheme, Residential Design Codes and Local Planning Policies. The other listed Exclusions to Delegated Authority will still apply.</p>

Revocation	
Delegation	Rationale
Entry and Inspection Powers ( <i>formerly 9.2.1</i> )	The <i>Planning and Development Act 2005</i> vests power with a Local Government CEO to appoint Authorised Officers who are employees, through the issue of a Certificate of Authorisation. Relevant Shire employees will be appointed by the CEO as an Authorised Officer for property entry and inspection purposes in accordance with cl.79 of the <i>Planning and Development (Local Planning Scheme) Regulations 2015</i> . This requirement has been confirmed with WALGA.
Review	
Delegation	Rationale
1.1.1 Audit and Risk Management Committee	Council may wish to consider the revocation of this Delegation, given that the Audit and Risk Management Committee do not have a decision-making role incorporated into its Terms of Reference. The Audit and Risk Management Committee makes recommendations which are then presented to Council for deliberation.

<b>COUNCIL RESOLUTION:</b> 102/24			
<b>MOVED BY:</b> Cr Anne Mitchell		<b>SECONDED BY:</b> Cr Grant Patrick	

**That Council:**

- Notes completion by Council as the Delegator, of the 2024-2025 annual statutory review of the Delegations Register, in accordance with s.5.18 and s5.46 of the *Local Government Act 1995*, s47(2) of the *Cat Act 2011* and s.10AB of the *Dog Act 1976*.
- Approves, by Absolute Majority, the following listed delegations, inclusive of amendments as detailed in Attachment 9.2.8(1), in accordance with s.5.17 and s.5.42 of the *Local Government Act 1995* and s.21 of the *Public Health Act 2016*:
  - 8.1.6 Commence Proceedings and Issue Enforcement Orders;
  - 9.2.1 Local Planning Scheme No. 7 - Development Applications.
- Revokes, by Absolute Majority, the following listed delegation as detailed in Attachment 9.2.8(2), under the *Local Government Act 1995*:
  - Entry and Inspection Powers.

<b>For:</b> Cr MacCarthy, Cr Davy, Cr Mitchell, Cr Glover, Cr Bailey, Cr Gubler, Cr Lindemann, Cr Patrick, Cr Shand
<b>Against:</b> Nil.
<b>Carried: 9/0</b>

### 9.2.9. Update: H.J. (Jack) Denning Funds – Deed of Indemnity and Release

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#### Report Details:

**Prepared by:** Manager Corporate Services

**Manager:** Tim Clynych, Acting Director Finance and Corporate

**File Reference:** CSV 01/2E

**Voting Requirement:** Simple Majority

**Attachment(s):**

Nil.

#### Executive Recommendation

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##### That Council:

1. Authorise the Chief Executive Officer to execute a Deed of Indemnity and Release with related parties regarding the funds bequeathed by the late Herbert John Denning (Jack Denning) and Mr Frank Crowley “to relieve the needs arising from old age in respect of residents of Tuia Lodge”; and
2. Authorise the Chief Executive officer to transfer the provisional total of \$270,574.28 to the Trustee for HJ (Jack) Denning Fund, noting that the provisional total will be adjusted to account for:
  - 2.1. Actual legal fees associated with the establishment of the Charitable Trust and the preparation of a Deed of Indemnity and Release estimated at \$11,527.36; and
  - 2.2. Interest earnings as at date of transfer.

#### Strategic Alignment

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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.

**Item:** Nil.

#### Executive Summary

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Council is requested to consider authorising the Chief Executive Officer to execute a Deed of Indemnity and Release and transferring /paying the funds owed to the Trustee for HJ (Jack) Denning Fund for the purpose of “to relieve the needs arising from old age in respect of residents of Tuia Lodge”.

#### Background

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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 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).

In late 2022, 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.

At its Ordinary Council meeting held 23 November 2022 Council resolved the following:

**COUNCIL RESOLUTION 155/22**

*That Council:*

3. *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).*
4. *Authorise the transfer of \$203,686.21 (minus Trust Deed costs only) to the abovementioned Charitable Trust.*
5. *Request related amendments to the Annual Budget to be recognised via the 2022-23 Budget Review.*

In early 2023, Mr Tuia, Mr Wringe and Mr Foale approached the Shire to request the addition of the 'Frank Crowley' funds to be transferred, in addition to the 'Jack Denning' funds. Following a detailed historical review by the Shire of 'Denning' and 'Crowley' funds transferred to the Shire, including assessment of interest earnings and minor expenditure items (legal advice), a meeting with Mr Tuia, Wringe and Foale was undertaken on 18 May 2023. At this meeting, Mr Tuia and Mr Foale agreed to undertake the role of Trustees to the Trust, and Mr Wringe agreed to undertake the role of Appointor to the Trust.

At its Ordinary Council meeting held 24 May 2023 Council resolved the following:

**"COUNCIL RESOLUTION 69/23**

*That Council (the Commissioner):*

1. *Authorise the Chief Executive Officer to transfer the HJ (Jack) Denning bequeathed funds, being \$215,559.29, via a Deed of Trust to a Deed established for the defined purpose of "to relieve the needs arising from old age in respect of residents of Tuia Lodge".*

2. Authorise the Chief Executive Officer to transfer the Frank Crowley bequeathed funds, being \$53,883.91, via a Deed of Trust to a Deed established for the defined purpose of “to relieve the needs arising from old age in respect of residents of Tuia Lodge”.
3. Authorise the Chief Executive Officer to execute a Deed of Trust to give effect to motions 1 and 2, above.
4. Acknowledges that legal fees required to draft and execute the Deed of Trust will be deducted from the funds to be transferred to the Trust, being approximately \$7,500.
5. Acknowledges that the financial figures in motions 1 and 2 may be subject to minor adjustment dependent on interest adjustments as at the date of funds transfer.

The Trust Deed was executed in October 2023, and the charity “Trustee for HJ (Jack) Denning Fund” received the approval for its registration from the Australian Charities and Not-for-profits Commission (ACNC) on 12 February 2024, and further approval from the Australian Taxation Office (ATO) on 24 March 2024, for Income Tax Exemption and Goods and Services Tax Concessions.

### Risk Management

Risk:	Likelihood:	Consequence:	Risk Rating:
Financial Impact	Rare	Major	Low (4)
Risk Description:	Claims related to the previous management of the funds.		
Mitigation:	Deed of Indemnity and Release		
Risk:	Likelihood:	Consequence:	Risk Rating:
Reputational	Rare	Minor	Low (2)
Risk Description:	Claims relating to the handling and administration of the bequeathed funds.		
Mitigation:	Deed of Indemnity and Release		

### Financial Implications

Professional Service costs to date:

- a) Establish Charitable Trust: \$ 4,927.36
- b) Preparation of the Deed of Indemnity and Release: \$4,725 is (estimated total cost \$6,600 Exc GST).

The funds are currently held as a contract liability (current contributions to works). Release of the funds will decrease the Shire’s liabilities in its balance sheet.

### Policy Compliance

Nil.

## Statutory Compliance

Nil.

## Consultation

Officers have consulted with the Shire's lawyers Jackson MacDonald in relation to Trustee for HJ (Jack) Denning Fund and the need to protect the Shire against any potential claims or liabilities arising from the release of the funds.

Officers have consulted with external parties including executors of the estate of the late Herbert John Denning (Jack Denning), and Frank Crowley.

Officers note that some external parties related to the matter have been difficult to contact due to their unknown whereabouts, frailty and/or age. The Shires lawyers have advised that there is a low risk to the Shire if contact cannot be made with these parties.

## Officer Comment

The May 2023 decision of Council (the Commissioner) approved the transfer of H.J. (Jack) Denning funds and Frank Crowley funds to an appropriate body capable of carrying out the originally bequeathed purpose of the funds. The Trust Deed was executed in October 2023, and the charity "Trustee for HJ (Jack) Denning Fund" received the approval for its registration on 12 February 2024, and further approval on 24 March 2024, for Income Tax Exemption and Goods and Services Tax Concessions. Officers have set up The Trustee for HJ (Jack) Denning Fund ready for transfer/payment.

The proposed transfer/payment is as follows:

HJ Jack Denning Funds	\$215,559.29
Frank Crowley Funds	\$53,883.91
Interest earnings as at 13/06/24 (subject to interest earning adjustments as at date of transfer)	\$ 12,658.44
Estimate of legal costs to establish Charitable Trust and to prepare a Deed of Indemnity and Release	-\$11,527.36
<b>Provisional Total</b>	<b>\$ 270,574.28</b>

Prior to the payment to the Trustee for HJ (Jack) Denning Fund, Council is requested to authorise the Chief Executive Officer to execute a Deed of Indemnity and Release with relevant parties regarding the funds bequeathed by the late Herbert John Denning (Jack Denning) and Frank Crowley "to relieve the needs arising from old age in respect of residents of Tuia Lodge". The deed is critical for several reasons:

#### Legal Protection and Clarity

The deed will ensure that all parties involved are legally protected. By formalising the indemnity and release, the Shire safeguards itself from any future claims or disputes related to the handling and administration of the bequeathed funds. This clarity prevents potential legal challenges, ensuring smooth governance and trust management.

#### Fulfillment of Bequeathor's Intentions

The deed will acknowledge and respect the wishes of Jack Denning, who intended the funds to be used solely for the benefit of Tuia Lodge. By transferring to the Trustee for HJ (Jack) Denning Fund, the Shire honours this intention, thereby maintaining ethical standards and community trust.

#### Mitigation of Financial Risks

An indemnity clause within the deed will protect the Shire from financial liabilities that could arise from claims related to the previous management of the funds. This financial safeguard is crucial for maintaining the Shire's financial health and stability.

#### Efficient Fund Management

By assigning the remaining funds to the trustees of the H.J. Denning Memorial Trust, the deed ensures that the funds are managed and administered in accordance with the specific needs of Tuia Lodge. This focused management enhances the effectiveness and impact of the bequeathal.

#### Enhanced Governance and Accountability

The deed will outline clear responsibilities and expectations for all parties involved, promoting transparency and accountability. This structured approach helps in maintaining high standards of governance within the Shire and ensures that the funds are used appropriately for their intended purpose.

Executing the Deed of Indemnity and Release is a prudent and necessary step for the Shire. It provides legal, financial, and operational clarity, ensuring that the bequeathed funds are managed effectively and in accordance with the donor's wishes, while protecting the Shire from potential risks and liabilities.

Council is requested to consider executing the Deed of Indemnity and Release and transferring/paying the funds to the Trustee for HJ (Jack) Denning Fund.

<b>COUNCIL RESOLUTION:</b> 103/24		
<b>MOVED BY:</b>	Cr John Bailey	<b>SECONDED BY:</b> Cr Lisa Glover

**That Council:**

1. Authorise the Chief Executive Officer to execute a Deed of Indemnity and Release with related parties regarding the funds bequeathed by the late Herbert John Denning (Jack Denning) and Mr Frank Crowley “to relieve the needs arising from old age in respect of residents of Tuia Lodge”; and
2. Authorise the Chief Executive officer to transfer the provisional total of \$270,574.28 to the Trustee for HJ (Jack) Denning Fund, noting that the provisional total will be adjusted to account for:
  - 2.1. Actual legal fees associated with the establishment of the Charitable Trust and the preparation of a Deed of Indemnity and Release estimated at \$11,527.36; and
  - 2.2. Interest earnings as at date of transfer.

<b>For:</b> Cr MacCarthy, Cr Davy, Cr Mitchell, Cr Glover, Cr Bailey, Cr Gubler, Cr Lindemann, Cr Patrick, Cr Shand
<b>Against:</b> Nil.
<b>Carried: 9/0</b>

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

Nil.

12. Meetings Closed to the Public

12.1. Matters for which the Meeting may be closed

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12.1.1 RFT 04-2324 Road Sweeping and Pit/Pipe Cleaning Tender

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

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

<b>COUNCIL RESOLUTION:</b> 104/24	
<b>MOVED BY:</b> Cr Anita Lindemann	<b>SECONDED BY:</b> Cr Peter Gubler

**That the meeting be closed in accordance with section 5.23(c) of the *Local Government Act 1995* to discuss the following confidential items:**

**12.1.1 RFT 04-2324 Road Sweeping and Pit/Pipe Cleaning Tender**

<b>For:</b> Cr MacCarthy, Cr Davy, Cr Mitchell, Cr Glover, Cr Bailey, Cr Gubler, Cr Lindemann, Cr Patrick, Cr Shand
<b>Against:</b> Nil.
<b>Carried: 9/0</b>

The meeting was closed to the public at 6:52pm

<b>COUNCIL RESOLUTION:</b> 106/24		
<b>MOVED BY:</b>	Cr Alexis Davy	<b>SECONDED BY:</b> Cr Deanna Shand

**That the meeting be reopened to the public.**

<b>For:</b> Cr MacCarthy, Cr Davy, Cr Mitchell, Cr Glover, Cr Bailey, Cr Gubler, Cr Lindemann, Cr Patrick, Cr Shand
<b>Against:</b> Nil.
<b>Carried: 9/0</b>

The meeting was reopened to the public at 6:55pm.

## 12.2. Public reading of Resolutions that may be made public

**"COUNCIL RESOLUTION: 105/24**

*That Council:*

1. *Requests the Chief Executive Officer to award the contract for RFT 04-2324 – Road Sweeping and Pit/Pipe Cleaning, to Veolia Environmental Services (Australia) Pty Ltd, based on:*
  - 1.1. *Their submitted price and rates,*
  - 1.2. *The contract being for a period of two (2) years; and*
  - 1.3. *The Chief Executive Officer having the option to extend the contract by a further one (1) year, in accordance with the tender documentation, subject to the contractor achieving satisfactory performance throughout the term of the contract, outlined in 1.2.*
2. *Requests the Chief Executive Officer to publish this Council decision in the minutes of the 26 June 2024 Ordinary Meeting of Council."*

## 13. Closure

The Shire President advised that the next Agenda Briefing Session will be held on 17 July 2024 at 5:00PM, in the Shire of Donnybrook Balingup Council Chamber.

The Shire President declared the meeting closed at 6:57pm.



These minutes were confirmed as a true and accurate record at the Ordinary Council Meeting held 24 July 2024.



Vivienne MacCarthy

**PRESIDENT – SHIRE OF DONNYBROOK BALINGUP**

