

ORDINARY MEETING OF COUNCIL

HELD IN THE COUNCIL CHAMBERS,
953 SOUTH COAST HIGHWAY, DENMARK
ON TUESDAY, 16 MAY 2017.

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Ordinary Council Meeting

16 May 2017

DISCLAIMER

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1. DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS

4.00pm – *The Shire President, Cr Morrell, declared the meeting open.*

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

MEMBERS:

Cr David Morrell (Shire President)
 Cr Ceinwen Gearon (Deputy Shire President)
 Cr Mark Allen
 Cr Peter Caron
 Cr Jan Lewis
 Cr Janine Phillips
 Cr Rob Whooley
 Cr Clem Wright

STAFF:

Mr Bill Parker (Chief Executive Officer)
 Mr Gilbert Arlandoo (Director of Infrastructure Services)
 Mr Cary Green (Director of Finance & Administration)
 Mrs Annette Harbron (Director of Planning & Sustainability)
 Mr Gregg Harwood (Director of Community & Regulatory Services)
 Ms Claire Thompson (Executive Assistant)

APOLOGIES:

Nil

ON APPROVED LEAVE(S) OF ABSENCE:

Cr Yasmin Bartlett (pursuant to Council Resolution No. 020217)

ABSENT:

Nil

VISITORS:

Members of the public in attendance at the commencement of the meeting: 12
 Members of the press in attendance at the commencement of the meeting: Nil

DECLARATIONS OF INTEREST:

Nil

3. ANNOUNCEMENTS BY THE PERSON PRESIDING

The Shire President acknowledged the recent passing of former Councillor, Richard Blythe. Cr Morrell advised that Mr Blythe had served on Council in the 1990s and he was a great cattleman and community member who would be sadly missed.

4. PUBLIC QUESTION TIME

4.1 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

4.1.1 Mr Brian Humphries – Dam at Hazelvale Road

At the meeting held on 18 April 2017 Mr Humphries asked some questions which were taken on notice. The following written response has been provided to Mr Humphries.

“In response to your question taken on notice at the Ordinary Council Meeting held on Tuesday, 18 April 2017, I provide the following responses. Your questions and this written response will be published in the Council Agenda for the Ordinary meeting scheduled for Tuesday, 16 May 2017.

Question 1 – Did the extensions to the existing dams require a separate development approval?

Response: From a review of the works that have occurred relating to the enlargement of three (3) existing dams on-site, it is considered that development approval was not required to be obtained as the acceptable development criteria as contained with Town Planning Scheme Policy No. 37: Dams was achieved.

Question 2 - Did the sedimentation ponds require a separate development approval and how will clean water be discharged to the watercourse?

Response: Condition 8 of Development Approval 2016/62 for a 2000m2 dam on the western side of the subject property requires a vegetated sump or similar to be used to divert water for filtration to prevent sedimentation or nutrient release into the downstream watercourse, with all excess water to be returned to the watercourse within the property boundary. Details of the arrangements have not been provided to date to ascertain how proposing to comply with this requirement, however it is noted that there is existing vegetation on-site between the proposed dam and the watercourse (which interrelates with other dams on-site) that could facilitate the filtration arrangements required – particularly given the scale of the dam.

It should be noted that the Department of Fisheries undertook an inspection of the subject property in mid-2016 as a result of concerns raised by yourself regarding wastewater management arrangements; with the findings being that the Department of Fisheries are satisfied that the aquaculture operations on-site are managed in a manner so as to minimise any adverse impact on downstream water quality.

Question 3 - Should contractors be held responsible if they undertook works when a development approval had not been issued?

Response: As per the Planning and Development Act 2005, contractors who undertake unauthorised works and the landowner(s) of the site where the works have taken place can be prosecuted.”

4.2 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 clause 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

4.2.1 Mrs Katy Rutter – Denmark Gymnastics

Mrs Rutter presented some spreadsheets to Council showing the number of participants that Denmark Gymnastics had and their current training and equipment schedule. Mrs Rutter noted the cross overs in the schedules stating that most of the time participants, and age groups, had to share equipment and stations because of time and space constraints at the Recreation Centre. Mrs Rutter advised that coaches found it difficult to coach in the present environment and that generally participants did not get adequate training time on the equipment. Mrs Rutter requested Council's support for their CSRFF grant application to fund a dedicated facility near the Recreation Centre and asked Council to allocate sufficient contributory funds in the 2017/18 Budget to support their application.

Councillors asked a number of questions regarding alternative venues, additional training days and moving of the equipment.

Mrs Rutter advised that there was no other suitable venue in Denmark and no additional training times available at the Recreation Centre. Mrs Rutter advised that the equipment had significant wear and tear because of it having to be constantly moved in and out of storage.

4.2.2 Ms Bronwyn Wallace – ANZAC Day and the New Zealand Flag

Ms Wallace stated that she found it disrespectful that the New Zealand Flag wasn't flown at Denmark's ANZAC services. Ms Wallace said that ANZAC was about two countries and that she felt as though there was a missing anthem. Ms Wallace advised that the Denmark RSL had informed her that there was no additional flag pole to fly the New Zealand Flag and asked Council to look at providing an additional flag pole at the War Memorial or, find some way or some money to have one installed.

4.2.3 Mr Geoff Osborne – East River Road

Mr Osborne stated that he was one of the Sheoak Drive residents who had signed the recent petition regarding the works on East River Road (east). Mr Osborne queried the last paragraph of the Chief Executive Officer's written response which stated, "*I am not sure in terms of previous investigations into Kernutts Road, however your statements in relation to East River Road being 'perfectly good' are subjective. The Shire has had concerns in relation to the alignment of East River Road and more specifically the intersection with Sheoak Drive. The road is narrow and the intersection is considered dangerous. The upgrade of this road provides an opportunity to improve the*

intersection and the Shire's road network. From an asset management perspective, the Shire is not in a position to continue adding to our sealed road network. As you can appreciate, adding to the network increases maintenance and renewal costs and the Shire needs to be very careful when incurring these additional costs.

Mr Osborne said that he had been using East River Road for over 20 years and believed that it had been in good condition and not in need of repair. Mr Osborne asked whether an upgrade to Kernutts Road had been considered as an alternative access to the Light Industrial Area and if it had, why it had not been selected. Mr Osborne asked whether it really did cost more to maintain a sealed road as opposed to a gravel road and when East River Road (east) was expected to be completed.

The Shire President advised that the questions would be taken on notice and responded to in writing.

4.2.4 Mr Brian Humphries – Dams

Mr Humphries stated that he wished to respond to the answers provided by the Chief Executive Officer to his previous questions taken on notice. Mr Humphries made a presentation to Councillors.

A copy of Mr Humphries statements and questions are copied below;

“Question 1:

In regards your answer to my previous Questions on Notice #1 where I queried the need for separate DA approvals for the enlargement of certain existing dams, and for which you advised that, in your opinion, such approvals were not required by virtue of compliance to the Acceptable Conditions of the Shire's Dams Policy:

- (a) Would you agree that, irrespective of the Shire dismissing any need for any separate approvals and irrespective of the Shire having approved its Dams Policy in August 2009, the Works (circa 2010) that have previously created a larger dam by enlargement of an earlier smaller dam (pre 2003 and located adjacent to Hazelvale Rd where the watercourse first enters the subject property) required approval by (i) the Department of Water by virtue of the enlarged dam further interfering with the watercourse (contravening the Rights in Water & Irrigation Act) and (ii) the Department of Environment Regulation by virtue of the destruction of riparian vegetation surrounding the watercourse (contravention of the EP Act)?*
- (b) If you now respond to the above that issues affecting other agencies are not matters for the Shire to be concerned about, would you then agree that there is a problem with the “inter-agency consultative process” that is otherwise only triggered if the Shire initiates a DA assessment process and collates the responses from the other agencies?*
- (c) Would you also agree that the Shire's practice - that started with the previous CEO [name removed] - of adding “Advice Notes” (which I was advised by [name removed] have no legal standing and cannot be enforced by the Shire) to its DA approvals is creating a form of self-regulation within the development process that has allowed the dam owner to easily opt out of what otherwise should be mandatory conditions of the other agencies*

the non-compliance by the dam owner to many of which have created the problems now evident.

It is noted from FOI documents that the various issues now impacting on the Crossleys are derivatives of the Shire's failure to properly administer the inter-agency consultative process and/or a failure of the process itself that relies on or promotes self-regulation. FOI documents also reveal that Fisheries themselves have failed to properly administer their process for approving the issue of a Commercial Aquaculture Licence that otherwise requires considerable detail about the subject property, the source of water, its decontamination treatment and discharge. They collected no such detail. The Shire, incredulously, likewise has no plan nor any detail whatsoever of the inter-connectedness of the many dams and yet it claims integrity in its administration of the Local Planning Scheme and application of the Dams Policy.

Question 2:

In regards the recent (June 2016) approval for the installation of yet another dam (near the dam owner's house). You have advised the Shire has no detail of how the Dept. of Fisheries condition for a vegetated sedimentation pond will be implemented. It is noted from FOI documents that the Fisheries condition was not ambiguous nor discretionary for the dam owner to adopt any alternative method of filtration that is otherwise inferred by your comment that a "vegetated sump or similar" would be acceptable.

- (a) Please advise how and physically where the vegetated sedimentation pond will be implemented? In my opinion, this issue is critical and demands a separate DA approval. It is noted from FOI documents that Fisheries also (belatedly) advised all the other dams on the subject property should be similarly treated.*
- (b) Please advise how the Shire intended the filtered water would be "returned to the watercourse" whilst noting that the watercourse has been physically totally destroyed?*
- (c) If the Shire cannot now advise how the water will be filtered and returned to the watercourse, would you then agree the DA should not have been approved (and more so also for the following reasons)?*
- (d) Please advise why the Shire ignored the P&D Act (Local Planning Scheme) Regulations 2015 that under Clause (o) states the "local government is to have regard tothe likely effect of the development on the natural environment or water resources and any means that are proposed to protect or mitigate the impacts on the natural environment or the water resource."*
- (e) Is the Shire's non-compliance to the foregoing Regulation a further example of the Shire's negligence in its administration of the Local Planning Scheme and application of the Dams Policy?*
- (f) If you are now not able to provide satisfactory explanations to the above questions, please explain why the Shire approved the DA in ignorance of the practicalities of the conditions that it has imposed?*

It is also noted from FOI documents that the Fisheries Divisional Senior Policy Advisor on Aquaculture who corresponded with [name removed] on the above

matters has subsequently admitted that, incredulously, she had no prior awareness of the Department of Water having any definitive policy document describing acceptable water quality criteria for Aquaculture. This matter brings into serious question the integrity of Fisheries Licencing protocols and its disregard for environmental and bio-security issues.

Question 3:

In regards your answer to my previous QoN #3, namely that “contractors who undertake unauthorised works or the land owner of the site where the works have taken place can be prosecuted”: Will the Shire now initiate prosecution against the contractor and the land owner for the installation of an unauthorised “glory hole” overflow pipe?

Question 4:

(a) Please explain why the Shire should now not also prosecute the dam owner for non-compliance to Condition 3 of the Retrospective Approval of June 2014 that required an overflow spillway to be installed on the “subject dam” it being noted that the maximum statutory grace period for compliance of 24 months has long expired?

(b) In giving your explanation to the above, please also explain where the Shire intended the physical installation of the spillway would be located on the subject dam and how the Shire envisaged the overflow water could then be returned to the watercourse before exiting into the downstream property?

It is assumed that in imposing Condition 3 that the Shire had an appreciation of the practicalities for installation of the spillway else it would be alleged that the condition was merely fanciful on the Shire’s part, was lacking credibility and to be exposing the Shire’s potential liability in its negligence for damages caused to third parties.

Question 5:

How does the Shire now propose to uphold the Dept of Water’s requirement that the dam owner must not take any water from the watercourse unless the flow exceeds 267 kilolitres per day? (Documents previously distributed explain this criteria).

Question 6:

Given the complex technical and legal issues involved in compliance to the Department of Water’s requirement for a bypass, would you agree that the Shire has been foolhardy in approving more dams?

Question 7:

Would now agree that the Shire needs to issue a moratorium to the dam owner that no further development on the subject property will be tolerated else be subject to prosecution until all the existing issues are satisfactorily resolved?”

The Shire President advised Mr Humphries that he had exhausted the time allocated to him for public question time and that the questions would be taken on notice and responded to in writing.

4.3 QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN

Nil

4.4 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 Council’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.

5. APPLICATIONS FOR FUTURE LEAVE OF ABSENCE

A Council may, by resolution, grant leave of absence, to a member, for future meetings.

Nil.

6. CONFIRMATION OF MINUTES

6.1 ORDINARY COUNCIL MEETING

COUNCIL RESOLUTION & OFFICER RECOMMENDATION	ITEM 6.1
MOVED: CR GEARON	SECONDED: CR CARON
That the minutes of the Ordinary Meeting of Council held on the 18 April 2017 be confirmed as a true and correct record of the proceedings.	
CARRIED UNANIMOUSLY: 8/0	Res: 010517

6.2 STRATEGIC BRIEFING NOTES

COUNCIL RESOLUTION & OFFICER RECOMMENDATION	ITEM 6.2
MOVED: CR WHOOLEY	SECONDED: CR PHILLIPS
That the Notes from the Strategic Briefing held on 18 April 2017 be received.	
CARRIED UNANIMOUSLY: 8/0	Res: 020517

7. ELECTED MEMBERS MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

8. REPORTS OF OFFICERS

8.1 Director of Planning & Sustainability

8.1.1 SCHEME AMENDMENT 143 – REZONING NO. 6676 (LOT 150) SOUTH COAST HIGHWAY, NORNALUP FROM “RURAL” TO “RESIDENTIAL”

File Ref:	TPS3/SA143 (A3878)
Applicant / Proponent:	Williams Consulting on behalf of K Lymon, A Butorac and L & R Cant
Subject Land / Locality:	No. 6676 (Lot 150) South Coast Highway, Nornalup
Disclosure of Officer Interest:	Nil
Date:	5 May 2017
Author:	Annette Harbron, Director of Planning & Sustainability
Authorising Officer:	Annette Harbron, Director of Planning & Sustainability
Attachments:	8.1.1a – Advertised Scheme Text Provisions, Zoning Map and Concept Plan 8.1.1b – Schedule of Submissions

Summary:

In December 2016 Council resolved to initiate Scheme Amendment No. 143 to Town Planning Scheme No. 3 (TPS No. 3) to rezone No. 6676 (Lot 150) South Coast Highway, Nornalup from “Rural” to “Residential (R5)” to facilitate subdivision of the property into two (2) residential lots.

Scheme Amendment No. 143 was advertised for public comment, with twelve (12) submissions received.

It is recommended that Council grant final approval with modifications to Scheme Amendment No. 143 and refer the document to the Western Australian Planning Commission (WAPC)/Minister for Planning for final approval.

Background:

At its meeting of 20 December 2016, Council considered initiating Scheme Amendment No. 143 to Town Planning Scheme No. 3 (TPS No. 3) wherein they resolved the following (Res No: 061216):

That with respect to the request to initiate a Scheme Amendment to rezone No. 6676 (Lot 150) South Coast Highway, Nornalup from “Rural” to “Residential”, Council:

1. *Require a drainage easement to be created associated with the drainage soak and channel that traverses No. 6676 (Lot 150) South Coast Highway, Nornalup;*
2. *Pursuant to Section 75 of the Planning and Development Act 2005 initiate Town Planning Scheme No. 3 Amendment No. 143 by:*
 - a) *Rezoning No. 6676 (Lot 150) South Coast Highway, Nornalup from “Rural” zone to “Residential (R5)” zone and*
 - b) *Amending the Scheme Maps accordingly.*
3. *Determine that Town Planning Scheme No. 3 Scheme Amendment No. 143 is a ‘Standard Amendment’ as per the provisions of the Planning and Development (Local Planning Schemes) Regulations 2015 for the following reasons:*
 - a) *It is an amendment relating to the ‘Residential’ zone that is consistent with the objectives identified in Town Planning Scheme No. 3 for the ‘Residential’ zone;*
 - b) *It is an amendment that is generally consistent with a local planning strategy that has been endorsed by the Western Australian Planning Commission;*
 - c) *It is an amendment that is considered will have minimal impact on land in the scheme area that is not the subject of the amendment;*

- d) *It is an amendment that is considered will not result in any significant environmental, social, economic or governance impacts on land in the scheme area; and*
- e) *Is not a complex or basic amendment.*
- 4. *Refer Town Planning Scheme No. 3 Scheme Amendment No. 143 to the Environmental Protection Authority in accordance with Section 81 of the Planning and Development Act 2005.*
- 5. *Resolve to proceed to advertising of Town Planning Scheme Amendment No. 143 as per Regulation 47 of the Planning and Development (Local Planning Schemes) Regulations 2015.*

In line with Council's resolution the documentation was referred to the Environmental Protection Authority (EPA) in accordance with Section 81 of the *Planning and Development Act 2005* on 31 January 2017.

The EPA considered the proposal and determined that the proposed scheme amendment should not be assessed under Part IV Division 3 of the *Environmental Protection Act 1986* and that it was not necessary to provide any advice or recommendations.

Consultation:

Public advertising of Scheme Amendment No. 143 (refer Attachment 8.1.1a for the proposed Scheme Text provisions, Zoning Map and a Concept Plan – noting that due to the size of the document a copy of the Scheme Amendment Report documentation is available for Councillors via Dropbox or USB, with a printed version available for Councillors upon request) commenced on 28 February 2017 and closed on 21 April 2017 (being 53 days; statutory requirement is minimum 42 days). During the advertising period the following consultation took place:

- Advertising notice in the Denmark Bulletin on 2 March 2017 inviting public comment;
- Referral of the Scheme Amendment documentation to the following government departments/servicing authorities inviting comment:
 - Department of Aboriginal Affairs
 - Department of Agriculture and Food WA
 - Department of Environment Regulation
 - Department of Fire & Emergency Services
 - Department of Health
 - Main Roads WA
 - Department of Water
 - Telstra Corporation
 - Water Corporation
 - Western Power
- Referral to eighty seven (87) landowners generally within 1km radius of the subject lot inviting comment;
- Referral to Denmark Historical Society given as per the Shire's Municipal Heritage Inventory (2011) the subject property contains 'Nornalup Hospital'; and
- Scheme Amendment documentation was available for viewing at the Shire Administration Office and on the Shire's website.

At the close of the advertising period, a total of twelve (12) submissions were received – five (5) from the public and seven (7) from government departments/servicing authorities. Attached as Attachment 8.1.1b is the Schedule of Submissions – with all submissions received being entered into the schedule as verbatim. Column 4 of the Schedule of Submissions represents Planning Services comments/response to the submissions and any modifications recommended as a result of submissions received (noting no modifications are recommended arising from submissions).

Statutory Obligations:

- *Planning and Development Act 2005* – TPS No. 3 is an operative Local Planning Scheme under the Act;

- Town Planning Scheme No. 3 – the subject land is currently zoned “Rural”; and
- *Planning and Development (Local Planning Schemes) Regulations 2015* – The Regulations set the procedure for amending a town planning scheme.

Policy Implications:

The following policies have been given due consideration in relation to this proposal:

- State Planning Policy No. 1: State Planning Framework Policy
- State Planning Policy No. 2.5: Rural Planning
- State Planning Policy No. 3: Urban Growth and Settlement
- State Planning Policy 3.7: Planning in Bushfire Prone Areas
- Draft Country Sewerage Policy
- Town Planning Scheme Policy No. 29: Rural Settlement Strategy
- Town Planning Scheme Policy No. 43: Nornalup Development Guidelines and the associated Nornalup Character Study (2011)

In accordance with the Shire of Denmark’s Municipal Heritage Inventory (2011), the subject property contains ‘Nornalup Hospital’ which is listed as having an exceptional level of significance. The overall development proposal at this point in time is to subdivide the property into two (2) residential lots, with the ‘Nornalup Hospital’ building being retained on one (1) lot.

Budget / Financial Implications:

Fees associated with the amendment have been paid as per Council’s operative Fees and Charges Schedule.

Strategic Implications:

The site is designated in the adopted Local Planning Strategy as ‘Indicative Rural Nodal Settlement’ and due regard has been given to the relevant Local Planning Strategy provisions within Scheme Amendment No. 143.

The report and officer recommendation is consistent with Council’s adopted Strategic Plan Objectives and Goals and the Corporate Business Plan Actions and Projects in the following specific ways:

Strategic Community Plan

Economic Goal: Development – that the Shire of Denmark closely monitor development and associated infrastructure needs in the region, and acts in conjunction with other authorities and agencies to plan development which is sensitive, timely and appropriate to the community’s needs.

Governance Goal: Planning – that the Shire of Denmark work with other relevant authorities and agencies to develop and implement planning policies and decisions that not only reflect the wishes of the community, but also provide the region with appropriate development options.

Corporate Business Plan

3.2.3 Encourage development that is consistent with the individual character of townsites.

4.1.1 Ensure quality, consistent and responsive development and building assessment approval processes and enforcement.

Sustainability Implications:

➤ **Governance:**

All processes associated with Amendment 143 have been actioned as per the requirements of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

➤ **Environmental:**

There are no known significant environmental considerations relating to the report or officer recommendation, noting that development of the site will be restricted to two (2) lots only (or maximum two (2) dwellings should the site not be subdivided) due to the existence of the natural drainage soak and channel that traverses the site. The concept plan identifies areas where development (including effluent disposal systems) are not to be located due to the existence of a waterlogged area in the north-east corner of the site and the natural drainage soak and channel that traverses the site.

➤ **Economic:**

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

➤ **Social:**

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

➤ **Risk:**

Risk	Risk Likelihood (based on history and with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That the WAPC/Minister for Planning do not support the Amendment proposal	Unlikely (2)	Minor (2)	Low (1-4)	Not Meeting Community expectations	Accept Officer Recommendation

Comment/Conclusion:

From a Planning Services perspective it is considered that the proposed rezoning to facilitate the creation of two (2) residential lots is appropriate.

Due to the existence of the natural drainage soak and channel that traverses the site being addressed via a drainage easement only (in lieu of a drainage reserve and associated Scheme reservation as originally recommended by Planning Services), it is considered that a new clause needs to be added to TPS No. 3 which references that despite the R5 density coding that applies to the site that development is restricted to one (1) additional lot only (or one (1) additional dwelling only should subdivision not occur).

The inclusion of this clause will ensure that all future landowners and development approval bodies (i.e. Shire of Denmark; Western Australian Planning Commission) are cognisant of the development restrictions that relate to the property which restricts development to two (2) lots only as opposed to three (3) lots utilising land area considerations only (noting that a R5 density coding provides for a minimum lot size of 2000m²) – particularly given that the concept plan provided for in the Scheme Amendment documentation does not have any statutory weight.

Voting Requirements:

Simple majority.

COUNCIL RESOLUTION & OFFICER RECOMMENDATION	ITEM 8.1.1
MOVED: CR GEARON	SECONDED: CR ALLEN
That with respect to Scheme Amendment No. 143 to rezone No. 6676 (Lot 150) South Coast Highway, Nornalup from “Rural” to “Residential (R5)”, Council:	
<ol style="list-style-type: none"> 1. Notes the submissions received. 2. Adopts Scheme Amendment No. 143 for final approval with modifications by: <ol style="list-style-type: none"> a) Rezoning No. 6676 (Lot 150) South Coast Highway, Nornalup from “Rural” to “Residential (R5)” zone; b) Adding Clause 5.3.8 as follows: <i>Notwithstanding the R5 density coding that applies to No. 6676 (Lot 150) South Coast Highway, development of the land is restricted to two (2) lots (or two (2) dwellings only should the site not be subdivided) due to the land capability assessment considerations relating to the existence of the natural drainage soak and channel that traverses the site and the associated setback requirements as a result.</i> c) Amending the Scheme Maps accordingly. 3. Authorises the Shire President and Chief Executive Officer to execute the documentation for forwarding to the Western Australian Planning Commission seeking final approval by the Minister for Planning. 4. Advises the submitters of Council’s resolution. 	
CARRIED UNANIMOUSLY: 8/0	Res: 030517

8.2 Director of Community & Regulatory Services

8.2.1 PROPOSED FIRE WORKS POLICY P070405	
File Ref:	ADMIN.2
Applicant / Proponent:	Not applicable
Subject Land / Locality:	Shire of Denmark
Disclosure of Officer Interest:	Nil
Date:	27 April 2017
Author:	Gregg Harwood, Director of Community & Regulatory Services
Authorising Officer:	Gregg Harwood, Director of Community & Regulatory Services
Attachments:	8.2.1a – Summary of Submissions 8.2.1b – Draft Policy

Summary:

The objective of this policy is to provide guidance to staff in considering requests for approval to use fireworks to prevent the spread of wildfire and the traumatisation of livestock, horses and companion animals through inappropriate usage.

The officer report recommends that Council adopt the draft policy as it was advertised for public comment on the basis that all of the submissions that were received supported it.

Background:

Council periodically receives inquiries from function centres and wineries seeking permission to have fireworks at events and these events typically occur during restricted or prohibited fire seasons.

Fireworks have the potential to “spook” cattle and companion animals and Shire staff usually receive complaints when an event occurs.

The most recent request was in 2015 when a reception centre sought fireworks approval at short notice for a wedding. Permission was denied based on fire risk, adverse comment from nearby livestock owners and the fact that the short notice meant that Shire staff did not have the lead time to initiate a consultation/ negotiation process with nearby property occupiers.

The refusal of this permit understandably caused considerable angst to both the couple and the reception centre. This would have been prevented if the proposed fireworks policy was in place and reception centre had been able to advise their clients of this up front.

Council considered these factors at its meeting 20 December 2016 meeting and resolved to advertise the draft policy.

(Resolution No. 091216)

“That Council advertise the draft P070405 Fireworks Usage Policy for 30 days inviting public comments prior to its referral back to Council for consideration with amendment where necessary in the light of those comments, and eventual adoption.”

Consultation:

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 further external/internal engagement or consultation is not required as the draft policy has been advertised for 30 days for public comment.

In addition to this, Council staff have also written to the two principal complainants in the 2015 incident as well as the various reception centres and wineries in the Shire advising them of the submission period.

This extensive consultation effort produced two submissions that fully supported the policy as advertised with a third submission that suggested the inclusion of a clause in Council’s Fire Regulation Notice supporting the policy.

Statutory Obligations:

The use of fireworks by the public is banned in Western Australia (WA), with the only exceptions being what are classed as “unrestricted fireworks” such as bon-bons, party poppers, Christmas crackers, throwdowns and sparklers, which are available for general sale.

The Dangerous Goods Safety Act 2004 and Dangerous Goods Safety (Explosives) Regulations 2007 stipulates that the more dangerous types of fireworks can only be set up and fired by a licensed fireworks operator and their staff and that the licensed fireworks operator must have a Department of Mines and Petroleum approval for the event.

To obtain a permit a licensed fireworks operator must apply to the Department of Mines and Petroleum at least 14 days in advance and it is unlikely that this agency will issue an approval if the local authority objects.

The only legal power that Council has to stop the usage of fireworks would be by adding a regulation to the annual Shire of Denmark Fire Regulation Notice.

While one submission has been received supporting this, such an action is not recommended for the following reasons:

- 1) Council has embarked on the task of pruning down the size of its Fire Regulation Notice by removing advice notes and peripheral controls from it.

- 2) The Department of Mines and Petroleum Resource Safety are the peak licencing agency in terms of fireworks permits and they have advised that they would not issue a fireworks approval that contravenes a clear Council policy stance.
- 3) Experience indicates that a maximum of one to two fireworks permits inquiries are received in any calendar year so the risk of an approval slipping through the Department of Mines and Petroleum system is quite low.

Policy Implications:

The officer report and recommendation if adopted will result in the creation of a new policy.

Budget / Financial Implications:

There are no known financial implications upon either the Council's current Budget or Long Term Financial Plan.

Strategic Implications:

The report and officer recommendation is consistent with Council's adopted Strategic Plan Objectives and Goals and the Corporate Business Plan Actions and Projects in the following ways:

Strategic Community Plan

Lifestyle: ...endeavour to maintain and improve the standards and style of living, together with the creative and vibrant culture, that residents and visitors have come to expect.

Public Safety: ...work with relevant authorities and organisations to maintain a safe and secure environment for its residents and visitors.

Corporate Business Plan

1.7.3 *Support the functions of Community Emergency Services in achieving required actions and goals.*

1.7.4 *Educate the community in matters of emergency prevention and preparedness.*

1.7.5 *Maximise community safety through the management of the risks associated with fire, natural events and large scale emergencies, whilst supporting initiatives to improve community safety.*

2.3.2 *Maximise community safety through the management of the risks associated with fire.*

Sustainability Implications:**➤ Governance:**

There are known governance considerations relating to the report or officer in as much that a definite fireworks policy will provide guidance for the staff and community in considering fireworks requests that are referred to them.

➤ Environmental:

There are known environmental implications relating to the report or officer recommendation in that while the scale of fireworks usage is likely to always be low in Denmark the atmospheric pollution that they cause can linger in the immediate area for several hours.

➤ **Economic:**

There are no known significant economic implications relating to the report or officer recommendation as the availability of fireworks is not a critical factor in the selection of reception venues.

This reinforced by the fact that letters were sent to 37 wineries and reception centres and no objections to the policy were received.

➤ **Social:**

There are known social considerations relating to the report and officer recommendation in that having a clear fireworks policy will help neighbourhood relationships in rural areas.

Cattle in the Denmark area tend to be skittish due to the temperate climate and relaxed pace of life which means that they are not handled as regularly or exposed to as much stimuli as cattle in other areas.

➤ **Risk:**

Risk	Risk Likelihood (based on history and with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That fireworks cause community conflict through the disturbance of livestock and companion animals in rural areas.	Likely (4)	Minor (2)	Moderate (5-9)	Ineffective Management of Facilities and Events	Accept Officer Recommendation
That the use of fireworks during high fire risk leads to the outbreak of wildfires.	Possible (3)	Catastrophic (5)	High (10-16)	Inadequate Organisation or Community Emergency Management	Accept Officer Recommendation

Comment/Conclusion:

As has been previously mentioned there is the potential for both significant land use conflict and bushfire risks when fireworks are used near rural lands together with livestock and companion animal disturbance risks.

The draft policy seeks to address these concerns while preserving the possibility of allowing fireworks to be used responsibly on town site reserves and on large bodies of water and via the specific consideration by Council where unique circumstances warrant.

The lack of feedback from the hospitality industry indicates that restricting the usage of fireworks is not likely to affect local wineries and function centres and the support from parties that have been most affected by the usage of fireworks on previous occasions indicates that the balance of the policy is right.

Draft policy P070405 Fireworks Usage (Attachment 8.2.1b) is recommended to Council for adoption.

Voting Requirements:

Simple majority.

COUNCIL RESOLUTION & OFFICER RECOMMENDATION	ITEM 8.2.1
MOVED: CR CARON	SECONDED: CR WRIGHT
That with respect to draft Policy P070405 – Fireworks Usage, Council;	
<ol style="list-style-type: none"> 1. Note the submissions received; and 2. Adopt the Policy as per Attachment 8.2.1b; 3. Advise the submitters of Council’s Resolution. 	
CARRIED: 7/1	Res: 040517
<i>Pursuant to Resolution No.031115 all Councillors’ votes on the above resolution are recorded as follows;</i>	
<i>FOR: Cr Lewis, Cr Gearon, Cr Wright, Cr Phillips, Cr Morrell, Cr Whooley and Cr Caron.</i>	
<i>AGAINST: Cr Allen</i>	

8.3 Director of Infrastructure Services

8.3.1 TENDER 1-2016/17 – QUARRYING, CRUSHING AND SCREENING OF LIMESTONE
File Ref: A3770
Applicant / Proponent: Shire of Denmark
Subject Land / Locality: Ocean Beach Quarry
Disclosure of Officer Interest: Nil
Date: 7 April 2017
Author: Gilbert Arlandoo, Director of Infrastructure Services
Authorising Officer: Gilbert Arlandoo, Director of Infrastructure Services
Attachments: 8.3.1 – WALGA’s Evaluation Report (CONFIDENTIAL)

Summary:

Shire of Denmark engaged Western Australian Local Government Association (WALGA) to undertake procurement services to appoint a contractor for the quarrying, crushing and screening of limestone at the Ocean Beach Quarry for the purpose of producing agricultural lime.

The scope of engagement included document preparation, process management, provision of evaluators, management of the evaluation process, and provision of a recommendation report.

This item recommends the appointment of Palmer Earthmoving for the contract of limesand mining from the Ocean Beach Quarry for an initial three (3) year period, starting in the new financial year, with a two (2) year option.

The contract will be awarded on the condition that no quarrying operation should occur on site until all necessary approvals have been obtained.

Background:

At its 18 October 2016 meeting Council considered commissioning WALGA to undertake the tender process, and resolved as follows (Resolution No. 041016):

That with respect to the Ocean Beach Lime Quarry, Council;

1. Amend the 2016/17 Budget by transferring an additional \$60,000 from the Lime Quarry Reserve.

2. *Increase expenditure associated with Job No. 70001 from \$50,000 to \$110,000 for the preparation of an environmental management plan and other associated compliance and rectification works.*
3. *Advise consumers that due to compliance and rectification works that the Shire's agricultural lime may not be available in time for the 2016/17 season.*
4. *Authorise the Chief Executive Officer to prepare a specification and tender documentation for the quarrying and crushing of agricultural lime for a period of three (3) years.*

In accordance with this resolution the Budget was amended, rectification works were carried out, relevant documents were submitted to authorities for approval, Shire staff have been communicating with potential customers and WALGA reviewed the tender documents for quarrying and crushing of agricultural lime.

Tenders were advertised in the Denmark Bulletin, the Albany Advertiser, The West Australian, and WALGA's TenderLink e-Tendering Portal. A mandatory site briefing was held, which provided Tenderers with the opportunity to ask any questions and to visit the site.

Submissions were received by the deadline of the Request for Tender from the following organisations:

- a) Axis Minerals
- b) Denmark Earthmoving
- c) Palmer Earthmoving

The tendered rates (excluding GST) provided by tenderers were as follows:

Respondent	Price per Tonne (excl GST)
Axis Minerals	\$18.95
Denmark Earthmoving	\$15.76
Palmer Earthmoving	\$12.95

The Tender submissions were reviewed by an Evaluation Panel consisting of WALGA staff. The evaluation components consisted of Compliance Criterion, Qualitative Criterion and Value for Money assessment. The Evaluation Panel made a series of value judgements based a number of other factors, including the capability of the Tenderers to complete the requirements of the tender, the pricing submitted by each Tenderer and Shire's Regional Price Preference Policy.

Confidential attachment 8.3.1 provides full details of the submissions received and the evaluation process, which includes assessment of each tenderer's capacities, operations, resources, registrations/certifications, insurance details, profile and financial position.

The Evaluation Panel considered that Palmer Earthmoving be the Preferred Tenderer as having the best overall value for money by:

- achieving the highest qualitative score; and
- presenting the most competitive overall fee structure.

WALGA completed the assessment process by undertaking reference checks to verify any claims and ensure that Palmer Earthmoving has the financial capability to undertake this project. The responses were positive and no issues were identified through this process.

Consultation:

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. Consultation with the parties listed below is still ongoing;

- Department of Mines and Petroleum,
- Environmental Protection Authority,
- Department of Aboriginal Affairs,
- Department of Parks and Wildlife.

Statutory Obligations:

The quarry is to be operated in accordance with the requirements of the:

- Land Administration Act 1997
- EPA Ministerial Statement 521
- Mining Act 1978 and 1986
- Mines Safety and Inspection Act 1994 and Regulations 1995
- Occupational Health and Safety Act 1984

Policy Implications:

Price reduction for local content applies:

- P040216 Regional Price Preference Policy

Budget / Financial Implications:

The tender evaluation proposal will have the following financial implications:

The cost to extract the lime is budgeted at \$12.95 per tonne (excl GST) for 20,000 tonnes, in the first year. The sale price is \$24.55 (excl GST) as per the current fees and charges schedule.

Budget Expenses 2017/18	\$325,000
Budget Revenue 2017/18	<u>\$491,000</u>
Total	\$166,000

The above profit includes the Shires costs for operating and maintaining the Lime Quarry of \$55,000.

The total budgeted profit of \$166,000 will be transferred to the Lime Quarry Reserve for future maintenance and rehabilitation of the site.

It is expected the profit from the site will be constant throughout the term of the contract.

Strategic & Corporate Plan Implications:

The report and officer recommendation is consistent with Council’s adopted Strategic Plan Objectives and Goals and the Corporate Business Plan Actions and Projects in the following specific ways:

Strategic Community Plan

Economic Objective: Denmark’s economy is diverse and vibrant - its primary industries of tourism and agriculture rely on and enjoy natural and other assets that are sensibly managed and promoted.

Economic Goal: Agriculture - That the Shire of Denmark acknowledge agriculture as a diverse and prominent industry in the region, and implements and advocates for policies and strategies that will assist farming to improve its effectiveness and viability.

Corporate Business Plan

3.1.2 *Encourage and promote the use of agricultural land.*

Sustainability Implications:

➤ **Governance:**

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

➤ **Environmental:**

The identified impacts on the remaining buffer zone and *Thomasia quercifolia* priority species have been addressed and the requirements of the revised Environmental Management Plan once approved will need to be satisfied.

➤ **Economic:**

There are local economic implications relating to the production of agricultural lime. The product is sold first and foremost to benefit local farmers so they would not have to source poorer quality lime from greater distances when this lime is available.

➤ **Social:**

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

➤ **Risk:**

Risk	Risk Likelihood (based on history and with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That Council decide not to proceed with a tender award	Unlikely (2)	Minor (2)	Low (1-4)	Not Meeting Community expectations	Accept Officer Recommendation

Comment/Conclusion:

A thorough assessment was undertaken by WALGA which concluded that Palmer Earthmoving as having presented the most advantageous and best value for money Tender to the Shire of Denmark.

On the basis of this evaluation, it is recommended that Council endorse WALGA’s report, appoint Palmer Earthmoving as the preferred contractor for the quarrying, crushing and screening of limestone at the Ocean Beach Quarry and authorise the CEO to enter into minor negotiations with Palmer Earthmoving. Quarrying operation for the purpose of selling agricultural lime is not envisaged until all necessary approvals are in place.

Voting Requirements:

Simple majority.

COUNCIL RESOLUTION & OFFICER RECOMMENDATION	ITEM 8.3.1
MOVED: CR ALLEN	SECONDED: CR LEWIS
That, with respect to the Quarrying, Crushing and Screening of Limestone at the Ocean Beach Quarry, Council:	
<ol style="list-style-type: none"> 1. Endorse the Western Australian Local Government Association Evaluation Report. 2. Award Tender 1-2016/17 for Quarrying, Crushing and Screening of Limestone at the Ocean Beach Quarry to Palmer Earthmoving in accordance with their submitted tender. 3. Authorise the Chief Executive Officer to enter into a contract with Palmer Earthmoving, subject to any minor variations as defined by the Local Government (Functions and General) Regulations 1996 that may be agreed upon by the Shire of Denmark and Palmer Earthmoving. 	
CARRIED UNANIMOUSLY: 8/0	Res: 050517

8.4 Director of Finance & Administration

8.4.1 FINANCIAL STATEMENT FOR THE MONTH ENDING 31 MARCH 2017	
File Ref:	FIN.1
Applicant / Proponent:	Not applicable
Subject Land / Locality:	Denmark
Disclosure of Officer Interest:	Nil
Date:	4 May 2017
Author:	Steve Broad, Accountant
Authorising Officer:	Cary Green, Director of Finance & Administration
Attachments:	8.4.1 – March Monthly Financial Report

Summary:

It is a requirement of the Local Government Act 1995 that monthly and quarterly financial statements are presented to Council, in order to allow for proper control of the Shire’s finances. In addition, Council is required to review the Municipal Budget on a six monthly basis to ensure that income and expenditure is in keeping with budget forecasts. It should be noted that the budget is monitored on a monthly basis in addition to the requirement for a half yearly review.

The attached financial statements and supporting information are presented for the consideration of Elected Members. Council staff welcome enquiries in regard to the information contained within these reports.

Background:

In order to prepare the attached financial statements, the following reconciliations and financial procedures have been completed and verified;

- Reconciliation of all bank accounts.
- Reconciliation of the Rates Book, including outstanding debtors and the raising of interim rates.
- Reconciliation of all assets and liabilities, including payroll, taxation and postal services.
- Reconciliation of the Sundry Debtors and Creditors Ledger.
- Reconciliation of the Stock Ledger.
- Completion of all Works Costing transactions, including allocation of costs from the Ledger to the various works chart of accounts.

Consultation:

Nil

Statutory Obligations:

Local Government Act 1995 Section 5.25 (1)

Local Government (Financial Management) Regulations 1996

The attached statements are prepared in accordance with the requirements of the Local Government Act 1995.

Policy Implications:

Policy P040222 - Material Variances in Budget and Actual Expenditure, relates;

For the purposes of Local Government (Financial Management) Regulation 34 regarding levels of variances for financial reporting, Council adopt a variance of 10% or greater of the annual budget for each program area in the budget, as a level that requires an explanation or report, with a minimum dollar variance of \$10,000.

The material variance is calculated by comparing budget estimates to the end of month actual amounts of expenditure, revenue and income to the end of the month to which the financial statement relates.

This same figure is also to be used in the Annual Budget Review to be undertaken after the first six months of the financial year to assess how the budget has progressed and to estimate the end of the financial year position.

A second tier reporting approach shall be a variance of 10% or greater of the annual budget estimates to the end of the month to which the report refers for each General Ledger/Job Account in the budget, as a level that requires an explanation, with a minimum dollar variance of \$10,000.

Budget / Financial Implications:

There are no significant trends or issues to be reported.

Strategic & Corporate Plan Implications:

The report and officer recommendation is consistent with Council's adopted Strategic Plan Objectives and Goals and the Corporate Business Plan Actions and Projects in the following specific ways:

Governance Objective: The Shire of Denmark provides renowned leadership in sustainability, is effective with both its consultation with its people and its management of its assets, and provides transparent and fiscally responsible decision making.

Sustainability Implications:**➤ Governance:**

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

➤ Environmental:

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

➤ Economic:

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

➤ **Social:**

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

➤ **Risk:**

Risk	Risk Likelihood (based on history and with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
Not meeting Statutory Compliance	Rare (1)	Moderate (3)	Low (1-4)	Failure to meet Statutory, Regulatory or Compliance Requirements	Accept Officer Recommendation
Financial mismanagement and/or Budget overruns.	Rare (1)	Moderate (3)	Low (1-4)	Inadequate Financial, Accounting or Business Acumen	Control through robust systems with internal controls and appropriate reporting mechanisms

Comment/Conclusion:

As at 31 March 2017 total cash funds held total \$13,780,777 (Note 4).

Shire Trust Funds total \$192,637 with the amount of \$176,734 invested for 180 days with the National Bank, maturing 16 June 2017 at the quoted rate of 2.60%.

Reserve Funds (restricted) total \$10,321,075 and \$7,031,219 has been placed on investment for 30 days with the Western Australian Treasury Corporation at the quoted rate of 1.45% and \$2,919,111 has been invested with the National Bank, maturing 28 May 2017 at the quoted rate of 2.50%.

Municipal Funds (unrestricted) total \$3,100,403 with the amount of \$2,674,798 invested with the National Bank, maturing on various dates up to the 25 June 2017 at an average rate of 2.26% (refer note 4 for detail).

Key Financial Indicators at a Glance

The following comments and/or statements provide a brief summary of major financial/budget indicators and are included to assist in the interpretation and understanding of the attached Financial Statements.

- Taking into consideration the adopted Municipal Budget and subsequent mid- year budget review amendments identified (Note 5), the 30 June 2017 end of year position is estimated to be \$0 as per budget projections (Statement of Financial Activity).
- Operating revenue and expenditure is in line with that predicted for 31 March 2017 (Statement of Financial Activity).
- Rates Collection percentage of 93.26% is in keeping with historical collection rates (Note 6).
- The 2016/17 Capital Works Program is 48.96% complete utilising actual year to date figures and total committed cost is 55.31% at 31 March 2017 (Note 12).
- Various transfers to and from Reserve Funds have been made for 2016/17 with the exception of the Parry Beach Camp Ground Reserve as the final transfer amount will not be available until June 2017, depending on specific projects to which these transfers relate.
- Salaries and Wages expenditure is in keeping with budget estimates (not reported specifically in Financial Statement).

Budget Amendments and Variances (Note 5 and 5a)

As detailed in Note 5a.

Voting Requirements:

Simple majority.

COUNCIL RESOLUTION & OFFICER RECOMMENDATION	ITEM 8.4.1
MOVED: CR ALLEN	SECONDED: CR GEARON
That with respect to Financial Statements for the month ending March 2017, Council;	
1. Receive the Financial Reports, incorporating the Statement of Financial Activity and other supporting documentation.	
2. Endorse the Accounts for Payment for March 2017 as listed.	
CARRIED UNANIMOUSLY: 8/0	Res: 060517

8.5 Chief Executive Officer

Nil

9. COMMITTEE REPORTS & RECOMMENDATIONS

Nil

10. MATTERS BEHIND CLOSED DOORS

Nil

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

Nil

Public Question Time

Prior to the closure of the meeting the Shire President announced that he would commence a second public question time which would enable Mr Humphries to speak for a further five minutes and perhaps conclude his presentation to Council. Cr Morrell asked if there were any members of the public who wished to address Council.

Mr Humphries

Mr Humphries thanked the Shire President for allowing him to continue his presentation to Council noting that he understood that it was a very complex issue which spread across five different State Government Minister’s portfolios. Mr Humphries concluded his presentation.

12. CLOSURE OF MEETING

4.46pm – There being no further business to discuss the Shire President declared the meeting closed.

<p>The Chief Executive Officer recommends the endorsement of these minutes at the next meeting.</p> <p>Signed: _____ <i>Bill Parker – Chief Executive Officer</i></p> <p>Date: _____</p> <p>These minutes were confirmed at a meeting on the _____.</p> <p>Signed: _____ <i>(Presiding Person at the meeting at which the minutes were confirmed.)</i></p>
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