

# Shire of Denmark

## Ordinary Council Meeting

# MINUTES

21 NOVEMBER 2023



HELD IN COUNCIL CHAMBERS, 953 SOUTH COAST HIGHWAY,  
DENMARK, ON TUESDAY, 21 NOVEMBER 2023.



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

*4.00pm - The Shire President, Cr Gibson, declared the meeting open and acknowledged the Bibbulmun and Minang people as the traditional custodians of the land on which the meeting was being held. Cr Gibson paid his respects to Elders past, present and emerging.*

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

MEMBERS:

- Cr Kingsley Gibson (Shire President)
- Cr Jan Lewis (Deputy Shire President)
- Cr Clare Campbell
- Cr Donna Carman
- Cr Jackie Ormsby
- Cr Janine Phillips
- Cr Aaron Wiggins
- Cr Dominic Youel

STAFF:

- David King (Chief Executive Officer)
- Rob Westerberg (Director Infrastructure & Assets)
- Jodi Masson (Acting Manager Corporate Services)
- Claire Thompson (Governance Coordinator)
- Kristie Buss (Executive Support Officer)

ON APPROVED LEAVE(S) OF ABSENCE

Nil

ABSENT WITHOUT LEAVE

Cr Nathan Devenport

VISITORS

Nil

**3. DECLARATIONS OF INTEREST**

Name	Item No	Interest	Nature
Cr Phillips	9.1.2	Financial and Impartiality	I am an owner and operator of Peaceful Bay Caravan Park. The proponent is a relative of mine. I do not have any association with the proposed development or the JLP Superfund.
David King	11.1	Financial	I have a performance-based contract and any Key Performance Indicators effect potential remuneration.
David King	12.1	Impartiality	Member of Surf Club.

#### 4. ANNOUNCEMENTS BY THE PERSON PRESIDING

*The Shire President announced that this was his first Ordinary Council Meeting as Shire President and welcomed the two new councillors, following the local government election.*

#### 5. PUBLIC QUESTION TIME

##### 5.2 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

At the meeting held on 17 October 2023, Peter questioned the Shire's transparency and community engagement regarding the Bibbulmun Track realignment, urging for more input from affected ratepayers in the planning stage and questioning the cost-benefit analysis and field assessment conducted.

Peter also challenged the need for the realignment and suggested alternative actions to improve the foreshore reserve. In another matter, Peter requested the release of a report related to the Kwoorabup Nature School's search for a permanent site and raised concerns about the Annual General Meeting's attendance and promotion. Peter requested that written questions asked by ratepayers be published without alteration in meeting minutes.

The Shire President took the questions on notice. The following written response has been provided to Peter.

The Shire uses the IAP2 spectrum, an internationally recognised framework, to select the appropriate community and stakeholder participation level. In this case, officers consulted directly affected landowners and collaborated with a number of key stakeholders to achieve the best outcomes.

For works like this that are low cost, a cost-benefit analysis is not carried out due to the low financial risk. In this case, the positive environmental outcomes resulting from the rationalisation of multiple tracks through the area justified the expenditure.

The Shire continues to work with key stakeholders to improve the foreshore reserve. For example, the Shire has been working closely with the Wilson Inlet Catchment Committee (WICC) for a number of years in revegetation of degraded fringing vegetation.

Regarding the request for documents, a Freedom of Information request must be submitted when a document is not publicly available through the website. This is to ensure a proper process is followed that is in accordance with privacy legislation.

As previously discussed, it is not currently the Shire of Denmark's practice to record questions verbatim. However, upcoming Local Government reforms will include a standardised meeting across the state. If any changes are required from this legislation regarding public question time, they will be incorporated into Shire of Denmark's practice.

## 5.2 PUBLIC QUESTIONS

In accordance with Section 5.24 of the Local Government Act 1995, Council conducts a public question time to enable members of the public to address Council or ask questions of Council. The procedure for public question time can be found on the wall near the entrance to the Council Chambers or can be downloaded from our website at <http://www.denmark.wa.gov.au/council-meetings>.

Questions from the public are invited and welcomed at this point of the Agenda.

In accordance with clauses 3.2 (2) & (3) of the Shire of Denmark Standing Orders Local Law, a second Public Question Time will be held, if required, and the meeting is not concluded prior, at approximately 6.00pm.

### Questions from the Public

#### 5.2.1 Helen Spencer – Scheme Amendment 147

Helen said that she was aware that there were some people who had put in submissions but hadn't been notified that the item was being considered at this meeting. Helen urged Council to defer the matter to ensure that all people that had an interest in the matter could address Council prior to a decision being made.

*The Manager Development Services said that he believed all submitters had been notified as it was part of the planning team's process.*

*The Shire President advised Helen that Councillors could consider moving a motion to defer the item should they wish to.*

#### 5.2.2 Louise Duxbury – Scheme Amendment 147

Louise spoke as an adjacent landowner stating that she believed a decision on the matter should be delayed until the close of submissions on the draft Local Planning Strategy. Louise raised a number of potential concerns with the proposed future use including traffic and increasing visitor numbers during peak tourist periods.

*The Shire President said that the matter for Council to consider was the re-zoning only and the final decision would be made by the WA Planning Commission. Cr Gibson said that any future development would be considered should a development application be submitted.*

*The Manager Development Services advised that as the amendment had already been initiated, the process had to continue.*

#### 5.2.3 Julie Marsh – Climate Emergency

Julie referred to the Council's Climate Emergency Declaration in 2019 stating that she believed the amount of work that has happened probably was what people expected. Julie provided information on the state of the climate, urged Council to take more action, and consider the climate emergency when making decisions.

*The Shire President said that he appreciated Julie's passion and thanked her for the timely reminder.*

**5.2.4 Brian Wilson – Denmark Machinery Restoration Group Lease**

Brian spoke as the President of the Denmark Machinery Restoration Group noting that many of the Councillors had visited their premises and been impressed with what they do. Brian said that they had plans for the future but would be guided by the Concept Plan for the precinct, once the review was finalised.

**5.2.5 Donald Clarke – Investment Policy**

Donald referred to the Investment Register and the Sustainable Action Plan and urged Council to invest more in non-fossil fuel lending banks. Donald suggested that perhaps the Council needed to review its Investment Policy.

*The Shire President thanked Donald for his suggestion.*

**5.2.6 Karen Buck – Scheme Amendment 147**

Karen spoke against the amendment saying that she was surprised that, given the concerns raised by a number of State Government departments, Officers were recommending Council support it. Karen referred to the Shire's Sustainable Tourism Strategy which highlighted the need to take the pressure of Green's Pool, stating that she didn't see how the proposal would help alleviate that. Karen urged Council to listen and pay attention to what the community want.

**5.2.7 Bob Gretton – Scheme Amendment 147**

Bob referred to the concerns raised by a number of State Government departments and said that there was no evidence that the Scheme Amendment had been amended to take any of the concerns into account. With the concerns in mind about the proposed future caravan park, Bob wondered how Council could be considering the re-zoning.

*The Manager Development Services advised that seeking comment from departments and the community was part of the process, and Officers had commented on the submissions in the list of suggested modifications.*

**5.2.8 Neil Riddell – Scheme Amendment 147**

Neil stated the Councillors were elected to represent their constituents and therefore it was important to ask whether they wanted to see the proposal approved. Neil raised a number of concerns regarding the proposed future caravan park including the already large influx of people to Greens Pool over tourist seasons.

**5.2.9 David Pate – Scheme Amendment 147**

David said that he had spoken to a resident who lived near the proposed development, and they had expressed concern, to the point that they would contemplate selling their property if the proposed caravan park development went ahead.

**5.2.10 Helen Spencer – Scheme Amendment 147**

Helen provided a number of reasons why the Council should not support the Scheme Amendment.

**5.2.11 Ian Swain – Scheme Amendment 147**

Ian said that he believed that Denmark was only going to continue to grow, and that accommodation options were needed into the future to support that growth. Ian said that it was particularly important so that people weren't camping illegally, potentially creating the risk of bushfire and litter.

4.57pm – Cr Carman left the room.

**5.3 QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN**

Nil

**5.4 PRESENTATIONS, DEPUTATIONS & PETITIONS**

In accordance with Section 5.24 of the Local Government Act 1995, Sections 5, 6 and 7 of the Local Government (Administration) Regulations and section 3.3 and 3.13 of the Shire of Denmark Standing Orders Local Law, the procedure for persons seeking a deputation and for the Presiding Officer of a Council Meeting dealing with Presentations, Deputations and Petitions shall be as per Council Policy P040118 which can be downloaded from the Shire's website at <http://www.denmark.wa.gov.au/council-meetings>.

In summary, however, prior approval of the Presiding Person is required, and deputations should be for no longer than 15 minutes and by a maximum of two persons addressing the Council.

Nil.

**6. APPLICATIONS FOR FUTURE LEAVE OF ABSENCE**

Nil.

**7. CONFIRMATION OF MINUTES**

**7.1 ORDINARY COUNCIL MEETING – 17 OCTOBER 2023**

<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>	<b>ITEM 7.1</b>
MOVED: CR PHILLIPS	SECONDED: CR CAMPBELL
That the minutes of the Ordinary Meeting of Council held on the 17 October 2023 be CONFIRMED as a true and correct record of the proceedings.	
CARRIED: 7/0	Res: 021123
TOTAL VOTES FOR: 7 Cr Campbell, Cr Wiggins, Cr Youel, Cr Gibson, Cr Ormsby, Cr Lewis and Cr Phillips.	
TOTAL VOTES AGAINST: 0	



4.58pm – Cr Carman returned to the room.

**7.2 SPECIAL COUNCIL MEETING – 23 OCTOBER 2023**

<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>	<b>ITEM 7.2</b>
MOVED: CR ORMSBY	SECONDED: CR PHILLIPS
That the minutes of the Special Meeting of Council held on the 23 October 2023 be CONFIRMED as a true and correct record of the proceedings.	
CARRIED: 8/0	Res: 031123
TOTAL VOTES FOR: 8 Cr Campbell, Cr Wiggins, Cr Youel, Cr Gibson, Cr Ormsby, Cr Carman, Cr Lewis and Cr Phillips.	
TOTAL VOTES AGAINST: 0	

**7.3 STRATEGIC BRIEFING NOTES – 17 OCTOBER 2023**

<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>	<b>ITEM 7.3</b>
MOVED: CR ORMSBY	SECONDED: CR LEWIS
That the notes of the Strategic Briefing held on the 17 October 2023 be RECEIVED.	
CARRIED: 8/0	Res: 041123
TOTAL VOTES FOR: 8 Cr Campbell, Cr Wiggins, Cr Youel, Cr Gibson, Cr Ormsby, Cr Carman, Cr Lewis and Cr Phillips.	
TOTAL VOTES AGAINST: 0	

**7.4 SPECIAL COUNCIL MEETING – 14 NOVEMBER 2023**

<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>	<b>ITEM 7.4</b>
MOVED: CR WIGGINS	SECONDED: CR CARMAN
That the minutes of the Special Meeting of Council held on the 14 November 2023 be CONFIRMED as a true and correct record of the proceedings.	
CARRIED: 8/0	Res: 051123
TOTAL VOTES FOR: 8 Cr Campbell, Cr Wiggins, Cr Youel, Cr Gibson, Cr Ormsby, Cr Carman, Cr Lewis and Cr Phillips.	
TOTAL VOTES AGAINST: 0	

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

Nil

**9. REPORTS OF OFFICERS**

**9.1 DEVELOPMENT SERVICES**

**9.1.1 SCHEME AMENDMENT 154 – PROPOSED EXTENSION OF ADDITIONAL USE SITE NO. 12 TO LOT 1 RIVERBEND LANE, SCOTSDALE**

**File Ref:** TPS3/SA154  
**Applicant / Proponent:** Edge Planning & Property  
**Subject Land / Locality:** Lot 1 (#23) Riverbend Lane, Scotsdale  
**Disclosure of Officer Interest:** Nil  
**Date:** 25 October 2023  
**Author:** Craig Pursey, Manager Development Services  
**Authorising Officer:** David King, Chief Executive Officer  
**Attachments:** 9.1.1a – Scheme Amendment 154 Report (without attachments)  
 9.1.1b – Development Master Plan extract

**IN BRIEF**

- Council has received a request to initiate an Amendment to Town Planning Scheme No.3 (the Scheme) to extend the adjoining Additional Use Site No.12 over Lot 1 Riverbend Lane, Scotsdale to allow for the extension of the Golden Hill Steiner School into Lot 1.
- This report recommends initiating Scheme Amendment 154 despite there being a moratorium on scheme amendments due to Council commitments to this project that predate the moratorium.

**VOTING REQUIREMENTS**

1. Simple majority.

**RECOMMENDATIONS**

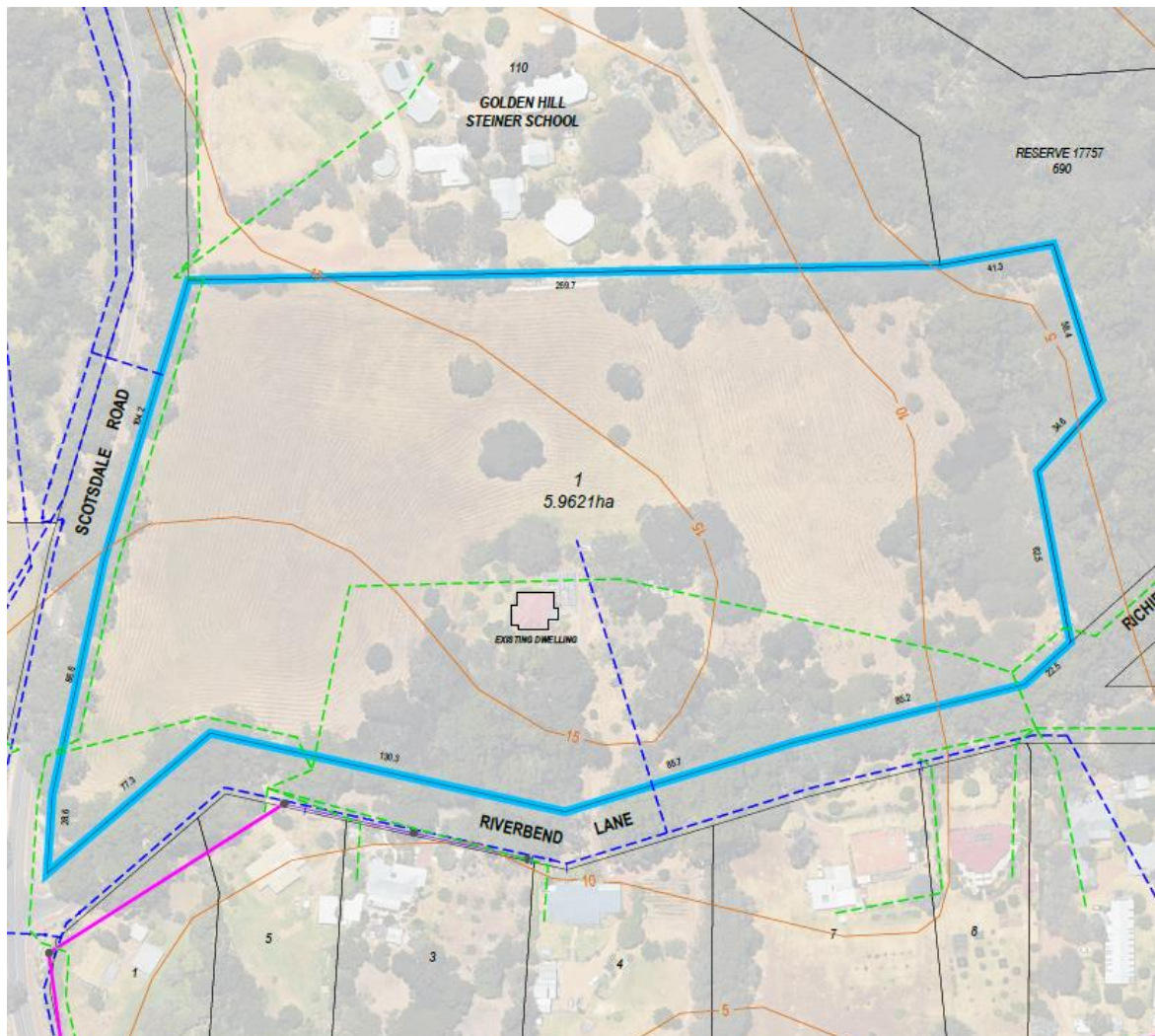
<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>	ITEM 9.1.1a
MOVED: CR PHILLIPS	SECONDED: CR LEWIS
That Council REMOVE the moratorium on the acceptance and initiation of any further standard or complex amendments to Town Planning Scheme No. 3.	
CARRIED: 8/0	Res: 061123
TOTAL VOTES FOR: 8 Cr Campbell, Cr Wiggins, Cr Youel, Cr Gibson, Cr Ormsby, Cr Carman, Cr Lewis and Cr Phillips.	
TOTAL VOTES AGAINST: 0	

<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>	ITEM 9.1.1b
MOVED: CR PHILLIPS	SECONDED: CR YOUEL
<ol style="list-style-type: none"> <li>1. In accordance with Section 75 of the Planning and Development Act 2005, resolve to ADOPT (initiate) Amendment 154 of the Shire of Denmark Town Planning Scheme No.3 by:             <ol style="list-style-type: none"> <li>a) Replacing ‘Pt Lot, 613 Scotsdale Road, Denmark’ with Lot 110 on Plan 21633 (No.222) Scotsdale Road, Scotsdale’ and add ‘and Lot 1 on Diagram 87539 (No. 23) Riverbend Lane, Scotsdale’ in Additional Use Site No. 12 (A12) in the second column (Particulars of the Land) in Appendix 2 Schedule of Additional Use Sites.</li> <li>b) Amending the Scheme Map accordingly.</li> </ol> </li> <li>2. In accordance with Regulation 35 of the Planning and Development (Local Planning Schemes) Regulations 2015, determines that Amendment No. 154 of the Shire of Denmark Town Planning Scheme No.3 is a standard amendment for the following reasons:             <ol style="list-style-type: none"> <li>a) The amendment would have minimal impact on land in the scheme area that is not the subject of the amendment.</li> <li>b) The amendment does not result in any significant environmental, social, economic or governance impacts on land in the scheme area.</li> </ol> </li> <li>3. AUTHORISES the Shire President and Chief Executive Officer, in accordance with Section 9.4.9a of the Local Government Act 1995, to execute Amendment No. 154 of the Shire of Denmark Town Planning Scheme No.3.</li> <li>4. REFER Scheme Amendment No. 154 to the Environmental Protection Authority in accordance with Section 81 of the Planning and Development Act 2005.</li> </ol>	
CARRIED: 8/0	Res: 071123
<p>TOTAL VOTES FOR: 8                  Cr Campbell, Cr Wiggins, Cr Youel, Cr Gibson, Cr Ormsby, Cr Carman, Cr Lewis and Cr Phillips.</p>	
<p>TOTAL VOTES AGAINST: 0</p>	

<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>	ITEM 9.1.1c
MOVED: CR CARMAN	SECONDED: CR CAMPBELL
That Council ADOPT a moratorium on the acceptance and initiation of any further standard or complex amendments to Town Planning Scheme No. 3 until such time as Local Planning Scheme No. 4 has been gazetted.	
CARRIED: 8/0	Res: 081123
TOTAL VOTES FOR: 8 Cr Campbell, Cr Wiggins, Cr Youel, Cr Gibson, Cr Ormsby, Cr Carman, Cr Lewis and Cr Phillips.	
TOTAL VOTES AGAINST: 0	

**LOCATION**

- Lot 1 (#23) Riverbend Lane, Scotsdale (Lot 1) is owned freehold by the Shire of Denmark, is 5.96ha in area and developed with a single house.
- Lot 1 is approximately 1.75km from the Denmark town centre, located on the corner of Scotsdale Road and Riverbend Lane and immediately adjacent to the Golden Hill Steiner School.



**Site Plan extract from Scheme Amendment 154 documentation (Edge Property & Planning)****BACKGROUND**

4. Council has been negotiating with the Golden Hill Steiner School for the school to purchase Lot 1 to expand and offer a secondary school on the site for some time.
5. Council agreed to terms to sell Lot 1 to Cultura Incorporated (the owners of Golden Hill Steiner School) at their meeting on the 20<sup>th</sup> December 2022 where it as resolved as follows:  
“That with respect to No. 23 (Lot 1) Riverbend Lane, Council:
  1. NOTES the submission received in support of the disposal.
  2. AUTHORISE the Chief Executive Officer to enter into a contract to dispose (sell) the property to Cultura Incorporated for \$900,000 (ex GST) subject to the following conditions prior to settlement:
    - a) Western Australian Planning Commission approves a revised structure plan providing a minimum of 2,500sq.m of the lot allocated for educational purposes.
    - b) The Minister for Planning approves a Scheme Amendment providing a minimum of 2,500sq.m of the lot allocated for educational purposes.
    - c) Cultura Incorporated to draft and cover all costs for planning documents required for a) and b).
  3. REQUEST the Chief Executive Officer to include the sale in the revised Long Term Financial Plan and draft 2023/24 Municipal Budget.”
6. Cultura Inc have engaged Edge Property and Planning to prepare the necessary planning documentation to satisfy the above resolution which is now presented to Council for consideration.

**Existing Zoning**

7. Lot 1 (#23) Riverbend Lane, Scotsdale is currently zoned "Special Rural (SR15)" by Town Planning Scheme No. 3. As per the approved subdivision guide plan for the site, it could potentially be subdivided into three (3) lots subject to Western Australian Planning Commission (WAPC) approval.
8. The Golden Hill Steiner School currently operates from Lot 110 (#222) Scotsdale Road, within the SR15 zoning. There is an additional use for 'educational establishment', listed as A12 in the Town Planning Scheme, that allows for the existing school as a land use. The Additional Use zoning provisions list 'conditions' or considerations when assessing a proposal for an educational establishment in A12 which include (but are not limited to):
  - Development to be in accordance with an approved 'Development Plan';
  - Suitable onsite effluent disposal systems;
  - Suitable fire control measures;
  - Access/egress points along Scotsdale to be to the satisfaction of the Council.
9. For the school to expand and develop a secondary school into a portion of Lot 1, a scheme amendment to expand the additional use site across all or part of Lot 1 is required to enable a Development Application to be considered.

### **Moratorium on New Scheme Amendments**

10. At their meeting of 20 September 2022 Council resolved to prepare a new Local Planning Scheme. As part of this resolution Council adopted a “...moratorium on the acceptance and initiation of any further standard or complex amendments to Town Planning Scheme No. 3 until such time as Local Planning Scheme No. 4 has been gazetted.”
11. The moratorium was adopted to allow existing amendment proposals to be finalised, avoid delays in adopting a new scheme due to outstanding amendment proposals and to enable staffing resources to be dedicated to the preparation of the new Scheme.

### **DISCUSSION / OFFICER COMMENTS**

#### **Proposal**

12. The scheme amendment document describes the proposal as follows:

*“Future development and uses on the site will be subject to gaining necessary approvals from the Shire including a local development plan and development approval.*

*The Golden Hill Steiner School seeks to grow the school and offer a secondary schooling option (years 7 to 12), in addition to the primary school (kindy to year 6) currently in operation. The school requires access to the adjoining land, Lot 1 Riverbend Lane, to achieve this growth objective.*

*The intent of the Amendment is to extend Additional Use No. 12 (A12) to enable educational establishment on Lot 1 Riverbend Lane.*

*The base zoning of ‘Special Rural’ with SR15, will remain.*

*The proposed additional use will provide a flexible approach to land use planning on the site. By supporting educational establishment as an additional use, there is an opportunity for development to be undertaken as either educational establishment or as a mix of educational establishment and special rural (rural residential).*

*The expansion of the Golden Hill Steiner School will accommodate growing education demands in Denmark.”*

A copy of the Scheme Amendment 154 Report, without attachments, is found at 9.1.1.a of this report. A full copy of the report and all attachments are available in the Councillor Dropbox.

#### **Assessment**

13. The expansion of the school and an additional secondary schooling option for Denmark is broadly supported. The extension of the same zoning provisions that apply to the existing Steiner School (Additional Use No.12 – educational establishment) seems to be a logical approach to facilitating the expansion of the school.
14. Surrounding development is a mix of low density residential, a winery, farmland, river foreshore and the Riverbend Caravan Park. The existing school has co-existed with these surrounding land uses for many years without complaint. The proposed expansion will increase the numbers of students on the property but will remain well buffered to adjoining properties.
15. The scheme amendment documentation supplied adequately explains and justifies the proposal and addresses the major issues. These are explored in more detail below.

### Bushfire Management Plan

16. Lot 1 is designated 'bushfire prone' and a school is a 'vulnerable land use'; this triggers the requirement to prepare a Bushfire Management Plan (BMP). A BMP is to be prepared by an appropriately accredited bushfire practitioner and is required to show that the site is capable of being developed in accordance with the requirements of the state's Bushfire Planning Framework.
17. In this case the BMP shows that the site is capable of being developed in an acceptable low fuel location, has reasonable road access and dedicated firefighting water available from the Water Corporation reticulated water supply.
18. The BMP identifies that a future development application will need to provide the details of driveways, turnarounds, asset protection zones and a Bushfire Emergency Evacuation Plan.

### Access & Carparking

19. Lot 1 adjoins Scotsdale Road and Riverbend Lane. Vehicular access is proposed to be limited to/from Scotsdale Road. Lot 1 is accessed by a good quality shared path when approaching from the town centre.
20. A Traffic Impact Assessment has been prepared by Albany based consultant's, Stantec. This assessment concludes:
  - "The educational establishment will have negligible impact on the surrounding road network, including on traffic flow, and can be accommodated in adjacent roads and intersections;
  - Scotsdale Road and the nearby road network and intersections have sufficient capacity to address traffic generation from the proposed development;
  - There are appropriate sight distances on Scotsdale Road in both directions;
  - Golden Hills Steiner School also encourages 'kiss and ride' to be undertaken on-site to minimise the impacts on the road network and adjacent residents. Parents will be advised of the parking management guidelines; and
  - The site is located on the edge of the townsite and is highly accessible. There are accordingly various opportunities to promote walking and cycling to/from the site given its location. This is facilitated through the dual use path on Scotsdale Road which connects the site to the Denmark town centre. There is considerable space on the site for bicycle parking."
21. Carparking will be assessed at the development application stage. The development 'Master Plan' provided within the scheme amendment document provides a likely development scenario for the site, an extract of this Plan is provided at attachment 9.1.1b of this report. This 'Master Plan' shows all necessary parking being located on site, in a compliant layout with little impact upon the surrounding road network.

### Effluent Disposal

22. There is no reticulated sewerage available to this site and Lot 1 is identified as being in a 'sewerage sensitive' location when assessed against the requirements of the Government Sewerage Policy 2019.
23. A Site and Soil Evaluation was prepared by Aurora Environmental which includes late-winter ground water testing. This assessment concludes that there is enough suitable land to accommodate the correctly sized dispersal field for a 'Secondary Treatment System'.

### Development Plan

24. Additional Use zone No.12 Scheme provisions require the preparation of a 'Development Plan' to guide the development of educational facilities. The Planning and Development (Local Planning Schemes) Regulations 2015 would now consider this to be a 'Local Development Plan'.
25. The role of the scheme amendment document is to show that the site is capable and suitable for zoning.
26. The 'Local Development Plan' will provide the development layout and show how the development will respond to the various opportunities and constraints. This would be a separate process involving further Council consideration and public advertising.
27. Finally, a development application and building permit are lodged to provide finer details and structural information but in a manner that is consistent with an adopted 'Local Development Plan' (LDP).
28. The Master Plan included in the Scheme Amendment documentation (see 9.1.1b of this report) is indicative of the eventual LDP. This plan shows good buffers to surrounding residences, retention and enhancement of remnant vegetation and good setbacks to the Scotsdale Brook and its foreshore. The Scheme Amendment 154 documentation states:

*"In support of the Amendment, a Master Plan is provided in Attachment 6 which conceptually shows how the site could be developed. In addition to the existing development and uses, the proposal is to:*

- Cluster new buildings with generous setbacks to Scotsdale Road and Riverbend Lane;
- Provide significant parking areas including for bus parking;
- The school currently has two crossovers to Scotsdale Road. This will assist to promote safety for road users travelling on Scotsdale Road. Internal accessways will service the site and will provide convenient carparking and loading areas;
- Provide a generous amount of open space including an oval; and
- Upgrade landscaping and replanting.

*The Master Plan is intended to be progressed following approval of the Amendment and following preparation/approval of a local development plan. The intent is to extend the Golden Hill Steiner School and co-ordinate with existing development.*

*The Master Plan will be refined at the Local Development Plan and development application stages.*

*Based on the current development of the school, proposed building materials will be sympathetic to and complement the site's setting.*

*The Golden Hill Steiner School propose an environmentally friendly development which is serviced by a combination of off-grid sustainable power (likely solar) and connection to the grid power supply with progression to full off-grid as technology allows. The development will also use an alternative treatment unit(s) for on-site wastewater disposal."*

### Moratorium on new Scheme Amendments

29. As stated in paragraphs 9 and 10 of this report, Council resolved in September 2022 to not accept any further 'standard' and 'complex' scheme amendments until the new Town Planning Scheme was finalised. However, the issue of facilitating the expansion of the Golden



Hill Steiner School has been ongoing for many months with a lease signed in August 2022 and a conditional purchase formalised in December 2022.

30. Negotiations with the Golden Hill Steiner School were underway when the moratorium was put in place. Advice from the Department of Planning, Lands and Heritage (DPLH) at the time was that Scheme Amendment 154 would be a 'basic' amendment and the wording of the moratorium was drafted accordingly.
31. Following the adoption of the moratorium the DPLH revised their advice and stated Amendment 154 would be a 'standard' amendment. Therefore, if Council wish to entertain the scheme amendment, then the moratorium on new scheme amendments would need to be temporarily lifted long enough to initiate Scheme Amendment 154.

#### **CONSULTATION AND EXTERNAL ADVICE**

32. In accordance with the Planning and Development (Local Planning Schemes) Regulations 2015, a 'standard amendment' is required to be subject to public advertising for a minimum period of 42 days once the Environmental Protection Authority (EPA) has considered the Amendment.

#### **STATUTORY / LEGAL IMPLICATIONS**

##### **PLANNING AND DEVELOPMENT ACT 2005**

33. Town Planning Scheme No.3 is an operative Local Planning Scheme under the Act;  
PLANNING AND DEVELOPMENT (LOCAL PLANNING SCHEMES) REGULATIONS 2015
34. Provide for complex, standard and basic amendments. Having regard to Regulation 34, Amendment No.154 is a standard amendment given the amendment:
  - Would have minimal impact on land in the scheme area that is not the subject of the amendment.
  - Does not result in any significant environmental, social, economic or governance impacts on land in the scheme area.
  - Is consistent with the draft Local Planning Strategy 2022.

#### **STRATEGIC / POLICY IMPLICATIONS**

35. The following policies have been given due consideration in relation to this proposal:
  - State Planning Strategy 2050
  - State Planning Policy No. 2: Environment and Natural Resources Policy
  - State Planning Policy No. 3: Urban Growth and Settlement
  - State Planning Policy 3.7: Planning in Bushfire Prone Areas
  - Government Sewerage Policy 2019
 Strategic Community Plan 'Denmark 2033'
36. The proposed policy is consistent with the following objectives of the Strategic Community Plan 'Denmark 2033':
 

Services and Facilities for Youth – we want youth to have easy access to quality support services.

The expansion of a local primary school to offer secondary education will offer youth other options in town and assist to retain and attract younger families to town.

### Local Planning Strategy

37. The 2011 Local Planning Strategy identifies Lot 1 Riverbend Lane as a Rural Residential site. It also sets Lot 1 in the context of being needed to facilitate a second bridge over the Denmark River. This is no longer being pursued and the draft 2022 Local Planning Strategy has the following relevant information:

*“The Golden Hill Steiner School is located at Lot 110 Scotsdale Road, a site zoned Special Rural (15) in TPS3 with Additional Use (12) providing for ‘Educational Establishment’ as a permitted land use. Golden Hill Steiner School has made a submission to the Shire regarding the potential to offer secondary education by expanding their campus into the adjoining Lot 1 (#23) Riverbend Lane, which is also zoned Special Rural but does not currently have additional use rights.*

*Should the School be able to acquire Lot 1 (or portion) the Strategy supports the use of this site for an Educational Establishment. Access and other relevant planning issues may be resolved at the development application stage.”*

### FINANCIAL IMPLICATIONS

38. Fees associated with the amendment have been paid as per Council’s operative Fees and Charges Schedule.
39. The Shire of Denmark has a contract to dispose (sell) the property to Cultura Incorporated for \$900,000 (ex GST) subject to the satisfactory progress of a scheme amendment.

### OTHER IMPLICATIONS

#### Environmental

40. Lot 1 is within reasonable proximity to the Scotsdale Brook and Denmark River, is located within a sewerage sensitive area and has a substantial area of good quality vegetation near to the Brook.
41. Adequate foreshore reserves are in place and effluent disposal and protection of vegetation will be addressed in subsequent planning stages.

#### Economic

42. Although not quantified, additional jobs will be created in both the construction of the new school and additional employment in the school's operations.

#### Social

43. Having a range of schooling options will improve educational outcomes for the community and the social benefits that accompany it.

### RISK MANAGEMENT

44. A risk assessment has been undertaken per the Shire's Risk Management Governance Framework, and no risks have been identified in relation to the officer recommendation or the report.

*Cr Phillips declared a financial and impartiality interest and made the following statement.  
 “I am an owner and operator of Peaceful Bay Caravan Park. The proponent is a relative of mine. I do not have any association with the proposed development or the JLP Superfund.”*

5.06pm - Cr Phillips left the room and did not participate in discussion or vote on the matter.

**9.1.2 SCHEME AMENDMENT 147 - PROPOSED TOURIST ZONE: LOT 3 (No. 2446) SOUTH COAST HIGHWAY, WILLIAM BAY**

<b>File Ref:</b>	TPS3/SA147
<b>Applicant / Proponent:</b>	Williams Consulting on behalf of JLP Superfund
<b>Subject Land / Locality:</b>	Lot 3 (No. 2446) South Coast Highway, William Bay
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	1 November 2023
<b>Author:</b>	Will Hosken, Planning Officer
<b>Authorising Officer:</b>	David King, Chief Executive Officer
	9.1.2a – Location Plan
	9.1.2b – Scheme Amendment Report (appendices available on Your Denmark)
	9.1.2c – Schedule of Modifications (Initiation)
<b>Attachments:</b>	9.1.2d – EPA Advice
	9.1.2e – Schedule of Government Agency Submissions
	9.1.2f – Schedule of Public Submissions – Support
	9.1.2g – Schedule of Public Submissions – Objection
	9.1.2h – Schedule of Modifications (Final Adoption)

**IN BRIEF**

- Amendment 147 proposes to rezone Lot 3 from the Rural Zone to the Tourist Zone, enabling the development of the site for tourism purposes.
- At its meeting on 16 February 2021 Council resolved to adopt Scheme Amendment 147 for public consultation, subject to modifications.
- During advertising a total of 61 submissions were received from members of the public and 5 submissions received from government agencies. In addition, the proponent collected and forwarded a further 107 submissions from members of the public.
- This report assesses the submissions received and recommends supporting the proposed scheme amendment subject to modifications.

**VOTING REQUIREMENTS**

1. Simple majority.

<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>	ITEM 9.1.2
MOVED: CR GIBSON	SECONDED: CR WIGGINS
That Council:	
<ol style="list-style-type: none"> <li>1. In accordance with Regulation 41(2) of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>,             <ol style="list-style-type: none"> <li>a. NOTES the submissions received in respect to Amendment No. 147 to the Shire of Denmark Town Planning Scheme No.3; and</li> <li>b. ENDORSES the response to the submissions as contained at Attachments 9.1.2e, 9.1.2f and 9.1.2g of this report.</li> </ol> </li> <li>2. In accordance with Regulation 41(3)(b) of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>, SUPPORT Amendment No. 147 to the Shire of Denmark Town Planning Scheme No.3 with modifications as detailed in Attachment 9.1.2h.</li> <li>3. AUTHORISES the Shire President and the Chief Executive Officer, in accordance with Section 9.49a of the <i>Local Government Act 1995</i>, to execute under Common Seal Amendment No.147 to the Shire of Denmark Town Planning Scheme No.3.</li> <li>4. ADVISES those who provided a submission of the Council’s resolution.</li> </ol>	
CARRIED: 4/3	Res: 091123
TOTAL VOTES FOR: 4 Cr Wiggins, Cr Youel, Cr Gibson and Cr Lewis.	
TOTAL VOTES AGAINST: 3 Cr Campbell, Cr Ormsby and Cr Carman	

**LOCATION**

2. Amendment 147 applies to Lot 3 (No. 2446) South Coast Highway, William Bay. The location of property is shown in Attachment 9.1.2a – Location Plan.
3. Lot 3 is currently zoned ‘Rural’ in Town Planning Scheme No. 3 (TPS 3), which allows for a range of rural land uses and limited forms of tourism development.
4. Land to the east and west of the site is zoned ‘Rural’. Land to the north and south of the site is zoned ‘Rural Multiple Occupancy’ and ‘Special Rural’ respectively, with each accommodating rural residential land uses.

**BACKGROUND**

**Proposal**

5. Amendment 147 proposes changes to TPS 3 as follows:
  - Rezoning No. 2446 (Lot 3) South Coast Highway, William Bay, from ‘Rural’ to Tourist (T14)’ zone and amending the Scheme Maps accordingly.
  - Inserting ‘Tourist (T14)’ and associated Special Provisions into *Appendix XIII – Schedule of Tourist Zones* of the scheme text. This sets out the following as permissible land uses:
    - Aquaculture (AA), Agritourism (AA), Caravan Park (AA), Caretakers Dwelling (P), Horticulture (AA), Brewery (AA), Outbuilding (P), Private Recreation (AA),

Restaurant (AA), Rural Pursuit (P), Shop (max. 150m<sup>2</sup> gross leasable area) (AA), Single House (P)

- Introduce the following land use definitions into *Appendix I – Interpretations* of the scheme text:

**Agritourism** – means visiting a farm or rural food related business for enjoyment and education or to participate in activities or events.

**Workforce Accommodation** – means premises, which may include modular or relocatable buildings, used –

(a) Primarily for the accommodation of workers engaged in construction, resource, agricultural or other industries on a temporary basis; and

(b) For any associated catering, sporting and recreation facilities for the occupants and authorised visitors.

6. This amendment proposes to extent the type and extent of tourism-related land uses that may be permitted on the subject site ('Microbrewery' and 'Shop') as well as acknowledging the cumulative extent of non-rural land uses and change in the primary use of the site (from rural to tourism land uses).
7. The proposed amendment retains the ability for the landowner to continue rural/ primary production land uses on the property, as has commenced under the current Rural zoning.
8. The amendment has been supported by the preparation of a draft Local Development Plan that identifies how the proposed land uses might be laid out on the subject site. This is included in Attachment 9.1.2b –Scheme Amendment Report.

The proposed Special Provisions require development of the site to be consistent with an adopted Local Development Plan; however, it is premature for the Council to adopt the proposed Local Development Plan until the scheme amendment has been finalised.

### Timeline

9. In February 2021 the Council initiated Amendment 147 to TPS 3, including:
  - Classifying the proposal as a 'complex' scheme amendment.
  - Requiring the proponent to undertake modifications to the proposed scheme amendment, as detailed in Attachment 9.1.2c.
  - Referring the proposal to the Environmental Protection Authority (EPA) and the Western Australian Planning Commission (WAPC) for review.
  - Supporting progression of the proposal to public consultation.
10. Between February 2021 and September 2022, the proponent completed further investigations and modification of the scheme amendment report.
11. Once reviewed and accepted by the Shire, the proposed scheme amendment was then referred to the EPA as follows:
  - 17 November 2022 – Shire forwarded referral to EPA
  - 12 December 2022 – EPA request for additional information
  - 2 February 2023 – Proponent provided additional information to the Shire which was then forwarded to the EPA

- 3 March 2023 – EPA determined not to formally assess the proposal, providing advice to the Shire for consideration (see Attachment 9.1.2d)
12. The Shire then forwarded the proposed scheme amendment to the WAPC to request consent to publicly advertise the proposal, as follows:
- 15 March 2023 – Shire forwarded proposed scheme amendment to WAPC
  - 24 May 2023 – Shire received WAPC consent including request for minor modifications to the amendment report
  - 6 June 2023 – Proponent completed modifications required by WAPC
13. The proposed scheme amendment was then advertised for public comment between 29 June and 30 August 2023. The comment period was extended to 9 October 2023 due to requests from members of the public and to allow full responses from relevant government agencies. Submissions received from government agencies are detailed in Attachment 9.1.2e and submissions from members of the public are detailed in Attachment 9.1.2f and 9.1.2g.

#### **DISCUSSION / OFFICER COMMENTS**

14. During the advertising period the Shire received a total of 61 public submissions, including 45 objecting and 17 in support. A further 107 public submissions in support were collected and lodged by the proponent.
15. The Shire also received referral responses from 5 state government agencies, including the Departments of Water & Environmental Regulation (DWER), Primary Industries & Regional Development (DPIRD), Fire & Emergency Services (DFES), Health (DoH) and Main Roads Western Australia (MRWA).
16. A range of issues and concerns were raised in submissions, the most common being:
- Road safety
  - Impacts on neighbours (noise, light, trespass, etc.)
  - Impacts on visual amenity and landscape values
  - Environmental impacts (wastewater, nutrient run-off, water use, protection of native vegetation)
  - Peak season tourism
  - Impacts on William Bay National Park, including peak season congestion
  - Concerns with existing development and management of the property
17. Submissions in support of the proposal noted:
- Importance of catering for tourism industry/ need for more low-cost tourist accommodation
  - Benefits of location near key tourism attractions
  - Suitability/ attractiveness of site
  - Employment opportunities for local residents

#### **Road Safety**

18. The majority of submissions in objection to the proposed scheme amendment (43 of 45) raise road safety as a significant concern. The proposed amendment facilitates the development of tourism-related land uses on the subject site that will ultimately result in

additional vehicle movements and increase the complexity of vehicle movements on this section of road. The proponent has provided a Traffic Statement that assesses likely vehicle movements and identifies potential long term road safety improvements.

19. As South Coast Highway is a MRWA controlled road the Shire referred the proposal to MRWA for comment. Although the written response received from MRWA refers only to the location of crossovers, Shire officers subsequently met with MRWA to discuss the issues raised in public submissions. Shire and MRWA officers are in agreement that:
  - The estimated vehicle movements in the Traffic Statement is unlikely to reflect full development of the site and/or peak season demand.
  - The most substantial concern is right-hand turning into the subject site, which may result in stationary vehicles in a traffic through-lane.
  - The identification of and response to road safety issues should be determined by an independent, accredited road safety auditor.
20. Acknowledging the concerns raised in submissions and reflecting technical advice on the how these might be addressed, this report recommends the inclusion of an additional special provision requiring the proponent to commission a road safety audit. This will provide clarity on road safety concerns and a basis for conditions of approval should the proposed rezoning proceed.
21. Improvements to road safety can potentially be made to improve the safety of vehicle access to the site and thereby enable for the land uses proposed. While the extent and cost of these works has not been specified at this time, it is not appropriate to impose a requirement for specific improvements to access or road safety at the rezoning stage. Required works will relate to traffic generation, which is dependent on whether the proponent progresses development of the site, the extent of tourism-related development and the timing in which this occurs. Should development proceed, the proponent will be required to implement road safety improvements to the satisfaction of MRWA. As such, MRWA and Shire officers do not consider vehicle access and road safety to be a fatal flaw to progressing the proposed rezoning.
22. It is noted that the landowner previously sought advice from Main Roads on the most suitable location for access into the subject site and have relocated their crossover accordingly. This was undertaken as one of several improvements the landowner has made to the site under its current Rural zoning.
23. Submissions also identify concerns with the safety of pedestrian access to and from the property given the current and future traffic on South Coast Highway and the adjacent alignment of the Munda Biddi Trail. It is noted that the majority of movements into and out of the property will occur via private vehicle and that most users of the Munda Biddi Trail will utilise more accessible places to use the trail; however, consideration of limited pedestrian movements should be incorporated into a road safety traffic audit. Many concerns reflect a general dissatisfaction with the alignment of the Munda Biddi Trail being on the South Coast Highway and William Bay Road generally.

### **Impacts On Neighbours**

24. Submissions objecting to the proposal raised varying concerns with the potential impacts of future tourism development on neighbouring landowners. This included consideration of noise, light spill, rubbish, biosecurity, trespassing and wandering dogs.

25. Should the proposed rezoning proceed, the landowner would be required to apply for approval for any tourism-related land uses, providing the opportunity for the Shire to assess issues in detail and require site and/or management responses as appropriate.
26. While any increase in the use of the site has the potential to increase noise, officers consider that the proposed land uses would not be in conflict with the requirements of the *Environmental Protection (Noise) Regulations 1997* and that sensitive land uses on the site (eg. caravan park, residences) would necessitate internal management of noise levels. The nearest residence on a neighbouring property is >140m from the closest possible caravan park site and noise would be expected to dissipate within the undulating and relatively well-vegetated topography, reducing the likelihood of noise being received at a level that is inconsistent with the Regulations.
27. The proposed special provisions include the control of external lighting and this can be appropriately considered at subsequent approval stages. Likewise the provision of rubbish and recycling bins (and collection) will be addressed at subsequent approval stages and management can be enforced under the *Caravan Parks and Camping Grounds Regulations 1997*.
28. The Caravan Parks Regulations also require any dog within a licensed facility to be kept on a leash or in an enclosed area at all times (other than a registered assistance dog). Concerns relating to the behaviour of dogs or other animals on the property can be reported to the Shire's Ranger Services team for investigation and are unrelated to the proposed scheme amendment.
29. Concerns relating to trespassing and biosecurity can be addressed through the provision of improved boundary fencing and appropriate signage, which is a matter to be resolved between landowners. Shire officers have raised these concerns with the proponent who has indicated that they have commenced fencing improvements and will continue to pursue this with the neighbouring landowners.

#### **Impacts On Visual Amenity/ Landscape Values**

30. Submissions objecting to the proposal raised concerns with the potential impacts on visual landscapes and amenity, noting the high level of visibility of the site from the South Coast Highway (including rest stop/ lookout).
31. The rest stop/ lookout point on South Coast Highway at the eastern end of the subject site is identified as a priority view location in the Visual Landscape Evaluation undertaken by the Shire in support of the Draft Local Planning Strategy 2022, with the identified visual management objectives being 'Not Evident/ Restoration'. This recommends that development should therefore not be visible from this location so as not to impact on views of the surrounding landscape.
32. The Visual Landscape Evaluation also classifies the vegetated parts of the property as 'Forested Hills' and cleared parts of the property as 'Rural Hills', with 'Forested Hills' being a priority for retention and 'Rural Hills' appropriate for development to be 'blended' with the surrounding landscape. South Coast Highway is generally identified as a priority view route, but along its length demonstrates a variety of values and the Visual Landscape Evaluation does not therefore designate any specific visual management objectives.
33. The proponent has undertaken an assessment of visual landscape values in support of the proposal (see Attachment 9.1.2b – Scheme Amendment Report). This includes recommendations for retaining existing on-site vegetation, additional landscaping and revegetation, limitations on fencing materials, limitations on external building materials and



boundary setback requirements. The proposed special provisions incorporate these recommendations, including the requirement for the preparation and implementation of a Landscape Management Plan.

34. Officers consider that built development proposed on the site is not extensive (and some is existing), that a substantial amount of revegetation is proposed across the site, and that a Landscape Management Plan is an appropriate mechanism to ensure that development on the site responds to the identified visual management objectives. The location of tourism-related land uses at the most distant part of the site from the rest stop/ lookout is also an appropriate response. The extent of revegetation that has already commenced on the subject site is also likely to substantially reduce the visibility of buildings.

### **Environmental Impacts**

35. Concerns raised about potential environmental impacts were generally centred on the protection of remnant vegetation, water use, nutrient run-off and wastewater.
36. The protection of remnant vegetation on the subject site is provided for by the identification of a Development Exclusion/ Tree Preservation Area and associated special provision that does not permit development within this area. Noting that submissions have raised concerns about previous disturbances within this area, Shire officers recommend that an additional requirement for the management and revegetation of this area is included in the provision requiring a Landscape Management Plan.
37. As part of any future development of the site, the proponent will be required to demonstrate that a potable water supply of sufficient volume is available for the intended land uses. This may be achieved through various means of on-site capture and treatment and can be considered in further detail as part of subsequent approvals (as appropriate).
38. Concerns relating to nutrient run-off and contamination of waterways are attributable to the management of wastewater and to agricultural land uses, including the orchards, gardens and aquaculture proposed. Each of the permitted agricultural land uses can be undertaken under the existing Rural zoning and concerns about the accumulation and export of nutrients are relevant to a wide range of land uses. Notwithstanding, the opportunity exists for this matter to be considered as part of the preparation of a Local Water Management Strategy as required by the special provisions proposed. This is to include consideration of nutrient and irrigation management.
39. Public submissions and comments received from DWER and DoH raise concerns with the treatment and disposal of wastewater on the subject site. In particular, comments from DWER and DoH note the need for separate treatment systems for trade (eg. restaurant and brewery) and human (eg. general ablutions) wastes and the need for disposal areas to have adequate separation from groundwater levels (at seasonal peaks). Each of these considerations will be required to be addressed by the proponent prior to the approval of any related development, and the advice of each agency has been forwarded to the proponent. This is not considered to be a fatal flaw to the proposed amendment but may prove a limiting factor to the extent of the intended land uses that generate significant wastewater. It is noted that DoH will be responsible for the approval of commercial wastewater treatment and disposal systems.
40. DWER suggests removing the potential for a microbrewery/ brewery land use on the basis that details of this development have not been provided; however, Shire officers consider it premature for the proponent to be required to submit detailed and technical information (including production volumes) for this land use prior to rezoning occurring. Similar to other

breweries and distilleries, the treatment and disposal of trade wastes will be required to be demonstrated prior to the granting of development approval, noting that production volumes can be limited if required.

41. It is noted that neither of the Shire's industrial areas is currently connected to a reticulated sewerage service, which limits the ability of these areas to support food and beverage manufacturing. This has been a consideration in businesses seeking rural land where a large land area is available to develop production facilities and provide for wastewater disposal, in addition to the benefits of an attractive setting for associated food venues and tourism.
42. The additional information sought by DWER and DoH can be required via the preparation of a Local Water Management Strategy (incorporating nutrient and irrigation management) which is included in the proposed special provisions.

#### **Peak Season Tourism**

43. The provision of additional tourist accommodation within the Shire is viewed by some submitters as increasing potential peak season visitation, which then relates to concerns about congestion and other seasonal tourism impacts experienced by residents within the Shire. This is responded to in both negative (eg. congestion concerns) and positive (eg. accommodation supply/ economic benefit) ways.
44. Submissions suggesting that the proposed development of a caravan park is inconsistent with the Shire's Sustainable Tourism Strategy (STS) are not supported, on the basis that the background report for the STS identifies an opportunity for additional nature-based and low-cost camping opportunities and the STS does not seek to limit the number of caravan parks or market competition. The STS identifies a preference for increased tourism activity in the shoulder and off-peak seasons but does not propose to restrict the development of tourist accommodation of any type. The STS identifies market gaps and opportunities to encourage the development of additional tourist accommodation in selected forms. The opportunity to develop tourist accommodation of a variety of types exists across the Shire in a number of zones and will occur in one form or another where market demand exists.

#### **William Bay National Park**

45. A number of submissions raised concerns about the proximity of the subject site to the William Bay National Park and the potential for a caravan park to facilitate an increase in visitation to this popular attraction. This was also responded to in negative (eg. peak season access and parking issues) and positive (eg. ideal location for access to National Park) ways.
46. The management of access and provision of infrastructure within the William Bay National Park is the responsibility of the Department of Biodiversity, Conservation & Attractions (DBCA), who did not provide comment on the proposed scheme amendment. It is noted that DBCA has generally advised of a preference for the provision of tourist accommodation on private land within proximity to attractions under its management, on the basis that this can reduce instances of illegal camping and alleviate pressure for development to occur on reserved land.
47. The STS supports improvements to access and the promotion of other coastal destinations as a way to provide other opportunities for tourism and recreation within the Shire, acknowledging the popularity of Greens Pool and the William Bay National Park.

### **Existing Development/ Management**

48. Submissions also raised concerns with recent development occurring on the property subject to this proposed scheme amendment, considering this as being premature and/or influencing the Council's decision making on this amendment.
49. The proponent and landowner have been in communication with Shire officers and have proceeded, at their own financial risk, with making improvements to the property as permitted under the current Rural zoning. This has included the development of sheds, gardens, tree planting/ orchards, a new crossover, and a current development application for additional dams (not yet determined).
50. Submissions identifying other concerns with the current management of the land are unrelated to this proposed amendment and reflect issues that should be reported to the appropriate managing agency (eg. issues with the behaviour of dogs should be reported to the Shire's Rangers Services team).

### **Further Consultation**

51. Several submissions identified a desire for public advertising/ neighbour referral of subsequent applications for tourism-related development. Should this rezoning be approved the proponent will be required finalise the preparation of a Local Development Plan to provide greater detail on the subsequent development of the site. The advertising and referral of this Local Development Plan will provide greater detail and clarity to adjoining landowners.

The majority of the land uses that are enabled by this proposed amendment are discretionary ('AA' land uses), necessitating development approval prior to commencement. The Shire can exercise discretion to advertise or refer applications for discretionary land uses, but it is expected that the advertising of a Local Development Plan for the site will reduce the need for this to occur. Officers do not recommend mandating advertising/ referral for the proposed land uses as this can result in unnecessary processing in some circumstances (for example, for a minor change to plans that does not materially affect neighbours).

### **Other Issues**

52. Several submissions disagreed with the proponent's justification that the property is insufficient in size to support traditional agricultural activities as a sustainable stand-alone operation. Shire officers note that there are a wide variety of rural lots in the district of all sizes that provide for primary production in many forms, including more intensive operations. The viability of a property for one rural land use or another is not a sufficient argument in support of rezoning land, particularly as viability can change over time and the fragmentation of land is very difficult to reverse. This amendment enables the continued use of the land for primary production while enabling the diversification of land uses, and is supported given the site is of strategic significance for tourism purposes.
53. Comments from public submissions and DoH refer to the management of chemical spray drift from gardens and orchards and the proximity of sensitive tourist and residential land uses. Noting that the proposed gardens and orchards are of a limited scale and not proposed to be used for intensive commercial production, Shire officers consider that this can be managed within the site by the landowner in accordance with the guidance provided by the referral agencies. It is not considered likely that this will impact on adjoining landowners given that this issue will need to be managed within the site and the distance to residences on neighbouring properties.

54. Comments from DFES identify issues with bushfire risk and the documents prepared in support of this amendment. These has been raised with the proponent who will be required to review and incorporate additional information within a Bushfire Management Plan and Emergency Evacuation Plan prior to the Shire approving any of the proposed tourism-related land uses. Drafts of each of these documents have been provided in support of the proposed amendment.

DFES have also raised concerns with the bushfire risks in the broader landscape and context of the site; however, the proposal has been supported by a Bushfire Management Plan that demonstrates compliance with the 'acceptable solutions' standard for location at Element 1 of the *Guidelines for Planning in Bushfire Prone Areas*. The Shire will request the proponent provide further contextual analysis in final bushfire reports and liaise with DFES as appropriate.

55. Comments from DPIRD query the inclusion of the land use class 'Agritourism' within TPS 3, noting that it may be confusing what this relates to. Shire officers support the inclusion of this as a land use class to provide for commercial activities that are not appropriately captured by the current land use classes in TPS 3 or the model use classes in the *Planning & Development (Local Planning Schemes) Regulations 2015*. This will enable the establishment of businesses that are incidental to primary production, particularly related to produce tours and tasting, that may otherwise be subject to more onerous approval requirements if assess as a 'use not listed'. The Shire will further consult with DPIRD as part of the preparation of Local Planning Scheme No. 4 in relation to use classes enabling rural land uses and businesses.

56. Concerns about the potential development of a caravan park that includes permanent residents are addressed through the inclusion of a special provision limiting the occupancy of any tourist accommodation to a maximum length of stay of 3 months in any 12 month period.

57. DPIRD also provides comments on the inclusion of 'Workforce Accommodation' as a land use, noting that any ongoing need for housing staff should occur within a townsite or other established residential area. In relation to Amendment 148, which similarly sought to rezone land from the Rural Zone to the Tourist Zone, the WAPC also advised that it did not generally support the establishment of permanent residential land uses within a Tourist Zone. While it is proposed to retain 'Workforce Accommodation' as a permitted land use, the Shire notes that this is intended to provide for temporary accommodation only and any associated development should not remain in situ for an extended period of time.

### **Microbrewery**

58. In June 2023 the Department of Planning, Lands & Heritage (DPLH) advised the Shire of the Minister's determination of Scheme Amendment No. 153. This amendment replaced the use class of 'Microbrewery' with 'Brewery' and expanded the definition to include the production of beer, cider or spirits consistent with liquor licensing legislation. To be consistent with the outcome of this amendment, officers recommend modifying the proposed 'Microbrewery' land use in Amendment 147 to read 'Brewery'.

### **Modifications**

59. Based on an assessment of the issues raised in submissions, officers do not believe there are any fatal flaws to progression of the proposed amendment. Although there are a number of matters raised that require further resolution, these can be appropriately addressed at subsequent approval stages. This is provided for by the special provisions to be included in

Appendix XIII of the Scheme, including the recommended modifications discussed above and outlined in Attachment 9.1.2h.

### **CONSULTATION AND EXTERNAL ADVICE**

60. In accordance with the requirements of the *Planning and Development (Local Planning Schemes) Regulations 2015* this proposal for a complex scheme amendment was advertised for a period of 60 days from 29 June to 30 August 2023. This included letters to government agencies and neighbouring landowners, publication of notices on the Shire's website and in local newspapers, and signage on site. Copies of the amendment were available for public viewing at Shire's offices and on the Shire's website. The Shire allowed for the receipt of late submissions upon request up until 9 October 2023.
61. Submissions received and issues raised are discussed in this report and included in Attachments 9.1.2e, 9.1.2f and 9.1.2g.

### **STATUTORY / LEGAL IMPLICATIONS**

#### **Planning and Development Act 2005**

62. Town Planning Scheme No. 3 is an operative local planning scheme under the *Planning and Development Act 2005*.
63. The processing of a complex scheme amendment to a local planning scheme occurs in accordance with the requirements of the *Planning and Development (Local Planning Schemes) Regulations 2015*. This includes meeting the minimum public advertising requirements that are prescribed in the Regulations.

### **STRATEGIC / POLICY IMPLICATIONS**

#### **Strategic Community Plan**

64. The proposed amendment is consistent with the community's Strategic Community Plan 'Our Future 2033', particularly with regard to achieving the Economic Development priorities identified. The proposal enables the development of new industry, supports business ideas and facilitates the establishment of tourism related to local primary industries. The proposal is considered to adequately safeguard against significant impacts on the natural environment and visual landscape values as is appropriate at this stage of the planning process.

#### **Draft Local Planning Strategy**

65. The proposed amendment is consistent with the Draft Local Planning Strategy 2022, with the subject site being included within the proposed William Bay Tourism Precinct. The intent of this precinct is to support the co-location of tourism land uses close to regional attractions, promote the use of common infrastructure (including trails) and provide suitable locations for tourism business development. Rezoning to enable the primary use of the land for tourism purposes is supported by the Strategy in identified tourism precincts (only).

The amendment is consistent with the direction the Strategy provides for caravan parks and camping grounds and rural tourism. The amendment is also consistent with the visual landscape management objectives identified in the Draft Strategy, including the supporting Visual Landscape Evaluation (as discussed above).

The amendment is not foreseen by the previous Local Planning Strategy (2011) and as such was classified as a complex scheme amendment.

### **Sustainable Tourism Strategy**

66. As discussed above, the proposed amendment is consistent with the objectives of the Sustainable Tourism Strategy (STS), including strategy 5.1 which aims to “*Assist operators to develop and grow the region’s product and experience offering*”. The Strategy also supports the development of additional nature-based and low-cost camping opportunities and the STS does not seek to limit the number of caravan parks or market competition.

### **Sustainability Strategy**

67. The proposed amendment provides for tourism land uses in a location that is well serviced by road and trail infrastructure and in close proximity to regional attractions. The proposal is considered to be consistent with the Shire’s Sustainability Strategy, particularly in seeking to provide for and connect local food production with a tourism experience.

At this stage of the approvals process, the proposal does not demonstrate the extent to which the initiatives identified in the Strategy are to be adopted as development of the site proceeds. The proponent will be encouraged to provide further information on water and waste minimisation strategies, the potential for alternative modes of transport to service the site and other sustainable practices that are to be incorporated into both building and management processes.

### **State Planning Policies**

68. The following other relevant policies have been given due consideration and the proposed scheme amendment is considered to be consistent with the requirements of each:
- State Planning Policy 2.5: Rural Planning
  - Draft State Planning Policy 2.9: Planning for Water
  - Draft State Planning Policy 3.7: Bushfire
  - State Planning Policy 5.4: Road and Rail Noise
  - Draft Planning for Tourism Position Statement
  - Guidelines for Planning in Bushfire Prone Areas
  - Government Sewerage Policy

Further details confirming compliance will be required at subsequent approval stages, as referred to in the proposed special provisions.

### **FINANCIAL IMPLICATIONS**

69. Fees associated with the Amendment have been paid as per Council’s operative Fees and Charges Schedule.
70. There are not considered to be any financial implications for the Shire associated with the proposed scheme amendment.

### **OTHER IMPLICATIONS**

#### **Environmental**

The amendment incorporates provisions to address relevant environmental considerations, including those identified by the EPA, DWER and DoH. This will enable any outstanding concerns with the use of water and disposal of wastewater to be addressed at subsequent approval stages.

**Economic**

- 71. The proposed scheme amendment demonstrates a high level of economic benefit and the development of the land uses that are enabled by this proposal are likely to create ongoing business and employment opportunities within the Denmark community.

**Social**

- 72. The proposed amendment enables land uses that are perceived by neighbouring landowners to result in a loss of amenity. Officers consider that the development of a range of rural land uses under the existing zoning could potentially be more disruptive, noting that the management of potential impacts will be required to maintain sensitive (residential and tourist accommodation) land uses within the property itself. The proposed rezoning is therefore not considered to unduly result in a loss of amenity compared to the current zoning.

**RISK MANAGEMENT**

- 73. A risk assessment has been undertaken per the Shire's Risk Management Governance Framework, and no risks have been identified in relation to the officer recommendation or the report.

5.45pm – Cr Campbell left the room.

5.46pm – Cr Phillips returned to the room.

5.47pm – Cr Campbell returned to the room.

**9.2 CORPORATE SERVICES**

**9.2.1 FINANCIAL STATEMENTS FOR THE PERIOD ENDING 30 SEPTEMBER 2023**

<b>File Ref:</b>	FIN.1
<b>Applicant / Proponent:</b>	Not applicable
<b>Subject Land / Locality:</b>	Not applicable
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	25 October 2023
<b>Author:</b>	Scott Sewell, Financial Accountant
<b>Authorising Officer:</b>	Jodi Masson, Acting Manager Corporate Services
<b>Attachments:</b>	9.2.1 - September 2023 Monthly Financial Report

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**IN BRIEF**

- Under the Local Government Financial Management Regulations, a local government is to prepare, on a monthly basis, a statement of financial activity that reports on the Shire’s financial performance in relation to its adopted budget.
- The Shire of Denmark’s Statement of Financial Activity for the period ending 30 September 2023 has been prepared and is attached.
- In addition, the Shire provides Council with a monthly investment register to ensure the investment portfolio complies with the Shire’s Investment Policy.

**VOTING REQUIREMENTS**

- 1. Absolute majority.

<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>	ITEM 9.2.1
MOVED: CR WIGGINS	SECONDED: CR CAMPBELL
That Council:	
<ol style="list-style-type: none"> <li>1. RECEIVE the Financial Reports for the period ending 30 September 2023, incorporating the Statement of Financial Activity and other supporting documentation, as per Attachment 9.2.1.</li> <li>2. APPROVE a budget amendment to increase the expenditure provision to account 1021004 (Job 53006) by \$7,000, increase the expenditure provision to account 1021154 (Job 53015) by \$20,000 and increase the transfer from the Waste Services Reserve by \$27,000 to maintain a balanced budget.</li> </ol>	
CARRIED BY AN ABSOLUTE MAJORITY: 8/0	Res: 101123
TOTAL VOTES FOR: 8	
Cr Campbell, Cr Wiggins, Cr Youel, Cr Gibson, Cr Ormsby, Cr Carman, Cr Lewis and Cr Phillips.	
TOTAL VOTES AGAINST: 0	

**LOCATION**

2. Not applicable.

**BACKGROUND**

3. In order to fill statutory reporting obligations, the Monthly Financial Report prepared provides a snapshot of the Shire’s year-to-date financial performance. The report provides:
  - Statement of Financial Activity by Nature or Type;
  - Statement of Financial Activity by Program;
  - Explanation of Material Variances;
  - Net Current Funding Position;
  - Receivables;
  - Capital Acquisitions;
  - Cash Backed Reserve Balances;
  - Loan Schedule;
  - Investment Register;
  - Cash and Investments Summary.
4. Each year a local government is required to adopt a percentage or value to be used in the Statement of Financial Activity for reporting material variances. Under Resolution 030823, Council adopted the monthly reporting variance for the 2023/2024 financial year of 10% or greater for each program area in the budget as a level that requires an explanation or report, with a minimum dollar variance of \$10,000.
5. Pursuant to the Shire’s Investment Policy, an investment report and investment register are to be provided to Council on a monthly basis, detailing the investment portfolio in terms of performance and counterparty percentage exposure of total portfolio.



**DISCUSSION / OFFICER COMMENTS**

**The Statement of Financial Activity**

6. The Statement of Financial Activity for September 2023 shows a closing funding surplus of \$10,130,952. The adopted budget for the year ended 30 June 2024 is premised on a zero year end closing funding position. Operating expenditure is \$1,014,198 less than the year-to-date budgeted amount. The main factors for this variance is the depreciation expense for all non-current fixed asset classes have not been calculated for this reporting period. Depreciation expense will be applied once the annual audit of the financial accounts for the year ended 30 June 2023 has been completed. There are also some variances in timing for undertaking contracted works when compared to the budget profile. (Refer to Materials & Contracts Expense).
7. A summary of the financial position for September 2023 is detailed in the table below:

	<b>Adopted Annual Budget</b>	<b>YTD Budget (a)</b>	<b>YTD Actual (b)</b>	<b>Var. \$ (b)-(a)</b>	<b>Var. % (b)-(a)/(a)</b>
	\$	\$	\$	\$	%
<b>Opening Funding Surplus / (Deficit)</b>	<b>1,882,014</b>	<b>1,882,014</b>	<b>1,883,689</b>	<b>1,675</b>	<b>0%</b>
<b>Revenue</b>					
Operating revenue	13,468,609	11,027,877	11,118,976	91,099	1%
Capital revenue, grants and contributions	7,743,453	853,751	853,603	-148	0%
	<b>21,212,062</b>	<b>11,881,628</b>	<b>11,972,579</b>	<b>90,951</b>	
<b>Expenditure</b>					
Operating Expenditure	-17,590,191	-4,203,080	-3,188,882	1,014,198	24%
Capital Expenditure	-10,109,504	-713,374	-551,623	161,751	-15%
	<b>-27,699,695</b>	<b>-4,916,454</b>	<b>-3,740,505</b>	<b>1,175,949</b>	
Funding balance adjustments	4,605,619	1,140,099	15,189	-1,124,910	-99%
<b>Closing Funding Surplus / (Deficit)</b>	<b>0</b>	<b>9,987,286</b>	<b>10,130,952</b>	<b>143,666</b>	<b>1.44%</b>

**Other Information**

8. There are two capital works projects included in the adopted budget related to waste management, being upgrades to the CDS Shed and other upgrades to the Waste Transfer Station Facility. After going through a competitive tendering process for the procurement of the works and services required to complete these works, two submissions were received.
9. Both submissions have come in above the budget expense estimate. A budget amendment is now requested to enable the works to proceed in line with the submission made by the preferred supplier.
10. The required budget amendments are as follows:
  - Increase expenditure for A/c 1021004 (Job 53006) by \$7,000 from \$15,000 to \$22,000

- Increase expenditure for A/c 1021154 (Job 53015) by \$20,000 from \$40,000 to \$60,000
- Increase the Transfer from the Waste Services Reserve by \$27,000 from \$55,000 to \$82,000

11. An Officer Recommendation is included as part of this report to facilitate the above request.

### **Investment Report**

12. Pursuant to the Shire's Investment Policy, an investment report and investment register are to be provided to Council on a monthly basis, detailing the investment portfolio in terms of performance and counterparty percentage exposure of total portfolio. The Investment Register is also to provide details of investment income earned against budget, whilst confirming compliance of the portfolio with legislative and policy limits.

As at 30 September 2023, total cash funds held (including trust funds) totals \$11,428,048 (Summary – Investment Register).

- Municipal Funds total \$6,780,738
- Shire Trust Funds total \$850
- Reserve Funds (restricted) invested, total \$4,646,460
- Municipal Funds (unrestricted) invested, total \$5,250,000

The official Reserve Bank of Australia's (RBA) cash rate was lifted by 0.25% from 3.85% to 4.10% at the Reserve Bank Board meeting held on 7 June 2023. No further adjustments to the official cash rate have occurred at the time of writing this report.

### **CONSULTATION AND EXTERNAL ADVICE**

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

### **STATUTORY / LEGAL IMPLICATIONS**

#### **Local Government (Financial Management) Regulations 1996**

14. Regulation 34 (1-5) of the Local Government (Financial Management) Regulations 1996, details the form and manner in which a local government is to prepare financial activity statements.

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

15. Section 6.14.

#### **The Trustees Act 1962**

16. Part III Investments.

#### **The Local Government (Financial Management) Regulations 1996**

17. Reg. 19, 28 and 49; and The Australian Accounting Standards, sets out the statutory conditions under which Council funds may be invested.

### **STRATEGIC / POLICY IMPLICATIONS**

18. Nil

**FINANCIAL IMPLICATIONS**

- 19. The Shire’s 2023/2024 Annual Budget provides a set of parameters that guides the Shire’s financial practices.
- 20. Any financial implications or trends are detailed within the context of this report.

**OTHER IMPLICATIONS**

**Environmental**

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

**Economic**

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

**Social**

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

**RISK MANAGEMENT**

- 24. A risk assessment has been undertaken per the Shire's Risk Management Governance Framework, and no risks have been identified in relation to the officer recommendation or the report.

**9.2.2 LIST OF PAYMENTS FOR THE PERIOD ENDING 30 SEPTEMBER 2023**

<b>File Ref:</b>	FIN.1
<b>Applicant / Proponent:</b>	Not applicable
<b>Subject Land / Locality:</b>	Not applicable
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	27 October 2023
<b>Author:</b>	Kelly Schroeter, Assistant Accountant (Acting)
<b>Authorising Officer:</b>	Jodi Masson, Manager Corporate Services (Acting)
<b>Attachments:</b>	September 2023 Monthly List of Payments Summary

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**IN BRIEF**

- The purpose of this report is to advise the Council of payments made during the period 1 September 2023 to 30 September 2023.

**VOTING REQUIREMENTS**

- 1. Simple majority.

<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>	ITEM 9.2.2
MOVED: CR CAMPBELL	SECONDED: CR ORMSBY
That with respect to the attached Schedule of Payments totalling \$1,538,030.56 for the month of September 2023, Council RECEIVE the following summary of accounts:	
<ul style="list-style-type: none"> <li>• Electronic Funds Transfers EFT 36402 to EFT 36625 - \$972,172.55</li> <li>• Municipal Fund Cheque payments – Nil</li> <li>• Internal Account Transfers (Payroll) - \$464,613.70</li> <li>• Direct Debit - \$7,773.38</li> <li>• Corporate Credit Card - \$2,792.18</li> <li>• Department of Transport Remittances - \$90,678.75</li> <li>• Loan Payments – Nil</li> </ul>	
CARRIED: 8/0	Res: 111123
TOTAL VOTES FOR: 8	
Cr Campbell, Cr Wiggins, Cr Youel, Cr Gibson, Cr Ormsby, Cr Carman, Cr Lewis and Cr Phillips.	
TOTAL VOTES AGAINST: 0	

**LOCATION**

2. Not applicable.

**BACKGROUND**

3. Nil

**DISCUSSION / OFFICER COMMENTS**

4. Nil

**CONSULTATION AND EXTERNAL ADVICE**

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

**STATUTORY / LEGAL IMPLICATIONS**

6. Local Government (Financial Management) Regulation 13 relates.

**STRATEGIC / POLICY IMPLICATIONS**

7. Nil

**FINANCIAL IMPLICATIONS**

8. There are no known significant trends or issues to be reported.

**OTHER IMPLICATIONS**

**Environmental**

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

**Economic**

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

**Social**

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

**RISK MANAGEMENT**

12. A risk assessment has been undertaken per the Shire's Risk Management Governance Framework, and no risks have been identified in relation to the officer recommendation or the report.

**9.3 INFRASTRUCTURE AND ASSETS**

**9.3.1 WALGA ROADWISE COUNCIL**

<b>File Ref:</b>	ORG.120
<b>Applicant / Proponent:</b>	Not Applicable
<b>Subject Land / Locality:</b>	Not Applicable
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	26 October 2023
<b>Author:</b>	Robert Westerberg, Director Infrastructure & Assets
<b>Authorising Officer:</b>	David King, Chief Executive Officer
<b>Attachments:</b>	9.3.1 – Invitation to become a RoadWise Council

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**IN BRIEF**

- The Shire of Denmark has been invited by WALGA to join other regional Councils in becoming a Roadwise Council.
- To be a Roadwise Council is to demonstrate leadership towards initiatives and actions to improve road safety outcomes for the community.
- It is recommended that Council accept the invitation.

**VOTING REQUIREMENTS**

1. Simple majority.

<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>	ITEM 9.3.1
MOVED: CR CARMAN	SECONDED: CR CAMPBELL
That Council:	
1. ACCEPT the invitation from WALGA to register the Shire of Denmark as a RoadWise Council;	
2. REQUEST the CEO to formally thank WALGA for the opportunity.	
CARRIED: 8/0	Res: 121123
TOTAL VOTES FOR: 8	
Cr Campbell, Cr Wiggins, Cr Youel, Cr Gibson, Cr Ormsby, Cr Carman, Cr Lewis and Cr Phillips.	
TOTAL VOTES AGAINST: 0	

### BACKGROUND

2. Correspondence has been received from WALGA inviting the Shire of Denmark to sign up to a new initiative and register as a RoadWise Council.
3. The new RoadWise Councils Framework informs the approach WALGA's road safety team takes in supporting local governments in working towards delivering best practice road safety. The Framework takes into account the elements which determine the level of safety of the road transport system within the context of local governments.
4. To register, local governments can accept the invitation by providing a Council resolution or a written declaration of commitment to road safety and nominating at least two personnel (Officers and/or Elected Members) to be the primary point of contact for road safety matters.
5. The benefits for local governments that register as RoadWise Councils include:
  - use of the RoadWise logo,
  - priority access to WALGA's road safety services and products,
  - exclusive quarterly meetings and support from a Road Safety Advisor,
  - priority access to participate in WALGA's road safety policy development,
  - training, professional development forums and knowledge-sharing workshops offered by WALGA,
  - access to incentives and sponsored programs, and
  - participation in the new RoadWise Recognised initiative.
6. The RoadWise Recognised aspect of being a RoadWise Council provides formal recognition for, and enables benchmarking and monitoring of road safety management, actions and interventions. RoadWise Recognised will assist Local Governments with continuous improvement in road safety actions and outcomes through regular support, monitoring and sharing of information. Local governments are encouraged to remain registered RoadWise Councils to ensure they have access to specialist advice and assistance in managing road safety at a local level to the best of their capacity and capability.

**DISCUSSION / OFFICER COMMENTS**

7. The Shire of Denmark recognises that it invests significant resources in managing an extensive network of local roads and is well placed to influence road safety performance.
8. The RoadWise Recognised Program provides the opportunity for the Shire to improve road safety outcomes on the local road network through our role in building, maintaining and managing roads.

**CONSULTATION AND EXTERNAL ADVICE**

9. The Officer has considered the requirement for consultation and/or engagement with persons or organisations that may be unduly affected by the proposal and considered Council's Community Engagement Policy P040123 and the associated Framework and believes that no additional external/internal engagement or consultation is required.
10. There may be future consultation or external advice required with persons or organisations should the chosen actions from the group necessitate it.

**STATUTORY / LEGAL IMPLICATIONS**

11. Road authorities owe all road users a duty of care and must do what is reasonable to be aware of deficiencies in the road transport system, to assess and prioritise them, and have a system for remedying them.
12. Austroads (2021). Guide to Road Safety Part 1: Introduction and the Safe System. <https://austroads.com.au/publications/roadsafety/agrs01>.

**STRATEGIC / POLICY IMPLICATIONS****Strategic Community Plan**

13. Our Strategic Community Plan states "Local roads and stormwater drainage" as a key community priority.

**Corporate Business Plan**

14. The community priorities in the Corporate Business Plan include "Build and maintain local roads and stormwater drainage".

**FINANCIAL IMPLICATIONS**

15. There are no immediate financial implications, but there is the potential for future financial implications stemming from subsequent actions or organisational directions.
16. There are financial considerations associated with the allocation of officer time.

**OTHER IMPLICATIONS****Environmental**

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

**Economic**

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

**Social**

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

**RISK MANAGEMENT**

20. A risk assessment has been undertaken per the Shire's Risk Management Governance Framework, and no risks have been identified in relation to the officer recommendation or the report.

**9.4 GOVERNANCE**

**9.4.1 CONTINUED PROFESSIONAL DEVELOPMENT POLICY REVIEW**

<b>File Ref:</b>	ADMIN.2
<b>Applicant / Proponent:</b>	Not applicable
<b>Subject Land / Locality:</b>	Not applicable
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	29 September 2023
<b>Author:</b>	Claire Thompson, Governance Coordinator
<b>Authorising Officer:</b>	David King, Chief Executive Officer
<b>Attachments:</b>	9.4.1 - Continued Professional Development Policy

**IN BRIEF**

- Council is required to review the Continued Professional Development Policy following each local government election.

**VOTING REQUIREMENTS**

1. Simple majority.

<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>	<b>ITEM 9.4.1</b>
MOVED: CR ORMSBY	SECONDED: CR YOUEL
That Council APPROVE the Continued Professional Development Policy (Attachment 9.4.1) without change.	
CARRIED: 8/0	Res: 131123
TOTAL VOTES FOR: 8 Cr Campbell, Cr Wiggins, Cr Youel, Cr Gibson, Cr Ormsby, Cr Carman, Cr Lewis and Cr Phillips.	
TOTAL VOTES AGAINST: 0	

**LOCATION**

2. Not applicable.

**BACKGROUND**

3. The policy was last reviewed in December 2021.

**DISCUSSION / OFFICER COMMENTS**

4. The policy is working effectively, and Officers do not recommend any amendments.



**CONSULTATION AND EXTERNAL ADVICE**

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

**STATUTORY / LEGAL IMPLICATIONS**

**Local Government Act 1995**

6. Section 5.128(1) – local government must prepare and adopt a policy in relation to the continuing professional development of council members.
7. Section 5.128(5)(a) – After each ordinary election a local government must review its continuing professional development policy.

**STRATEGIC / POLICY IMPLICATIONS**

8. Nil

**FINANCIAL IMPLICATIONS**

9. Training expenses are accounted for in the 2023/24 Budget.

**OTHER IMPLICATIONS**

**Environmental**

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

**Economic**

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

**Social**

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

**RISK MANAGEMENT**

13. A risk assessment has been undertaken per the Shire's Risk Management Governance Framework, and no risks have been identified in relation to the officer recommendation or the report.

**COUNCIL RESOLUTION**

MOVED: CR CAMPBELL

SECONDED: CR LEWIS

That Standing Orders be suspended to allow Councillors to freely discuss their nomination preferences for Item 9.4.2.

CARRIED: 8/0

Res: 141123

TOTAL VOTES FOR: 8

Cr Campbell, Cr Wiggins, Cr Youel, Cr Gibson, Cr Ormsby, Cr Carman, Cr Lewis and Cr Phillips.

TOTAL VOTES AGAINST: 0

<b>COUNCIL RESOLUTION</b>	
MOVED: CR WIGGINS	SECONDED: CR PHILLIPS
That Standing Orders be resumed.	
CARRIED: 8/0	Res: 151123
TOTAL VOTES FOR: 8 Cr Campbell, Cr Wiggins, Cr Youel, Cr Gibson, Cr Ormsby, Cr Carman, Cr Lewis and Cr Phillips.	
TOTAL VOTES AGAINST: 0	

**9.4.2 APPOINTMENT OF COUNCILLOR DELEGATES TO STATUTORY COMMITTEES AND EXTERNAL ORGANISATIONS**

<b>File Ref:</b>	ADMIN.12, COMM.LEMC, GOV.21.A, ORG.94, GOV.71, GOV.32 and COMM.BCC
<b>Applicant / Proponent:</b>	Not applicable
<b>Subject Land / Locality:</b>	Not applicable
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	8 November 2023
<b>Author:</b>	Claire Thompson, Governance Coordinator
<b>Authorising Officer:</b>	David King, Chief Executive Officer
	9.4.2a - Audit Advisory Committee Charter
	9.4.2b - Code of Conduct Behaviour Complaints Management Policy
	9.4.2c - Behaviour Complaints Committee Charter
	9.4.2d - Local Emergency Management Committee Charter
<b>Attachments:</b>	9.4.2e - South Coast Alliance Inc. Membership Policy
	9.4.2f - Great Southern Regional Road Group - Reference Information for Elected Members on Regional Road Groups and Map
	9.4.2g – WALGA Zone Elected Member Prospectus

**IN BRIEF**

- Council needs to appoint delegates to the following statutory or required committees, and essential external groups/panel.
  - Audit Advisory Committee
  - Behaviour Complaints Committee
  - Local Emergency Management Committee
  - Great Southern Regional Road Group
  - South Coast Alliance Inc.
  - Joint Development Assessment Panel
  - WA Local Government Association (WALGA) – Great Southern Zone

**VOTING REQUIREMENTS**

1. Simple or Absolute majority, as shown below each recommendation.

**RECOMMENDATIONS**

<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>	<b>ITEM 9.4.2a</b>
That with respect to the Audit Advisory Committee, Council:	
<ol style="list-style-type: none"> <li>1. APPROVE the Charter, as per Attachment 9.4.2a; and</li> <li>2. APPOINT Cr Gibson, Cr Carman, Cr Campbell, Cr Wiggins, Cr Devenport and Cr Ormsby as members.</li> </ol>	
CARRIED BY AN ABSOLUTE MAJORITY EN BLOC BY RESOLUTION NO. 161123	

*\* Absolute majority required.*

<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>	<b>ITEM 9.4.2b</b>
That with respect to the Behaviour Management Committee, Council:	
<ol style="list-style-type: none"> <li>1. APPROVE the Charter, as per Attachment 9.4.2c; and</li> <li>2. APPOINT Cr Youel, Cr Phillips, Cr Wiggins, Cr Ormsby and Cr Devenport as members.</li> </ol>	
CARRIED BY AN ABSOLUTE MAJORITY EN BLOC BY RESOLUTION NO. 161123	

*\* Absolute majority required.*

<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>	<b>ITEM 9.4.2c</b>
That with respect to the Local Emergency Management Committee, Council:	
<ol style="list-style-type: none"> <li>1. APPROVE the Charter, as per Attachment 9.4.2d;</li> <li>2. NOTE that the Shire President is an automatic member according to the Charter;</li> <li>3. APPOINT the Shire President as Chair of the Committee; and</li> <li>4. APPOINT Cr Campbell as the additional councillor member.</li> </ol>	
CARRIED EN BLOC BY RESOLUTION NO. 161123	

*\* Simple majority required.*

<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>	<b>ITEM 9.4.2d</b>
That with respect to the South Coast Alliance Inc Committee, Council APPOINT Cr Campbell as the additional councillor member.	
CARRIED EN BLOC BY RESOLUTION NO. 161123	

*\* Simple majority required.*

<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>	<b>ITEM 9.4.2e</b>
That with respect to the Joint Development Assessment Panel, Council:	
<ol style="list-style-type: none"> <li>1. NOTE that the current members appointments are valid until 26 January 2024; and</li> <li>2. Upon expiry, NOMINATE Cr Carman and Cr Devenport as the members and Cr Youel and Cr Phillips as the alternate members.</li> </ol>	
CARRIED EN BLOC BY RESOLUTION NO. 161123	

*\* Simple majority required.*

**COUNCIL RESOLUTION & OFFICER RECOMMENDATION** ITEM 9.4.2f  
 That Council APPOINT Cr Wiggins to the Great Southern Regional Road Group.  
 CARRIED EN BLOC BY RESOLUTION NO. 161123

*\* Simple majority required.*

OFFICER RECOMMENDATION ITEM 9.4.2g  
 That with respect to the WALGA Great Southern Zone, Council APPOINT Cr \_\_\_\_\_  
 and Cr \_\_\_\_\_.

*\* Simple majority required.*

Since the Agenda publication, the WALGA Great Southern Zone Executive Officer has requested that all local government members appoint two members and two deputy members. The following Amended Officer Recommendation accommodates the request.

**COUNCIL RESOLUTION & AMENDED OFFICER RECOMMENDATION** ITEM 9.4.2g  
 That with respect to the WALGA Great Southern Zone, Council APPOINT:  
 1. Cr Youel and Cr Ormsby as members; and  
 2. Cr Carman and Cr Phillips as deputy members.  
 CARRIED EN BLOC BY RESOLUTION NO. 161123

**COUNCIL RESOLUTION**  
 MOVED: CR ORMSBY SECONDED: CR CARMAN  
 That Items 9.4.2a to 9.4.2g (inclusive) be carried en bloc.  
 CARRIED BY AN ABSOLUTE MAJORITY: 8/0 Res: 161123  
 TOTAL VOTES FOR: 8  
 Cr Campbell, Cr Wiggins, Cr Youel, Cr Gibson, Cr Ormsby, Cr Carman, Cr Lewis and Cr Phillips.  
 TOTAL VOTES AGAINST: 0

**LOCATION**

1. Not applicable.

**BACKGROUND**

2. Following the local government election, it is best practice to review council committees and consider council delegates on committees and external entities.
3. This report considers the membership of Statutory Committees and essential external organisational groups.
4. There are a number of other committees, working groups and representation on external groups. These will be considered at a future date.

## **DISCUSSION / OFFICER COMMENTS**

### **Audit Advisory Committee**

5. The Charter for the Audit Advisory Committee is attached (see Attachment 9.4.2a). This includes the Terms of Reference.

This committee has delegated authority as outlined in part 9 of the Charter, is required to be open to the public and hold a public question time.

Membership is comprised of 6 councillors.

The committee meets as required, generally around 3 – 4 times a year.

### **Behaviour Complaints Committee**

6. Established by Council in 2021 to deal with behaviour complaints made under Division 3 of the (then) newly adopted Code of Conduct for Council Members, Committee Members and Candidates. A copy of the Charter is attached (see Attachment 9.4.2c).

The committee has delegated authority as outlined in part 9 of the Charter, is required to be open to the public and hold a public question time. Notwithstanding that the nature of any items to be dealt with would result in the matters being deliberated behind closed doors.

Membership is comprised of 5 councillors.

To date the committee has never met.

### **Local Emergency Management Committee**

7. Required to be established under the Emergency Services Act 2005. A copy of the Charter is attached (see Attachment 9.4.2d).

Membership is detailed in the Charter and includes 2 councillors. One of whom is to be the Shire President and the Chair.

The committee meets quarterly, and as required.

### **South Coast Alliance Inc.**

8. The South Coast Alliance (SCA) is an incorporated body consisting of the councillors of the Shire of Denmark, Shire of Plantagenet, Shire of Jerramungup and the City of Albany. The Committee is made up of 12 members, 3 from each local government.

The SCA's focus over the last 2 years has been on climate change projects across the region. However, a conversation of purpose and initiatives needs to be had in the near year.

In accordance with the SCA's Membership Policy (see Attachment 9.4.2e), the Shire Presidents / Mayor and Deputy Shire Presidents / Deputy Mayor are automatically board members. Council needs to appoint an additional member.

The SCA Annual General Meeting is scheduled for the 8 December 2023.

### **Joint Development Assessment Panel - Southern (JDAP)**

9. Development Assessment Panels are established by legislation and are intended to enhance planning expertise in decision making by improving the balance between technical advice and local knowledge. A map showing the Southern JDAP is attached (see Attachment 9.4.2e).

For a district outside of the City of Perth, development applications for a prescribed class valued at \$10 million or more must be referred to the JDAP. There are also optional development applications of a prescribed class with a value between \$2 million and \$10 million, that can be referred to the JDAP.

As indicated in paragraph 13, local governments are required to nominate 2 members and 2 alternate members to the Joint Development Assessment Panel.

Members are nominated by the Council and appointed by the Minister, and must undergo some training. Current members to 26 January 2024 are Cr Gibson and Cr Phillips. Alternate members are Cr Carman and Cr Devenport.

Council is requested to nominate its members for post January 2024.

### **Great Southern Regional Road Group (GSRRG)**

10. Regional Road Groups are responsible for

- Assessing road-funding submissions from its member local governments.
- The annual distribution of funds to local government roads.
- Monitoring and reporting on the effectiveness of applying funds to local government roads in its regions.

The Terms of Reference for Regional Road Groups require Council representation from each local government. See Attachment 9.4.2f, *Great Southern Regional Road Group - Reference Information for Elected Members on Regional Road Groups*.

The next GSRRG meeting is scheduled for Monday, 20 November 2023 at the City of Albany.

### **Western Australian Local Government Association (WALGA) Great Southern Zone**

11. WALGA Zones are responsible for bringing relevant local and regional issues to the State Council decision making table and are a key player in developing policy and legislative initiatives for Western Australian local government.

See the Elected Member Prospectus – Becoming a Zone Delegate or State Councillor (Attachment 9.4.2g).

Member local governments have the opportunity to provide 2 councillors as voting members.

The next WALGA Great Southern Zone meeting is Friday, 24 November 2023 in the Shire of Broomehill-Tambellup.

### **CONSULTATION AND EXTERNAL ADVICE**

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

### **STATUTORY / LEGAL IMPLICATIONS**

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

13. Section 5.8 – local government may establish committees of 3 or more persons to assist the council and to exercise the powers and discharge the duties of the local government that can be delegated to committees.

Section 7.1A – local government is to establish an audit committee of 3 or more persons to exercise the powers and discharge the duties conferred on it. At least 3 of the members, and the majority of members, are to be councillors.

Section 7.1B – the only powers and duties a local government can delegate to an audit committee are those under Part 7 of the Act.

**Local Government (Model Code of Conduct) Regulations 2021**

14. Regulation 15(2) – local government may determine procedure for dealing with complaints. Council have adopted a Code of Conduct Behaviour Complaints Management Policy (see Attachment 9.4.2b).

**Emergency Management Act 2005**

15. Section 38(1) – local government is to establish one or more local emergency management committees for the local government district.

Section 39 – determines the functions of a local emergency management committee.

**Planning & Development (Development Assessment Panels) Regulations 2011**

16. Section 26(3) and 28 – local governments to nominate two (2) delegates as members and two (2) delegates as alternate members on the Joint Development Assessment Panel. The current members are Cr Gibson and Cr Phillips, their term of appointment ends on 26 January 2024.

**STRATEGIC / POLICY IMPLICATIONS**

17. Code of Conduct for Council Members, Committee Members and Candidates relates.
18. Code of Conduct Behaviour Complaints Management Policy relates (see Attachment 9.4.2b).

**FINANCIAL IMPLICATIONS**

19. Any costs incurred by councillors in attending meetings can be accommodated in the 2023/2024 Budget.

**OTHER IMPLICATIONS****Environmental**

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

**Economic**

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

**Social**

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

**RISK MANAGEMENT**

23. A risk assessment has been undertaken per the Shire's Risk Management Governance Framework, and no risks have been identified in relation to the officer recommendation or the report.

**9.4.3 REVIEW OF DELEGATIONS**

<b>File Ref:</b>	ADMIN.9
<b>Applicant / Proponent:</b>	Not applicable
<b>Subject Land / Locality:</b>	Not applicable
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	9 November 2023
<b>Author:</b>	Claire Thompson, Governance Coordinator
<b>Authorising Officer:</b>	David King, Chief Executive Officer
<b>Attachments:</b>	Delegations Register

**IN BRIEF**

- Council is required to review its delegations annually.
- Council is also requested to review 2 authorisations.

**VOTING REQUIREMENTS**

1. Simple majority.

<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>	<b>ITEM 9.4.3</b>
MOVED: CR PHILLIPS	SECONDED: CR CAMPBELL
That Council:	
1. APPROVE the delegations contained in the Delegations Register (Attachment 9.4.3) subject to the following amendments:	
a) Remove clause 5.2.4 from Delegation No. 1.4.7 – Health Local Law;	
b) Remove Bush Fire Control Officers from Delegation 3.1.7 – Prosecution of Offences, Issuing of Infringements and Withdrawals.	
2. AUTHORISE the Governance Coordinator to be the Complaints Officer for the purposes of regulation 11(3) of the Local Government (Model Code of Conduct) Regulations 2021.	
CARRIED: 8/0	Res: 171123
TOTAL VOTES FOR: 8	
Cr Campbell, Cr Wiggins, Cr Youel, Cr Gibson, Cr Ormsby, Cr Carman, Cr Lewis and Cr Phillips.	
TOTAL VOTES AGAINST: 0	

**LOCATION**

2. Not applicable.

**BACKGROUND**

3. Nil

**DISCUSSION / OFFICER COMMENTS**

4. Officers recommend the following minor changes.



No.	Title	Recommended Change
1.4.7	Health Local Law	Remove clause 5.2.4. The keeping of more than 2 cats is now covered in the Cats Local Law (1.4.11).
3.1.7	Prosecution of Offences, Issuing of Infringements and Withdrawals	Remove Bush Fire Control Officer.  There is a requirement that any person who can issue an infringement must also be on the Department of Justice’s Fines Enforcement Register. Bush Fire Control Officers are not issued with infringement books and prosecution generally requires expenditure of Shire funds.  Officers recommend that this delegation should be limited to Shire Officers only.
N/A	N/A	Change ‘Manager Sustainable Development’ to ‘Manager Development Services’.  Change ‘Director Corporate and Community Services’ to ‘Executive Manager Corporate Services’.  These changes relate to sub-delegations only and will be made administratively.

5. Council have authorised officers for the following.

- Certain provisions about land, Local Government Act 1995. The authorised officer is the Chief Executive Officer. No change is recommended.
- Complaints Officer, Local Government (Model Code of Conduct) Regulations 2021. The authorised officer was the Director Corporate & Community Services. Recommending that this be amended to the Governance Coordinator. The Governance Coordinator is also the Complaints Officer for the purposes of section 5.120 of the Local Government Act 1995.

**CONSULTATION AND EXTERNAL ADVICE**

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

**STATUTORY / LEGAL IMPLICATIONS**

7. Each delegation within the register refers to the relevant statute that provide the power or function, and authority to delegate such powers or functions, where applicable.

**Local Government Act 1995**

Section 5.46(2) – delegations must be reviewed at least once every financial year.

Part 3, Division 3, Subdivision 2 (Certain provisions about land) – the powers of this Subdivision can only be exercised on behalf of the local government by a person expressly authorised by it to exercise those powers.

**Local Government (Model Code of Conduct) Regulations 2021**

Regulation 11(3) – a local government must, in writing, authorise 1 or more persons to receive complaints and withdrawals of complaints.

**STRATEGIC / POLICY IMPLICATIONS**

8. Nil

**FINANCIAL IMPLICATIONS**

9. Nil

**OTHER IMPLICATIONS**

**Environmental**

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

**Economic**

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

**Social**

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

**RISK MANAGEMENT**

13. A risk assessment has been undertaken per the Shire's Risk Management Governance Framework, and no risks have been identified in relation to the officer recommendation or the report.

**9.4.4 DENMARK MACHINERY RESTORATION GROUP INC. LEASE**

<b>File Ref:</b>	LEA.2
<b>Applicant / Proponent:</b>	Denmark Machinery Restoration Group Inc.
<b>Subject Land / Locality:</b>	Part of Lot 952 on Deposited Plan 39348 (No. 2c Inlet Drive, Denmark)
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	10 November 2023
<b>Author:</b>	Claire Thompson, Governance Coordinator
<b>Authorising Officer:</b>	David King, Chief Executive Officer
<b>Attachments:</b>	9.4.4a - Information Brochure 9.4.4b - Denmark Historical Railway Station Precinct Concept Plan 9.4.4c - Draft Lease

**IN BRIEF**

- Council is requested to consider the draft lease between the Shire of Denmark and the Denmark Machinery Restoration Group Inc (DMRG).

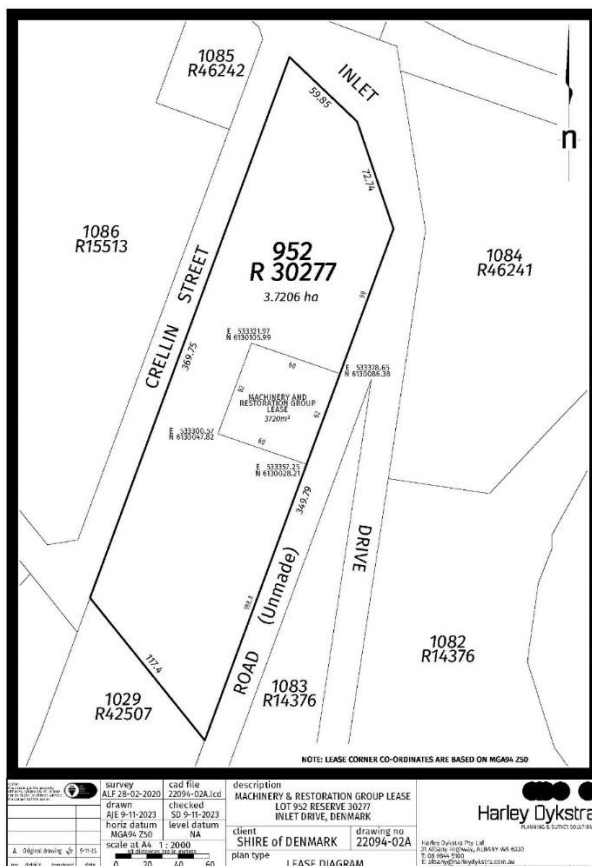
**VOTING REQUIREMENTS**

14. Simple majority.

<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>	ITEM 9.4.4
MOVED: CR PHILLIPS	SECONDED: CR LEWIS
That Council:	
<ol style="list-style-type: none"> <li>1. APPROVE the draft lease with the Denmark Machinery Restoration Group Inc., as per Attachment 9.4.4; and</li> <li>2. AUTHORISE the Shire President and the Chief Executive Officer to execute the lease, subject to obtaining consent from the Minister for Lands.</li> </ol>	
CARRIED: 6/2	Res: 181123
TOTAL VOTES FOR: 6	
Cr Wiggins, Cr Youel, Cr Gibson, Cr Devenport, Cr Carman, Cr Lewis and Cr Phillips.	
TOTAL VOTES AGAINST: 2	
Cr Campbell and Cr Ormsby.	

**LOCATION**

15. Part of Lot 952 on Deposited Plan 39348 (No. 2c Inlet Drive, Denmark). Reserve No. 30277. See surveyed diagram below.
16. The Reserve’s purpose is Historical Site – Old Well, Civic Purposes and Recreation, is managed by the Shire of Denmark with a power to lease for up to 21 years.



**BACKGROUND**

17. The DMRG were established in 2006, have held a lease for the site with the Shire since 2010 and have approximately 40 members. Attached is a brochure providing some further information about the group. (see Attachment 9.4.4a).
18. At its meeting held on 15 August 2023 Council requested the Chief Executive Officer to negotiate a 21 years, peppercorn lease with the DMRG.

**DISCUSSION / OFFICER COMMENTS**

19. The draft lease is based on the Shire's standard community group lease, with the exception of the removal of the lessor's right to terminate by giving 6 months notice, notwithstanding that the lessee is not in default or the lease term hasn't expired.
20. The DMRG requested the change to provide them with comfort of security of tenure, particularly given the adjacent lessee's (Kwoorabup Nature School) recent expansion with the site.

**CONSULTATION AND EXTERNAL ADVICE**

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

**STATUTORY / LEGAL IMPLICATIONS**

22. LOCAL GOVERNMENT ACT 1995

Section 3.58 – a local government may dispose of property, including to lease.

23. LOCAL GOVERNMENT (FUNCTIONS & GENERAL) REGULATIONS 1996

Regulation 30(2)(b) – leasing of land to a body whose objects are charitable, benevolent, recreational, sporting or other like nature, and the members of which are not entitled to receive any pecuniary profit from the transaction, are exempt from disposal provisions under s 3.58.

24. LAND ADMINISTRATION ACT 1997

Section 18 – requires that Ministerial Approval be given for any transaction involving Crown land.

**STRATEGIC / POLICY IMPLICATIONS**

25. Council's *Leasing of Land and/or Buildings to Community Groups Policy* relates.

*With respect to community groups exclusively occupying, or seeking to exclusively occupy, Council property or buildings;*

- a. *There be a signed lease based on Council's standard 'not for profit' lease prior to occupation or upon renewal;*
- b. *Council desires lessees to be incorporated (with the exception of Volunteer Bush Fire brigades which are covered under the Bush Fires Act);*
- c. *Contribution by Council towards legal costs (if required) by Council 100%;*

- d. *Have differing rentals discounted to market valuation depending upon the following factors;*
    - i. *To what degree the property is utilised for charitable, not for profit or sporting purposes;*
    - ii. *The ability of the lessee to derive income from use of the property including sub-leases, rental hire and the presence of a liquor license;*
    - iii. *The strategic value of the land in the short term to Council;*
    - iv. *To what degree if any that the use is competing with commercial enterprise;*
  - e. *Where the applied rental is lower than a valuation or real estate rental appraisal, Council indicate that contra difference in its annual budget, for that property;*
  - f. *Offer local authority rate exemption, rebate or donation (rather than exemption contra);*
  - g. *Offer Council insurance of the buildings and Council owned property / contents without recoup of the annual premium and to encourage repairs and reinstatement through insurance claims, Council will meet all bar the first \$500 of any insurance excess on claims;*
  - h. *All outgoings and consumable costs to be met by the lessee including but not limited to water, sewer, gas, telephone, ESL, refuse charges, etc;*
  - i. *Lessees to meet all ongoing internal and external building and grounds maintenance other than structural building repairs;*
  - j. *Leases require endorsement of Council prior to signing;*
  - k. *Have differing tenure and renewal rights and terms depending upon the strategic future requirements for that land and or building(s) but based on a maximum of 21 years including any right of renewal (subject to the prevailing management order if applicable);*
  - l. *The use of the property is consistent with the zoning and/or management order and power to lease exists (if required).*
  - m. *Reflecting the non 'exclusive club' usage and fact that they perform a valuable Council service for wide community benefit Council annually (subject to annual budget deliberation) contributes to the maintenance of the following leased Halls;*
    - i. *Parryville Hall \$2,000;*
    - ii. *Tingledale Hall \$2,000;*
    - iii. *Scotsdale Hall \$2,000 (nb: Hall is owned by Scotsdale Progress Association on Association vested land);*
    - iv. *Kentdale Hall \$2,000;*
    - v. *RSL Hall \$3,000;*
    - vi. *Museum Building maintenance is 100% Council responsibility;*
    - vii. *Nornalup Hall \$2,000;*
    - viii. *Morgan Richards Community Centre \$2,000; and*
    - ix. *Peaceful Bay Hall (& Les Carpenter Shed) \$2,000.*
  - n. *Council's Principal Building Surveyor at least on an annual basis inspect all leased buildings and land to ascertain their state of maintenance pursuant to the lease and priority for future and long term maintenance in conjunction with the lessee.*
  - o. *The definition of 'exclusive occupation' does not include reference to yearly licenses to occupy storage space within a building such as at the Denmark Recreation Centre.*
26. While the Concept Plan for the site is due for review, the lease and use are consistent with the current adopted Concept Plan (see Attachment 9.4.4c).

### **FINANCIAL IMPLICATIONS**

27. In accordance with Council's resolution in August 2023, the consideration for the draft lease is \$1.00 (peppercorn).

**OTHER IMPLICATIONS****Environmental**

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

**Economic**

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

**Social**

30. The DMRG are a local community group with active members who collaborate to achieve the organisation's objectives which have many social elements.

31. EXTRACT FROM THE DMRG CONSTITUTION

The objects of the association are to assist in preserving a historical record of machines and technology used in earlier times through:

- i. The collection, preservation, and restoration of all types of devices, machinery, and equipment of a mechanical nature within the Shire of Denmark and beyond.
- ii. Assisting and encouraging members with restoration projects and the sharing of knowledge, skills, and workshop facilities.
- iii. Holding regular meetings of members to discuss and view members progress and achievements on restoration projects.
- iv. Holding regular public displays of both member's and visitor's machinery and equipment.
- v. Encouraging youth to take an interest in machinery and equipment from a past era.
- vi. Providing information/training sessions to school groups and youth groups, including young people from disadvantaged backgrounds, with a view to passing on practical skills and knowledge associated with machinery operation and restoration.

**RISK MANAGEMENT**

32. A risk assessment has been undertaken per the Shire's Risk Management Governance Framework, and no risks have been identified in relation to the officer recommendation or the report.

**9.5 COMMUNITY SERVICES**

Nil

**10. COMMITTEE REPORTS AND RECOMMENDATIONS**

Nil

**11. MATTERS BEHIND CLOSED DOORS**

*The Chief Executive Officer, David King, declared a financial interest and made the following statement, “I have a performance-based contract and any Key Performance Indicators effect potential remuneration”.*

*6.08pm - David left the room and did not participate in discussion or vote on the matter.*

*6.08pm – The Director Infrastructure & Assets and the Acting Manager Corporate Services left the room. The Acting Manager Corporate Services did not return.*

<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>	<b>ITEM 11</b>
MOVED: CR WIGGINS	SECONDED: CR PHILLIPS
That in accordance with section 5.23(a) of the Local Government Act 1995, Council move behind closed doors to consider Item 11.1 which relates to an employee.	
CARRIED: 8/0	Res: 191123
TOTAL VOTES FOR: 8 Cr Campbell, Cr Wiggins, Cr Youel, Cr Gibson, Cr Ormsby, Cr Carman, Cr Lewis and Cr Phillips.	
TOTAL VOTES AGAINST: 0	

**11.1 CHIEF EXECUTIVE OFFICER - ADDITIONAL PERFORMANCE CRITERIA**

<b>File Ref:</b>	Personnel File
<b>Applicant / Proponent:</b>	Not Applicable
<b>Subject Land / Locality:</b>	Not applicable
<b>Disclosure of Officer Interest:</b>	David King, Chief Executive Officer – Financial Interest
<b>Date:</b>	8 November 2023
<b>Author:</b>	David King, Chief Executive Officer
<b>Authorising Officer:</b>	David King, Chief Executive Officer
<b>Attachments:</b>	11.1a - CEO Contract of Employment ( <b>confidential</b> ) 11.1b - Standards for CEO Recruitment, Performance and Termination Policy

This report was confidential and was provided to Councillors under separate cover.

**COUNCIL RESOLUTION & OFFICER RECOMMENDATION** ITEM 11.1  
 MOVED: CR LEWIS SECONDED: CR YOUEL

That Council:

1. In accordance with the Standards for CEO Recruitment, Performance and Termination Policy 16(1)(b), APPROVE the additional Performance Criteria detailed in within the report; and
2. AUTHORISE the Shire President to execute the contractual documents.

CARRIED BY AN ABSOLUTE MAJORITY: 8/0 Res: 201123

TOTAL VOTES FOR: 8  
 Cr Campbell, Cr Wiggins, Cr Youel, Cr Gibson, Cr Ormsby, Cr Carman, Cr Lewis and Cr Phillips.

TOTAL VOTES AGAINST: 0

**COUNCIL RESOLUTION** SECONDED: CR YOUEL  
 MOVED: CR LEWIS

That the meeting proceeds in public.

CARRIED: 8/0 Res: 211123

TOTAL VOTES FOR: 8  
 Cr Campbell, Cr Wiggins, Cr Youel, Cr Gibson, Cr Ormsby, Cr Carman, Cr Lewis and Cr Phillips.

TOTAL VOTES AGAINST: 0

**12. NEW BUSINESS OF AN URGENT NATURE**

**COUNCIL RESOLUTION** SECONDED: CR CARMAN  
 MOVED: CR WIGGINS

That Council accept an Item of New Business to consider awarding the tender for the Ocean Beach seawall, the urgency being in relation to funding timelines.

CARRIED: 8/0 Res: 221123

TOTAL VOTES FOR: 8  
 Cr Campbell, Cr Wiggins, Cr Youel, Cr Gibson, Cr Ormsby, Cr Carman, Cr Lewis and Cr Phillips.

TOTAL VOTES AGAINST: 0

6.12pm – The Chief Executive Officer and the Director Infrastructure & Assets returned to the room.



*The Chief Executive Officer declared that he is a member of the Surf Club and as a consequence there may be a perception that her impartiality on this matter may be affected.*

**12.1 CONTRACT AWARD – DEMOLITION OF EXISTING AND CONSTRUCTION OF NEW SEAWALL AT OCEAN BEACH (DENMARK WA)**

<b>File Ref:</b>	PROJ.ENG.64.23_24
<b>Applicant / Proponent:</b>	Not applicable
<b>Subject Land / Locality:</b>	Ocean Beach, Denmark WA
<b>Disclosure of Officer Interest:</b>	Nil
<b>Date:</b>	20 November 2023
<b>Author:</b>	Damian Schwarzbach, Manager Sustainable Projects
<b>Authorising Officer:</b>	Rob Westerberg, Director of Infrastructure and Assets
<b>Attachments:</b>	Confidential Briefing Note – Ocean Beach Seawall Project Evaluation.

**IN BRIEF**

- The Shire of Denmark has sought Tenders from suitably qualified and experienced Contractors to deliver the replacement of the timber retaining seawall at Ocean Beach.
- The submitted tenders have been evaluated by Shire Officers, a specialist coastal engineer consultant and a coastal specialist from the Department of Transport.
- A recommendation to approve a budget amendment of \$310,000 to facilitate the construction of Ocean Beach Seawall.
- A recommendation to award a contract to Neo Civil Pty. Ltd. for the Ocean Beach Seawall Project.

**RECOMMENDATION**

Simple Majority

<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>	ITEM 12.1a
MOVED: CR WIGGINS	SECONDED: CR ORMSBY
That Council APPROVE the award of the tender for the ‘Demolition of existing and Construction of new Seawall at Ocean Beach (Denmark WA)’ to Neo Civil Pty. Ltd.	
CARRIED: 8/0	Res: 231123
TOTAL VOTES FOR: 8	
Cr Campbell, Cr Wiggins, Cr Youel, Cr Gibson, Cr Ormsby, Cr Carman, Cr Lewis and Cr Phillips.	
TOTAL VOTES AGAINST: 0	

Absolute Majority

<b>COUNCIL RESOLUTION &amp; OFFICER RECOMMENDATION</b>	ITEM 12.1b
MOVED: CR LEWIS	SECONDED: CR ORMSBY
That Council:	
1. APPROVE an increase income estimate for A/c 1228443 (Storm damage Recoup) by \$460,000.	
2. APPROVE an increase expenditure provision for A/c 1121154 (Job 60130) by \$310,000.	
3. APPROVE an increase transfer to Infrastructure Reserve by \$150,000 to maintain a balanced budget.	
CARRIED BY AN ABSOLUTE MAJORITY: 8/0	Res: 241123
TOTAL VOTES FOR: 8	
Cr Campbell, Cr Wiggins, Cr Youel, Cr Gibson, Cr Ormsby, Cr Carman, Cr Lewis and Cr Phillips.	
TOTAL VOTES AGAINST: 0	

**LOCATION**

1. Ocean Beach, Denmark WA

**BACKGROUND**

2. Ocean Beach is the main, popular beach with locals and is a key tourist node within the Shire of Denmark.
3. The site is partially protected from coastal erosion by a timber seawall in poor condition with a five to ten-year nominal life expectancy.
4. The site provides public realm and infrastructure (Denmark Surf Life Saving Clubhouse, Patrol Building & Public Amenities) that was threatened during winter 2021 due to severe coastal erosion.
5. A Coastal Hazard Risk Management and Adaptation Plan (CHRMAP) showed that the Ocean Beach Precinct was within the 10-year hazard line due to its exposure to coastal erosion processes.
6. This seawall construction seeks to secure the public realm and the nearby building assets. The construction of this seawall can be considered as phase 1 of the Ocean Beach precinct redevelopment.
7. The Department of Transport (DoT) identified Ocean Beach for Hotspot Coastal Adaptation and Protection (HCAP) funding, with the Shire securing \$1,140,000 from the DoT.
8. With funding secured, Officers progress research, detailed design and specification development with the assistance of a specialist coastal engineer and representatives from the DoT.
9. Using the documentation developed, Officers released a tender for seawall construction. This tender closed on the 8 November 2023.

## **DISCUSSION / OFFICER COMMENTS**

### **Tender Assessment**

10. The confidential attachment outlines the evaluation process. NEO Civil Pty. Ltd is the preferred contractor.
11. Considering contingency, the required budget for the sea wall works is \$1,450,000.
12. The financial section of this report outlines the budget implications. In summary, awarding the contract to the preferred tenderer will result in a budget shortfall of \$310,000 for this Ocean Beach redevelopment project component.
13. Officers have been advised from within the respective construction industry that the scope of work tendered by the Shire of Denmark has come at a quiet time for most contractors. This fortunate timing has resulted in significant interest in the request for tender and competitive submissions from premium contractors.
14. This phase of redevelopment is the first step. The new seawall secures the public realm and provides long-term structural stability for refurbishing the existing surf club under future building contracts.
15. The funding offered by the Department of Transport must be exhausted by 30 June 2024. An award of the construction contract at our November OCM will allow construction to be completed by this date.
16. The proposed construction window will have the best chance of aligning with the environmental factors, mainly the Wilson Inlet closing, to create more beach space in front of the seawall, improving constructability.
17. The quality of the submissions was high.

### **Options Assessment**

18. Officers have considered several options to reduce the immediate budget impact:
  - Not award the contract
  - Re-scope the works
  - Award the contract for the full scope

#### Not award the contract.

19. Given the recent construction cost escalation, it is highly likely that any delay to the reconstruction of the seawall will result in an increase in the costs.
20. This option results in the loss of the DoT HCAP funding of \$1,140,000 as the project would not be able to be completed on time.
21. It is highly unlikely that the Shire will be able to secure future funding for the seawall that would result in a future Shire contribution of less than the estimated \$310,000 if the contract was awarded in November.
22. This option would see the current seawall exist until the end of its useful life, expected to be approximately five-ten years, depending on storm activity. The existing seawall is

deteriorating, leading to high maintenance costs. Fundamental issues such as the absence of geofabric for material retention necessitate ongoing labour and material applications.

23. In the short term, this option limits the development of the public realm areas. In the medium term, once the seawall is no longer effective, the presentation of the public realm and beach accessibility will be altered significantly.
24. In this option, a managed retreat is likely inevitable and would require officers to reassess the wider Ocean Beach redevelopment project, including the proposed redevelopment of the surf club, kiosk, amenities and public realm.

Award the contract but Re-scope the seawall to fit the budget.

25. Re-scoping the seawall will require a re-design by the coastal engineer, revised construction specifications and potentially additional modelling to understand the expected coastal erosion impacts associated with a smaller seawall. There will be loss of some public realm which, throughout consultation, has been identified as a high-value asset to the community.
26. With delays associated with a re-scoping exercise, it is highly unlikely that acquittal of the DoT funding would be achievable by June 2024, resulting in a potential loss of funding.
27. If the funding is lost, the implications would be consistent with not awarding the contract.

Award the contract for the full scope.

28. Building the designed and tendered seawall would secure the public realm at Ocean Beach and allow the Ocean Beach redevelopment to commence. The new seawall will provide a space that meets the community's expectations, albeit at an additional cost.
29. There are some significant lead times for sheet pile and round pile products. An award of a contract at the November Ordinary Council Meeting will allow for the ordering of materials to meet the June 2024 project completion target.
30. Officers have been advised from within the respective construction industry that the scope of work tendered by the Shire of Denmark has come at a quiet time for most contractors. This fortunate timing has resulted in significant interest in the request for tender and competitive submissions from premium contractors.
31. The Officer believes that constructing the new seawall at Ocean Beach is the best option and meets the community's desires and expectations for the Ocean Beach Precinct in the long-term.

**CONSULTATION AND EXTERNAL ADVICE**

32. A Request for Tender was published in the West Australian on 11 October 2023, placed on the Shire's website, and available on the Shire's E-tendering portal.
33. The Officer has considered the requirement for consultation and/or engagement with persons or organisations that may be unduly affected by the proposal and considered Council's Community Engagement Policy P040123 and the associated Framework and believes that no additional external/internal engagement or consultation is required.

**STATUTORY / LEGAL IMPLICATIONS****Local Government (Functions and General) Regulations 1996**

34. Regulation 11 of the Local Government (Functions and General) Regulations 1996 (Regulations) requires the Council to publicly tender if the contract is, or is expected to be, more or worth more than \$250,000.
35. Regulation 18 of the Regulations outlines a number of requirements relating to the choice of tender. The Council is to decide which of the acceptable tenders is the most advantageous to the Council. It may also decline to accept any tender.
36. Regulation 19 of the Regulations requires the Council to advise each tenderer in writing the result of the Council's decision.

**STRATEGIC / POLICY IMPLICATIONS**

37. P040220 Purchasing Policy and P040216 Regional Price Preference Policy are applicable to this item.

**FINANCIAL IMPLICATIONS**

38. The current budget for Ocean Beach Seawall Coastal Adaptation Works is \$1,140,000 – Account 1121154 (Job 60130).
39. The Department of Transport (DoT) fully funds the current budget through their Hotspot Coastal Adaptation and Protection funding stream.
40. Tendered values can be found in the confidential briefing note associated with this item.
41. The proposed revised budget provision required is \$1,450,000. This results in a funding shortfall of \$310,000.
42. Proposed source of additional funds - In October 2023 Council received its first settlement of Disaster Recovery Funding Arrangements Western Australia (DRFAWA) funding from the August 2020 and June 2021 storm events from DFES of \$461,526.
43. The proceeds of this settlement are an un-budgeted revenue gain to the adopted 2023-24 budget.
44. Opportunities for additional funding to cover the funding shortfall will continue to be explored with DoT for the remainder of the 2023-24 financial year, and if successful, any funds received will be used to increase the amount available to be transferred to the Infrastructure Reserve.
45. The strategy proposed to fund the increased expenditure has no detrimental effect to the current adopted budget.

**OTHER IMPLICATIONS****Environmental**

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

**Economic**

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

**Social**

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

**RISK MANAGEMENT**

49. Risk Table

Risk	Risk based on history and with existing controls			Proposed Treatment/Control
	Likelihood	Consequence	Risk Rating	
<b>Financial Impact:</b> That works go over budget due to variations from unforeseen works.	Likely (4)	Minor (2)	Moderate (5-9)	Thorough and detailed specification and design documents
<b>Reputational:</b> That works will interrupt access to Ocean Beach	Almost Certain (5)	Minor (2)	High (10)	Consistent messaging through media platforms and engagement with those affected. Monthly progress meetings with Contractor

**13. CLOSURE OF MEETING**

6.20pm – There being no further business the Shire President, Cr Gibson, declared the meeting closed.

The Chief Executive Officer recommends the endorsement of these minutes at the next meeting.

Signed: \_\_\_\_\_  
*David King – Chief Executive Officer*

Date: \_\_\_\_\_

These minutes were confirmed at a meeting on the \_\_\_\_\_.

Signed: \_\_\_\_\_  
*(Presiding Person at the meeting at which the minutes were confirmed)*