



**Shire of Derby /
West Kimberley**

AGENDA

Ordinary Council Meeting Thursday, 31 August 2023

I hereby give notice that an Ordinary Meeting of Council will be held on:

Date: Thursday, 31 August 2023

Time: 5:30pm

**Location: Council Chambers
Clarendon Street
Derby**

Amanda Dexter

Chief Executive Officer



Our Guiding Values

We are **PROUD** of who we are and where we live.

We will create a **POSITIVE LEGACY** for our children and children's children.

We will go about our business with **INTEGRITY, TRANSPARENCY and AUTHENTICITY**.

We value and **RESPECT** what our community has to say and will strive to make things happen.

We are **PROUD** of and value the **KNOWLEDGE** of our diverse and strong people and cultures.

We value our **RELATIONSHIPS** and will work with others to achieve common goals and gain maximum impact.

We are **PROUD** of and **COMMITTED** to the responsible preservation of our unique natural environment and making sure our built environment reflects our current and future needs.

We are open for and encourage business, industry and all aspects of **COMMUNITY DEVELOPMENT**, particularly our thriving arts and cultural scene.

Disclaimer

No responsibility whatsoever is implied or accepted by the Shire of Derby/West Kimberley (Shire) for any act, omission or statement or intimation occurring during Council or Committee meetings.

The Shire disclaims any liability for any loss whatsoever and howsoever caused arising out of reliance by any person or legal entity on any such act, omission or statement or intimation occurring during Council or Committee meetings. Any person or legal entity who acts or fails to act in reliance upon any statement, act or omission made in a Council or Committee meeting does so at that person's or legal entity's own risk.

In particular and without derogating in any way from the broad disclaimer above, in any discussion regarding any planning application or application for a licence, any statement or intimation of approval made by any Elected Member or officer of the Shire during the course of any meeting is not intended to be and is not taken as notice of approval from the Shire.

The Shire warns that anyone who has any application lodged with the Shire must obtain and should only rely on written confirmation of the outcome of the application and any conditions attaching to the decision made by the Shire in respect of the application.

Notes for Members of the Public

PUBLIC QUESTION TIME

The Shire of Derby/West Kimberley extends a warm welcome to you in attending any Shire meeting. The Shire is committed to involving the public in its decision making processes whenever possible. The ability to ask questions during 'Public Question Time' is of critical importance in pursuing this public participation objective. The Shire sets aside a period of 'Public Question Time' to enable a member of the public to put questions. Questions should only relate to the business of the Shire and should not be a statement or personal opinion. Upon receipt of a question from a member of the public, the Presiding Member may either answer the question or direct it to an officer to answer, or it will be taken on notice.

Any comments made by a member of the public become a matter of public record as they are minuted by Council. Members of the public are advised that they are deemed to be held personally responsible and legally liable for any comments made by them that might be construed as defamatory or otherwise considered offensive by any other party.

MEETING FORMALITIES

Local government Council meetings are governed by legislation and regulations. During the meeting, no member of the public may interrupt the meetings proceedings or enter into conversation. Members of the public shall ensure that their mobile telephone or audible pager is not switched on or used during any Shire meeting.

Members of the public are hereby advised that the use of any electronic, visual or audio recording device or instrument to record proceedings of the meeting is not permitted without the permission of the Presiding Member.

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Notes for Elected Members

NATURE OF COUNCIL'S ROLE IN DECISION MAKING

Advocacy:	When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.
Executive/Strategic:	The substantial direction setting and oversight role of the Council such as adopting plans and reports, accepting tenders, directing operations, grants, and setting and amending budgets.
Legislative:	Includes adopting local laws, town planning schemes and policies.
Administrative:	When Council administers legislation and applies the legislative regime to factual situations and circumstances that affect the rights of people. Examples include town planning applications, building licences and other decisions that may be appealable to the State Administrative Tribunal.
Review:	When Council reviews a decision made by Officers.
Information:	Includes items provided to Council for information purposed only that do not require a decision of Council (that is for 'noting').

ALTERNATIVE MOTIONS

Councillors wishing to make alternative motions to officer recommendations are requested to provide notice of such motions in written form to the Chief Executive Officer prior to the Council meeting.

DECLARATIONS OF INTERESTS

Elected Members should fill in Disclosure of Interest forms for items in which they have a financial, proximity or impartiality interest and forward these to the Presiding Member before the meeting commences. Section 5.60A of the *Local Government Act 1995* states;

"a person has a financial interest in a matter if it is reasonable to expect that the matter will, if dealt with by the local government, or an employee or committee of the local government or member of the council of the local government, in a particular way, result in a financial gain, loss, benefit or detriment for the person."

Section 5.60B states;

"a person has a proximity interest in a matter if the matter concerns –

*(a) a proposed change to a planning scheme affecting land that adjoins the person's land;
or*

(b) a proposed change to the zoning or use of land that adjoins the person's land; or

(c) a proposed development (as defined in section 5.63(5)) of land that adjoins the person's land."

MEETING DATES

At its Ordinary Meeting of Council on 27 October 2022, Council adopted the following meeting dates for 2023:

January			Council in Recess
Thursday	23 February 2023	5.30 pm	Council Chambers, Derby
Thursday	30 March 2023	5.30 pm	Fitzroy Crossing
Thursday	27 April 2023	5.30 pm	Council Chambers, Derby
Thursday	25 May 2023	5.30 pm	Fitzroy Crossing
Thursday	29 June 2023	5:30pm	Council Chambers, Derby
Thursday	27 July 2023	11.00am	Remote Aboriginal Community
Thursday	31 August 2023	5.30 pm	Council Chambers, Derby
Thursday	28 September 2023	5.30 pm	Fitzroy Crossing
Thursday	26 October 2023	5.30 pm	Council Chambers, Derby
Thursday	30 November 2023	5.30 pm	Fitzroy Crossing
Thursday	14 December 2023	5.30 pm	Council Chambers, Derby

Council's Compliance and Strategic Review Committee and the Commercial Committee meet when required. Details of these meetings are advised as appropriate.

APPLICATION FOR LEAVE OF ABSENCE

In accordance with Section 2.25 of the *Local Government Act 1995*, an application for leave requires a Council resolution granting leave requested. Council may grant approval for Leave of Absence for an Elected Member for ordinary Council meetings for up to but not more than six consecutive meetings. The approval of the Minister is required for leave of absence greater than six ordinary Council meetings.

This approval must be by Council resolution and differs from the situation where an Elected Member records their apologies for the meeting. A failure to observe the requirements of the Act that relates to absence from meetings can lead to an Elected Member being disqualified should they be absent without leave for three consecutive meetings.

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1 DECLARATION OF OPENING, ANNOUNCEMENT OF VISITORS**2 ATTENDANCE VIA TELEPHONE/INSTANTANEOUS COMMUNICATIONS**

A Councillor may attend council or committee meetings by electronic means if the member is authorised to do so by the President or the Council. Electronic means attendance can only be authorised for up to half of the Shire's in-person meetings they have attended in total, in any rolling 12 months prior period. Authorisation can only be provided if the location and the equipment to be used by the Councillor are suitable to enable effective, and where necessary confidential, engagement in the meeting's deliberations and communications.

3 DISCLOSURE OF INTERESTS**3.1 Declaration of Financial Interests****3.2 Declaration of Proximity Interests****3.3 Declaration of Impartiality Interests****4 APPLICATIONS FOR LEAVE OF ABSENCE****5 RESPONSES TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE****6 PUBLIC TIME****6.1 Public Question Time****6.2 Public Statements****7 PETITIONS, DEPUTATIONS, PRESENTATIONS AND SUBMISSIONS****8 ANNOUNCEMENTS BY PRESIDING PERSON WITHOUT DISCUSSION****9 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS****RECOMMENDATION**

That the Minutes of the Special Meeting of the Shire of Derby/West Kimberley held at the Council Chambers, Clarendon Street, Derby, on 17 August 2023 at 4:30pm and the Special Meeting of the Shire of Derby/West Kimberley held at the Council Chambers, Clarendon Street, Derby, on 17 August 2023 at 5:53pm be CONFIRMED.

10 RECOMMENDATIONS AND REPORTS OF COMMITTEES

10.1 MINUTES OF THE AUDIT COMMITTEE MEETING HELD ON 24 AUGUST 2023

File Number: 4110

Author: Sarah Smith, Executive Services Coordinator

Responsible Officer: Amanda Dexter, Chief Executive Officer

Authority/Discretion: Administrative

SUMMARY

For Council to receive the minutes of the Audit Committee Meeting held on 24 August 2023.

ATTACHMENTS

1. Minutes of the Audit Committee Meeting held on 24 August 2023

RECOMMENDATION

1. That the Minutes of the Audit Committee Meeting held on 24 August 2023 be received and the recommendations therein be adopted.

COMMITTEE RESOLUTION AC73/23

Moved: Cr Peter McCumstie

Seconded: Cr Geoff Haerewa

That the Audit Committee recommends that Council:

1. Receive the information contained in the report detailing outstanding rates and sundry debtors as at 31 July 2023

In Favour: Crs Geoff Haerewa, Peter McCumstie and Andrew Twaddle

Against: Nil

CARRIED 3/0

COMMITTEE RESOLUTION AC74/23

Moved: Cr Peter McCumstie

Seconded: Cr Geoff Haerewa

That the Audit Committee recommends that Council:

1. Notes the report; and
2. Requires that an update Leases Report be provided to the Audit & Risk Committee on an annual basis.

In Favour: Crs Geoff Haerewa, Peter McCumstie and Andrew Twaddle

Against: Nil

CARRIED 3/0

COMMITTEE RESOLUTION AC77/23

Moved: Cr Peter McCumstie

Seconded: Cr Geoff Haerewa

That the Audit Committee recommends to Council:

1. That the next Audit Committee Meeting be held on 26 September 2023 at 4:00pm; and
2. Direct the CEO to advertise by local public notice the change of meeting date.

In Favour: Crs Geoff Haerewa, Peter McCumstie and Andrew Twaddle

Against: Nil

CARRIED 3/0



**Shire of Derby /
West Kimberley**

UNCONFIRMED MINUTES

Audit Committee Meeting

Thursday, 24 August 2023

Date: Thursday, 24 August 2023

Time: 4:00pm

**Location: Council Chambers
Clarendon Street
Derby**



Order Of Business

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**MINUTES OF SHIRE OF DERBY / WEST KIMBERLEY
AUDIT COMMITTEE MEETING
HELD AT THE COUNCIL CHAMBERS, CLARENDON STREET, DERBY
ON THURSDAY, 24 AUGUST 2023 AT 4:00PM**

PRESENT: Cr Andrew Twaddle (Chair), Cr Geoff Haerewa (Shire President) and Cr Peter McCumstie (Deputy Shire President)

IN ATTENDANCE: Neil Hartley (Director of Strategic Business)(MS Teams), Christie Mildenhall (Acting Director of Community Services)(MS Teams), Tamara Clarkson (Acting Director of Corporate Services), Sarah Smith (Executive Services Coordinator), Callum Murray (Governance Officer).

VISITORS: Cr Paul White

GALLERY: Nil

APOLOGIES: Cr Keith Bedford and Cr Pat Riley

APPROVED LEAVE OF ABSENCE: Nil

ABSENT: Nil

1 DECLARATION OF OPENING, ANNOUNCEMENT OF VISITORS

The meeting was opened at 4:00pm by Cr Andrew Twaddle (Chair).

2 ATTENDANCE VIA TELEPHONE/INSTANTANEOUS COMMUNICATIONS

A Councillor may attend council or committee meetings by electronic means if the member is authorised to do so by the President or the Council. Electronic means attendance can only be authorised for up to half of the Shire's in-person meetings they have attended in total, in any rolling 12 months prior period. Authorisation can only be provided if the location and the equipment to be used by the Councillor are suitable to enable effective, and where necessary confidential, engagement in the meeting's deliberations and communications.

- Cr Geoff Haerewa;
- Neil Hartley – Director Strategic Business
- Christie Mildenhall – Acting Director of Community Development

3 ANNOUNCEMENTS BY PRESIDING PERSON WITHOUT DISCUSSION

- Nil.

4 DISCLOSURE OF INTERESTS

4.1 Declaration of Financial Interests

- Nil.

4.2 Declaration of Proximity Interests

- Nil

4.3 Declaration of Impartiality Interests

- Nil

5 PETITIONS, DEPUTATIONS, PRESENTATIONS AND SUBMISSIONS

- Nil

6 REPORTS

6.1 OUTSTANDING DEBT JULY 2023

File Number: 5174

Author: Aaron Gloor, Senior Finance Officer

Responsible Officer: Tamara Clarkson, Acting Director of Corporate Services

Authority/Discretion: Information

SUMMARY

For the Committee to receive the outstanding rates and outstanding sundry debtors reports and provide strategic direction as required.

Reportable Financial Year: 2023/2024

Reportable Month: July 2023

DISCLOSURE OF ANY INTEREST

Nil by Author and Responsible Officer.

BACKGROUND

The Committee will ensure compliance in the Shire's financial reporting and will liaise with the CEO to ensure the effective and efficient management of the Shire's financial accounting systems to meet statutory requirements.

STATUTORY ENVIRONMENT

Local Government Act 1995

Subdivision 4 — Payment of rates and service charges

6.43. Rates and service charges are a charge on land

6.44. Liability for rates or service charges

6.50. Rates or service charges due and payable

6.53. Land becoming or ceasing to be rateable land

Subdivision 5 — Recovery of unpaid rates and service charges

6.55. Recovery of rates and service charges

6.56. Rates or service charges recoverable in court

6.16 Imposition of fees and charges

POLICY IMPLICATIONS

F4 – SUNDRY DEBTORS COLLECTION POLICY

F5 – OUTSTANDING RATES COLLECTION POLICY

F6 – FINANCIAL HARDSHIP POLICY

FINANCIAL IMPLICATIONS

Outstanding Rates and Service Charges totalling \$1,008,799.22 in cash flow impacts.

Outstanding Sundry debtors totalling \$1,117,714.11 in cash flow impacts.

STRATEGIC IMPLICATIONS

GOAL	OUR PRIORITIES	WE WILL
1. Leadership and Governance	4.3 Sustainability	1.2.2 Provide strong governance

RISK MANAGEMENT CONSIDERATIONS

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Financial: Non recovery of debts will impact the type and level of services provided to the town.	Almost Certain	Severe	Extreme	Be proactive with collection process and recovering outstanding debt

CONSULTATION

The finance department has followed both Council policies relating to collection of rates and service charges (this includes a customer contact process) and have consulted with CS Legal with regard to use of services to recover outstanding debts.

COMMENT

Attached to this report is an aged breakdown of outstanding rates and service charges by rating category as well a depiction of rates debt by month. The report also contains a breakdown of outstanding sundry debtor charges by age as well as the movement of this debt over a rolling five-month period

There were no write-offs approved and processed in July 2023.

VOTING REQUIREMENT

Simple majority

ATTACHMENTS

1. Total Debtors Comparison Graph
2. Report to Council - Accounts Receivable
3. Rates Debt Summary Report
4. Report to Audit Committee Rates Outstanding

COMMITTEE RESOLUTION AC73/23**Moved: Cr Peter McCumstie****Seconded: Cr Geoff Haerewa****That the Audit Committee recommends that Council:**

- 1. Receive the information contained in the report detailing outstanding rates and sundry debtors as at 31 July 2023**

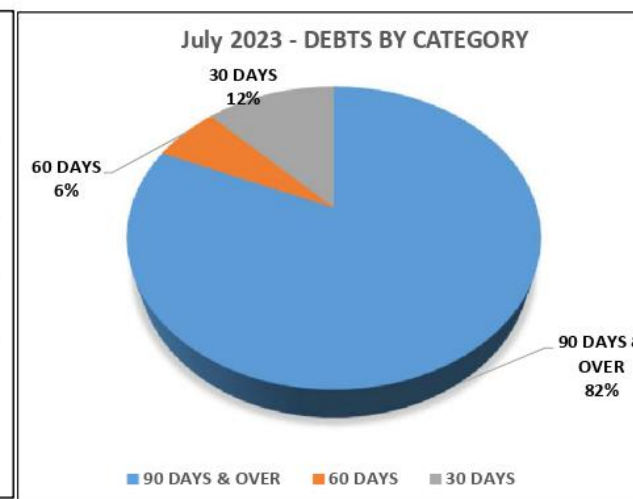
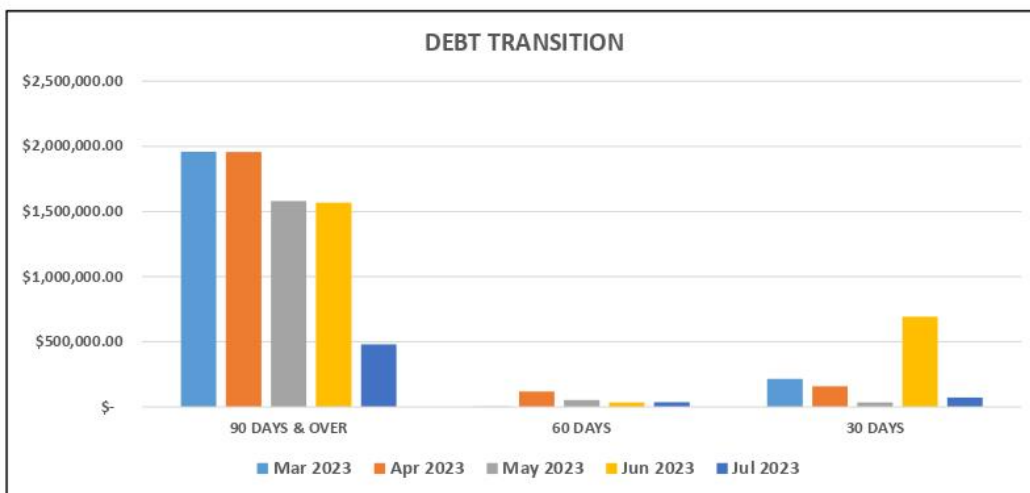
In Favour: Crs Geoff Haerewa, Peter McCumstie and Andrew Twaddle**Against:** Nil**CARRIED 3/0**

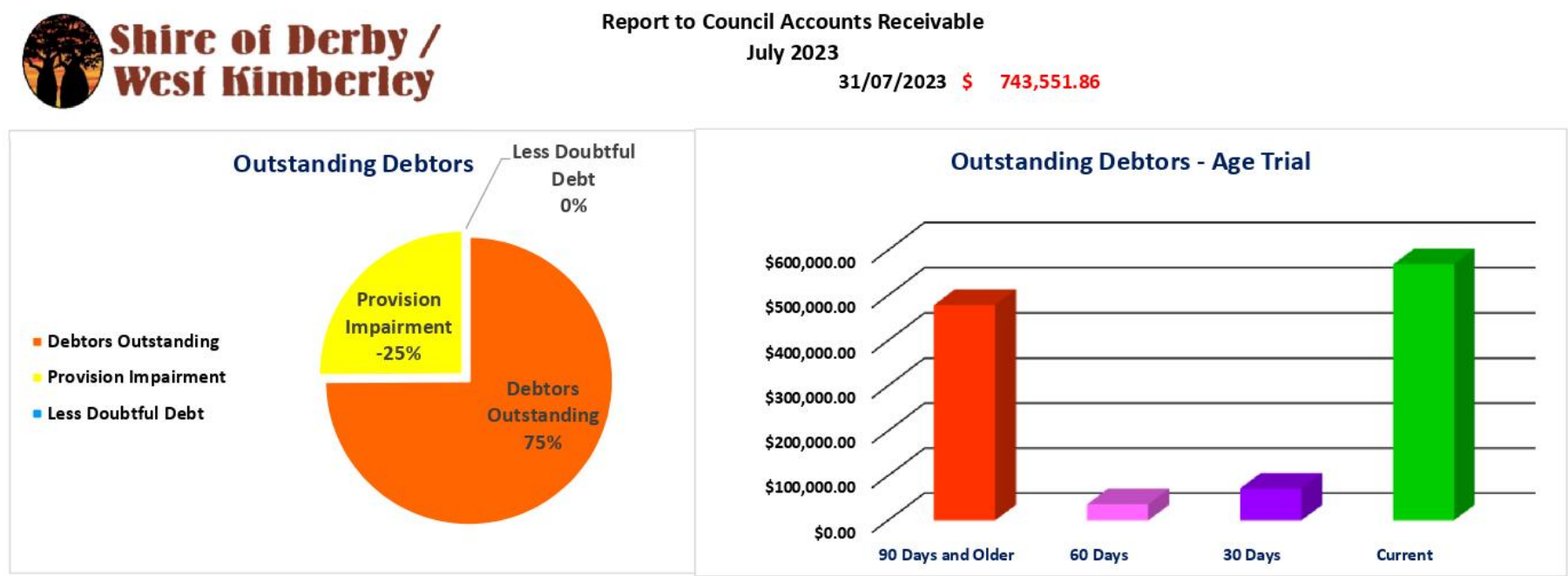


Shire of Derby / West Kimberley

TOTAL DEBTORS OUTSTANDING COMPARISON GRAPHS (A) - 2023/2024

	Mar 2023	Apr 2023	May 2023	Jun 2023	Jul 2023	Changes (June-July)
90 DAYS & OVER	\$ 1,958,785.63	\$ 1,955,696.00	\$ 1,579,518.90	\$ 1,566,266.17	\$ 478,638.99	-\$ 1,087,627.18
60 DAYS	\$ 875.02	\$ 117,401.28	\$ 52,827.18	\$ 32,696.39	\$ 36,064.77	\$ 3,368.38
30 DAYS	\$ 215,379.98	\$ 158,201.43	\$ 33,998.81	\$ 691,101.86	\$ 71,523.89	-\$ 619,577.97
OUTSTANDING DEBT	\$ 2,175,040.63	\$ 2,231,298.71	\$ 1,666,344.89	\$ 2,290,064.42	\$ 586,227.65	-\$ 1,703,836.77





The Finance Department is continuing Debt collection to recover outstanding amounts owed by Sundry Debtors in accordance with F4 - **Sundry Debtors Collection Policy**. The Finance Dept has made contact by telephone, email and letter to outstanding debtors requesting payments.

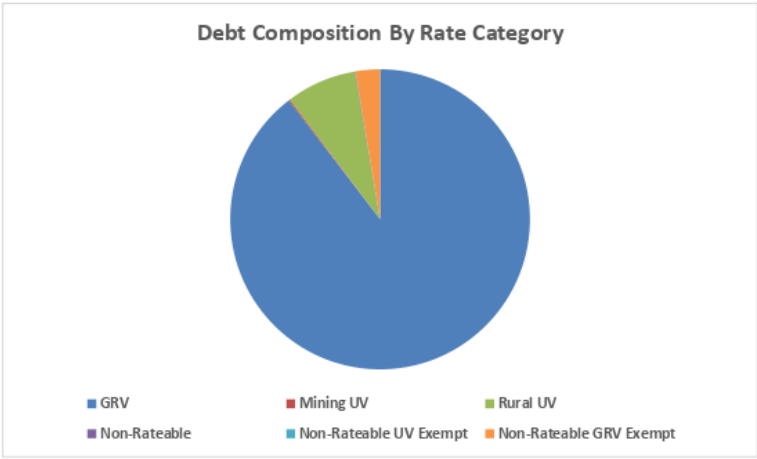
The Finance Department and the Acting Director Corporate are working together to ensure that the debt owing will be recovered and to reduce amounts owed to the Shire.



Total Rates & Service Charges Outstanding as at 11th August 2022
Total Rates & Service Charges Outstanding as at 31 July 2023
Total Collected YTD From Outstanding Rates & Service charges

\$12,379,654.69
\$1,008,799.22
\$11,370,855.47

	Net Debt					Change (June - July)
	Mar-23	Apr-23	May-23	Jun-23	Jul-23	
GRV	\$ 1,400,417.28	\$ 1,386,603.99	\$ 1,248,958.14	\$ 1,118,704.85	\$ 904,926.73	-\$ 213,778.12
Mining UV	\$ 3,768.71	\$ 2,286.66	\$ 2,725.58	\$ 1,919.16	\$ 1,367.99	-\$ 551.17
Rural UV	\$ 131,570.64	\$ 113,715.46	\$ 115,056.69	\$ 115,771.17	\$ 76,812.26	-\$ 38,958.91
Non-Rateable	-\$ 864.51	-\$ 840.49	\$ 812.46	-\$ 790.64	-\$ 764.89	\$ 25.75
Non-Rateable UV Exempt	\$ 1,745.41	\$ -	\$ -	\$ -	\$ -	\$ -
Non-Rateable GRV Exempt	\$ 29,909.49	\$ 30,116.92	\$ 25,870.37	\$ 26,058.36	\$ 26,257.13	\$ 198.77
	\$ 1,566,547.02	\$ 1,531,882.54	\$ 1,391,798.32	\$ 1,261,662.90	\$ 1,008,599.22	-\$ 253,063.68



% of Levied outstanding
8.15%

Total Overdue From Instalment Payers
Unavailable until 23/24 rates are levied

Comments

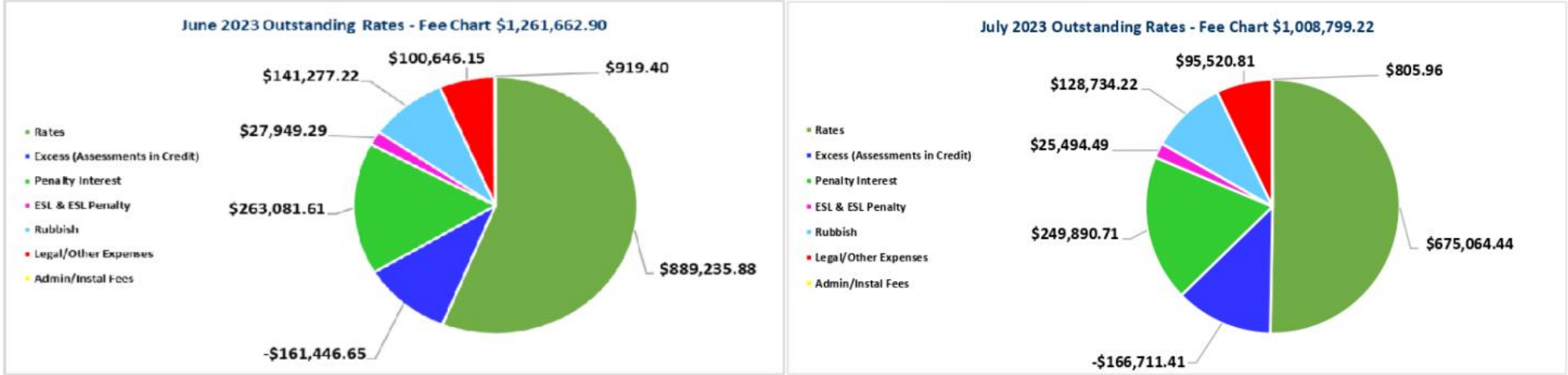
Large movement of debt driven by multiple LGA sale processes starting to gain traction.

	08/09	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	21/22	22/23	23/24	Total Credits	Total
COMMERCIAL - GRV	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 30,754.38	\$ 71,223.06	\$ 2,320.51	-\$ 41,868.85	\$ 62,429.10
INDUSTRIAL - GRV	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 17,597.07	\$ 317.34	-\$ 12,712.08	\$ 5,202.33
MINING - UV	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 629.77	\$ 1,824.79	\$ 40.35	-\$ 1,126.92	\$ 1,367.99
NON-RATEABLE	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 111.70	\$ 1,745.76	\$ 2,636.89	\$ 75.60	-\$ 5,334.84	-\$ 764.89
NON-RATEABLE/EXEMPT - GRV	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,375.79	\$ 5,275.35	\$ 5,606.06	\$ 8,703.98	\$ 11,970.94	\$ 595.29	-\$ 8,270.28	\$ 26,257.13
OTHER LOCATIONS - GRV	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 159.01	\$ 37.90	\$ -	\$ 196.91
RESIDENTIAL - GRV	\$ 1,103.41	\$ 2,648.50	\$ 5,252.56	\$ 12,349.04	\$ 13,003.73	\$ 14,303.26	\$ 16,027.66	\$ 50,903.55	\$ 35,824.82	\$ 44,553.22	\$ 67,949.10	\$ 77,576.50	\$ 92,473.13	\$ 137,774.02	\$ 308,192.22	\$ 15,659.87	-\$ 73,126.52	\$ 822,468.07
RURAL - UV	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 34.03	\$ 7,763.01	\$ 11,455.08	\$ 79,716.19	\$ 1,764.72	-\$ 23,920.77	\$ 76,812.26
URBAN FARMLAND - GRV	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 259.68	\$ 1,785.16	\$ 1,503.32	\$ 4,817.55	\$ 6,479.58	\$ 136.18	-\$ 351.15	\$ 14,630.32
Total	\$ 1,103.41	\$ 2,648.50	\$ 5,252.56	\$ 12,349.04	\$ 13,003.73	\$ 14,303.26	\$ 16,027.66	\$ 50,903.55	\$ 35,824.82	\$ 44,553.22	\$ 70,584.57	\$ 84,671.04	\$ 107,457.22	\$ 195,880.54	\$ 499,799.75	\$ 20,947.76	-\$ 166,711.41	\$ 1,008,599.22



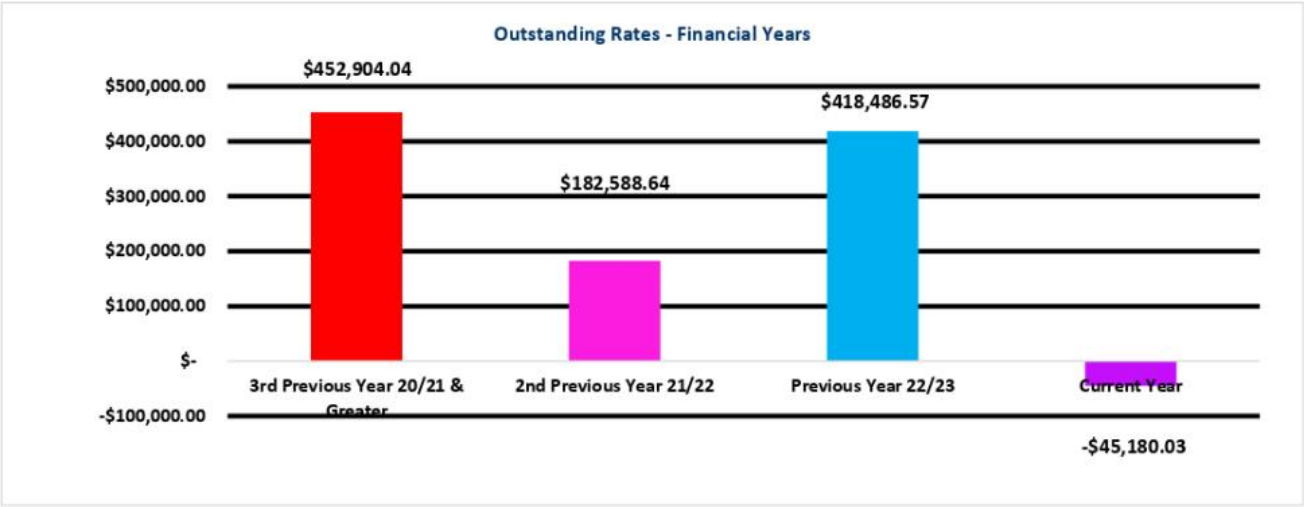
Report to Audit Committee
July 2023

Total Rates Outstanding as at EOM July 2023 \$ 1,008,799.22



Rates and Service Charges Levied 2022/2023

Issued 11th August 2022	
Rates	8,660,698.59
Waste	2,195,514.00
Pool Fee	1,344.12
ESL	269,853.68
SUB TOTAL	\$ 11,127,410.39
Prior FY Debt O/S	
Rates	864,460.72
Waste	362,347.25
Pool Fee	115.63
ESL	25,320.70
SUB TOTAL	1,252,244.30
TOTAL TO COLLECT	\$ 12,379,654.69



Debt Comparison for Same Month Last Year			
EOM July 2022	\$1,590,499.97	EOM July 2023	\$ 1,008,799.22
Difference	-\$ 581,700.75		

6.2 LEASE REPORT - UPDATE**File Number: 5345****Author: Neil Hartley, Director - Strategic Business****Responsible Officer: Amanda Dexter, Chief Executive Officer****Authority/Discretion: Information****SUMMARY**

The Shire has numerous parcels of land which it offers for lease on both community and commercial terms. Historically, leases have received varying levels of attention, but for the last four years, the Shire's leases have received a budget and a consequential administrative priority.

This report provides an update on the Shire's community and commercial leases portfolio.

DISCLOSURE OF ANY INTEREST

Nil by Author.

BACKGROUND

The Shire has a several key parcels of land which it offers up for both community and commercial lease. Historically, lease activation and management has received varying levels of attention dependent on the availability of staffing resources. For the last few years they have received a dedicated budget provision and considerable progress has consequentially been made on their control and management.

Council has also reinforced its interest in the need to effectively manage the Shire's commercial leases via the following CEO key performance indicator (*...to provide a six monthly report on the Lease and Property Management Framework demonstrating that Council's Assets and commercial operations are effectively managed.*).

The attached Spreadsheet is an internal control document used by the organisation to manage its leases (both community and commercial).

Current leases require ongoing monitoring for consideration of renewal, with lease terms and due dates all varying. Submissions for new leases are also occasionally received, which require actioning and reporting to Council for its consideration. The process for commercial leases must follow the requirements of the Local Government Act, in the main Section 3.58, and must reach mutual agreement on lease conditions.

Commercial leases regularly take several months to finalise, but can on occasion take in excess of a year to achieve a successful conclusion. The cost of establishing a lease is high for the lessee, with legal and valuation costs regularly being in the vicinity of \$5 – 7,000, and in addition, the Shire also charges an administration fee of \$2 – 3,000 for the lease's establishment. The administration fee rarely covers actual costs, but does make a meaningful contribution towards them.

STATUTORY ENVIRONMENT

Local Government Act S.2.7 (Role of Council) outlines that Councils are to govern the local government's affairs; take responsibility for the performance of their local government's functions, and oversee the allocation of their local government's finances and resources.

POLICY IMPLICATIONS

Nil applicable.

FINANCIAL IMPLICATIONS

The financial implications of preparing this report are minimal and limited to officer time and resources consumed to research and prepare it.

Cumulatively, over \$200,000 is raised through lease payments annually.

STRATEGIC IMPLICATIONS

GOAL	OUR PRIORITIES	WE WILL
1. Leadership and Governance	1.2 Capable, inclusive and effective organisation	1.2.2 Provide strong governance

RISK MANAGEMENT CONSIDERATIONS

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Reputation: Not gaining a suitable financial return from Shire owned assets may result in adverse community sentiment about asset commercialisation opportunities available.	Likely	Moderate	High	Ensure that resources are made available to enable adequate management of commercial leases.

CONSULTATION

No community consultation is required relative to this report.

COMMENT

This report provides an update on the Shire's community and commercial leases portfolio. Notwithstanding that all commercial leases progress through Council in order that the requirements of S. 3.58 of the Local Government Act can be met, this is the first coordinated update report to be provided to Council, at least for the last several years.

Leases require constant attention and even when diligently progressed, can take over a year to finalise on occasion, particularly for commercial leases.

The attention given to the Shire's several dozen leases has however, provided both good financial and social dividends. Community groups have security of tenure of their area, providing confidence to invest time and effort into their site, and commercial tenants are enabled to pursue business activities, and pay rent/lease fees to Shire in exchange.

Commercial lease fees in the main are established via a commercial valuation of the site. Experience indicates that valuations closely follow current lease payments in that vicinity (e.g. the Derby airport) so movements in lease charges do not vary greatly from a simple lease fee+CPI calculation, year on year.

Of critical importance is to actually have a lease in place, manage it diligently, and if possible be innovative in how lease fees might be calculated. Examples of leases/licences that have been particularly productive for the Shire include:

1. Derby Port Boat Storage Area – a \$3,500 annual Licence fee (@\$16/square metre) where previously, boats/trailers used to park without any contribution;
2. FX Airport Hangar – a \$8,000 land lease over an abandoned hanger that was being used without any payment previously;
3. The settlement negotiation of the RFDS lease at Derby Airport, which included partial lease payments for a period of time, plus airport landing fees (with airport landing fees raising approximately \$40,000pa);
4. Journey Beyond – a per passenger rate that raises approximately \$45,000pa (as opposed to the \$0 charge that was in place prior to then); and
5. The renegotiation of the Kimberley Mineral Sands Lease, which includes the potential of additional payments of up to \$10,000,000 beyond what was previously being received.

VOTING REQUIREMENT

Simple majority

ATTACHMENTS

1. Lease Register - August 2023

COMMITTEE RESOLUTION AC74/23

Moved: Cr Peter McCumstie

Seconded: Cr Geoff Haerewa

That the Audit Committee recommends that Council:

1. Notes the report; and
2. Requires that an update Leases Report be provided to the Audit & Risk Committee on an annual basis.

In Favour: Crs Geoff Haerewa, Peter McCumstie and Andrew Twaddle

Against: Nil

CARRIED 3/0

	Lease Identification	Lessee Plus/and On Trading name	Status / Actions	Assessment Number	Synergy number	Location	Email Address for correspondence	Lease Status	Lease Start Date	Lease End Date	Term	Options	Rent PA	GL Code	CPI	Rent review Mkt-Exts	Charge Outgoings	Includes GST	Lease Maintenance Requirement			Comments/Notes
Derby Airport	Derby Airport - Lease Area 1 - Lot 343 on Plan 144238	VACANT (RFD5 Building)	Vacant pending New Lease Opportunities		N8352	Lot 143 on Plan 144238, Derby Airport Lease 1	westops@rfdwa.com.au , Cleiton.Bright@rfdwa.com.au	In Handover	1/07/2021	1/08/2023	3 years	No	\$1,113.75	1312063503430	N/A	N/A	Yes	Yes, Inclusive	Not addressed	Lessee		Outs never claimed
Derby Airport	Derby Airport - Lot 343 on Plan 144238, Lease Area 2 (663m2)	Dunnings Fuel	No action required		O33266	Derby Airport - Lease area 2	manager@dunningsfuel.com.au	Current	1/05/2022	30/04/2032	30	30	Lease Start Ftg of \$16,500.00	1312063503430	N/A	Mkt at yrs. 5,10,15,	Yes	No + GST	Land only	Lessee		
Derby Airport	Derby Airport - Lot 343 on Plan 144238, Lease Area 3 (1,658m2)	All North Helicopters (Previously KAS Helicopters)	No action required		Lease O32604 Variation O33268	Lot 143 on Plan 144238, Derby Airport Lease Area 3	davep23@bigpond.com	Current	5/06/2013	4/06/2023	10yrs	10yrs	Lease Start Ftg 25,462.80	1312063503430	Annually	Mkt at yrs. 5,10,15,	Yes	Yes Inclusive	Not addressed	Lessee		Outs never claimed
Derby Airport	Derby Airport - Lot 343 on Plan 144238, Lease Area 5	All North Helicopters (Previously KAS Helicopters)	No action required		O32405	Lot 143 on Plan 144238, Derby Airport Lease Area 5	pjck@northernaviationservices.com.au	Current	12/09/2011	11/09/2021	10yrs	10yrs	Lease Start \$14,490.00 or 16,721.67	1312063503430	Annually	Mkt at yrs. 5,10,15,	Yes	Yes Inclusive	Not addressed	Lessee		
Derby Airport	Derby Airport - Lease Area 6	BP Australia Ltd	No action required - Let go to "Holding Over" unless otherwise advised by Lessee (and let Dunnings/BP competition issue settle out)			Derby Airport Lease Area 6	rick.golding@bp.com	Current	1/04/2014	31/03/2019	5yrs	5yrs	\$ 27,502.28	1312063503430	Annually	Lease Start \$23,844.00 or 27,902.28	Yes	Yes Inclusive	Not addressed	Lessee		Check Rent CPI
Derby Airport	Derby Airport - Lease Area 7	All North Helicopters	No action required		O32425	Derby Airport Lease Area 7	pjck@northernaviationservices.com.au	Current	1/01/2011	31/12/2030	10yrs	20yrs	Lease Start 29,300 or 23,302.08	1312063503430	Annually	Mkt at yrs. 5,10,15,	Yes	Yes + gst	Lessee	Not addressed		Rent inclusive of gst
Derby Airport	Derby Airport - Lease Area 8 - Admin Building (Part of)	No further leases to be issued.				Derby Airport Admin Building Lease Area 8									N/A							
Derby Airport	Derby Airport - Lease Area 9 - Admin Building (Part of)	No further leases to be issued.				Derby Airport Admin Building Lease Area 9 (Part of)									N/A							No Info
Derby Airport	Derby Airport - Lot 343 on Plan 144238, Lease Area 10 (1556m2)	Dunnings Fuel	No action required		O33233	Derby Airport - Lease area 10	manager@dunningsfuel.com.au	Current	1/05/2022	01/05/2032	30	30	Lease Start Ftg of \$25,674.00	1312063503430	N/A	Mkt at yrs. 5,10,15,	Yes	No + GST	Land only	Lessee		
Derby Airport	Derby Airport - Lease Area 11	BP Australia Ltd	No action required - Let go to "Holding Over" unless otherwise advised by Lessee (and let Dunnings/BP competition issue settle out)			Derby Airport Lease Area 11	rick.golding@bp.com	Current	11/01/2013	31/10/2023	10yrs	2 x 5yr options	Lease Start \$37,021.60 or 43,054.48	1312063503430	Annually	Mkt at yrs. 5,10,15,	Yes	Yes Inclusive	Not addressed	Lessee		Check Rent + gst fgt
Derby Airport	Derby Airport - Lease Area 16	No further leases to be issued. Not leaseable access to airstrip				AIRPORT LEASE AREA 16																
Derby Airport	Derby Airport - Lease Area 17 - Aircraft Hanger and Associated Offices	Kingdom Aviation Ministries	No action required			Aircraft Hanger and Associated Offices, Lease Area 17	plb@kderby@bigpond.com	Current	6/12/2008	11/06/2028	10yrs	No	\$ 300.00	1312063503430	N/A	N/A	Yes	No	Lessee	Lessee		
Derby Airport	Derby Airport - Land Area (Or Lease Area) 18	All North Helicopters Trading as Frontier Helicopters	No action required			Derby Airport Land Area 18	pjck@northernaviationservices.com.au	Current	1/01/2023	31/12/2032	10yrs	10yrs	\$ 15,304.68	1312063503430	Annually	Yes	Yes	No	Lessee	Lessee		Check Rent + gst fgt
Derby Airport	Derby Airport	Bureau of Meteorology	No action required. Extension for 10 years approved wef 01/04/2023.			Derby Airport		Current	1/04/2013	31/03/2033	10yrs	10 yrs	One off payment \$1,000.00	1312063503430	N/A				Land only	Land only		
Derby Airport	Derby Airport - Lease Area 19 (Eastern portion of airport (air-side/land-side 7))	Horizon Power	Under negotiation for solar farm																			
Derby Airport	Landing Leading to the Derby Airport (MOU also includes/Covers the Derby Port)	Air Infrastructure/WPQ, Property (Part of the Warburton Group)	Avoiding new signed agreement.Requires annual monitoring of KPI's, and Council report to consider annual extension. Report requested but not as yet supplied.			Land Leading to Derby Wharf.	marcus.lemonnier@wpq.biz	Current	30/06/2022	30/06/2023	1yr	No	\$ 5.00	1312072003450	N/A	N/A	N/A	N/A				MOU Extension part of Warburton Group and covers Derby airport well as land leading to the Port. In April follow up MOU outcome the next step. 9/1/20 check rent \$5
Derby Airport	Derby Airport - Lease Area 20 (Adjacent to airstrip and Weather Station)	Federal Government agency, Geoscience Australia (SouthPAN Project)	Under negotiation for GPS Satellite Station			Adjacent to airstrip and Weather Station	elnd@ga.gov.au		1/01/2024?	31/12/2032	10yrs	10yrs										
Derby Community	One Tree Community Services Inc., Lot 1220, Ashley Street Derby	One Tree Community Services Inc.	No action required	A10565		One Tree Childcare Facility, Lot 1220, Ashley Street	frances@onetree.org.au	Current	2/06/2020	1/06/2025	5yrs	5 yrs	\$ 1.00		N/A	N/A	Yes	Yes + gst	Lessee	Lessee		New lease has been prepared
Derby Community	2 Holman Street, Derby (Lot 1143, Residence)	Children Services Support Unit	No action required	A103780		Residence at 2 Holman Street, Derby (Lot 1143)	frances@onetree.org.au	Current	31/05/2020	open	N/A	No	Start \$4,360 or 4,320		N/A	N/A	Yes	No	Lessee	Lessee		Bond or 420 is lodged where? Rent review has/not been done
Derby Community	61 Ashley Street Derby Lot 3033, Part Reserve 23127	Derby Rodco Club	No action required	A10645		Lot 3033, Part Reserve 23127, 61 Ashley Street	cr@g@clubst.com.au	Current	24/05/2016	23/05/2026	10yrs	10yrs	\$ 300.00		N/A	N/A	Yes	Yes + gst	Lessee	Lessee		13/1/20 No Action
Derby Community	Lot 656, Reserve 6929 On Plan 210827	Red Shed, Derby's Women's Collective	No action required			Lot 656, Reserve 6929 On Plan 210827	deborahshad@gmail.com	Current	1/10/2021	31/09/2027	30	2+2+2	\$ 300.00		N/A	N/A	Yes	No + gst	Lessor if owned by SOWK.	Lessor	Lessee: Structural maintenance. Lessee: Keep clean and in good repair.	
Derby Community	Reserve 35129 Lot 226 on Plan 187656 Worsley Road, Derby	Derby Speedway Club	No action required	A10152		Reserve 35129 Lot 226 on Plan 187656 Worsley Road, Derby	soc@speedwayclubderby@gmail.com	Current	29/10/2021	28/10/2031	30	30	\$ 300.00		N/A	N/A	N/A	No + gst	Lessor if owned by SOWK.	Lessor	Lessee: Structural maintenance. Lessee: Keep clean and in good repair.	See Lease for special conditions.
Derby Community	Reserve 35130, Lot 1271 on Plan 189172 Worsley Road, Derby	Derby Pistol Club	No action required	A102216		Reserve 35130, Lot 1271 on Plan 189172	derbypistolclub@westnet.com.au	Current	29/10/2021	28/10/2031	30	30	\$ 300.00		N/A	N/A	N/A	No + gst	Lessor if owned by SOWK.	Lessor	Lessee: Structural maintenance. Lessee: Keep clean and in good repair.	See Lease for special conditions.
Derby Community	Reserve 35130, Lot 1271 on Plan 189172 Worsley Road, Derby	Derby Sporting Shooters Aust Inc. (Nile Club)	No action required	A102216		Reserve 35130, Lot 1271 on Plan 189172	stuart5@nileclubbigpond.com	Current	1/01/2022	31/12/2031	30	30	\$ 300.00		N/A	N/A	N/A	No + gst	Lessor if owned by SOWK.	Lessor	Lessee: Structural maintenance. Lessee: Keep clean and in good repair.	See Lease for special conditions.
Derby Community	Gulford Road, Derby Lot 3033 Part Reserve 23127,	West Kimberley Turf Club	No action required	A10645		Lot 3033, Part Reserve 23127, Gulford Road	geoff@westnet.com.au	Current	1/07/2009	30/06/2030	21yrs	No	\$ 300.00		N/A	N/A	Yes	Yes Inclusive	Lessor if owned by SOWK.	Lessor		13/1/20 No Action but check Point every 4yrs or longer as apprt by the CEO
Derby Community	Gulford Road, Derby Lot 3033 Part Reserve 23127,	Derby Sportsman Club (Golf Club)	No action required	A103160		Lot 3033, Part Reserve 23127, Gulford Road	derbysportclubst@bigpond.com	Current	1/07/2009	30/06/2030	21yrs	No	\$ 300.00		N/A	N/A	Yes	Yes Inclusive	Lessor if owned by SOWK.	Lessor		13/1/20 No Action but check Point every 4yrs or longer as apprt by the CEO
Derby Community	Lot 500, Part of Reserve 6929 (more info)	Derby Visitor Centre	No action required		103427	Lot 500, Part of Reserve 6929	manager@derbytourism.com.au	Current	1/10/2021	30/09/2026	5yrs	No	\$ 300.00		N/A	N/A	Yes	Yes	Lessee	Not specified	Utilities and 50% of building insurance to be charged to Lessee	
Derby Community	Lots 456 and 820 Reserve 10227, Derby (Dewd)	Kimberley Entrance Caravan Park - Bare Water	No action required			Lots 456 and 820 Reserve 10227, Derby	manager@wp@westnet.com.au	Current	7/01/2009	30/06/2023 Extension of 6 months approved. Expires 31/12/2023	20yrs	No	Start 3,300 or 4,813.2		Annually	CPI	Yes	Yes Inclusive	Lessor to maintain and best interest to keep the flow operational at all times.			
Derby Community	Derby Recreation Centre (more info)	VACANT	VACANT			Derby Recreation Centre							\$ 6,600.00		N/A	N/A		Yes + gst				Sold remove ?
Derby Community	Portion of reserve 35129, Lot 226 Plan 187656	Kimberley Enduro Club Motorcross	No action required	A10152		Portion of reserve 35129, Lot 226 Plan 187656		Current	20/09/2019	19/09/2024	5yrs	5yrs	\$ 300.00		N/A	N/A	Yes	Yes + gst	Lessee	Lessee		No Evacuated Lease by Lessee
Derby Community	27 Sutherland Street Derby Lot 1287 Reserve 42140.	Ngarring Barwoona Frail Aged Home	No action required	A108181		Ngarring 42140 Lot 1287 DP 190598	ac.donovan@nabla.com.au	Current	1/10/2015	30/09/2025	10yrs	Yes	\$ 300.00		N/A	No method of RR specified in Lease	Yes	Yes + gst	No specified	Lessee		One moth but no more than 6 months notice to exercise optio
Derby Community	Lot 296 on Plan 222380, being the whole of the land contained in Certificate of Title Volume 1636 Folio 900, being located at 55 Clarendon Street, Derby	Regional Power Corp. (trading as Horizon Power)	No action required			Lot 296 on Plan 222380, being the whole of the land contained in Certificate of Title Volume 1636 Folio 900, being located at 55 Clarendon Street, Derby	Regional Power Corporation - 18 Brodie Hall Drive, Bentley WA 6102	Current	1/07/2022	30/06/2032	10yrs	5yrs	\$-									
Derby Community	TBA	Bush Fire Brigades	No existing leases in place. Investigate number and location																			
Derby Community	Gulford Road, Derby Lot 3033 Part Reserve 23127,	SOWK/Derby Golf Club/Water Corporation	To be determined	A103160		Lot 3033, Part Reserve 23127, Gulford Road		Unknown	2/09/2002													
Derby Community	Nicholson Road - Reserve 26179, Lot 1402 on plan 193851	Horizon Power - Community Battery	No action required			Nicholson Road - Reserve 26179, Lot 1402 on plan 193851		Current	14/03/2023	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a				
Derby Community	Derby District School - Carpark	Dept of Education	In the hands of DOE management, no action required by the Shire.		136663	Lot 254, Reserve 24594			4/07/2014													
Derby Wharf	Derby Port - Jetty - Head Lease	Shire of Derby/West Kimberley	No action required			Derby Port Jetty		Current	1/05/2019	29/06/2040	21yrs	No	*		N/A	N/A	Yes	No		SOWK		*Rent \$1.00pa Exercised the option for a further 21yrs. Notice negotiate a new lease term must be "more than 12 and not less than 3 months" from the end of the current term in writing. 9/1/20 action at this time.
Derby Wharf	Derby Port - Management Agreement	Shire of Derby/West Kimberley	No action required			Derby Port Jetty		Current	1/05/2019	29/06/2040	21yrs	No	N/A		N/A	N/A	Yes	No		SOWK		Management Agreement runs in parallel with the exercised optio a further 21yrs. Notice to negotiate a new lease term must be "n than 12 and not less than 3 months" from the end of the cure term in writing. 9/1/20 No action at this time.
																						*One off fee of \$1,154.00. To exercise the option for another 21

Derby Port	Landing Leading to the Derby Port. (MOU also includes/Covers the Derby Airport)	Air Infrastructure (NPA) Property (Part of the Warburton Group)	Requires annual monitoring of KPI's, and report to Council. Report requested but not as yet supplied.		Land Leading to Derby Wharf.	marcus.kressmerer@wglb.tz	Current		30/06/2024	1 year	\$	500	131207200.3450	N/A	N/A	N/A	N/A				MOU Extension part of Warburton Group and covers Derby airport as well as land leading to the Port. In April follow up MOU outcome the next step. 9/1/20 check rent \$5
Derby Port	Derby Port, PT Reserve 26818 - Derby Wharf Lot 293, Plan 243258.	Colonial Marine Consultants (CMC)	In Holding over, Awaiting advice from CMC if they want a new lease. No action required unless something changes!		PT Reserve 26818 - Derby Wharf	admin@cmcwharfing.com	Expired	11/01/2011	11/10/2016		\$	33,306.77	131207200.3450	N/A		Yes + g/t				9/1/20 - No Lease Info- Contact McLeod for a copy of the lsa Contact CMC Broome to ask about these intentions.	
Derby Port	Derby Port Lot 293 of Deposited Plan 243258, PT Reserve 26818	Derby Volunteer Marine Rescue Group	No action required		Lot 293 of Deposited Plan 243258, PT Reserve 26818	PO BOX 258, DERBY WA 6728	Current	1/02/2020	31/01/2030	10yrs	No	\$	300.00	131207200.3450	Annually	Rent review based on CPI. No decrease permitted.	Yes	Yes + g/t	Lessee	Lessee	
Derby Port	Derby Port PT Reserve 10831	Mary Island Fishing Club	No action required		Reserve 10831 being land more particularly described as Lot 643 on Deposited Plan 222880 and being the whole of the land comprised in Crown Land Certificate of Title volume LR3007 Folio 47	mfisherby@hotmail.com	Current	10/01/2011	30/09/2031	10yrs	10yrs	\$	300.00	131207200.3450	N/A	N/A	Yes	Yes + g/t	Lessee	Lessee	9/1/20 No Action required at this time.
Derby Port	Derby Port PT Reserve 26818	VACANT	VACANT		PT Reserve 26818									N/A							9/1/20 Lease expired - No further comments/actions on file - to advise on if land is offered again? Plus check if monies are b
Derby Port	Derby Port - Lease Area 2 - Jetty Transit Shed PT Reserve 26818	NPA Fish Farms Pty Ltd	Under administration holding over.	032982	PT Reserve 26818, Lease Area 2 - Transit Shed	mc@marinaproduces.com	Current	1/07/2029	30/06/2023	2yrs	No	26519.24 or 26,519.24	131207200.3450	Annually	The greater of CPI or 3%	Yes	Yes + g/t	Lessee	Not addressed	9/1/20 Check Rent	
Derby Port	Derby Port - Lease Area 3 - Jetty Transit Shed PT Reserve 26818	NPA Fish Farms Pty Ltd	Under administration holding over.	032982	PT Reserve 26818, Lease Area 3 - Transit Shed	mc@marinaproduces.com	Current	1/07/2029	30/06/2023	2yrs	No	11,842.47 or 30,595.00	131207200.3450	Annually	The greater of CPI or 3%	Yes	Yes + g/t	Lessee	Not addressed	9/1/20 Check Rent	
Derby Port	Derby Port Restaurant, - PT Reserve 26818 Lot 181	VACANT	VACANT		Wharf Restaurant, Derby, PT Reserve 26818 Lot 181									N/A						Lease terminated late 2019. No Action Required Last Rent w \$29,347.60pa	
Derby Port	Derby Port, Main Sub-lease Wharf Bulk Handling Facility	Thunderbird Operations (Sheffield Resources)	Lease finalised. (Including Mt Gibson Iron Ore licence) Neil Hartley - \$1 mill payment owed to be settled.		Main Sub-lease Wharf Bulk Handling Facility	info@sheffieldresources.com.au	Current	1/07/2018	28/06/2040	22yrs		\$169,028.80 or \$134,735.00	131207200.3450	Annually	Mkt at yrs. 5,10,15.	Yes	Yes + g/t				Tonnage fee of \$1 per tonne for first 6yrs. After yrs subject to increase 9/1/20 Check Rent \$11g
Derby Port	Derby Port, Elder Street Derby, PT Reserve 26818 Lot 639	VACANT	Awaiting NPA electrical contractor advice on use as lay down area. Then, tidy up the site utilising Wood Kimberley Fuels (previous lessor) credit balance.		Elder Street Derby, PT Reserve 26818 Lot 639									N/A							
Derby Port	Derby Port, Barge Ramp (Licence)	Mt Gibson Iron (Koolan Island Operations)	No action required		Derby Port (SW Side Nr Boat Slipway.		Current	1/05/2017	30/04/2038	21yrs	TBC	\$	1,154.00	131207200.3450	N/A	TBC	Yes	Yes + g/t			One off fee of \$15,154.00. To exercise the option for another 21 license notification has to be given "No Less than 3 and no more 6 months from date of expiry. 19/1/20 No Action Required
Friznoy X Community	Friznoy Crossing Lot 106, Reserve 36669 on Deposited Plan 233657 (more info)	Friznoy Valley Rodos Club	No action required		Lot 106, Reserve 36669 on Deposited Plan 233657	friznoyvalleyrodeosclub@outlook.com	Current	7/10/2014	7/09/2035			\$	300.00	131109210.3430	N/A	N/A			Not addressed	Not addressed	No information - local lease
Friznoy X Community	Friznoy Valley DHS Hard Courts Licence Agreement	Department of Education	No action required		Lot 199 on Deposited Plan 186944 and being the whole of the land in qualified certificate of crown land Title Volume 3346 Folio 699	Dept of Education, 151 Royal Street, EAST PERTH WA 6004	Current	1/10/2020	30/09/2031	N/A	N/A	N/A		N/A	N/A	Yes	N/A	Lessor but with cost sharing	Lessor but with cost sharing	50% cost sharing as per schedule includes Cleaning, Maintenance facilities and improvement/supplies excluding major work!	
Friznoy X Community	Friznoy Valley DHS Oval Licence Agreement	Department of Education	No action required		Lot 199 on Deposited Plan 186944 and being the whole of the land in qualified certificate of crown land	Dept of Education, 151 Royal Street, EAST PERTH WA 6004	Current	1/01/2009	31/12/2029	N/A	N/A	N/A		N/A	N/A	Yes	N/A	Lessor but with cost sharing	Lessor but with cost sharing	50% cost sharing as per schedule. Shire to pay 100% of lights electricity account	
Friznoy X Community	Friznoy Crossing, Flynn Drive - Reserve 36824	Karraguli Adult Education Centre	No action required	A302171	Reserve 36824 Flynn Drive, Friznoy Crossing	acc@karraguli.org.au	Current	28/03/2022	30/06/2039	17+ years	No	\$	300.00		No	Annually by Council	Yes	No Plus GST	Lessee	Lessee	
Friznoy X Community	Friznoy Crossing Lot 199, Reserve 39671	The Housing Authority Little House and pool	No action required		Lot 199, Reserve 39671, Friznoy Crossing	jimnie.symons@community.wa.gov.au	Expired	24/03/2020	25/03/2025	6yrs		Pappercom	131103010.3140	N/A	N/A	Yes	N/A	Lessee	Lessee	No information - Swimming Pool	
Friznoy X Community	Lot 302 on Deposited Plan 76781, being the whole of the land contained in Qualified Certificate of Crown Land title volume LR3363 Folio 729, being located at Lot 302 Grot Northern Hwy, Friznoy Crossing	Regional Power Corp. (trading as Horizon Power)	No action required	A30629	Lot 302 on Deposited Plan 76781, being the whole of the land contained in Qualified Certificate of Crown Land title volume LR3363 Folio 729, being located at Lot 302 Grot Northern Hwy, Friznoy Crossing	Regional Power Corporation - 18 Brodie Hall Drive, Bentley WA 6102 -	Current	1/07/2022	30/06/2032	10yrs	See item 2.2 of agreement	N/A	N/A	N/A	N/A	N/A	N/A	N/A			
Friznoy Crossing Airport	Friznoy Crossing - Airport - Area 1 - PT Reserve 20668 LOC 32, 40, 47 & 72.	Fuel Tram Australia Pty Ltd	Now only requires fuel execution by SOWK		FX Airport PT Reserve 20668 LOC 32, 40, 47 & 72, Area 1														Lessee	Lessee	
Friznoy Crossing Airport	Friznoy Crossing - Airport - Area 2 - PT Reserve 20668 LOC 32, 40, 47 & 72.	Friznoy Helicopters	No action required		FX Airport PT Reserve 20668 LOC 32, 40, 47 & 72, Area 2	friznoyhelicopters@outlook.com	Current	27/05/2021	26/05/2031	10yrs	10yrs	\$8099.28 (invoiced monthly)	131206350.3430	Yes	Mkt at yrs. 5,10,15.	Yes	Yes Inclusive	Lessee	Lessee	What outs have been recovered.	
Friznoy Crossing Airport	Friznoy Crossing - Airport - Area 3	Friznoy Helicopters (S2245 Original In StrongRoom	No action required		FX Airport Area 3	friznoyhelicopters@outlook.com	Current	20/04/2017	19/04/2027	10yrs	10yrs	\$	7,240.00	131206350.3430	Annually	At commencement of further term 2027	Yes	Yes + g/t	Lessee	Lessee	What outs have been recovered.
Friznoy Crossing Airport	Friznoy Crossing - Airport - PT Reserve 20668 LOC 32, 40, 47 & 72 Lease Area 4 (more info)	All North Helicopters	No action required		FX Airport PT Reserve 20668 LOC 32, 40, 47 & 72	pjd@northmavolutionservices.com.au	Current	13/02/2017	12/02/2027	10	-	\$	4,991.28	131206350.3430	Annually	CPI. Mkt at start of option	Yes	Yes + g/t	Lessee	Lessee	Check rent/g/t and lease start date. What outs have been recov
Friznoy Crossing Airport	Friznoy Crossing - Airport - Lot 32 Plan 167697 Vol 3123 Folio 755	Australian Air Services	No action required		FX Airport Lot 32 Plan 167697	info@australianair.com.au	Current	12/04/2011	11/04/2032	21yrs	No	\$	1.00	131206350.3430	N/A	No	Yes	No	Not addressed	Not addressed	No Action
Friznoy Crossing Airport	Friznoy Crossing - Airport - Crown Land Record Volume 3109-306	Bureau of Meteorology	No action required	032987	Friznoy Crossing Crown Land Record Volume 3105-265		Current	18.04.2022	31.01.2033	<1yrs	No	One off payment \$3,000.00	131206350.3430	N/A	N/A	N/A	Plus GST				
Curtin Airport	Licensed Area/Dead Runway 11/29, Taxiway Lima, Apron, Parking Area and Access Road	30 YR	Awaiting advice from Defence on its view post March 2024.		Curtin Airport		Current	18/03/1994	17/03/2024	30yrs	No	\$3,000+ 9% of Curtin airport turnover		N/A	(CPI) see notes	yes	yes + g/t				

6.3 COMPLIANCE REPORTS - COUNCIL MINUTE MANAGEMENT**File Number:** 4262 - Status Reports**Author:** Sarah Smith, Executive Services Coordinator**Responsible Officer:** Amanda Dexter, Chief Executive Officer**Authority/Discretion:** Information**SUMMARY**

The Council Minute Management Report provides Council with an update on all actions required to be undertaken by the Administration once a resolution has been adopted by Council at the Ordinary Council and Audit Committee Meetings.

DISCLOSURE OF ANY INTEREST

Nil by Author and Responsible Officer.

BACKGROUND

Officers are required to provide an accurate update on items to inform the Council on the progress, or any delays or the completion of each recommendation adopted by Council at the Ordinary Council and Audit Committee Meetings.

The report assists the Shire fulfil its corporate governance responsibilities in managing the affairs of the organisation. This includes financial reporting, risk management, compliance requirements and auditing.

STATUTORY ENVIRONMENT***Local Government Act 1995***

Section 5.41(a) of the Act requires CEOs to advise councils in relation to the functions of a local government under both the *Local Government Act 1995*, and other legislation.

The CEO's function under section 5.41(b) is to ensure the availability of unbiased, professional and relevant advice and information to elected members for their decision making purposes.

POLICY IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

GOAL	OUR PRIORITIES	WE WILL
1. Leadership and Governance	1.2 Capable, inclusive and effective organisation	1.2.1 Provide strong civic leadership 1.2.2 Provide strong governance

RISK MANAGEMENT CONSIDERATIONS

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Financial: Financial, Legal and Compliance, Organisational Operations and Reputation	Unlikely	Severe	Extreme	Monthly reporting to the Audit Committee for awareness and direction where required.

CONSULTATION

Internal consultation has been undertaken with relevant areas to collate information.

COMMENT

Most items are up to date within reasonable parameters.

Staff leave, recent resignations and flood recovery impacts have had some impact on progress, and however the delays at this point are not concerning.

VOTING REQUIREMENT

Simple majority

ATTACHMENTS**1. Actions - August****COMMITTEE RESOLUTION AC75/23**

Moved: Cr Peter McCumstie

Seconded: Cr Geoff Haerewa

That the Audit Committee:

- 1. RECEIVES the information contained in the report detailing Council Minute Management.**

In Favour: Crs Geoff Haerewa, Peter McCumstie and Andrew Twaddle

Against: Nil

CARRIED 3/0

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Meeting	Officer/Director	Section	Subject
Council 25/05/2023	Ross, Steve Neate, Wayne	Corporate Services	AWARDING OF TENDER T1-2023 CLEANING OF VARIOUS SHIRE OFFICE BUILDINGS AND FACILITIES IN FITZROY CROSSING
RESOLUTION 56/23 Moved: Cr Andrew Twaddle Seconded: Cr Paul White That Council: 1. Award Tender T1-2023 Cleaning of various facilities in Fitzroy Crossing to Cleaning Gardening and Tree Services; or Not award T1-2023 Cleaning of various facilities in Fitzroy Crossing to any party; 2. Authorise the Chief Executive Officer to sign the contract. <u>In Favour:</u> Crs Geoff Haerewa, Paul White, Geoff Davis, Andrew Twaddle, Rowena Mouda, Keith Bedford and Peter McCumstie <u>Against:</u> Nil			
			CARRIED 7/0

Meeting	Officer/Director	Section	Subject
Council 25/05/2023	Ross, Steve Neate, Wayne	Corporate Services	AWARDING OF TENDER T3-2023 CLEANING OF SHIRE FACILITIES IN DERBY
RESOLUTION 58/23 Moved: Cr Andrew Twaddle Seconded: Cr Keith Bedford That Council: 1. Award Tender T3-2023 Cleaning of Shire Facilities in Derby to Skippers Cleaning Services; or Not award Tender T3-2023 Cleaning of Shire Facilities in Derby to any party; and			

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2. Authorise the Chief Executive Officer to sign the contract.

In Favour: Crs Geoff Haerewa, Paul White, Geoff Davis, Andrew Twaddle, Rowena Mouda, Keith Bedford and Peter McCumstie

Against: Nil

CARRIED 7/0

Meeting	Officer/Director	Section	Subject
Council 30/03/2023	Ross, Steve Neate, Wayne	Technical Services	Proposed Purchase of Light Vehicles
RESOLUTION 23/23 Moved: Cr Geoff Davis Seconded: Cr Andrew Twaddle That Council; <ol style="list-style-type: none"> 1. Approves an amendment to the 2022/23 budget with an increase of \$225,000 for the replacement of light vehicles; 2. Agrees to include \$290,000 in the 2023/24 budget for the replacement of light vehicles; and 3. Instructs the Chief Executive Officer to immediately order the replacement of vehicles due in 2023/24, and for those vehicle due for replacement in 2024/25, to order those in July/August 2023 as per the attached "Proposed Plant Replacement". <p><u>In Favour:</u> Crs Geoff Haerewa, Geoff Davis, Andrew Twaddle, Pat Riley and Peter McCumstie</p> <p><u>Against:</u> Nil</p> <p style="text-align: right;">CARRIED 5/0 ABSOLUTE MAJORITY</p> <p>14 Apr 2023 12:08pm Ross, Steve - Target Date Revision Revised Target Date changed by: Ross, Steve From: 13 Apr 2023 To: 31 Jul 2023, Reason: Item 1 completed.</p> <p>14 Apr 2023 12:08pm Ross, Steve - Target Date Revision Revised Target Date changed by: Ross, Steve From: 31 Jul 2023 To: 31 Jul 2023, Reason: Item 1 complete.</p> <p>14 Apr 2023 12:11pm Ross, Steve - Target Date Revision</p>			

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Revised Target Date changed by: Ross, Steve From: 31 Jul 2023 To: 31 Jul 2023, Reason: Item 2. Quotation issued for the vehicles for the 23/24 year closes on Vendor Panel 19/4/23 with orders being completed by the end of the month

14 Apr 2023 12:12pm Ross, Steve - Target Date Revision

Revised Target Date changed by: Ross, Steve From: 31 Jul 2023 To: 31 Jul 2023, Reason: Item 3 Quotation will be issued on Vendor Panel early July, and expect all purchases of vehicles be complete by the end of July

Meeting	Officer/Director	Section	Subject
Council 25/05/2023	Ross, Steve Neate, Wayne	Corporate Services	AWARDING OF TENDER T2-2023 CLEANING OF VARIOUS SHIRE OFFICE BUILDINGS IN DERBY
COUNCIL RESOLUTION 57/23 Moved: Cr Peter McCumstie Seconded: Cr Rowena Mouda That Council: <ol style="list-style-type: none"> Award Tender T2-2023 Cleaning of various Shire Office buildings to Skippers Cleaning; or Not award T2-2023 Cleaning of various Shire Office buildings to any party; Authorise the Chief Executive Officer to sign the contract. <p><u>In Favour:</u> Crs Geoff Haerewa, Paul White, Geoff Davis, Andrew Twaddle, Rowena Mouda, Keith Bedford and Peter McCumstie</p> <p><u>Against:</u> Nil</p> <p style="text-align: right;">CARRIED 7/0</p>			

Meeting	Officer/Director	Section	Subject
Council 23/02/2023	Neshoda, Megan Dexter, Amanda	Community and Recreation Services	User Agreement - Garnduwa Amboorny Wirnan Aboriginal Corporation - Fitzroy Crossing undercover courts and canteen
RESOLUTION 09/23 Moved: Cr Peter McCumstie			

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Seconded: Cr Keith Bedford

That Council

1. Authorises the CEO to enter into a User Agreement with Garnduwa Amboorny Wirnan Aboriginal Corporation for the use of the Fitzroy Crossing undercover courts, kiosk and one (1) storage cage for two hours per day, five (5) days per week, noting the standard facility User Agreement is currently under review and may be an amended version of the agreement provided as Attachment 1.
2. Endorses a fee of \$937.50 be charged to Garnduwa Amboorny Wirnan Aboriginal Corporation for the use of the undercover courts, kiosk and one (1) storage cage for a twelve month period.

In Favour: Crs Geoff Haerewa, Geoff Davis, Andrew Twaddle, Pat Riley, Keith Bedford and Peter McCumstie

Against: Nil

CARRIED 6/0 BY ABSOLUTE MAJORITY

Meeting	Officer/Director	Section	Subject
Council 23/02/2023	Neshoda, Megan Dexter, Amanda	Community and Recreation Services	Community Development Grants Assessment
<p>RESOLUTION 10/23</p> <p>Moved: Cr Peter McCumstie</p> <p>Seconded: Cr Andrew Twaddle</p> <p>That Council:</p> <ol style="list-style-type: none"> 1. APPROVES Derby Media Aboriginal Corporation (6DBY) funding request of \$5,000 (ex GST) for the Larrkardi Session project. 2. APPROVES Guruama Yani U Inc. funding request of \$3,682.94 (ex GST) for the Preseason Training project. 3. DECLINES Pandanus Park Aboriginal Corporation funding request of \$5,000 (ex GST) for the Prevention project. <p><u>In Favour:</u> Crs Geoff Haerewa, Geoff Davis, Andrew Twaddle, Pat Riley, Keith Bedford and Peter McCumstie</p> <p><u>Against:</u> Nil</p> <p style="text-align: right;">CARRIED 6/0</p>			

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Meeting	Officer/Director	Section	Subject
Council 29/06/2023	Neate, Wayne Dexter, Amanda	Technical Services	MOU with Department of Biodiversity, Conservation and Attractions 2023-2028
RESOLUTION 72/23 Moved: Cr Paul White Seconded: Cr Geoff Davis That Council directs the Chief Executive Officer to sign the Memorandum of Understanding with the Department of Biodiversity, Conservation and Attractions (DBCA) as presented noting the agreement to only use DBCA funds to maintain and upgrade the internal roads to Mount Hart Station. <u>In Favour:</u> Crs Geoff Haerewa, Paul White, Geoff Davis, Andrew Twaddle and Peter McCumstie <u>Against:</u> Nil <div style="text-align: right;">CARRIED 5/0</div>			
02 Aug 2023 3:26pm Neate, Wayne - Target Date Revision Target date changed by Neate, Wayne from 13 July 2023 to 10 August 2023 - Meeting with DBCA on thursday the 3/8/2022 to finalise the MOU			

Meeting	Officer/Director	Section	Subject
Council 30/03/2023	Neate, Wayne Dexter, Amanda	New Business Of An Urgent Nature	Additional Requirements to Parking Local Law
RESOLUTION 30/23 Moved: Cr Andrew Twaddle Seconded: Cr Pat Riley That Council; <ol style="list-style-type: none"> 1. Provide a copy of the Australian Standard 1742: Manual of Uniform Traffic Control Devices: as 11-1989: Parking Control available to view, free of charge, at the front counter of Derby Administration Office, Loch Street, Derby and on the Shire website; and 			

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2. Authorise the Shire President, to provide a copy of the Council Resolution to the Joint Standing Committee on Delegated Legislation advising of the action taken under dot point one.

In Favour: Crs Geoff Haerewa, Geoff Davis, Andrew Twaddle, Pat Riley and Peter McCumstie

Against: Nil

CARRIED 5/0 BY ABSOLUTE MAJORITY

01 May 2023 2:32pm Neate, Wayne - Target Date Revision

Revised Target Date changed by: Neate, Wayne From: 13 Apr 2023 To: 31 May 2023, Reason: Awaiting Response from Joint Standing Committee on legislation to repond stating all actions have been completed

Meeting	Officer/Director	Section	Subject
Council 8/12/2022	Neate, Wayne Dexter, Amanda	Matters for which the Meeting May Be Closed (Confi	Awarding of Tender 6-2022 Kerbside Collection of Waste and Management of Landfill sites
RESOLUTION 163/22			
Moved: Cr Geoff Davis			
Seconded: Cr Andrew Twaddle			
That Council:			
<ol style="list-style-type: none"> Awards the of Tender 6-2022 to Cleanaway Industrial solutions "Alternative proposal" for the Kerbside Collection of waste and Landfill Management subject to the negotiations with the Chief Executive Officer; Notes the legal advice received on the contract as submitted by Civic Legal; Delegate Authority the Chief Executive Officer to; <ol style="list-style-type: none"> Negotiate the best possible position for the Shire relative to the proposed contract and in light of the legal advice received; and Explore with Cleanaway any modifications that might be possible within the proposed "alternative" tender submitted, with the view to locating any cost reductions achievable (even if those reductions result in service level reductions); Instruct the Chief Executive Officer to provide advice to Council no later than the February 2024 Ordinary Council Meeting, inclusive of: <ol style="list-style-type: none"> Any modifications to the service levels outlined in Tender 6-2022 with any significant changes bought before Council as soon as practicable; 			

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- (b) Any modifications to the proposed contract as submitted by Cleanaway; and
- (c) Budgeting options to accommodate any added costs beyond the existing 2022/23 contract rate (which would be considered as part of the Councillor workshop program for the 2023/24 budget).

In Favour: Crs Geoff Haerewa, Paul White, Geoff Davis, Andrew Twaddle, Rowena Mouda, Pat Riley, Keith Bedford and Peter McCumstie.

Against: Nil

CARRIED 8/0

01 May 2023 2:33pm Neate, Wayne - Target Date Revision

Revised Target Date changed by: Neate, Wayne From: 22 Dec 2022 To: 31 May 2023, Reason: Continuing negotiations with Cleanaway

02 Aug 2023 3:18pm Neate, Wayne - Target Date Revision

Target date changed by Neate, Wayne from 31 May 2023 to 09 August 2023 - Purchase orders have been issued final points on contract are being worked through

Meeting	Officer/Director	Section	Subject
Council 29/06/2023	Neate, Wayne Dexter, Amanda	Technical Services	Award of Tender T7-2023 Project Management of Flood Damage Emergency Works AGRN 1044
THE ITEM WAS NOT FOUND (BOOKMARK: PDF2_ReportName_11129) CHECK THE INTEGRITY OF THE ITEM IN THE MINUTES DOCUMENT			
DOCUMENT: \\SDWK-APP02\INFOCOUNCIL\DOCUMENTS\COUNCIL\MINUTES\CO_20230629_MIN_2267_AT.DOCX Resolution not found			
02 Aug 2023 3:26pm Neate, Wayne - Target Date Revision Target date changed by Neate, Wayne from 13 July 2023 to 10 August 2023 - Contract within the next few days will be ready for release			

Meeting	Officer/Director	Section	Subject
Council 25/03/2021	Neate, Wayne Dexter, Amanda	Development Services	Policy H2 - Traders and Stall Holders Permits (revised)
RESOLUTION 24/21			
Moved: Cr Rowena Mouda			
Seconded: Cr Paul White			
That Council:			

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1. Pursuant to Section 2.7(2)(b) of the Local Government Act, 1995 adopt Policy H2 – Traders and Stall Holders Permits (revised) as presented in Attachment 1 of this report for a period of three months whilst it seeks community consultation on the matter.
2. Request the Chief Executive Officer to undertake a consultation process as addressed in the Shire Report and refer the matter back to Council for consideration.

In Favour: Crs Geoff Haerewa, Paul White, Geoff Davis, Chris Kloss, Andrew Twaddle, Rowena Mouda, Pat Riley and Keith Bedford

Against: Nil

CARRIED 8/0

17 May 2021 3:49pm Paull, Robert

Further report to Council on outcome of advertising

10 Sep 2021 4:14pm Paull, Robert

Report to be prepared for the 28 October 2021 Council meeting.

10 Aug 2022 11:04am Smith, Sarah - Reallocation

Action reassigned to Neate, Wayne by: Smith, Sarah for the reason: Rob Paull has left the organisation

12 Aug 2022 10:49am Neate, Wayne - Target Date Revision

Revised Target Date changed by: Neate, Wayne From: 8 Apr 2021 To: 01 Sep 2022, Reason: With resignation of MDS the DTDS will need to investigate what has occurred

Meeting	Officer/Director	Section	Subject
Council 25/05/2023	Neate, Wayne Dexter, Amanda	Technical Services	Awarding of Tender T6-2023 Flood Damage Reinstatement AGRN 1044
RESOLUTION 59/23			
Moved: Cr Paul White			
Seconded: Cr Geoff Davis			
That Council;			
<ol style="list-style-type: none"> 1. Award tender T6-2023 Flood Damage Re-instatement work for event AGRN 1044 to RE Group Australia, Buckley's Earthworks and Paving and Young's Earthmoving Pty Ltd; and 2. Authorise the Chief Executive Officer to negotiate with each contractor in point 1 in regards to the roads required under each contract to ensure that the best outcome for the Shire of Derby/West Kimberley and the work is performed in a timely manner. 			

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In Favour: Crs Geoff Haerewa, Paul White, Geoff Davis, Andrew Twaddle, Rowena Mouda, Keith Bedford and Peter McCumstie

Against: Nil

CARRIED 7/0

27 Jul 2023 9:24am Neate, Wayne - Target Date Revision

Target date changed by Neate, Wayne from 08 June 2023 to 18 August 2023 - Contracts have been awarded and executed with Youngs and Buckley's. Mara Mara have not signed the contract as yet as they were working on other commitments and only recently the extension came through for the EW/IRW work contract should be signed in near future.

Meeting	Officer/Director	Section	Subject
Council 25/08/2022	Neate, Wayne Dexter, Amanda	Technical Services	REQUEST TO CLOSE HOLLAND STREET, DERBY AND TO AMALGAMATE WITH ADJOINING LAND
RESOLUTION 110/22			
Moved: Cr Andrew Twaddle			
Seconded: Cr Rowena Mouda			
That with respect to request to close Holland Street, Derby and to amalgamate with adjoining land, Council:			
<ol style="list-style-type: none"> 1. Pursuant to Section 58 of the Land Administration Act 1997, support the permanent closure of Holland Street, Derby as outlined in this Report and expresses its preference that the closed portion be offered to adjoining land owners to acquire those portions of the closed road that abut their land; 2. Give notice of the proposed road closure in accordance with <i>Land Administration Act 1978</i> allowing a minimum period of 35 days for people to lodge submissions from the date of the notice; 3. At the conclusion of the submission period, that the Chief Executive Officer be requested to provide a further report addressing whether to proceed or not to proceed with the proposed road closure in light of any submissions; and 4. Instruct the Chief Executive Officer to write to all of the owners requesting that they indemnify the Shire and the State of Western Australia of any and all third party costs that may be triggered by this process and only proceed with points 1, 2 and 3 when all letters are received from all property owners that adjoin the Holland Street road reserve. 			
In Favour: Crs Geoff Davis, Andrew Twaddle, Rowena Mouda, Pat Riley, Linda Evans and Peter McCumstie			
Against: Nil			

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CARRIED 6/0**03 Nov 2022 4:38pm Neate, Wayne - Target Date Revision**

Revised Target Date changed by: Neate, Wayne From: 8 Sep 2022 To: 30 Jan 2023, Reason: All letters agreeing to indemnify Shire have been recieved from all property Owners. Currently advertising proposal and will await outcome of advertising.

02 Aug 2023 3:17pm Neate, Wayne - Target Date Revision

Target date changed by Neate, Wayne from 30 January 2023 to 09 December 2023 - Application has been lodged with DPLH we now await thier confirmation and process's to occur to finalise the process

Meeting	Officer/Director	Section	Subject
Audit Committee 23/06/2022	Mildenhall, Christie Dexter, Amanda	Reports	LGIS / Royal Life-saving WA Safety Assessment and Improvement Audit
COMMITTEE RESOLUTION AC54/22 Moved: Cr Peter McCumstie Seconded: Cr Geoff Haerewa That the Audit Committee; <ol style="list-style-type: none"> 1. Receives the information contained in the report detailing the Royal Life-Saving Safety Assessment and Improvement Plan. 2. Notes the proposed Action Plan as outlined in Attachment 2 to address the issues identified in the Royal Life-Saving WA Safety Assessment and Improvement Plan. <p><u>In Favour:</u> Crs Geoff Haerewa, Keith Bedford, Peter McCumstie, Pat Riley and Andrew Twaddle</p> <p><u>Against:</u> Nil</p>			
CARRIED 5/0			
18 Aug 2022 8:12am Mildenhall, Christie Feedback provided to Royal Lifesaving on some aspects of the report as per process. Final report has been provided with our total audit score increasing from 88.04% to 90.22% (90% is target mark).			
18 Aug 2022 3:22pm Mildenhall, Christie 15 of 32 identified actions now completed.			
01 Nov 2022 10:42am Mildenhall, Christie 26/32 items completed.			
16 Mar 2023 11:28am Mildenhall, Christie			

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Four actions remain outstanding, two of which are underway. , Since last update major risk identified relating to the chlorine gas system has been addressed and rectified. The other significant risk relating to the equipotential bonding has been addressed, with the certification required scheduled for next week.

03 May 2023 7:52pm Mildenhall, Christie

3 actions remain outstanding. 1 underway, 2 not yet commenced.

08 Jun 2023 1:56pm Mildenhall, Christie

3 actions remain outstanding. 2 underway, 1 not yet commenced.

Meeting	Officer/Director	Section	Subject
Council 17/08/2023	Mason, Elizabeth Dexter, Amanda	Executive Services	AWARD OF TENDER T09-2023 FACILITIES MANAGEMENT AND CATERING SERVICES FOR 40 PERSON WORKFORCE CAMP, FITZROY CROSSING AGRN 1044
RESOLUTION 86/23			
Moved: Cr Paul White			
Seconded: Cr Geoff Haerewa			
RECOMMENDATION			
That Council, subject to the CEO negotiating the best practical local business and local employment outcome opportunities:			
<ol style="list-style-type: none"> Award tender T2023-09 Facilities Management and Catering Services for 40-person workforce camp, Fitzroy Crossing to BBB Catering Pty Ltd for event ARGN 1044; Authorises the Chief Executive Officer to negotiate and sign a contract with BBB Catering Pty Ltd for the Facilities Management and Catering Services for 40-person workforce camp, Fitzroy Crossing for event AGRN 1044; and Notes costs incurred by the Shire in relation to this contract will be recovered from the federal government under the Disaster Recovery Funding Arrangement (AGRN1044). 			
<u>In Favour:</u> Crs Geoff Haerewa, Paul White, Andrew Twaddle, Rowena Mouda, Pat Riley and Peter McCumstie			
<u>Against:</u> Cr Geoff Davis			
CARRIED 6/1			

Meeting	Officer/Director	Section	Subject
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Council 17/08/2023

Mason, Elizabeth
Dexter, Amanda

Executive Services

AWARD OF TENDER T09-2023 FACILITIES MANAGEMENT AND CATERING SERVICES FOR 40 PERSON
WORKFORCE CAMP, FITZROY CROSSING AGRN 1044

MOTION**Moved:** Cr Andrew Twaddle**Seconded:** Cr Geoff Davis**That Council:**

1. Award tender T2023-09 Facilities Management and Catering Services for 40-person workforce camp, Fitzroy Crossing to BBB Catering Pty Ltd for event ARGN 1044;
2. Authorises the Chief Executive Officer to sign a contract with BBB Catering Pty Ltd for the Facilities Management and Catering Services for 40-person workforce camp, Fitzroy Crossing for event AGRN 1044; and
3. Notes costs incurred by the Shire in relation to this contract will be recovered from the federal government under the Disaster Recovery Funding Arrangement (AGRN1044).

Meeting	Officer/Director	Section	Subject
Council 27/04/2023	Hartley, Neil Dexter, Amanda	Executive Services	Derby Port Masterplan
RESOLUTION 34/23			
Moved: Cr Paul White			
Seconded: Cr Peter McCumstie			
That Council:			
1. Express its appreciation to Derby Port stakeholders for their contributions towards the Masterplan;			
2. Endorse the attached draft Derby Port Masterplan (noting in incorporates the recommendation changes highlighted in the "Consultation" section above);			

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3. Requires that the Chief Executive Officer (CEO) prepare for Council's 2023/24 budget consideration, a timetable for the Masterplan recommendations, incorporating the required funding and resources allocations to meet those timelines (with the view to progressing as many of them as is reasonably possible to do so within the 2023/24 financial year);
4. Requires that the CEO provide an annual progress/status report on the implementation of the Masterplan's recommendations (at a Councillors' Forum in March/April of each year); and
5. Requires that the Masterplan be formally reviewed in 2025, and then again in 2030 and 2035 (noting that the current Head Lease expires in 2040).

In Favour: Crs Geoff Haerewa, Paul White, Geoff Davis, Andrew Twaddle and Peter McCumstie

Against: Nil

CARRIED 5/0

03 Jul 2023 3:47pm Hartley, Neil - Target Date Revision

Target date changed by Hartley, Neil from 11 May 2023 to 30 June 2024 - Masterplan funding sought in 2023/24 budget to progress numerous recommendations. Regular reports logged into Attain as reminders for action.

Meeting	Officer/Director	Section	Subject
Council 30/03/2023	Hartley, Neil Dexter, Amanda	Executive Services	DERBY PORT - LEASING OF JETTY AREAS 2 AND 3 TO MPA FISH FARMS PTY LTD
RESOLUTION 19/23			
Moved: Cr Geoff Davis			
Seconded: Cr Pat Riley			
That Council:			
<ol style="list-style-type: none"> 1. Notes that no submissions were received in response to the recent local public notice of Council's intention to lease Areas 2 and 3 of the Derby Jetty Goods Shed at the Derby Port, to MPA Fish Farms Pty Ltd; 2. Notes the new ownership arrangements of MPA Fish Farms Pty Ltd and endorses the CEO's and President's recent actions in regard to the current lease's assignment. Also, notes that a formal Deed of Assignment will be executed between the Shire and MPA Fish Farms Pty Ltd for the remainder of the current lease (expiring 30 June 2023); 			

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3. Requires the CEO to negotiate a new Lease with MPA Fish Farms Pty Ltd, to commence on 1 July 2023, and for it to be generally consistent with Council's resolution of 24 November 2022; and

4. Notes that the lease will be executed and the common seal affixed in accordance with Delegation 1.1.33 (Applying Common Seal).

In Favour: Crs Geoff Haerewa, Geoff Davis, Andrew Twaddle, Pat Riley and Peter McCumstie

Against: Nil

CARRIED 5/0

01 May 2023 7:58am Hartley, Neil - Target Date Revision

Revised Target Date changed by: Hartley, Neil From: 13 Apr 2023 To: 30 Jun 2023, Reason: Lease Assignment and new Lease documentation forwarded to MPA for consideration Requested MPA changes submitted to Kimberley Ports Authority for consideration. Any changes need to be negotiated before lease can be executed.

03 Jul 2023 3:42pm Hartley, Neil - Target Date Revision

Target date changed by Hartley, Neil from 30 June 2023 to 30 September 2023 - MPA now under Administration, with view to finding new owners. Shire is monitoring the situation but lease agreement is now "stalled" until new owners can be located.

07 Aug 2023 11:03am Hartley, Neil - Target Date Revision

Target date changed by Hartley, Neil from 30 September 2023 to 30 September 2023 - MPA Fish Farms went into Administration and was purchased by Tassal (1 August 2023). The new lease will be in the name of Tassal, but a new Council Resolution is required.

Meeting	Officer/Director	Section	Subject
Council 27/04/2023	Hartley, Neil Dexter, Amanda	Executive Services	Derby Airport - X-Ray and Security Equipment
RESOLUTION 35/23			
Moved: Cr Andrew Twaddle			
Seconded: Cr Paul White			
That Council requires that the Chief Executive Officer:			
1. Secure a professional assessment of the existing x-ray equipment stored at Derby Airport and dispose of any equipment than cannot reasonably be recalibrated/refurbished;			
2. Deposit any funds received from the sale(s) into a <i>Airport Equipment Reserve Account</i> (the purposed of the account to be used for the provision of airport equipment); and			

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3. Report back to Council following the professional assessment concluding, on the practicality and cost to refurbish existing, or alternatively procure new compliant equipment should it be required again in the future to service passengers utilising the Derby or Curtin Airports.

In Favour: Crs Geoff Haerewa, Paul White, Geoff Davis, Andrew Twaddle and Peter McCumstie

Against: Nil

CARRIED 5/0

03 Jul 2023 3:48pm Hartley, Neil - Target Date Revision

Target date changed by Hartley, Neil from 11 May 2023 to 30 September 2023 - Having difficulty securing information on usefulness of x-ray equipment.

Meeting	Officer/Director	Section	Subject
Audit Committee 20/07/2023	Hartley, Neil Dexter, Amanda	New Business Of An Urgent Nature	Derby and Fitzroy Crossing Airports - Grant Application Endorsement
COMMITTEE RESOLUTION AC72/23			
Moved: Cr Geoff Haerewa			
Seconded: Cr Peter McCumstie			
That the Audit Committee recommends to Council that it, endorses the grant applications (State Regional Airports Development Scheme; and Federal Remote Airstrip Upgrade Program) for urgent capital works refurbishments on the Fitzroy Crossing Airstrip, and the Derby Airport, conditional on the Chief Executive Officer being suitably satisfied with costing estimates prior to the grant application being lodged.			
<u>In Favour:</u> Crs Geoff Haerewa, Peter McCumstie and Andrew Twaddle			
<u>Against:</u> Nil			
CARRIED 3/0			

Meeting	Officer/Director	Section	Subject
Council 29/06/2022	Hartley, Neil Dexter, Amanda	Executive Services	WA Grants Commission Submission - Change of Distribution Methodology
RESOLUTION 75/22			

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Moved: Cr Paul White

Seconded: Cr Peter McCumstie

That Council:

1. Endorse the draft WA Grants Commission submission;
2. Supports the principal that the Shire and the Kimberley Region would benefit from other Kimberley local governments also having input and lodging complimentary submissions to the Grants Commission, and requires that the CEO refer the submission to the Kimberley Regional Group for its input and support; and
3. Authorises the CEO to modify the report following any feedback from the Kimberley Regional Group's members, and subsequent to that, forward the finalised submission to the Grants Commission for its consideration.

In Favour: Crs Geoff Haerewa, Paul White, Andrew Twaddle, Keith Bedford and Peter McCumstie

Against: Nil

CARRIED 5/0

12 Aug 2022 11:20am Dexter, Amanda - Target Date Revision

Revised Target Date changed by: Dexter, Amanda From: 13 Jul 2022 To: 30 Sep 2022, Reason: The Submission has been circulated to the KRG CEO's and Councils for their review and any recommendation and ultimate endorsement, prior to sending through to the Commission.

07 Sep 2022 8:29am Hartley, Neil - Target Date Revision

Revised Target Date changed by: Hartley, Neil From: 30 Sep 2022 To: 30 Jun 2023, Reason: Submission forwarded to Grants Commission. Assessment by Commission is expected to be concluded prior to the notification of the 2023/24 grant allocations.

06 Feb 2023 8:28am Hartley, Neil - Target Date Revision

Revised Target Date changed by: Hartley, Neil From: 30 Jun 2023 To: 30 Jun 2023, Reason: Awaiting communications with Grants Commission. Assessment by Commission is expected to be concluded prior to the notification of the 2023/24 grant allocations.

07 Mar 2023 2:45pm Hartley, Neil - Target Date Revision

Revised Target Date changed by: Hartley, Neil From: 30 Jun 2023 To: 30 Jun 2024, Reason: State Government has delayed appointment of Grants Commission members, so still awaiting fromal communications. Assessment by Commission is not now expected until after 2023/24 grant allocations have been announced. Minor possibility of some "financial acknowledgement" in 2023/24 grants.

07 Aug 2023 10:59am Hartley, Neil - Target Date Revision

Target date changed by Hartley, Neil from 30 June 2024 to 30 June 2024 - Grants Commission has now been appointed. Consideration of the Shire's application should commence in August/September 2023, but any change will not come into effect until 1 July 2024.

Meeting	Officer/Director	Section	Subject
Council 9/12/2021	Hartley, Neil Dexter, Amanda	Executive Services	Fitzroy Crossing Airport - Proposal for State Government Funding Plan

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RESOLUTION 160/21**Moved: Cr Peter McCumstie****Seconded: Cr Keith Bedford****That Council:**

- 1. Endorse the principle and thrust of the Fitzroy Crossing Airport Funding Plan and request the CEO to coordinate its finalisation at the earliest opportunity;**
- 2. Authorise the President and the Chief Executive Officer to facilitate discussions with the State Government for a contribution towards the long term asset management funding of the Fitzroy Crossing Airport; and**
- 3. Notes that a separate report on Curtin and Derby airports, including asset and operational cost considerations at those sites, will be forthcoming.**

In Favour: Crs Geoff Haerewa, Paul White, Andrew Twaddle, Rowena Mouda, Pat Riley, Keith Bedford, Linda Evans and Peter McCumstie**Against:** Nil**CARRIED 8/0****15 Dec 2021 9:53am Hartley, Neil - Target Date Revision**

Revised Target Date changed by: Hartley, Neil From: 23 Dec 2021 To: 31 Mar 2022, Reason: Letter forwarded to State Minister for Health. Awaiting meeting opportunity. Still need to finalise Funding Proposal with accurate asset management estimates (awaiting consultant engineering report).

07 Feb 2022 7:28am Hartley, Neil - Target Date Revision

Revised Target Date changed by: Hartley, Neil From: 31 Mar 2022 To: 30 Jun 2022, Reason: Minister for Health has passed on to Minister for Transport. Requires ongoing lobbying of state government.

03 Jun 2022 10:35am Hartley, Neil - Target Date Revision

Revised Target Date changed by: Hartley, Neil From: 30 Jun 2022 To: 30 Sep 2022, Reason: In ongoing discussions with Department of Transport. Asset Management Plans being prepared for DoT consideration to justify ongoing state support. \$1.5m(State - approved) + \$1.5m(Federal - awaiting confirmation) grants applied for to fund runway and apron area upgrade.

07 Sep 2022 8:36am Hartley, Neil - Target Date Revision

Revised Target Date changed by: Hartley, Neil From: 30 Sep 2022 To: 30 Apr 2024, Reason: \$1.5m (State) + \$1.5m (Federal) grants secured. Project Manager appointed. Works to now be scheduled and tendered for construction to occur in 2023. Discussions continue with State Department of Transport on the longer term management/funding of FX Airport.

17 Nov 2022 4:32pm Hartley, Neil - Target Date Revision

Revised Target Date changed by: Hartley, Neil From: 30 Apr 2024 To: 30 Apr 2024, Reason: Project is progressing. For example, the Funding Agreements have been executed by the parties; the Project Manager has been appointed. One of the grant pre-conditions, a Geotechnical Assessment has been organised and will be commenced on 28 November 2022. An independent assessment/peer review is also a grant pre-condition and the RFQ for that service has now closed but the successful contractor has not as yet been selected.

06 Feb 2023 8:35am Hartley, Neil - Target Date Revision

Revised Target Date changed by: Hartley, Neil From: 30 Apr 2024 To: 30 Apr 2024, Reason: Independent Reviewer appointed (grant pre-condition) (AMS Australia) and protocols settled for review to be undertaken; Geo Technical survey undertaken (grant pre-condition); Specifications and Tender Documents being prepared. Delays and logistical difficulties expected in light of Cyclone Ellie but no change to final completion date expected at this point in time.

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07 Mar 2023 2:47pm Hartley, Neil - Target Date Revision

Revised Target Date changed by: Hartley, Neil From: 30 Apr 2024 To: 30 Apr 2025, Reason: Project now delayed by Cyclone Ellie and application for 12 months deferral submitted. Project will progress to Full Tender Specification stage, with the view to calling tenders at the earliest reasonable opportunity.

Meeting	Officer/Director	Section	Subject
Council 25/11/2021	Hartley, Neil Dexter, Amanda	Matters for which the Meeting May Be Closed (Confi	Derby Jetty - Insurance and Related Considerations
RESOLUTION 159/21			
Moved: Cr Paul White			
Seconded: Cr Geoff Davis			
That Council:			
<ol style="list-style-type: none"> 1. Accepts the position offered by Kimberley Ports Authority that the Derby Jetty can be insured for \$5.6m on the basis that in the event of a catastrophic event which destroyed the jetty, the jetty would not be reinstated or replaced utilising the existing design and specifications, and the intent would be to clear the site and reinstate a small recreational jetty (due to the change in demand and utilisation since the Jetty was first built); 2. Understands that any costs above the insured level would be the responsibility of the Shire to bear, and asks that the Chief Executive Officer arrange for engineering studies to be sought to confirm the most prudent level of insurance that should be set, such that removal of debris/clean-up can be undertaken, and construction/reinstatement of a small recreational jetty to replace the existing structure can be achieved, without there being any undue risk of excess costs resulting. 3. Confirms the need to maintain current levels of insurance levels (until 2023 when the MPA Fish Farms Lease is due to expire) unless legal advice is obtained that reasonably allows the changes to be brought in earlier; 4. Notes that the eventual lease renegotiations with Kimberley Mineral Sands will need to accommodate a mutually agreed position on jetty insurance; 5. Requires the Chief Executive Officer to pursue the implementation of a Deed to suitably modify the insurance clauses of the Head Lease (from "replacement", to a "removal of debris/clean up only" clause); 6. Requires that any future Derby Port/Jetty Leases provide clarity on the Shire's capacity going forward to undertake Jetty maintenance or replacement, and that the Shire's position be suitably protected; 			

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7. Requires that a Derby Port Masterplan workshop be scheduled with Councillors, to outline options available for the sustainable operation of the Derby Port; and
8. Requires that a review of Derby Jetty fees/charges be undertaken and a report be presented to Council on the options available to it.

In Favour: Crs Geoff Haerewa, Paul White, Geoff Davis, Andrew Twaddle, Rowena Mouda, Pat Riley, Keith Bedford, Linda Evans and Peter McCumstie

Against: Nil

CARRIED 9/0

31 Mar 2022 2:37pm Hartley, Neil - Target Date Revision

Revised Target Date changed by: Hartley, Neil From: 9 Dec 2021 To: 30 Jun 2023, Reason: Insurance changes can be accommodated by LGIS, but can generally only occur once each year, on policy renewal (end of financial year). Insurance change is also subject to Kimberley Mineral Sands and MPA Fish Farms lease clauses and commitments. It is hoped that a change to Removal of Debris Only insurance can be arranged to occur from 1 July 2023.

05 Dec 2022 2:26pm Hartley, Neil - Target Date Revision

Revised Target Date changed by: Hartley, Neil From: 30 Jun 2023 To: 30 Jun 2023, Reason: KMS has agreed to fund the Replacement Value Insurance Premiums for the time being. Can revert to Removal of Debris Insurance once KMS ceases paying the premium.

03 Apr 2023 8:40am Hartley, Neil - Target Date Revision

Revised Target Date changed by: Hartley, Neil From: 30 Jun 2023 To: 30 Jun 2024, Reason: KMS has agreed to fund the Replacement Value Insurance Premiums for the time being, with no change to that position anticipated until its Broome Road Train (Gubinge Road) application has been decided. Shire can revert to Removal of Debris Insurance once KMS ceases paying the premium.

07 Aug 2023 10:57am Hartley, Neil - Target Date Revision

Target date changed by Hartley, Neil from 30 June 2024 to 30 June 2024 - KMS is considering allowing the Shire to move from Replacement Value Insurance Removal of Debris Insurance. KMS will then cease paying that higher premium, to be replaced with its portion of the ROD insurance premium only. Next change option consideration is likely to be 30 June 2024, upon the consideration for renewal of the premium.

Meeting	Officer/Director	Section	Subject
Audit Committee 16/02/2023	Gloor, Aaron Dexter, Amanda	Matters for which the Meeting May Be Closed (Conf)	Dead Tenements Debt Write-Off
COMMITTEE RESOLUTION AC19/23			
Moved: Cr Peter McCumstie			
Seconded: Cr Geoff Haerewa			
That the Audit Committee Recommends that Council			
1. Writes off the balance of rates, charges and penalty interest levied and accrued on dead mining tenements;			

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Assess No	Total Balance	Lot No
A900350	\$20,548.83	E80/4066
A900298	\$8,110.83	E04/1771
A900800	\$7,423.36	E04/2177
A900297	\$1,994.26	PEP04/464
A803630	\$1,399.58	M04/202
A900431	\$614.61	E04/1937
	<u>\$40,091.47</u>	
<u>In Favour:</u>	Crs Geoff Haerewa, Keith Bedford, Peter McCumstie and Andrew Twaddle	
<u>Against:</u>	Nil	
CARRIED 4/0 BY ABSOLUTE MAJORITY		

Meeting	Officer/Director	Section	Subject
Audit Committee 17/11/2022	Gloor, Aaron Dexter, Amanda	Matters for which the Meeting May Be Closed (Confi	Aboriginal Communities - Waste & ESL Debt Write-Off
COMMITTEE RESOLUTION AC116/22			
Moved: Cr Geoff Haerewa			
Seconded: Cr Peter McCumstie			
That the Audit Committee Recommends to Council:			
1. Writes off the waste, ESL, legal and interest charges on each assessment totalling \$68,597.76.			
<u>In Favour:</u>	Crs Geoff Haerewa, Peter McCumstie and Andrew Twaddle		
<u>Against:</u>	Nil		

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CARRIED 3/0 BY ABSOLUTE MAJORITY

Meeting	Officer/Director	Section	Subject
Audit Committee 16/02/2023	Gloor, Aaron Dexter, Amanda	Matters for which the Meeting May Be Closed (Confi	Aboriginal Communities - Rates Write-off and exemption
COMMITTEE RESOLUTION AC20/23			
Moved: Cr Geoff Haerewa			
Seconded: Cr Peter McCumstie			
That the Audit Committee recommend that Council			
<ol style="list-style-type: none"> 1. Impairs the ESL, legal, Rates & interest charges on A600276, A900616, A600153 & A300605 totalling \$198,524.44 2. Approves the conversion of A600276, A600153 & A300605 to Non-Rateble/Exempt – UV 3. Upholds and re-endorses Councils decision 059/2017 to convert A900616 to Non-Rateble/Exempt – UV 			
<u>In Favour:</u> Crs Geoff Haerewa, Keith Bedford, Peter McCumstie and Andrew Twaddle			
<u>Against:</u> Nil			
CARRIED 4/0 BY ABSOLUTE MAJORITY			

Meeting	Officer/Director	Section	Subject
Audit Committee 16/02/2023	Gloor, Aaron Dexter, Amanda	Matters for which the Meeting May Be Closed (Confi	Local Government Act (LGA) Sales - Rates Debt 3+ Years
COMMITTEE RESOLUTION AC21/23			
Moved: Cr Geoff Haerewa			
Seconded: Cr Keith Bedford			

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That the Audit Committee recommends that Council:

- 1. Approve the commencement of LGA sale proceedings against the following properties;**

A100000, A100760, A101040, A103320, A103950, A105880, A900275, A108150, A108151, A108152, A108153

In Favour: Crs Geoff Haerewa, Keith Bedford, Peter McCumstie and Andrew Twaddle

Against: Nil

CARRIED 4/0

Meeting	Officer/Director	Section	Subject
Audit Committee 16/02/2023	Gloor, Aaron Dexter, Amanda	Matters for which the Meeting May Be Closed (Confi	Looma Community - Rates Write-off and Refund
COMMITTEE RESOLUTION AC22/23			
Moved: Cr Geoff Haerewa			
Seconded: Cr Peter McCumstie			
That the Audit Committee recommend that Council			
1. Impairs the ESL, Rates & interest charges outstanding on the community of \$18,440.36.			
2. Declines the request to refund rates and ESL charges (\$44,683.01) already paid prior to the 12/13 FY.			
<u>In Favour:</u> Crs Geoff Haerewa, Keith Bedford, Peter McCumstie and Andrew Twaddle			
<u>Against:</u> Nil			
CARRIED 4/0 BY ABSOLUTE MAJORITY			

Meeting	Officer/Director	Section	Subject
Council 27/04/2023	Edwards, Shane	Community and Recreation Services	MOU between SDWK and ENAC regarding Youth Activities under the Intensive Family Support Program

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Martin, Stuart

RESOLUTION 42/23

Moved: Cr Paul White

Seconded: Cr Andrew Twaddle

That Council:

1. Endorse the proposed Memorandum of Understanding – Intensive Family Support Program between the Shire of Derby/West Kimberley and Emama Nguda Aboriginal Corporation; and
2. Authorise the CEO to extend the Memorandum of Understanding in its endorsed form for a period of twelve (12) months following the original three (3) month trial if the program is deemed to be successful.

In Favour: Crs Geoff Haerewa, Paul White, Geoff Davis, Andrew Twaddle and Peter McCumstie

Against: Nil

CARRIED 5/0

Meeting	Officer/Director	Section	Subject
Council 24/11/2022	Edwards, Shane Martin, Stuart	Community and Recreation Services	Garnduwa User Agreement - Fitzroy Crossing Gym
RESOLUTION 154/22 Moved: Cr Paul White Seconded: Cr Peter McCumstie That Council <ol style="list-style-type: none"> 1. Endorses the 2022/23 Garnduwa Amboorny Wirnan Aboriginal Corporation User Agreement as provided in Attachment 1; 2. Approves the user agreement fees for the gymnasium area of the Fitzroy Crossing Recreation Centre to be included into the Schedule of Fees and Charges; 			

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- 3. Require Garnduwa Amboorny Wirnan Aboriginal Corporation to undertake a deep clean of the space prior to installing new equipment; and**
- 4. Approves the advertisement of the intention to impose the fee as required in Section 6.19 to the *Local Government Act 1995*.**

In Favour: Crs Geoff Haerewa, Paul White, Geoff Davis, Andrew Twaddle, Pat Riley and Peter McCumstie

Against: Nil

CARRIED 6/0 BY ABSOLUTE MAJORITY

Meeting	Officer/Director	Section	Subject
Council 25/05/2023	Edwards, Shane Martin, Stuart	Community and Recreation Services	Memorandum of understanding between the Shire of Derby/West Kimberley and Nindilingarri Cultural Health Services regarding youth collaboration Girl's Program
RESOLUTION 64/23			
Moved: Cr Geoff Davis			
Seconded: Cr Paul White			
That Council:			
1. Endorse the proposed Memorandum of Understanding – Youth Girl's Program between the Shire of Derby/West Kimberley and Nindilingarri Cultural Health Services.			
<u>In Favour:</u> Crs Geoff Haerewa, Paul White, Geoff Davis, Andrew Twaddle, Rowena Mouda, Keith Bedford and Peter McCumstie			
<u>Against:</u> Nil			
CARRIED 7/0			

Meeting	Officer/Director	Section	Subject
Council 24/11/2022	Edwards, Shane Martin, Stuart	Matters for which the Meeting May Be Closed (Confi	Nominations - Community Citizen of the Year Awards 2023

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RESOLUTION 155/22**Moved:** Cr Paul White**Seconded:** Cr Andrew Twaddle**That Council**

1. Determines Nominee B as the recipient of the 2023 Community Citizen of the Year for the Shire of Derby / West Kimberley.
2. Determines Nominee C as the recipient of the 2023 Senior Community Citizen of the Year for the Shire of Derby / West Kimberley.
3. Determines Nominee B as the recipient of the 2023 Youth Community Citizen of the Year for the Shire of Derby / West Kimberley.
4. Determines the Nominee A as the recipient of the 2023 Active Citizenship Award for the Shire of Derby / West Kimberley.

In Favour: Crs Geoff Haerewa, Paul White, Geoff Davis, Andrew Twaddle, Pat Riley and Peter McCumstieAgainst: Nil**CARRIED 6/0**

Meeting	Officer/Director	Section	Subject
Council 27/04/2023	Edwards, Shane Martin, Stuart	Community and Recreation Services	MOU between SDWK and ENAC Regarding Hoops After Dark Program
RESOLUTION 41/23 Moved: Cr Peter McCumstie Seconded: Cr Andrew Twaddle That Council: Endorse the proposed Memorandum of Understanding – Hoops After Dark between the Shire of Derby/West Kimberley and Emama Nguda Aboriginal Corporation. <u>In Favour:</u> Crs Geoff Haerewa, Paul White, Geoff Davis, Andrew Twaddle and Peter McCumstie			

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Against: Nil

CARRIED 5/0

Meeting	Officer/Director	Section	Subject
Council 26/08/2021	Dexter, Amanda Dexter, Amanda	Executive Services	Aboriginal Empowerment Strategy
<p>RESOLUTION 84/21</p> <p>Moved: Cr Geoff Davis</p> <p>Seconded: Cr Rowena Mouda</p> <p>That Council:</p> <ol style="list-style-type: none"> Endorses the Workshop Report – 22 July 2021 – Shire of Derby/West Kimberley Aboriginal Empowerment Strategy; Authorise the CEO to commence a Request for Quote process, to seek out an external consultancy with expertise to support Councillors and the Executive with strategic direction setting and policy development to the Aboriginal Empowerment Strategy; and Endorse the scoping and development of a senior Aboriginal identified position within the SDWK to operationalise empowerment strategies including economic development and communications. <p><u>In Favour:</u> Crs Geoff Haerewa, Paul White, Geoff Davis, Chris Kloss, Andrew Twaddle, Rowena Mouda, Pat Riley and Keith Bedford</p> <p><u>Against:</u> Nil</p> <p>CARRIED 8/0</p>			
<p>10 Sep 2021 4:12pm Smith, Sarah - Reallocation</p> <p>Action reassigned to O'Halloran, Amanda by: Smith, Sarah for the reason: Sarah Tobias is an external consultant</p> <p>16 Mar 2022 11:30am Dexter, Amanda</p> <p>Amanda will arrange advertising to progress the appointment of a Organisation/ Consultant to assist with the Development of a Strategy and/ or high level priorities in order to get this program up and running over the next few months.</p> <p>16 Mar 2022 11:34am Dexter, Amanda - Target Date Revision</p> <p>Revised Target Date changed by: Dexter, Amanda From: 9 Sep 2021 To: 31 May 2022, Reason: This item has not been resourced adequately and higher prioritisation has been allocated to ensure that it progresses over the next few months</p>			

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09 Jun 2022 4:02pm Dexter, Amanda - Target Date Revision

Revised Target Date changed by: Dexter, Amanda From: 31 May 2022 To: 30 Jul 2022, Reason: This project has unfortunately not progressed due to resourcing issues, it has been reallocated in the 2022/23 Budget and the CEO's Exec Team will progress the project once the once the budget is approved.

12 Aug 2022 11:09am Dexter, Amanda - Target Date Revision

Revised Target Date changed by: Dexter, Amanda From: 30 Jul 2022 To: 30 Sep 2022, Reason: This Item is a high priority for the first quarter of the 2022/23 FY.

12 Aug 2022 11:10am Dexter, Amanda - Target Date Revision

Revised Target Date changed by: Dexter, Amanda From: 30 Sep 2022 To: 30 Sep 2022, Reason: This Item is a high priority of the 2022/23 FY. A detailed report will be provided to Council by the 30 September 2022

Meeting	Officer/Director	Section	Subject
Council 24/11/2022	Dexter, Amanda Dexter, Amanda	Amendment	Amendment - FITZROY CROSSING ADMINISTRATION CENTRE - UNSAFE WORK ENVIRONMENT
RESOLUTION 150/22			
Moved: Cr Paul White			
Seconded: Cr Andrew Twaddle			
This recommendation was changed and workshopped by Council at the 24 November 2022 Ordinary Council Meeting and is now put for consideration.			
That Council:			
<ol style="list-style-type: none"> Express its appreciation to the Shire's Fitzroy Crossing staff for endeavouring to maintain a workable service to the Fitzroy Crossing community, notwithstanding the extremely difficult circumstances that presently prevails in that location, and express its empathy to staff and their families for any physical and psychological violence or stress suffered by them as a direct consequence of elevated violence within the Fitzroy Crossing community; Council accepts that it needs to take appropriate actions to protect its employees; The actions of the Chief Executive Officer to immediately close the Fitzroy Crossing Administration & Visitors Centre to the public are to remain in place, until such time that a safe work environment consistent with the expectations of the Work Health and Safety Act 2020 can be provided for the Shire's staff; Notes that in regard to (2), the Shire's customer services will be provided by appointment, other arrangement or via remote access where that is available; Notes that the WA State Government has a direct responsibility through the WA Police force's Policing Pillars to maintain a safe environment in Fitzroy Crossing, the Shire considers the situation in Fitzroy Crossing to be akin to an "Emergency Situation" and therefore requires WA Police to more satisfactorily meet those responsibilities, particularly the following key pillars not being maintained to date: 			

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- (a) Pillar #1 - Enforce the Law; and
- (b) Pillar #2 - Prevent Crime;
- (c) Pillar #3 - Manage and Coordinate Emergencies - Coordinate multi-agency approaches to manage emergencies.

5. Authorises an immediate emergency 2022/23 budget allocation for the purpose of improving security and community/employee safety at the Shire's Fitzroy Crossing Administration, Library and Visitors Centre Building and its surrounds, and at Shire owned employee homes in Fitzroy Crossing in the immediate term as per the CEO's delegated authority. Funds to be allocated at the Chief Executive Officer's discretion so as to maximise safety but in a suitably cost conscious manner, reported monthly to council;
6. Requires the President and CEO to immediately and actively engage with the WA State Government Agencies to:
 - (a) secure additional Police and other government resources for Fitzroy Crossing;
 - (b) secure State Government grant funds to meet the costs outlined in (5); and
 - (c) secure the necessary State (and Federal) Government services to address the existing issues within Fitzroy Crossing and to have those services remain until community concerns are addressed to meet community expectations;
7. Requires that the President and the CEO actively engage the media in all of its forms and across the widest practical levels, to draw to the attention of Fitzroy Crossing stakeholders that the Council is actively engaging in strategic discussions, taking direct action where it can, and redirecting its limited resource capacities to addressing the situation. Also, to highlight the Shire is actively engaging with the WA State Government to directly assist with addressing the issues within Fitzroy Crossing; and
8. Requires that the President and CEO arrange for suitable public consultation to occur in the district, to invite contributions from relevant stakeholders, particularly the local community and government agencies.

In Favour: Crs Geoff Haerewa, Paul White, Geoff Davis, Andrew Twaddle, Pat Riley and Peter McCumstie
Against: Nil

CARRIED 6/0

RESOLUTION 150/22

Moved: Cr Paul White

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Seconded: Cr Andrew Twaddle

This recommendation was changed and workshopped by Council at the 24 November 2022 Ordinary Council Meeting and is now put for consideration.

That Council:

1. Express its appreciation to the Shire's Fitzroy Crossing staff for endeavouring to maintain a workable service to the Fitzroy Crossing community, notwithstanding the extremely difficult circumstances that presently prevails in that location, and express its empathy to staff and their families for any physical and psychological violence or stress suffered by them as a direct consequence of elevated violence within the Fitzroy Crossing community; Council accepts that it needs to take appropriate actions to protect its employees;
2. The actions of the Chief Executive Officer to immediately close the Fitzroy Crossing Administration & Visitors Centre to the public are to remain in place, until such time that a safe work environment consistent with the expectations of the Work Health and Safety Act 2020 can be provided for the Shire's staff;
3. Notes that in regard to (2), the Shire's customer services will be provided by appointment, other arrangement or via remote access where that is available;
4. Notes that the WA State Government has a direct responsibility through the WA Police force's Policing Pillars to maintain a safe environment in Fitzroy Crossing, the Shire considers the situation in Fitzroy Crossing to be akin to an "Emergency Situation" and therefore requires WA Police to more satisfactorily meet those responsibilities, particularly the following key pillars not being maintained to date:
 - (a) Pillar #1 - Enforce the Law; and
 - (b) Pillar #2 - Prevent Crime;
 - (c) Pillar #3 - Manage and Coordinate Emergencies - Coordinate multi-agency approaches to manage emergencies.
5. Authorises an immediate emergency 2022/23 budget allocation for the purpose of improving security and community/employee safety at the Shire's Fitzroy Crossing Administration, Library and Visitors Centre Building and its surrounds, and at Shire owned employee homes in Fitzroy Crossing in the immediate term as per the CEO's delegated authority. Funds to be allocated at the Chief Executive Officer's discretion so as to maximise safety but in a suitably cost conscious manner, reported monthly to council;
6. Requires the President and CEO to immediately and actively engage with the WA State Government Agencies to:
 - (a) secure additional Police and other government resources for Fitzroy Crossing;
 - (b) secure State Government grant funds to meet the costs outlined in (5); and

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(c) secure the necessary State (and Federal) Government services to address the existing issues within Fitzroy Crossing and to have those services remain until community concerns are addressed to meet community expectations;

7. Requires that the President and the CEO actively engage the media in all of its forms and across the widest practical levels, to draw to the attention of Fitzroy Crossing stakeholders that the Council is actively engaging in strategic discussions, taking direct action where it can, and redirecting its limited resource capacities to addressing the situation. Also, to highlight the Shire is actively engaging with the WA State Government to directly assist with addressing the issues within Fitzroy Crossing; and
8. Requires that the President and CEO arrange for suitable public consultation to occur in the district, to invite contributions from relevant stakeholders, particularly the local community and government agencies.

In Favour: Crs Geoff Haerewa, Paul White, Geoff Davis, Andrew Twaddle, Pat Riley and Peter McCumstie

Against: Nil

CARRIED 6/0

14 Apr 2023 8:50am Smith, Sarah
Continuing to progress

Meeting	Officer/Director	Section	Subject
Council 30/03/2023	Delvin, Ron Neate, Wayne	Technical Services	Award of Tender T10-2022 for Fairfield Leopold Road Reshaping and Re-Sheeting
RESOLUTION 25/23			
Moved: Cr Andrew Twaddle			
Seconded: Cr Pat Riley			
That Council;			
<ol style="list-style-type: none"> 1. Award Tender T10-2021 Fairfield –Leopold Road Reshape and Re-sheet works to Buckley’s Earthmoving and Paving (BEP); and 2. Authorise the CEO to negotiate a reduced scope of work with BEP in order to keep the cost of the project within the available budget amount. 			
<u>In Favour:</u> Crs Geoff Haerewa, Geoff Davis, Andrew Twaddle, Pat Riley and Peter McCumstie			

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Against: Nil

CARRIED 5/0

Meeting	Officer/Director	Section	Subject
Council 30/03/2023	Delvin, Ron Neate, Wayne	Technical Services	Award of Tender T9-2022 for Camballin Road reshaping and Re-sheeting
RESOLUTION 24/23			
Moved: Cr Andrew Twaddle			
Seconded: Cr Pat Riley			
That Council:			
1. Award Tender T9-2022 Camballin Road Reshape and Re-sheet works to Buckley's Earthmoving and Paving (BEP); and			
2. Authorise the CEO to negotiate a reduced scope of work with BEP in order to keep the cost of the project within the available budget amount.			
<u>In Favour:</u> Crs Geoff Haerewa, Geoff Davis, Andrew Twaddle, Pat Riley and Peter McCumstie			
<u>Against:</u> Nil			
CARRIED 5/0			

Meeting	Officer/Director	Section	Subject
Council 30/03/2023	Delvin, Ron Neate, Wayne	Technical Services	Award of Tender T8-2022 for the reconstruction of Alfonsas Street, Derby
RESOLUTION 22/23			
Moved: Cr Andrew Twaddle			
Seconded: Cr Geoff Davis			
That Council;			

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1. **Award Tender T8-2022 Alfonsas Street, Derby Reconstruction and Drainage improvements to Buckley's Earthmoving and Paving (BEP); and**
2. **Reallocate \$150,000 from Road Maintenance – Gravel outside BUA 121202130 to allow the work to be completed.**

In Favour: Crs Geoff Haerewa, Geoff Davis, Andrew Twaddle, Pat Riley and Peter McCumstie

Against: Nil

CARRIED 5/0

Meeting	Officer/Director	Section	Subject
Council 30/03/2023	Delvin, Ron Neate, Wayne	Technical Services	Award of Tender T11-2022 for the Calwynyardah-Noonkanbah Road Reshaping and Re-sheeting
RESOLUTION 26/23			
Moved: Cr Andrew Twaddle			
Seconded: Cr Geoff Davis			
That Council;			
<ol style="list-style-type: none"> 1. Award Tender T11-2022 Calwynyardah-Noonkanbah Road Reshape and Re-sheet works to Buckley's Earthmoving and Paving (BEP); and 2. Authorise the CEO to negotiate a reduced scope of work with BEP in order to keep the cost of the project within the available budget amount. 			
<u>In Favour:</u> Crs Geoff Haerewa, Geoff Davis, Andrew Twaddle, Pat Riley and Peter McCumstie			
<u>Against:</u> Nil			
CARRIED 5/0			

Meeting	Officer/Director	Section	Subject
Audit Committee 24/03/2022	Clarkson, Tamara Dexter, Amanda	Matters for which the Meeting May Be Closed (Confi	Kimberley Mineral Sands - Debt Write-Off

Division:	Date From:
Committee:	Date To:
Officer:	
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COMMITTEE RESOLUTION AC28/22**Moved: Cr Peter McCumstie****Seconded: Cr Keith Bedford****That the Audit Committee recommends that Council, conditional on a new sub-lease being executed by the Shire and the Kimberley Mineral Sands group:**

- Writes off the insurance contribution claim made upon the Derby Port lessee's, Thunderbird Operations Pty Ltd and Sheffield Resources Limited (of \$172,958.16); and**
- Notes that insurance contributions by the lessee will apply (as per the lease's new position) from 1 January 2022 .**

In Favour: Crs Keith Bedford, Peter McCumstie and Andrew Twaddle**Against:** Nil**CARRIED 3/0 BY ABSOLUTE MAJORITY****03 May 2022 2:11pm Hartley, Neil - Target Date Revision**

Revised Target Date changed by: Hartley, Neil From: 7 Apr 2022 To: 26 May 2022, Reason: Lease negotiations ongoing, with report hoped to be presented to the 26 May 2022 Council Meeting.

03 Jun 2022 10:29am Hartley, Neil - Target Date Revision

Revised Target Date changed by: Hartley, Neil From: 26 May 2022 To: 30 Jun 2022, Reason: Updated decision as per 26 May Council Meeting. Debt can be written off on execution of revised lease documentation.

04 Jul 2022 9:31am Hartley, Neil - Target Date Revision

Revised Target Date changed by: Hartley, Neil From: 30 Jun 2022 To: 30 Sep 2022, Reason: Subject to new 28 July Council Meeting decision and lease being executed.

07 Sep 2022 8:39am Hartley, Neil - Reallocation

Action reassigned to Thornton, Alan by: Hartley, Neil for the reason: New lease agreement execution progressing. Debt to be written off through the normal accounting process once executed lease documents finalised.

13 Feb 2023 3:34pm Smith, Sarah - Reallocation

Action reassigned to Clarkson, Tamara by: Smith, Sarah for the reason: Alan Thornton no longer at SDWK

Meeting	Officer/Director	Section	Subject
Audit Committee 23/03/2023	Clarkson, Tamara Dexter, Amanda	Reports	Audit Committee - Modifications to Role, Membership, Title and Meeting Cycle.
COMMITTEE RESOLUTION AC28/23			
Moved: Cr Geoff Haerewa			

Division:	Date From:
Committee:	Date To:
Officer:	
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Seconded: Cr Peter McCumstie

That Audit Committee recommends that Council by Absolute Majority:

1. **endorse the Audit & Risk Committee's Terms of Reference (as provided in the attachment); and**
2. **requires that the Terms of Reference be reviewed as part of the appointment process for the new Audit & Risk Committee (which will occur at a October or November 2023 Council Meeting, following the October 2023 Council Elections).**

In Favour: Crs Geoff Haerewa, Peter McCumstie, Pat Riley and Andrew Twaddle

Against: Nil

CARRIED 4/0 BY ABSOLUTE MAJORITY

08 May 2023 11:22am Smith, Sarah - Reallocation

Action reassigned to Clarkson, Tamara by: Smith, Sarah for the reason: To be driven by Tamara, Jill and Amanda

13 Jun 2023 3:14pm Clarkson, Tamara - Target Date Revision

Target date changed by Clarkson, Tamara from 06 April 2023 to 26 October 2023 - To be reviewed in October following LG Elections

Meeting	Officer/Director	Section	Subject
Audit Committee 24/03/2022	Clarkson, Tamara Dexter, Amanda	Reports	Long Term Financial Plan - 2022-23 to 2036-37
COMMITTEE RESOLUTION AC24/22			
Moved: Cr Peter McCumstie			
Seconded: Cr Keith Bedford			
That the Audit Committee recommend that Council:			
1. Endorse the Long Term Financial Plan 2022/23 – 2036/37 per attachment to this report for Council's on going consideration.			
<u>In Favour:</u> Crs Keith Bedford, Peter McCumstie and Andrew Twaddle			
<u>Against:</u> Nil			
CARRIED 3/0			
12 Aug 2022 11:17am Dexter, Amanda - Target Date Revision			

Division: Committee: Officer:	Date From: Date To:
Action Sheets Report	Printed: 23 August 2023 4:13 PM

Revised Target Date changed by: Dexter, Amanda From: 7 Apr 2022 To: 30 Sep 2022, Reason: Formal Presentation of the Long Term Financial Plan will occur at the OCM September 29 2022

13 Feb 2023 3:34pm Smith, Sarah - Reallocation

Action reassigned to Clarkson, Tamara by: Smith, Sarah for the reason: Alan Thornton no longer at SDWK

13 Jun 2023 3:13pm Clarkson, Tamara - Target Date Revision

Target date changed by Clarkson, Tamara from 30 September 2022 to 30 September 2023 - Engaged Moore Australia to update

Meeting	Officer/Director	Section	Subject
Council 17/08/2023	Clarkson, Tamara Dexter, Amanda	Corporate Services	Adoption of the 2023 - 2024 Annual Budget
RESOLUTION 80/23			
Moved: Cr Geoff Haerewa			
Seconded: Cr Geoff Davis			
<u>In Favour:</u> Crs Geoff Haerewa, Paul White, Geoff Davis, Andrew Twaddle, Rowena Mouda and Peter McCumstie			
<u>Against:</u> Nil			
CARRIED 6/0 BY ABSOLUTE MAJORITY			

6.4 COMPLIANCE REPORTS - COUNCILLOR MEETING ATTENDANCE

File Number: 4262 - Status Reports
Author: Sarah Smith, Executive Services Coordinator
Responsible Officer: Amanda Dexter, Chief Executive Officer
Authority/Discretion: Information

SUMMARY

For the Committee to monitor councillor attendance at Ordinary Meetings of Council and Special Council Meetings to oversee compliance with the Local Government Act.

In accordance with regulation 14D of the Local Government (Administration) Regulations 1996 Council may approve the holding of any Ordinary or Special Council Meeting by electronic means (vis. telephone, video conference or other means of instantaneous communication).

Council cannot authorise more than half of its Council meetings, to be held electronically, in any rolling 12 months period.

A Councillor may attend council or committee meetings by electronic means if the member is authorised to do so by the President or the Council. Electronic means attendance can only be authorised for up to half of the Shire's in-person meetings they have attended in total, in any rolling 12 months prior period. Authorisation can only be provided if the location and the equipment to be used by the Councillor are suitable to enable effective, and where necessary confidential, engagement in the meeting's deliberations and communications.

DISCLOSURE OF ANY INTEREST

Nil by Author and Responsible Officer.

BACKGROUND

The Councillor Meeting Attendance Reports provides Council with accurate meeting attendance register and allows the Administration to monitor attendance by Councillors to ensure compliance with the Local Government Act 1995 and Local Government (Administration) – Amendment Regulations 2022.

STATUTORY ENVIRONMENT

Local Government Act 1995

2.25. Disqualification for failure to attend meetings

- (1) A council may, by resolution, grant leave of absence, to a member.
- (2) Leave is not to be granted to a member in respect of more than 6 consecutive ordinary meetings of the council without the approval of the Minister, unless all of the meetings are within a period of 3 months.
- (3A) Leave is not to be granted in respect of —
 - (a) a meeting that has concluded; or
 - (b) the part of a meeting before the granting of leave.

- (3) The granting of the leave, or refusal to grant the leave and reasons for that refusal, is to be recorded in the minutes of the meeting.
- (4) A member who is absent, without obtaining leave of the council, throughout 3 consecutive ordinary meetings of the council is disqualified from continuing his or her membership of the council, unless all of the meetings are within a 2 month period.
- (5A) If a council holds 3 or more ordinary meetings within a 2 month period, and a member is absent without leave throughout each of those meetings, the member is disqualified if he or she is absent without leave throughout the ordinary meeting of the council immediately following the end of that period.
- (5) The non-attendance of a member at the time and place appointed for an ordinary meeting of the council does not constitute absence from an ordinary meeting of the council —
 - (a) if no meeting of the council at which a quorum is present is actually held on that day; or
 - (b) if the non-attendance occurs —
 - (i) while the member has ceased to act as a member after written notice has been given to the member under section 2.27(3) and before written notice has been given to the member under section 2.27(5); or
 - (ii) while proceedings in connection with the disqualification of the member have been commenced and are pending; or
 - (iii) while the member is suspended under section 5.117(1)(a)(iv) or Part 8; or
 - (iiii) while the election of the member is disputed and proceedings relating to the disputed election have been commenced and are pending.
- (6) A member who before the commencement of the *Local Government Amendment Act 2009* section 5 was granted leave during an ordinary meeting of the council from which the member was absent is to be taken to have first obtained leave for the remainder of that meeting.

[Section 2.25 amended: No. 49 of 2004 s. 19(1); No. 17 of 2009 s. 5; No. 31 of 2018 s. 5.]

Local Government Act 1995 – Local Government (Administration) – Amendment Regulations 2022

Regulation 7 inserts additional provisions for meetings that are conducted entirely by electronic means under regulation 14D. Regulation 14D provides for a meeting of council or committee to be conducted by electronic means outside of a declared state of emergency. Regulation 14D(1) defines a relevant period in relation to the backward-looking test used to calculate how many electronic meetings a local government has conducted over the previous 12 months relative to the proposed meeting, and the 50% cap provided by regulation 14D(2A). Subsection 14D(2)(a)(ii) is amended to require the mayor, president or council to consider the requirements under subregulation 14D(2B) in deciding whether to conduct an electronic meeting. Regulation 14D(2B) requires the local government to consider the suitability of a person's location and their equipment with respect to effective communication and confidential matters during a meeting.

Regulation 14D(2A) applies the 50% cap to the number of electronic meetings that a local government (council) may authorise outside of an emergency situation under subregulation (2)(c) over a 12-month period. The backward-looking test used to determine how many meetings have

already been held by electronic means in the preceding 12 months applies in the same way it does for electronic attendance at in-person meetings.

Regulation 14D(2B) inserts the criteria that the authorising authority (the mayor, president or council) are required to consider before deciding to hold an electronic meeting. The authorising authority is required to consider each council or committee member's ability to maintain confidentiality during closed parts of the meeting and the suitability of each person's intended location and equipment to enable effective engagement in council deliberations. The authorising authority must have regard to these matters when deciding to hold and authorise electronic meetings. Electronic meetings held outside of emergency circumstances under subregulation 2(c) may only be approved by council.

Subregulations 14D(5)(a) and (b) insert subsections (6) to (8) that apply to closed parts of electronic meetings. Subsection (6) requires each member in attendance to make a declaration that they can maintain confidentiality during the closed part of the meeting. Subsection (7) requires that if a member makes a confidentiality declaration but is unable to maintain confidentiality subsequent to the declaration, they are required to leave prior to the closed part of the meeting. Subsection (8) requires a member's declaration to be recorded in the meeting minutes.

POLICY IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

GOAL	OUR PRIORITIES	WE WILL
1. Leadership and Governance	1.2 Capable, inclusive and effective organisation	1.2.1 Provide strong civic leadership 1.2.2 Provide strong governance

RISK MANAGEMENT CONSIDERATIONS

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Financial: Financial, Legal and Compliance, Organisational Operations and Reputation	Unlikely	Severe	Extreme	Monthly reporting to the Audit Committee for awareness and direction where required.

CONSULTATION

Internal consultation has been undertaken with relevant areas to collate information.

COMMENT

There is no compliance concerns noted for this reporting period.

VOTING REQUIREMENT

Simple majority

ATTACHMENTS

1. Council Meeting Attendance Table - 23-24
2. Council Meeting Attendance - Electronic Attendance Calculator

COMMITTEE RESOLUTION AC76/23

Moved: Cr Peter McCumstie

Seconded: Cr Geoff Haerewa

That the Audit Committee:

1. **RECEIVES** the information contained in the reports detailing Councillor meeting attendance (including via electronic means).

In Favour: Crs Geoff Haerewa, Peter McCumstie and Andrew Twaddle

Against: Nil

CARRIED 3/0



MEETING ATTENDANCE

The following table provides information on attendance at the 2023/24 Financial Year Ordinary and Special Council Meetings:

Councillor	Cancelled	17	31	28	26	30	15	TBC	TBC	TBC	TBC	TBC
	Jul	Aug	Aug	Sep	Oct	Nov	Dec	Feb	Mar	Apr	May	June
	2023	2023	2023	2023	2023	2023	2023	2024	2024	2024	2024	2024
	OCM	Special	OCM	OCM	OCM	OCM	OCM	OCM	OCM	OCM	OCM	OCM
G Haerewa	-	✓ Phone										
P McCumstie	-	✓										
K Bedford	-	A										
R Mouda	-	✓ Phone										
P Riley	-	✓										
P White	-	✓										
A Twaddle	-	✓										
G Davis	-	✓										

Derby

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MONTH	Oct-22	Oct-22	Nov-22	Dec-22	Jan-23	Feb-23	Mar-23	Apr-23	May-23	Jun-23	Jul-23	Aug-17	Aug-23	Sep-23	Oct-23	Oct-23
TYPE/LOCATION	SCM - DBY	OCM - DBY	OCM - FX	OCM - DBY	Special - DBY	OCM - DBY	OCM - FX	OCM - DBY	OCM - FX	OCM - DBY	OCM - Remote	Special - DBY	OCM - DBY	OCM - FX	Special - DBY	OCM - DBY*
NAME																
G Haerewa	P	P	P	P	P	P	O	P	P	P	C	O				
P McCumstie	P	P	P	P	O	O	P	P	P	P	C	P				
K Bedford	LOA	LOA	LOA	P	O	O	A	LOA	P	A	C	A				
R Mouda	P	O	LOA	P	LOA	LOA	LOA	LOA	P	A	C	O				
P Riley	O	A	P	P	O	O	P	LOA	LOA	LOA	C	P				
P White	A	P	P	P	O	A	P	P	P	P	C	P				
A Twaddle	O	P	P	P	P	P	P	P	P	P	C	P				
G Davis	O	O	P	P	O	O	P	O	P	P	C	P				
L Evans	A	P	LOA	LOA	LOA	LOA	LOA	LOA	A	N/A	N/A	N/A				
	P	: IN-PERSON														* Inclusion depends on date not conflicting with 12 months rolling period.
	O	: ONLINE														
	A	: APOLOGY														
	LOA	: LEAVE OF ABSENCE														

Physical Attendance	Online Attendance	Apology*	LOA*	Total Attendance	Physically In Attendance %*
9	2	0	0	11	82
9	2	0	0	11	82
2	2	3	4	4	50
3	2	1	5	5	60
4	3	1	3	7	57
8	1	2	0	9	89
10	1	0	0	11	91
6	5	0	0	11	55
1	0	2	6	1	100
		*Not counted in attendance %			*Measured using "rolling 12 months period".

NAME
G Haerewa
P McCumstie
K Bedford
R Mouda
P Riley
P White
A Twaddle
G Davis
L Evans

7 NEW BUSINESS OF AN URGENT NATURE

- Nil.

8 NEW AND EMERGING ITEMS FOR DISCUSSION**MOTION****COMMITTEE RESOLUTION AC77/23****Moved:** Cr Peter McCumstie**Seconded:** Cr Geoff Haerewa

That the Audit Committee recommends to Council:

1. That the next Audit Committee Meeting be held on 26 September 2023 at 4:00pm; and
2. Direct the CEO to advertise by local public notice the change of meeting date.

In Favour: Crs Geoff Haerewa, Peter McCumstie and Andrew Twaddle**Against:** Nil**CARRIED 3/0****9 DATE OF NEXT MEETING**

The next meeting of Audit Committee will be held Thursday, 26 September 2023 in the Council Chambers, Clarendon Street, Derby.

10 CLOSURE OF MEETING

The Presiding Member closed the meeting at 4:18pm.

These minutes were confirmed at a meeting on

.....

Signed:**Presiding Person at the meeting at which these minutes were confirmed.**

Date:

REPORTS

11 CORPORATE SERVICES

11.1 POLICY - F1 PROCUREMENT OF GOODS AND SERVICES

File Number: 4160

Author: Tamara Clarkson, Acting Director of Corporate Services

Responsible Officer: Amanda Dexter, Chief Executive Officer

Authority/Discretion: Administrative

SUMMARY

This report recommends that Council adopt the revised F1 Procurement of Goods and Services Policy. The policy has been reviewed to maintain a strong governance framework, yet also facilitate improved efficiency of the operational purchasing process.

Approval is required from Council to increase the current corporate credit limit to allow for day to day operational procurement and provision of a corporate credit card for the Director Corporate Services.

DISCLOSURE OF ANY INTEREST

Nil applicable.

BACKGROUND

The Shire's Procurement Policy was developed using the WALGA Model as its base. Council reviewed this policy in early 2023 to accommodate the increased authorised limit for the Chief Executive Officer for expenses related to Ex TC Ellie and associated flood damage.

The policy has again been reviewed to ensure it is relevant and to include the changes to the Authorised Officers.

Discussions at the 17 August 2023 Special Council Meeting regarding local employment opportunities have also been incorporated into this report.

STATUTORY ENVIRONMENT

Local Government Act 1995 Section 2.7 (2)(b) allows Council to determine the local government policies.

Local Government (Functions and General) Regulations 1996 Clause 11A requires Council to adopt and implement a Purchasing Policy, including setting the minimum number of oral quotations and written quotations that must be obtained for a purchase.

POLICY IMPLICATIONS

Amendment to Policy F1 Procurement of Goods and Services

FINANCIAL IMPLICATIONS

Amendments to this policy will maintain suitable controls around purchasing, while improving the operational efficiencies of the purchasing process.

STRATEGIC IMPLICATIONS

GOAL	OUR PRIORITIES	WE WILL
1. Leadership and Governance	1.2 Capable, inclusive and effective organisation	1.2.2 Provide strong governance

RISK MANAGEMENT CONSIDERATIONS

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Legal & Compliance: Procurement is not undertaken in accordance with legislative requirements	Possible	Moderate	Medium	Continue to provide training and review authorisations of Officers regularly

CONSULTATION

Nil.

COMMENT

The Executive Services Project Director commenced with the Shire in June 2023 and requires purchasing authority in line with the other members of the Executive Team. This will allow authorising of purchase orders and requisition requests for goods and services.

In the current policy, the authorisation is for the Director Corporate and Community, this role has been split and the policy should reflect that. It is proposed to remove three roles that no longer exist in the Organisational Chart, being Manager Finance, Manager Operations and Manager Engineering.

Authorised Officers

Limit	Officer
\$600,000	Chief Executive Officer (for purchases relevant to Ex-Tropical Cyclone Ellie only)
\$250,000	Chief Executive Officer
\$125,000	Director Technical and Development Services
\$125,000	Director Corporate Services
\$125,000	Director Community Services
\$125,000	Director Strategic Business
\$125,000	Executive Services Project Director
\$60,000	Manager Infrastructure
<\$50,000	To ensure operational efficiency, the Chief Executive Officer is authorised to select employee roles and purchasing limits and manage operationally, for purchases less than \$50,000. These are detailed in the CEO Directive D-CP3 Procurement

Purchasing Limits.

The current corporate credit limit for the Shire of Derby / West Kimberley is \$60,000. The CEO has a \$50,000 limit for expenses where a purchase order is not accepted, for example many flights and accommodation providers require payment at the time of booking. The Director Technical Services and Acting Director Community Services each have \$5,000 for operational expenses. Due to an increase in the number of suppliers not accepting purchase orders and purchases, it is proposed for the Director Corporate Services to have a credit limit of \$20,000.

At the Special Council Meeting held 17 August 2023, Councillors enquired about the procurement requirements for local businesses and employment. Section 2 Sustainable Procurement of the attached policy (page 9) addresses these criteria. The importance of enhancing local employment and businesses opportunities across the district is acknowledged and it is recommended that a report be prepared, outlining any further options that might be available for Council to consider.

VOTING REQUIREMENT

Simple majority

ATTACHMENTS

1. **Review F1 Procurement of Goods and Services** [!\[\]\(49aa2e1da5fe39294864e9598c593810_img.jpg\) !\[\]\(7d0a8d8b1031f74abe67b09fcf4a2322_img.jpg\)](#)

RECOMMENDATION

That Council:

1. **Adopt F1 Procurement of Goods and Services;**
2. **Approve Director Corporate Services to be issued a credit card with a limit of \$20,000;**
3. **Note the Shire's Corporate Credit Card limit is \$80,000 total; and**
4. **Direct the CEO to prepare a report to Council on further options for district workforce development that can be considered as part of the Shire's procurement policy.**



(F1) PROCUREMENT OF GOODS AND SERVICES

1. PURCHASING

The Shire of Derby/West Kimberley (the “Shire”) is committed to delivering the objectives, principles and practices outlined in this Policy, when purchasing goods, services or works to achieve the Shire’s strategic and operational objectives.

This policy complies with the *Local Government (Functions and General) Regulations 1996* (The Regulations).

1.1 Objectives

The Shire’s purchasing activities will achieve:

- The attainment of best value for money;
- Sustainable benefits, such as environmental, social and local economic factors are considered in the overall value for money assessment;
- Consistent, efficient and accountable processes and decision-making;
- Fair and equitable competitive processes that engage potential suppliers impartially, honestly and consistently;
- Probity and integrity, including the avoidance of bias and of perceived and actual conflicts of interest;
- Compliance with the *Local Government Act 1995*, *Local Government (Functions and General) Regulations 1996*, as well as any relevant legislation, Codes of Practice, Standards and the Shire’s policies and procedures;
- Risks identified and managed within the Shire’s Risk Management framework;
- Records created and maintained to evidence purchasing activities in accordance with the *State Records Act 2000* and the Shire’s Record Keeping Plan; and
- Confidentiality protocols that protect commercial-in-confidence information and only release information where appropriately approved.

1.2 Ethics & Integrity

The Shire’s *Code of Conduct (Employees)* applies when undertaking purchasing activities and decision making. Elected Members and employees must observe the highest standards of ethics and integrity and act in an honest and professional manner at all times.

1.3 Value for Money

Value for money is achieved through the critical assessment of price, risk, timeliness, environmental, social, economic and qualitative factors to determine the most advantageous supply outcome that contributes to the Shire achieving its strategic and operational objectives.

The Shire will apply value for money principles when assessing purchasing decisions and acknowledges that the lowest price may not always be the most advantageous.

1.3.1 Assessing Value for Money

Assessment of value for money will consider:

- (a) All relevant Total Costs of Ownership (TCO) and benefits including transaction costs associated with acquisition, delivery, distribution, as well as other costs such as but not limited to holding costs, consumables, deployment, training, maintenance and disposal;



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- (b) The technical merits of the goods or services being offered in terms of compliance with specifications, contractual terms and conditions and any relevant methods of assuring quality. This includes but is not limited to an assessment of compliances, tenderers resources available, capacity and capability, value-adds offered, warranties, guarantees, repair and replacement policies, ease of inspection, ease of after sales service, ease of communications etc.
- (c) Financial viability and capacity to supply without the risk of default (competency of the prospective suppliers in terms of managerial and technical capabilities and compliance history);
- (d) A strong element of competition by obtaining a sufficient number of competitive quotations wherever practicable and consistent with this policy;
- (e) The safety requirements and standards associated with both the product design and the specification offered by suppliers and the evaluation of risk arising from the supply, operation and maintenance;
- (f) The environmental, economic and social benefits arising from the goods, services or works required, including consideration of these benefits in regard to the supplier's operations, in accordance with this Policy and any other relevant Shire Policy; and
- (g) Providing opportunities for businesses within the Shire's boundaries to quote wherever possible.

1.4 Purchasing Thresholds and Practices

The Shire must comply with all requirements, including purchasing thresholds and processes, as prescribed within the Regulations, this policy and associated purchasing procedures in effect at the Shire.

1.4.1 Policy Purchasing Value Definition

Purchasing value for a specified category of goods, services or works is to be determined upon the following considerations:

- (a) Exclusive of Goods and Services Tax (GST); and
- (b) Where a contract is in place, the actual or expected value of expenditure over the full contract period, including all options to extend specific to a particular category of goods, services or works.
OR
- (c) Where there is no existing contract arrangement, the Purchasing Value will be the estimated total expenditure for a category of goods, services or works over a minimum three year period. This period may be extended to a maximum of 3 years only where the supply category has a high risk of change i.e. to technology, specification, availability or the Shire's requirements (Regulation 12).

The calculated estimated Purchasing Value will be used to determine the applicable threshold and purchasing practice to be undertaken.

1.4.2 Purchasing from Existing Contracts

The Shire will ensure that any goods, services or works required that are within the scope of an existing contract will be purchased under that contract.

1.4.3 Table of Purchasing Thresholds and Practices

This table prescribes Purchasing Value Thresholds and the applicable purchasing practices which apply to the Shire's purchasing activities:



Purchase Value Threshold (excluding GST)	Purchasing Practice Required
Up to \$2,500	<p>Request Consult as to whether an existing Term Contract or Panel of Pre-Qualified Suppliers exists and use as prescribed.</p> <p>If no Contract or Panel exists, seek at least one verbal or written quotation (preferably a written quotation if a new supplier is involved) from a suitable supplier:</p> <ul style="list-style-type: none"> a Local Supplier (direct or via <i>Vendor Panel Marketplace</i>). <p>Evaluate The rationale for the procurement decision is to be documented within the Record and Evaluation of Quotes form and attached to the requisition.</p>
\$2,501 to \$10,000	<p>Request Consult as to whether an existing Term Contract or Panel of Pre-Qualified Suppliers exists and use as prescribed.</p> <p>If no Contract or Panel exists seek at least one written quotation from a suitable supplier:</p> <ul style="list-style-type: none"> a Local Supplier (direct or via <i>Vendor Panel Marketplace</i>); a prequalified supplier on the WALGA Preferred Supplier Program (via <i>eQuotes</i>); a WA Disability Enterprise; and/or an Aboriginal Owned Business. <p>Where it can be demonstrated that a suitable supplier is not available, seek at least one written quotation from:</p> <ul style="list-style-type: none"> other Suppliers that are accessible under another tender exempt arrangement; and/or the open market. <p>The reason for not using a suitable supplier must be documented within the Record and Evaluation of Quotes form and written approval must be given by the relevant Director or the CEO.</p> <p>Evaluate The purchasing decision is to be based upon assessment of the supplier's response to:</p> <ul style="list-style-type: none"> a brief outline of the specified requirement for the goods; services or works required; and value for Money criteria, not necessarily the lowest quote.



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Purchase Value Threshold (excluding GST)	Purchasing Practice Required
	The rationale for the procurement decision is to be documented within the Record and Evaluation of Quotes form and attached to the requisition.
\$10,001 to \$50,000	<p>Request Consult as to whether an existing Term Contract or Panel of Pre-Qualified Suppliers exists and use as prescribed.</p> <p>If no Contract or Panel exists, seek at least two written quotations from suitable suppliers:</p> <ul style="list-style-type: none"> a prequalified supplier on the WALGA Preferred Supplier Program (via eQuotes); a Local Supplier (direct or via <i>Vendor Panel</i> Marketplace); a WA Disability Enterprise; and/or an Aboriginal Owned Business. <p>Where it can be demonstrated that a suitable supplier is not available, seek at least two written quotations from:</p> <ul style="list-style-type: none"> other Suppliers that are accessible under another tender exempt arrangement; and/or the open market. <p>The reason for not using a suitable supplier must be documented within the Record and Evaluation of Quotes form and written approval must be given by the Director or CEO.</p> <p>Where it can be demonstrated that the required number of quotes cannot be sourced, the reason will be documented within the Record and Evaluation of Quotes form and written approval must be given by the Director or CEO.</p> <p>Evaluate The purchasing decision is to be based upon assessment of the supplier's response to:</p> <ul style="list-style-type: none"> a brief outline of the specified requirement for the goods; services or works required; and Value for Money criteria, not necessarily the lowest quote. <p>The rationale for the procurement decision is to be documented within the Record and Evaluation of Quotes form and attached to the requisition.</p>
\$50,001 to \$250,000	<p>Request Consult as to whether an existing Term Contract or Panel of Pre-Qualified Suppliers relevant to the required purchasing category exists and seek at least three written quotations by invitation under a formal Request for Quotation.</p>



Purchase Value Threshold (excluding GST)	Purchasing Practice Required
	<p>If no Contract or Panel exists for the required purchasing category, seek at least three written quotations from a suitable supplier:</p> <ul style="list-style-type: none"> • a prequalified supplier on the WALGA Preferred Supplier Program (via <i>eQuotes</i>); • a Local Supplier (direct or via <i>Vendor Panel Marketplace</i>); • a WA Disability Enterprise; and/or • an Aboriginal Owned Business. <p>Where it can be demonstrated that a suitable supplier is not available, seek at least three written quotations from:</p> <ul style="list-style-type: none"> • other Suppliers that are accessible under another tender exempt arrangement; and/or • the open market. <p>The reason for not using a suitable supplier must be documented within the Record and Evaluation of Quotes form and written approval must be given by the Director or CEO.</p> <p>Where it can be demonstrated that the required number of quotes cannot be sourced, the reason will be documented within the Record and Evaluation of Quotes form and written approval must be given by the relevant Director or the CEO.</p> <p>Evaluate The purchasing decision is to be based upon assessment of the supplier's response to:</p> <ul style="list-style-type: none"> • a brief outline of the specified requirement for the goods; services or works required; and • Value for Money criteria, not necessarily the lowest quote. <p>The rationale for the procurement decision is to be documented and recorded in accordance with the Shire Operational Procedure – Procurement of Goods and Services.</p>
Over \$250,000	<p>Request Consult as to whether an existing Term Contract or Panel of Pre-Qualified Suppliers relevant to the required purchasing category exists and use in accordance with the procedures prescribed Section 3.</p> <p>If no Contract or Panel exists for the required purchasing category:</p> <ul style="list-style-type: none"> • Seek at least three written quotations from suppliers included in the relevant WALGA Preferred Supplier Arrangement and / or another tender exempt arrangement; or



Purchase Value Threshold (excluding GST)	Purchasing Practice Required
	<ul style="list-style-type: none"> Conduct a Public Request for Tender process in accordance with the Local Government Act 1995 and relevant Shire Policy requirements. <p>Evaluate The purchasing decision is to be based upon assessment of the supplier's response to:</p> <ul style="list-style-type: none"> a specification of the goods, services or works (for a tender exempt process including the WALGA Preferred Supplier Arrangement); or a detailed specification for the open tender process; and pre-determined evaluation criteria that assess all best and sustainable value considerations <p>The rationale for the procurement decision is to be documented and recorded in accordance with the Shire Operational Procedure – Procurement of Goods and Services.</p>
Emergency Purchases (Not Included in Budget)	<p>Only applicable where, authorised in advance by the Mayor / President in accordance with s.6.8 of the <i>Local Government Act 1995</i> and reported to the next available Council Meeting.</p> <p>Where the Shire has an established Panel of Pre-Qualified Suppliers relevant to the required purchasing category, the emergency supply must be obtained from the Panel suppliers.</p> <p>If, however, no member of the Panel of Pre-qualified Suppliers or a suitable supplier from WALGA Preferred Supplier Arrangement is available, then the supply may be obtained from any supplier capable of providing the emergency purchasing requirement, and to the extent that it is reasonable in context of the emergency requirements, with due consideration of best and sustainable consideration.</p> <p>The rationale for the procurement decision should be documented and recorded in accordance with the Shire Operational Procedure – Procurement of Goods and Services.</p>

1.4.4 Exemptions

An exemption from the requirement to publicly invite tenders may apply when the purchase is:

- obtained from a pre-qualified supplier under the WALGA Preferred Supplier Arrangement or other suppliers that are accessible under another tender exempt arrangement.
- from a pre-qualified supplier under a Panel established by the Shire;
- from a Regional Local Government or another Local Government;
- acquired from a person/organisation registered on the WA Aboriginal Business Directory, as published by the Small Business Development Corporation, where the consideration under contract is worth \$250,000 or less (excluding GST) and represents value for money;



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- acquired from an Australian Disability Enterprise and represents value for money;
- the purchase is authorised under action by Council under delegated authority;
- within 6 months of no tender being accepted;
- where the contract is for petrol, oil, or other liquid or gas used for internal combustion engines; or
- the purchase is covered by any of the other exclusions under Regulation 11 of The Regulations.

1.4.5 Other Purchasing Exemptions

In addition to the regulatory Tender exemptions for purchasing as set out in Regulation 11.2 of The Regulations and section 1.4.4 of this policy, it may at times be necessary to vary from the requirements of this policy for a number of reasons, including but not limited to, the following further exemptions where the Shire is not required to undertake a competitive purchasing process (but these only apply where the total value of the purchase does not exceed \$250,000 (excluding GST) over three years):

- Services, supplies, and/or equipment directly related to an impacting epidemic or a pandemic (e.g., COVID-19);
- Services of industry organisations (e.g., WALGA, and Local Government Professionals);
- Advance / Prior Payment of Services (for example: accommodation, travel services, entertainment, conferences, seminars, Memberships, Subscriptions, training courses);
- Advertising – Newspaper (e.g., public notices and statutory advertising);
- Advertising – State Government Gazette (e.g., statutory advertising);
- Annual Memberships/Subscriptions (e.g., WALGA, and Library stocks);
- Annual Service/Software annual licencing and Maintenance/Support Fees;
- Reimbursements (TAFE, training course fees, accommodation / meal costs, telephone and internet);
- Employment of temporary staff through temporary personnel service agencies (CEO approval required for any contract exceeding or extended beyond three months);
- Motor vehicle licensing and registration;
- Postage;
- Talent acts for community events;
- Pre-employment medicals and staff medical services (e.g. annual flu immunisation program);
- Provision of utility services (where only sole provider – e.g. Western Power);
- Purchases from Original Equipment Manufacturer (OEMs) and where warranty provisions may be voided; and
- Local Government Insurance Service (e.g. premiums and insurance excesses) – note: not subject to the \$250,000 limit); and
- Purchasing as required and determined by the CEO and Directors providing that the approval is provided in writing prior to the purchase and the details are recorded against the requisition.

1.4.6 Inviting Tenders Under the Tender Threshold

The Shire may determine to invite Public Tenders, despite the estimated Purchase Value being less than the \$250,000 threshold.

This decision will be made after considering:



- Whether the purchasing requirement can be met through the WALGA Preferred Supplier Program or any other tender exemption arrangement; and
- Any value for money benefits, timeliness, risks; and
- Compliance requirements.

A decision to invite Tenders, though not required to do so, may occur where an assessment has been undertaken and it is considered that there is benefit from conducting a publicly accountable and more rigorous process. In such cases, the Shire's tendering procedures must be followed in full.

1.4.7 Other Procurement Processes

Expressions of Interest

Expressions of Interest (EOI) are typically considered in situations where the project is of a significant value, or contains significant complexity of project delivery that may solicit responses from a considerable range of industry providers.

In these cases, the Shire may consider conducting an EOI process, preliminary to any Request for Tender process, where the purchasing requirement is:

- Unable to be sufficiently scoped or specified;
- Open to multiple options for how the purchasing requirement may be obtained, specified, created or delivered;
- Subject to a creative element; or
- To establish a procurement methodology that allows for an assessment of a significant number of tenders leading to a shortlisting process based on non-price assessment.

All EOI processes are conducted as a public process and similar rules to a Request for Tender apply. However, the EOI should not seek price information from respondents, seeking qualitative and other non-price information only. All EOI processes should be subsequently followed by a Request for Tender through an invited process of those shortlisted under the EOI.

Request for Proposal

As an alternative to a Request for Tender, the Shire may consider conducting a Request for Proposal where the requirements are less known, or less prescriptive and detailed. In this situation, the Request for Proposal would still be conducted under the same rules as for a Request for Tender but would seek responses from the market that are outcomes based or that outline solutions to meet the requirements of the Shire.

1.4.8 Emergency Purchases

An emergency purchase is defined as an unanticipated purchase which is required in response to an emergency situation as provided for in the Act. In such instances, quotes and tenders are not required to be obtained prior to the purchase being undertaken.

Time constraints are not a justification for an emergency purchase. Every effort must be made to anticipate purchases in advance and to allow sufficient time to obtain quotes and tenders, whichever may apply.

1.4.9 Sole Source of Supply

A sole source of supply arrangement may only be approved where the:



- purchasing value is estimated to be over \$5,000; and
- purchasing requirement has been documented in a detailed specification; and
- specification has been extensively market tested and only one potential supplier has been identified as being capable of meeting the specified purchase requirement; and
- market testing process and outcomes of supplier assessments have been documented, inclusive of a rationale for why the supply is determined as unique and cannot be sourced through more than one supplier.

A sole source of supply arrangement will only be approved for a period not exceeding three (3) years. For any continuing purchasing requirement, the approval must be reassessed before expiry to evidence that a Sole Source of Supply still genuinely exists.

1.4.10 Anti-Avoidance

The Shire will not conduct multiple purchasing activities with the intent (inadvertent or otherwise) of "splitting" the purchase value or the contract value, avoiding a particular purchasing threshold or the need to call a Public Tender. This includes the creation of two or more contracts or creating multiple purchase order transactions of a similar nature.

Utilising rolling contract extensions at the end of a contract term without properly testing the market or using a tender exempt arrangement will not be adopted as this would place this Local Government in breach of The Regulations (Regulation 12).

The Shire will conduct regular periodic analysis of purchasing activities within supply categories and aggregating expenditure values in order to identify purchasing activities which can be more appropriately undertaken within the Purchasing Threshold practices detailed in clause 1.4.3 above.

1.4.11 Contract Variations

Authorises the CEO to approve minor variations to contracts entered by Council, subject to the funds required meeting the cost of the variations been contained within the amounts set aside in the budget.

2. SUSTAINABLE PROCUREMENT

The Shire is committed to implementing sustainable procurement by providing a preference to suppliers that *demonstrate* sustainable business practices (social advancement, environmental protection and local economic benefits).

The Shire will embrace Sustainable Procurement by applying the value for money assessment to ensure that wherever possible our suppliers demonstrate outcomes which contribute to improved environmental, social and local economic outcomes. Sustainable Procurement can be demonstrated as being internally focused (i.e. operational environmental efficiencies or employment opportunities and benefits relating to special needs), or externally focused (i.e. initiatives such as corporate philanthropy).

Requests for Quotation and Tenders will include a request for information from Suppliers regarding their sustainable practices and/or demonstrate that their product or service offers enhanced sustainable benefits.



2.1 Local Economic Benefit

The Shire encourages the development of competitive local businesses within its boundary first, and second within its broader region. As much as practicable, the Shire will:

- Where appropriate, consider buying practices, procedures and specifications that do not unfairly disadvantage local businesses;
- Consider indirect benefits that have flow on benefits for local suppliers (i.e. servicing and support);
- Ensure that procurement plans address local business capability and local content;
- Explore the capability of local businesses to meet requirements and ensure that Requests for Quotation and Tenders are designed to accommodate the capabilities of local businesses;
- Avoid bias in the design and specifications for Requests for Quotation and Tenders – all Requests must be structured to encourage local businesses to bid; and
- Provide adequate and consistent information to local suppliers.

To this extent, a qualitative weighting will be included in the evaluation criteria for quotes and Tenders where suppliers are located within the boundaries of the Shire, or substantially demonstrate a benefit or contribution to the local economy. This criteria will relate to local economic benefits that result from Tender processes.

The Shire has adopted F7 Regional Price Preference Policy, which will be applied when undertaking purchasing activities.

2.2 Purchasing from Disability Enterprises

An Australian Disability Enterprise may be contracted directly without the need to comply with the Threshold and Purchasing Practices requirements of this policy, where a value for money assessment demonstrates benefits for the Shire's achievement of its strategic and operational objectives.

A qualitative weighting will be used in the evaluation of quotes and Tenders to provide advantages to Australian Disability Enterprises, in instances where not directly contracted.

2.3 Purchasing from Aboriginal Businesses

A business registered in the current Aboriginal Business Directory WA (produced by the Small Business Development Corporation) may be contracted directly without the need to comply with the Threshold and Purchasing Practices requirements of this policy, only where:

- The contract value is or is worth \$250,000 or less, and
- A best and sustainable value assessment demonstrates benefits for the Shire's achievement of its strategic and operational objectives.

A qualitative weighting will be used in the evaluation of quotes and tenders to provide advantages to businesses registered in the current Aboriginal Business Directory WA, in instances where not directly contracted.

2.4 Purchasing from Environmentally Sustainable Business

The Shire will support the purchasing of recycled and environmentally sustainable products whenever a value for money assessment demonstrates benefits for the Shire's achievement of its strategic and operational objectives.



A qualitative weighting will be used in the evaluation of quotes and tenders to provide advantages to suppliers which:

- Demonstrate policies and practices that have been implemented by the business as part of its operations;
- Generate less waste material by reviewing how supplies, materials and equipment are manufactured, purchased, packaged, delivered, used, and disposed; and
- Encourage waste prevention, recycling, market development and use of recycled/recyclable materials.

3. PANELS OF PRE-QUALIFIED SUPPLIERS

3.1 Objectives

The Shire will consider creating a Panel of Pre-qualified Suppliers ("Panel") when a range of similar goods and services are required to be purchased on a continuing and regular basis.

Part of the consideration of establishing a panel includes:

- There are numerous potential suppliers in the local and regional procurement related market sector(s) that satisfy the test of 'value for money';
- The purchasing activity under the intended Panel is assessed as being of a low to medium risk;
- The Panel will streamline and will improve procurement processes; and
- The Shire has the capability to establish a Panel, and manage the risks and achieve the benefits expected of the proposed Panel through a Contract Management Plan.

3.2 Establishing and Managing a Panel

If the Shire decides that a Panel is to be created, it will establish the panel in accordance with the Regulations.

Panels will be established for one supply requirement, or a number of similar supply requirements under defined categories. This will be undertaken through an invitation procurement process advertised via a state-wide notice.

Panels may be established for a maximum of three (3) years. The length of time of a Local Panel is decided with the approval of the CEO/ Executive Director.

Evaluation criteria will be determined and communicated in the application process by which applications will be assessed and accepted.

In each invitation to apply to become a pre-qualified supplier, the Shire will state the expected number of suppliers it intends to put on the panel.

If a Panel member leaves the Panel, the Shire will consider replacing that organisation with the next ranked supplier that meets/exceeds the requirements in the value for money assessment – subject to that supplier agreeing. The Shire will disclose this approach in the detailed information when establishing the Panel.

A Panel contract arrangement needs to be managed to ensure that the performance of the Panel Contract and the Panel members under the contract are monitored and managed. This will ensure



that risks are managed and expected benefits are achieved. A Contract Management Plan should be established that outlines the requirements for the Panel Contract and how it will be managed.

3.3 Distributing Work Amongst Panel Members

To satisfy Regulation 24AD(5) of The Regulations, when establishing a Panel of pre-qualified suppliers, the detailed information associated with each invitation to apply to join the Panel will prescribe one of the following as to whether the Shire intends to:

- Obtain quotations from each pre-qualified supplier on the Panel with respect to all discreet purchases; or
- Purchase goods and services exclusively from any pre-qualified supplier appointed to that Panel, and under what circumstances; or
- Develop a ranking system for selection to the Panel, with work awarded in accordance with the Regulations.

In considering the distribution of work among Panel members, the detailed information will also prescribe whether:

- Each Panel member will have the opportunity to bid for each item of work under the Panel, with pre-determined evaluation criteria forming part of the invitation to quote to assess the suitability of the supplier for particular items of work. Contracts under the pre-qualified panel will be awarded on the basis of value for money in every instance; or
- Work will be awarded on a ranked basis, which is to be stipulated in the detailed information set out under Regulation 24AD(5)(f) when establishing the Panel. The Shire will invite the highest ranked Panel member, who is to give written notice as to whether to accept the offer for the work to be undertaken. Should the offer be declined, an invitation to the next ranked Panel member is to be made and so forth until a Panel member accepts a contract. Should the list of Panel members invited be exhausted with no Panel member accepting the offer to provide goods/services under the Panel, the Shire may then invite suppliers that are not pre-qualified under the Panel, in accordance with the Purchasing Thresholds stated in section 1.4.3 of this policy. When a ranking system is established, the Panel will not operate for a period exceeding 12 months.

In every instance, a contract must not be formed with a pre-qualified supplier for an item of work beyond 12 months, which includes options to extend the contract.

3.4 Purchasing from the Panel

The invitation to apply to be considered to join a panel of pre-qualified suppliers must state whether quotations are either to be invited to every Panel member (within each category, if applicable) of the Panel for each purchasing requirement, whether a ranking system is to be established, or otherwise.

Each quotation process, including the invitation to quote, communications with Panel members, quotations received, evaluation of quotes and notification of award communications must all be made through eQuotes (or other nominated electronic quotation facility).

Each quotation process, including the invitation to quote, communications with Panel members, quotations received, evaluation of quotes and notification of award communications must all be captured on the Shire's electronic records system. A separate file is to be maintained for each



quotation process made under each Panel that captures all communications between the Shire and Panel members.

4. PURCHASING POLICY NON-COMPLIANCE

Purchasing Activities are subject to financial and performance audits, which review compliance with legislative requirements and also compliance with the Shire's policies and procedures.

A failure to comply with the requirements of this policy will be subject to investigation, with findings to be considered in context of the responsible person's training, experience, seniority and reasonable expectations for performance of their role.

Where a breach is substantiated, it may be treated as:

- An opportunity for additional training to be provided;
- A disciplinary matter, which may or may not be subject to reporting requirements under the *Public Sector Management Act 1994*;
- Misconduct in accordance with the *Corruption Crime and Misconduct Act 2003*.

5. AUTHORISED OFFICERS

The following employees are authorised to sign official purchase orders and requisition Goods and services on behalf of Council:

LIMIT*	OFFICER
\$600,000	Chief Executive Officer (for purchases relevant to Ex-Tropical Cyclone Ellie only)
\$250,000	Chief Executive Officer
\$125,000	Director Technical and Development Services
\$125,000	Director Corporate and Community (note: currently two separate roles)
\$125,000	Director Corporate Services
\$125,000	Director Community Services
\$125,000	Director Strategic Business
\$125,000	Executive Services Project Director
\$60,000	Manager Infrastructure
\$60,000	Manager Engineering
\$60,000	Manager Finance
\$60,000	Manager Operations
<\$50,000 (vis. below the lower limit of being classified as "Key Management Personnel").	To ensure operational efficiency, the Chief Executive Officer is authorised to select employee roles and purchasing limits and manage operationally, for purchases <\$50,000. These are detailed in the CEO Directive D-CP3 Procurement Purchasing Limits.

**Note: Employees with authority ≥\$50,000 need to also be classified as "Key Management Personnel" and be include in the Related Party Transaction Register.*

6. RECORD KEEPING

All purchasing activity, communications and transactions must be evidenced and retained as local government records in accordance with the *State Records Act 2000* and the Shire's Record Keeping



Plan. This includes those with organisations involved in a tender or quotation process, including suppliers.

7. AGRN 1044 – Ex-Tropical Cyclone Ellie (2023 Fitzroy Crossing Floods)

Procurement for goods or services under \$250,000 which are required as a result of Ex-Tropical Cyclone Ellie (AGRN1044) may be exempt from relevant quotation requirements where it can be demonstrated via the Shire's Requisition Form that:

The district's commercial and its Aboriginal businesses can provide the quotation, and the goods or services:

1. As a registered business;
2. Within the agreed timeframe and to the required standard;
3. At an acceptable and reasonable cost;
4. With a suitably high level of community engagement and employment;
5. That businesses local to firstly Fitzroy Crossing, then secondly Derby, have been given the opportunity to provide a quotation;
6. Where there is more than one local supplier, the procurement of goods and/or services must be shared amongst those suppliers, conditional on each provider supplying the goods/services:
 - Within the agreed timeframe and to the standard required;
 - At an acceptable and reasonable cost; and
 - With a suitably high level of community engagement and employment.

At least one quote must be obtained, but where adequate time is available to do so, two is preferable. Suitable levels of specification for the purchase must also be supplied by Shire, or obtained from the provider. Purchasing authority limits apply as for *business as usual* procurement.

This provision is intended to be in place for the period of dealing with the impacts of ex Tropical Cyclone Ellie, or until otherwise modified by Council decision.



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Policy Details			
Original Adoption date:	27 August 1997	Review Frequency (Annual/Bi-ennial):	Bi-ennial
		Next Review Due:	June 2025
Policy Implementing Officer or Team:	Manager Finance	Policy Reviewer:	Director Corporate Services
Legislative Head of Power (Act, Regulation, or Local Law):	s.3.57 of the Local Government Act 1995 Part 4 of the Local Government (Functions and General) Regulations 1996		
Related Documents (other Policies, Operational Procedures, Delegations, etc.):	Policy F7 Regional Price Preference Policy F8 Transaction Cards Policy F18 Portable and Attractive Items Policy CEO Directive D-CP3 Procurements Purchasing Limits Delegation 1.1.16 Expressions of Interest for Goods and Services Delegation 1.1.17 Tenders for Goods and Services - Call Tenders Delegation 1.1.18 Tenders for Goods and Services - Accepting and Rejecting Tenders; Varying Contracts; Exercising Contract Extension Options Delegation 1.1.19 Tenders for Goods and Services - Exempt Procurement Delegation 1.1.20 Application of Regional Price Preference Delegation 1.1.21 Payments from the Municipal or Trust Funds Delegation 1.1.31 Renewal or Extension of Contracts during a State Emergency Delegation 1.1.32 Procurement of Goods or Services required to address a State of Emergency Delegation 1.2.10 Financial Management Systems and Procedures Code of Conduct (Employee) Risk Management Framework Operational Procedure – Procurement of Goods and Services		
Version Control Council Meeting Review Details:			
Review #:	Council Meeting Date:	Item/Resolution#:	
1.	28 February 2019	Item 10.1.2 Res. 012/19	
2.	12 December 2019	Item 10.7 Res. 159/19	
3.	30 September 2020	Item 11.3 Res. 159/20	
4.	24 June 2021	Item 11.2 Res. 57/21	
5.	24 February 2022	Item 11.5 Res. 07/22	
6.	30 March 2023	Item 10.1 Res. 15/23	
7.	Xx August 2023	Item xx Res. Xx/23	

12 EXECUTIVE SERVICES

12.1 DERBY AIRPORT - DISPOSAL OF X-RAY AND SECURITY EQUIPMENT

File Number: 9020.7

Author: Neil Hartley, Director - Strategic Business

Responsible Officer: Amanda Dexter, Chief Executive Officer

Authority/Discretion: Administrative

SUMMARY

The Shire has x-ray/security equipment stored at Derby Airport, some of which was previously utilised at Curtin Airport. The equipment has not been required to be used for quite some time and so licences have not been renewed for several years. The State Government is requiring that the Shire either resume its licencing of the x-ray equipment located at its airports, or dispose of the equipment.

The equipment is needed when an airport/passenger numbers reaches certain levels, but neither Derby nor Curtin Airports are currently at that point. Reaching the required limit for compulsory x-ray usage would seem unlikely under the current local circumstances, so the cost of retaining licences and recalibrating and retesting equipment we don't need or use, needs to be revisited.

This report recommends that the equipment be disposed of, and new equipment procured should it be required again in the future.

DISCLOSURE OF ANY INTEREST

Nil by Author.

BACKGROUND

The Public Health Regulation Directorate of the Department of Health contacted the Shire (13 February 2023) in regard to the expired (21 November 2020) registration of several items of airport x-ray equipment, and sought input from the Shire as to how the Shire intended to address the situation (vis. by either resuming the licencing, or disposing of the equipment).

The Shire has the below equipment stored at Derby Airport, some of which was relocated from Curtin Airport:

Item	Quantity	Make	Model	Serial Numbers
Hand Held Metal Detector (HHMD)	5	Fisher Labs (Vast Academy)	CW-10 (Concealed weapons detector)	10141469; 10141454; 10141483 (and two without serial numbers)
Walk Through Metal Detector	1	Rapiscan	M300 EMD MTXS 5178	M300 MEL8 5172
Explosive Trace Detection (ETD) equipment	Located at Curtin Airport but details not sourced for this report.			
Passenger Screening X-ray	2	Rapiscan	620DV 620XR	6123 732 60807N47

Checked Baggage Screening X-ray	1	Rapiscan	MVXR-5000	6083326
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Airports that have Regular Passenger Transport services above 50,000 customers per annum are required to have x-ray/scanning equipment. The equipment in storage at Derby Airport could be re-registered, but it is not required at the present time (in light of the passenger numbers being less than 50,000 passengers per annum) and there is no foreseeable likelihood of that requirement eventuating, at least in the current circumstances that prevail.

Council at its 27 April 2023 Meeting considered the situation and required that the Chief Executive Officer:

1. *Secure a professional assessment of the existing x-ray equipment stored at Derby Airport and dispose of any equipment that cannot reasonably be recalibrated/refurbished;*
2. *Deposit any funds received from the sale(s) into a Airport Equipment Reserve Account (the purposed of the account to be used for the provision of airport equipment); and*
3. *Report back to Council following the professional assessment concluding, on the practicality and cost to refurbish existing, or alternatively procure new compliant equipment should it be required again in the future to service passengers utilising the Derby or Curtin Airports.*

Advise was sought from Rubicon (the company that supplies/maintains the equipment) and it advises that:

The equipment in Derby was relocated from Curtin RAAF to Derby Airport in July of 2018. There were issues at the time with the construction and the load points on the terminal floor for the x-ray machine so the equipment was left in the CBS area of the terminal. That was the last time Rubicon was on site.

The MVXR5000 (CBS x-ray) has reached end of life from a service perspective and is no longer supported. There are only 3 left in operation in Australia and are being phased out.

The 620DV (checkpoint x-ray) was manufactured in 2012 so its 11 years old now. The usual lifetime of these units is generally speaking, 7-10 years, but we should still be able to get it operational. There is a risk of generator failures as the machine has not been in use for several years now.

The 30EMD WTMD (walk-through metal detector) is still compliant and should still work, they are pretty reliable, even if left off for extended periods.

Newer units have a far better image resolution than the current equipment on site, so unfortunately, there is no monetary value left in any of the equipment.

Rubicon can arrange for the decommissioning of the equipment on site. The most cost-effective way will be to transport it back to Perth and Rubicon can do the physical decommissioning works here (x-ray generator removal, scrapping of chassis, etc.) and then lodge the necessary decommissioning submissions to the Radiological Council of WA (WA Department of Health).

STATUTORY ENVIRONMENT

Airports that have Regular Passenger Transport services above 50,000 customers per annum, are required to have x-ray/scanning equipment. All equipment must be licenced, correctly calibrated, and regularly tested for safety.

POLICY IMPLICATIONS

Nil applicable.

FINANCIAL IMPLICATIONS

The annual cost of the licence is understood to be about less than \$1,000pa. The cost of bringing the equipment up to current code is not known but is likely to be over \$10,000 (one-off cost) and the cost of maintaining the units in a workable condition (annual safety and calibration testing) is estimated to be \$2,500 - 5,000pa. The cost of securing suitable covers to minimise dust and rodent access is estimated at \$2 - 3,000 (one-off cost). None of these costs would apply if the equipment was disposed of.

Even if no action to dispose of the equipment today was taken, at least some, if not all of the equipment would need to be replaced if Derby Airport again operated at the +50,000 customers/annum Regular Passenger Transport level that requires this equipment to be in place. No costs have been sought for this potential, but it is possible there might be some equipment (walk-through metal detector) that is re-usable at that point in time, saving some costs to re-establish this passenger security requirement.

STRATEGIC IMPLICATIONS

GOAL	OUR PRIORITIES	WE WILL
1. Leadership and Governance	1.2 Capable, inclusive and effective organisation	1.2.1 Provide strong civic leadership
2. Community	2.2 Healthy Communities	2.2.1 Build, maintain and maximise the use of community facilities
3. Economy	3.2 Strong economy	3.2.2 Endeavour to increase visitor numbers, length of stay, spend and return

RISK MANAGEMENT CONSIDERATIONS

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Legal & Compliance: Not complying with the requirement to maintain licences, and the associated equipment in a safe state, could lead to penalties.	Likely	Major	High	Either re-licence equipment and have it suitably maintained, or dispose of it.

Reputation: Imposed penalties will be reported to the general public via current forms of local media.	Likely	Moderate	High	Either re-licence equipment and have it suitably maintained, or dispose of it.
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CONSULTATION

Consultation has occurred with the WA Department of Health (the licencing body) and Ribicon, the equipment supplier/maintainer. There is no need for community consultation to occur on this occasion.

COMMENT

The Derby Airport already supports a flight service between Derby and Broome, and it might be that a direct Derby/Perth flight schedule could recommence at some point in the future, but X-Ray equipment is only required should Derby Airport again attract over 50,000 Regular Passenger Transport passengers per annum, which would seem unlikely under the current circumstances. The cost of retaining licences and recalibrating and retesting equipment we don't currently need or use therefore needs to be revisited, and of course the Department of Health is requiring the Shire to either licence or dispose of the equipment.

As there is no foreseeable increase in RPT numbers predicted; the current Derby/Broome linking flight is presently servicing Derby/Perth demand (albeit via Broome); and there is no firm timetable for the reintroduction of a periodic Derby/Perth/Derby flight; it is proposed that the equipment be disposed of, and that new "higher quality/in code" equipment be procured when the need arises.

VOTING REQUIREMENT

Simple majority

ATTACHMENTS

Nil

RECOMMENDATION

That Council:

- 1. Notes the professional assessment of the existing x-ray equipment stored at Derby Airport;**
- 2. Requires that existing airport x-ray/security equipment owned by the Shire be disposed of and the WA Department of Health advised of that decision; and**
- 3. That new contemporary standard equipment be procured if a future need arises.**

12.2 DERBY PORT - LEASING OF JETTY AREAS 2 AND 3 TO TASSAL GROUP**File Number:** 9010.13**Author:** Neil Hartley, Director - Strategic Business**Responsible Officer:** Amanda Dexter, Chief Executive Officer**Authority/Discretion:** Executive**SUMMARY**

MPA Fish Farms/Barramundi Group holds leases for Derby Jetty Areas 2 and 3 (both expiring on 30 June 2023). MPA was invited to take up new leases several months ago (and agreed) but the business recently went into Administration and was purchased by Tassal Group, an international fish farming business.

No agreement has been reached with Tassal Group on the lease (which is in “holding over” mode presently) but Tassal has registered its interest in having a lease. It is not known if Tassal Group will utilise MPA Fish Farms Pty Ltd (under new ownership) to be Lessee, or whether Tassal Group will take up the lease in its name.

This report recommends that the CEO be authorised to negotiate a new lease and advertise it for public comment, with the final decision being referred to Council for its consideration.

DISCLOSURE OF ANY INTEREST

Nil by Author.

BACKGROUND

MPA Fish Farms Pty Ltd undertake the production of Barramundi in Cone Bay and use the Derby Port and Jetty as a logistics hub to load feed on boats and store frozen Barramundi to be shipped off to their various markets. MPA began operations in 2008 and it has leased the areas of the Goods Shed known as Area's 2 and 3 for its operations from 1 July 2009. Lease Area 2 is used as a storage facility for the whole fish product and ice, but has also been used, in some instances, for limited handling operations for the whole fish product. Lease Area 3 has been used solely to store fish feed, which is transported for use in ocean fish pens at the Cone Bay.

The 28 July 2022 Council agreed to invite MPA Fish Farms Pty Ltd to register its interest in a new leases post the current expiry date of 30 June 2023. Council at its 24 November 2022 meeting endorsed the proposed leases to MPA Fish Farms Pty Ltd and commenced the process of disposition of property in accordance with Section 3.58 of the Local Government Act. The 24 November Council position included the following:

“... the Chief Executive Officer to negotiate a lease which will include the following;

- i) Lease Areas 2 and 3 of the Goods Shed;*
- ii) Period to be from 1 July 2023 for a two year term, but to be extendible in two year increments at the Shire's sole discretion, with the ultimate term being no longer than to the period to 29 June 2040 when the Head Lease expires (noting that the Lessee may wish to propose an end term earlier than 29 June 2029);*
- iii) Lessee to pay for all costs associated with preparing the lease including but not limited to legal, advertising and survey fees;*

- iv) *Rental fee to commence at:*
 - a. *Area 2 - \$32,130pa(+GST); and*
 - b. *Area 3 - \$16,300pa(+GST);*
- v) *Additional Conditions: to be consistent with the existing Head Lease; to require Head Lessor endorsement; to incorporate any operational or other restrictions that result from the Kimberley Mineral Sands Lease; that normal commercial conditions for a port type lease are to apply; and to be consistent with Council Policy (ES2) Establishment of Commercial Leases;”*

Two lease areas were applicable (Jetty Areas 2 and 3 - within the Goods Shed) with lease terms being from 1 July 2023 for a two year term, but to be extendable in two year increments at the Shire’s sole discretion, with the ultimate term being no longer than to the period to 29 June 2040 when the Head Lease expires (noting that the Lessee may wish to propose an end term earlier than 29 June 2040).

MPA Fish Farms at the same time as renegotiating the lease, was also endeavouring to restructure its business, but it failed to secure the necessary capital to do so. It recently went into Administration and was purchased by Tassal Group, an international fish farming business.

No agreement has been reached with Tassal Group on the leases at Derby Port, so it is in “holding over” mode presently, but Tassal has registered its interest in doing so. It is not known if Tassal Group will utilise MPA Fish Farms Pty Ltd (under new ownership) to be Lessee, or whether Tassal Group will take up the lease in its name. As the entity/its ownership, has significantly changed, it will be necessary to recommence the Local Government Act S3.58 process.

STATUTORY ENVIRONMENT

Local Government Act S3.58 (Disposing of property) outlines the requirements of a local government to undertake a disposal of land (vis. sell, lease, etc.). A local government can dispose of property by private treaty if it meets prescribed conditions, like accessing a current valuation, giving public notice, inviting submissions, and reviewing submission received.

The land transaction is not significant enough to require the Shire to progress through the alternative **S. 3.59 (Commercial enterprises by local governments)** requirements, which additional to extended public advertising, also requires a Business Plan.

Derby Port Head Lease outlines a range of requirements that sub-lessees need to comply with. The Head Lessor (via the Kimberley Port’s Authority) is also required to endorse any port subleases.

Kimberley Mineral Sands Lease entitles it to some operational priority access rights. The Kimberley Mineral Sands Lease needs therefore to be referenced in the Tassal Group lease to ensure mutual understandings prevail.

POLICY IMPLICATIONS

(ES2) Establishment of Commercial Leases – sets out the primary terms and conditions of commercial leases. One policy condition is that the term of the Lease shall be five years with a five year option, unless otherwise determined. This particular lease has in the past been for various relatively short periods of just a few years, but the proposed lease is for two year terms up to a maximum date of 29 June 2040 (the date the Head Lease expires).

FINANCIAL IMPLICATIONS

It was proposed that the lease payments for Area 2 be \$32,130pa(+GST) and for Area 3 \$16,300 pa(+GST) per annum, as per the licensed valuation assessment, however this will be the subject of negotiations. These amounts are considerably more, at least in percentage terms than the existing lease fees (of \$21,420+GST and \$10,595+GST respectively). The maximum lease income that could be earned if the term goes out to 2040 would be in the order of \$800,000 (exclusive of rent reviews). It might be that a new valuation is required in order to meet legislative requirements about currency of lease valuation information.

STRATEGIC IMPLICATIONS

GOAL	OUR PRIORITIES	WE WILL
1. Leadership and Governance	1.1 Collaboration and partnership	1.1.2 Maximise local opportunities
3. Economy	3.1 Industry and business development and growth	3.1.2 Value and support small to medium-sized businesses

RISK MANAGEMENT CONSIDERATIONS

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Legal & Compliance: That a legal lease document is not established before the current expiry date.	Unlikely	Moderate	Medium	Have lease prepared by the Shire's legal advisors and insist on it being executed prior to tenure being made available.
Financial: A lower lease fee than valuation will detrimentally impact upon the Shire's financial position.	Possible	Moderate	Medium	Council to consider the eventual lease offer.

CONSULTATION

Section 3.58 of the Local Government Act requires that community consultation is undertaken. This was achieved with the MPA Fish Farms lease through a public advertisement in the Broome Advertiser and placing the notice in various other locations (e.g. Shire's Facebook Page; Shire's Web Page; local libraries and notice boards etc). This consultation process will need to be repeated for Tassal Group.

Officers have also been in contact with Tassal and the Kimberley Ports Authority, to progress the matter.

COMMENT

The term of the lease has not been indicated by Tassal Group, but as per the previous document, it will be suggested that it be the same the term (albeit in two year options) as available under the

Head Lease (vis. to 29 June 2040) as the maximum. It is possible that Tassal might wish to have a lesser term, but in any event the starting rental should not alter and future annual reviews are proposed to include a combination of CPI and/or market reviews. Any extensions of the two year terms will be at the Shire's sole discretion.

VOTING REQUIREMENT

Simple majority

ATTACHMENTS

Nil

RECOMMENDATION

That Council:

1. Authorises the Chief Executive Officer to negotiate a lease with Tassal Group (or its business arm taking responsibility for Areas 2 and 3 of the Derby Port's Jetty Goods Shed), to be generally consistent with Council's resolution of 24 November 2022;
2. Authorises the Chief Executive Officer to advertise the negotiated lease proposal, in accordance with Local Government Act S3.58; and
3. Requires that the lease, plus any submissions resultant from the S3.58 community consultation process, be referred to Council for its ultimate decision.

12.3 DERBY AIRPORT - LEASE TO FEDERAL GOVERNMENT (SOUTHPAN PROJECT)**File Number:** 9020.6**Author:** Neil Hartley, Strategic Business Manager**Responsible Officer:** Amanda Dexter, Chief Executive Officer**Authority/Discretion:** Administrative**SUMMARY**

The Australian and New Zealand governments are working together to improve the accuracy of satellite navigation systems such as GPS through a project titled "SouthPAN".

The project requires the establishment of a number of ground-based reference stations across Australia and New Zealand. One of which is proposed to be at Derby Airport.

The report recommends that a lease be established between the Shire and the Commonwealth agency, Geoscience Australia, to enable the project to progress.

DISCLOSURE OF ANY INTEREST

Nil Applicable.

BACKGROUND

The Australian and New Zealand governments are working together to improve the accuracy of satellite navigation systems such as GPS. This will be through technology called a Satellite-Based Augmentation System (see attached information sheet titled, *Ground stations supporting satellite navigation*). The project will help ensure Australian's community and its industries have access to a contemporary standard free and open satellite positioning capability.

The project is part of a space initiative for the federal government and will require access to sites for the length of project, initially 20 years. A number of ground-based reference stations are required to be established to support this new system, with 22 stations proposed across Australia (one of which is at Derby Airport) and six in New Zealand.

SouthPAN has provided the attached draft lease. The Lessee will be the Commonwealth agency, Geoscience Australia.

The location of the proposed leased area is shown highlighted in the area plan below:



STATUTORY ENVIRONMENT

Section 3.58 (Disposing of property) of the Local Government Act deals with how a local government can lease property. This generally requires a public auction or a public tender, or a local public notice inviting public submissions if a private bid is being considered.

Regulation 30 (Dispositions of property excluded from Act s. 3.58) of the Local Government (Functions and General) Regulations provides for exemptions (if the local government wishes to take that option) and one of those exemptions is where the land is disposed of to —

the Crown in right of the Commonwealth; or a department, agency, or instrumentality of the Crown in right of the Commonwealth.

As the proposal is to offer the property to the Commonwealth agency, *Geoscience Australia*, then the exemption of regulation 30 can be applied.

POLICY IMPLICATIONS

Policy (ES2) Establishment of Commercial Leases is partially relevant.

FINANCIAL IMPLICATIONS

The lessee will essentially take on the sites “as is where is” and is responsible for any operational costs of the lease area (e.g. power, water, etc.). There will be no legal establishment costs involved. The new lease fee is yet to be negotiated.

STRATEGIC IMPLICATIONS

STRATEGIC AREA	OUR PRIORITIES	WE WILL
1. Leadership and Governance	1.2 Capable, inclusive and effective organisation	1.2.2 Provide strong governance

RISK MANAGEMENT CONSIDERATIONS

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Reputation: Potential for reputational damage if the lease is not issued for this GPS enhancement service.	Possible	Moderate	Medium	Lease the site to the Federal Government.
Financial: Lessee might not meet costs as per lease.	Unlikely	Minor	Low	Manage the lease and any costs for the area concerned.

CONSULTATION

No community consultation is suggested as being warranted on this occasion.

There has been direct consultation with SouthPAN representatives.

COMMENT

It is not proposed to seek legal advice in regard to this lease in light of the Lessee being a Federal Government agency, Geoscience Australia.

One condition warranted to be added to the draft lease, would be a clause that confirms that the needs and requirements of the Derby Airport are primary, and that if there are any instances arising where the lease or the lessee's activities are in conflict with that primary obligation, will require a negotiated resolution or a relocation of the lessee's equipment.

VOTING REQUIREMENT

Simple majority

ATTACHMENTS

1. Lease Agreement - Generic [!\[\]\(49aa2e1da5fe39294864e9598c593810_img.jpg\)](#) 
2. SouthPAN Ground Station Information [!\[\]\(6557fa7496e6a507d2326ea0bef061ee_img.jpg\)](#) 

RECOMMENDATION

That Council:

1. Notes that this proposed lease arrangement is exempt from the standard Local Government Act S3.58 requirements, via Regulation 30 of the Local Government (Functions and General) Regulations;
2. Agrees to lease the portion of land referred to in this report to the Federal Government agency, Geoscience Australia, for a period of up to 20 years; and
3. Authorises the Chief Executive Officer to negotiate the appropriate lease form, conditions, and annual lease charge.



Australian Government
Geoscience Australia

[Insert date]

Lessor name/s

Address line 1

Address line 2

Dear Mr/Mrs/Ms Lessor name/s

Re: Commonwealth of Australia represented by Geoscience Australia (GA) proposed Lease from lessor name

Site Address: Insert

Site Name: Insert

Site Code: Insert

The purpose of this letter is to obtain your agreement to enter into a new lease arrangement at the Site, the key terms of which are outlined below. These key terms will be included in the lease to be executed by Geoscience Australia and you (as Lessor).

The lease will incorporate the key terms as agreed in this Heads of Agreement, as follows:

Site code	Insert
Type of site:	New site
Lease:	Lease on the terms of this Heads of Agreement.
Site location:	Insert physical address
Lessor:	Lessor name/s
Lessee:	Commonwealth of Australia represented by Geoscience Australia (GA)
Land (title description):	CT information
Premises:	The area identified on the Indicative Site Layout annexed to this letter at Schedule 1, subject to a further survey.
Area:	Approximately [insert area in square meters] square meters, subject to a further survey.
Permitted Use:	GA may use the land for the following Permitted Purposes: design, construct, commission, test, decommission, and maintain SouthPAN GNSS Reference Stations, as well as to receive or broadcast signals in respect of such Stations.

Geoscience Australia HoA – SouthPAN ground station site – Site Name

Access:	<p>GA's intention is to provide prior notice of intended access to the Premises whenever it is practical to do so, in accordance with its policies, procedures and guidelines for undertaking work in the field which can be found outlined at: http://www.ga.gov.au/about/corporate-documents.</p> <p>The Lessor consents to GA, GA's contractors and persons otherwise authorised by GA entering the Land, with or without materials, plant and other apparatus and vehicles, via agreed access routes for the purpose of using the Premises and exercising its rights under the Lease during the Term.</p>
Commencement Date of Lease:	Insert
Term of Lease:	Insert
Option Term	<p>[insert eg]</p> <p>A minimum [#] months' notice will be provided by the Tenant if exercising an option.</p>
Expiry date of the Lease (including all sequential leases):	Insert
Break Dates:	<p>This lease is to support the Southern Positioning Augmentation Network (SouthPAN) Contract between the Commonwealth of Australia as represented by Geoscience Australia (ABN 80 091 799 039) and Lockheed Martin Australia Pty. Ltd. Geoscience Australia may terminate the lease prior to the end date if the SouthPAN Contract ends by giving the Lessor at least 12 months' written notice that it wishes to end the term or not take up a further term.</p>
Rent:	<p>GA will pay the Lessor rent at a rate of insert detail, inclusive of all Outgoings (including but not limited to rates, taxes and other outgoing, but excluding utilities connected by GA), if and when demanded, payable within one month of the date of any demand in writing made by the Lessor.</p>
Electricity and Telecommunications Service:	<p>The Lessor must at GA's request and at GA's cost provide to GA all reasonable support and sign all necessary documents to enable the connection to electricity, including approval to any required easements; as well as the ability to connect the Premises to an electricity supply through a dedicated usage meter.</p> <p>GA may connect Telecommunication Services and the landlord shall give all reasonable support and sign all necessary documents to enable that to occur.</p>
Insurance:	<p>As a Commonwealth entity, GA is self-insured and covered for all general insurable risks by Comcover. A copy of the Comcover</p>

Geoscience Australia HoA – SouthPAN ground station site – Site Name

	Statement of Cover can be obtained from the Commonwealth Department of Finance website.
Mutual indemnities:	Each party will indemnify the other for the Term of the Lease from and against all losses, damages, liabilities, actions, suits, claims, demands, costs and expenses of every kind arising from negligent or unlawful acts or omissions and any breach of the Lease, except to the extent caused, or contributed, to by the indemnified party's act, omission, neglect or default.
Construction access:	<p><u>Prior to the Commencement Date</u></p> <p>From insert date (usually 1 month prior to commencement) the Lessor will allow GA and its contractors to access the Premises for the purpose of:</p> <ul style="list-style-type: none"> a) performing a cadastral survey, to facilitate the preparation and registration of the Lease agreement; b) undertaking any due diligence including but not limited to cultural heritage and environmental clearances required by legislation or deemed necessary by any project collaborator, local, State or Federal Governments; c) any other activity required to allow for the construction and operation of the Ground Station.
GA Works:	<p>GA may, at GA's expense during the Term without the prior consent of the Lessor, carry out works as necessary or desirable for use of the Premises within the Permitted Use, from time to time. As is the case with access to the site, GA's intention is to provide prior notice of intended installation of Required Infrastructure whenever it is practical to do so, in accordance with GA's fieldwork policy, procedures and guidelines which can be found outlined at: http://www.ga.gov.au/about/corporate-documents.</p> <p>In addition, GA may at GA's expense during the Term with the prior consent of the Lessor (which must not be unreasonably withheld) install, erect, construct, dismantle, repair, replace, renew and maintain upon the Premises security fencing and any building or buildings as necessary now or in the future to shelter any part of the Ground Station, all necessary connecting appurtenances to the Ground Station and any required infrastructure installed or placed on the Premises by GA in accordance with the Permitted Use.</p>
Assignment and Subletting:	<p>GA may assign, sublet, part with possession or deal with its interest in this lease, within the permitted purpose after obtaining the Lessor's prior consent, which consent must not be unreasonably withheld.</p> <p>However, consent is not required in the circumstances where GA assigns, subleases, parts with possession or deals with its interest in this lease to a Commonwealth agency, statutory body or any corporation substantially owned or controlled by the Commonwealth including sub-contractors engaged by the Commonwealth.</p>
Lessor Dealings:	The Lessor will ensure that any transferee of the Land agrees to preserve GA's rights and the Lessor's obligations under the Lease.

	The Lessor must give GA prior written notice of any Lessor dealing with the Land, including any lease, transfer, assignment, mortgage, charge, encumbrance or other dealing over the Land.
Holding Over:	If GA occupies the Premises after the Expiry Date (other than pursuant to the grant of a further lease) GA must do so as a yearly tenant for yearly terms thereafter on the same terms and conditions as the Lease as far as they apply to a yearly tenancy. The Rent will not escalate and will remain at the rate payable in the last year of the Term.
Make Good:	On termination, GA must return the Premises to a state as close as reasonably possible to its original contours, and if requested by the Lessor (and it is reasonably possible to do so), re-seed and fertilise the Premises. This make good requirement will not cover the removal of utilities.
Superior lease:	The Lessor must not grant any other lease over Land that is concurrent or superior to GA's Lease without GA's prior consent, which GA may withhold in its absolute discretion.
Lease plan:	To be provided, based on the attached preliminary site plan.
Legal Fees:	GA will pay the Lessor's reasonable legal costs in relation to the preparation, review, negotiation, execution and registration of the Lease not exceeding \$2,000.00 (including GST). The Lessor will pay any mortgagee's consent fees.
Special Conditions:	<p><u>Site Suitability survey</u></p> <p>This agreement is subject to a Site Suitability Survey by SouthPAN contractors scheduled for xxx 2023.</p> <p><u>Lessor's use of the Land Surrounding the Premises</u></p> <p>The Lessor acknowledges it will be restricted from using the Land directly surrounding the Premises in such a way that will disrupt the structure or functioning of the Ground Station or any Required Infrastructure installed or placed on the Premises by GA in accordance with the Permitted Use</p> <p>To enable the Permitted Use, GA may need to maintain a xxx metre exclusion zone around the antenna to protect line of sight (please note that GA are still to define the xxx metres requirement, to be defined at site suitability survey if required);</p> <p><u>Fencing</u></p> <p>GA may construct, at its own expense, fencing around the Ground Station to prevent livestock from damaging the Ground Station and connecting appurtenances of the Ground Station that are situated above ground.</p> <p><u>Title to improvements</u></p> <p>Title in respect of any improvements made by Geoscience Australia (GA), or by any licensee or sub-licensee, shall remain with GA and not pass to the owner of the land;</p>

Not Legally Binding:	The parties will not be bound to the terms and conditions contained within this document until appropriate Commonwealth delegate approval has been received and the lease documentation duly executed.
Telecommunications Act 1997 (Cth):	<p>This letter and any proposed Lease is to be without prejudice to any rights GA might have pursuant to Schedule 3 of the <i>Telecommunications Act 1997 (Cth)</i> (Act).</p> <p>If the Act applies to GA's occupation of the Premises, to the extent that GA undertakes maintenance (as that term is defined under Schedule 3 of the <i>Telecommunications Act 1997 (Cth)</i>), the Lessor agrees that it does not require GA to give notice of that activity.</p>

Please confirm the Lessor's acceptance of the above terms, by signing this letter (where indicated below) and returning the original to our office. Should you have any queries, please contact Elise Bridson, SouthPAN Advisor directly on +64 4 496 9442 or by email ebridson@linz.govt.nz.

Yours sincerely,

Sven Wittchen, SouthPAN Delivery Manager

Acceptance of Proposed Commercial Terms

I, **Lessor name** in the capacity as Lessor/Landowner have read and agree to the above commercial terms forming the basis of a new Lease agreement for the new Geoscience Australia SouthPAN Ground Station at **site code, physical site address**, Australia.

Signature of **Lessor name**

(Dated)

I, _____ (Print Name)
in the capacity as _____ of GA, have read and agree to the above commercial terms forming the basis of a new Lease agreement for the new Geoscience Australia SouthPAN Ground Station at **site code, physical site address** Australia.

Signature for Geoscience Australia

(Dated)

Geoscience Australia HoA – SouthPAN ground station site – **Site Name**

When returning the signed letter please also provide the following information:

LESSOR

Address: (not PO Box)

Contact person:

Phone No:

Email:

LESSOR MANAGING AGENT (if applicable)

ABN:

Address: (not PO Box)

Contact person:

Phone No:

Email:

LESSOR'S SOLICITORS (if applicable)

Firm:

Name of Contact:

Email:

Phone No:

Address:

LESSOR'S THIRD PARTY SECURITY CONTACT DETAILS (if applicable)

Name of Security Company:

Name of Contact:

Phone No (24 hour line):

Address:

Geoscience Australia HoA – SouthPAN ground station site – **Site Name**

Schedule 1

Indicative Site Layout

Geoscience Australia HoA – SouthPAN ground station site – **Site Name**



Australian Government
Geoscience Australia



POSITIONING
AUSTRALIA

Ground stations supporting satellite navigation

The Australian and New Zealand governments are working together to improve the accuracy of satellite navigation systems such as GPS. This will be through technology called a Satellite-Based Augmentation System.

Geoscience Australia's Positioning Australia project needs to establish a number of long-term ground-based reference stations to support this new system. We want to work with local landholders, councils and communities to find locations for our ground stations that meet our technical needs and suit the needs of local people. The project is a major space initiative for the federal government and will require access to sites for the length of project, initially 20 years.

The project will help ensure all Australians have access to a world standard free and open satellite positioning capability, helping to ensure Australian industry remains competitive.

What is the project for?

Our position on the globe is essential to our everyday lives. Position helps us to pinpoint where we are and helps us to get where we need to go. The Positioning Australia program is improving the accuracy of positioning technologies for all Australians.

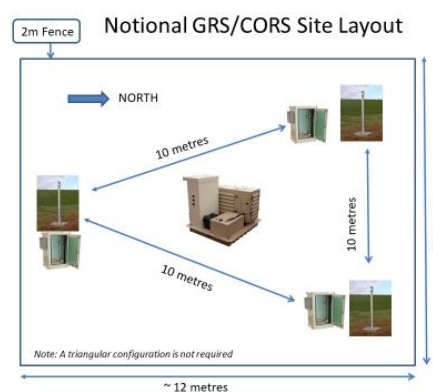
Knowing exactly where we are means we can deliver better services and make better decisions. The Satellite-Based Augmentation System will give positioning accuracy to the 10 centimetre level, which is a significant improvement on the current accuracy of 5–10 metres. This will particularly benefit regional and remote communities as this accuracy will be available regardless of mobile phone or internet coverage.

What will the site look like?

The ground stations cover an area approximately 144 metres square (12 m x 12 m). We need an area that is out in the open and not too close to

power lines or mobile phone towers. Each site will have power and communications installed, and a security fence. The fence is just to protect the equipment from damage as the Australian aviation community will use the system for navigation, and safety is our priority. The equipment is not classified.

The sites will consist of a generator with fuel tank, three antennas, and three cabinets.



The site layout will be similar to this (not to scale)

Site features

GRS/CORS Generator



Generator w/ ATS, and fuel tank
Pad approximately 1.2 metres by 1.2 metres

The Generator with fuel tank will look like this

Notional CORS Cabinet



NEMA 3R

Size:
66 centimetres wide
76 centimetres deep
81 centimetres tall

Antenna Mount



- Four-inch diameter tube
 - Mount is nominally 2.5 metres high
 - Antenna with radome secured on top of mount
- Concrete pad
 - 40.6 centimetres by 40.6 centimetres
 - Construction of pad to ensure movement of antenna less than 1 cm horizontal and vertical

This cabinets and antennas will look like this

Is this safe?

The equipment will observe the satellites as they pass overhead. This data will not impact the privacy of Australians, and the sites do not put out any hazardous electro-magnetic radiation.

When is this happening?

We are looking for sites right now, and would like to start establishing stations before the end of 2021. Each site should take around 15 months to build. We expect all stations to be up and running by the end of 2024, and they will remain in place for over 20 years.

After the initial installation, the site should only need servicing approximately once every quarter. This will typically be two people with a car, and access will be by arrangement with landholders.

Geoscience Australia acknowledges Traditional Custodians of Country throughout Australia and recognises the continuing connection to lands, waters and communities. We pay our respects to Aboriginal and Torres Strait Islanders' cultures and to elders past, present and emerging.

Accessing the land

Geoscience Australia staff and contractors will contact landholders individually prior to each visit and discuss land access, biosecurity measures and minimising disruption to local activities. Any concerns about environmental impacts can also be discussed.

All staff and contractors will comply with Geoscience Australia's COVID-19 protocol, which is available upon request.

Getting precise positioning from the system

We expect the fully-operational and certified system to be in place before the end of 2025. Anybody with a device that can receive signals from a Satellite-Based Augmentation System will be able to use it and benefit from 10 cm level accuracy.

The benefits

Precise positioning will benefit millions of Australians across a diverse range of industries including agriculture, construction, mining, engineering and logistics. By enabling technological transformation, Positioning Australia is paving the way for innovation and improving productivity, safety and decision-making.

Contact us

If you have any questions or if you have a site that may be suitable, please get in touch.

Geoscience Australia

Phone: 1800 800 173

Email: PositioningAustralia@ga.gov.au

GPO Box 378, Canberra ACT 2601

www.ga.gov.au

12.4 CHIEF EXECUTIVE OFFICER ANNUAL LEAVE/ ACTING CHIEF EXECUTIVE OFFICER ARRANGEMENTS**File Number:** 5355**Author:** Sarah Smith, Executive Services Coordinator**Responsible Officer:** Amanda Dexter, Chief Executive Officer**Authority/Discretion:** Executive**SUMMARY**

For Council to approve a request from the Chief Executive Officer to take annual leave from the 13 October 2023 to 4 November 2023 inclusive and to appoint an Acting CEO for the duration.

DISCLOSURE OF ANY INTEREST

The CEO declares a financial interest as they are the person requesting the leave.

BACKGROUND

The CEO is requesting leave for the Shire of Derby/West Kimberley from 13 October 2023 to 4 November 2023 inclusive and has adequate leave and time and lieu provision to do so.

STATUTORY ENVIROMENT

S. 5.36 (*Local government employees*) of the Local Government Act 1995 requires that every local government employs a Chief Executive Officer.

S. 5.39 (*Contracts for CEO and senior employees*) permits a Council to appoint a person to act in the position of a CEO for a term not exceeding one year without a written contract for that position.

POLICY IMPLICATIONS

Nil.

FINANCIAL IMPLICATIONS

The Acting CEO will receive a higher duties allowance during the term. Provision has been made in the 2023/24 Annual Budget for the CEO's Leave and this allowance.

STRATEGIC IMPLICATIONS

STRATEGIC AREA	OUR PRIORITIES	WE WILL
1. Leadership and Governance	1.2 Capable, inclusive and effective organisation.	1.2.2 Provide strong governance.

RISK MANAGEMENT CONSIDERATIONS

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Business Interruption: Not appointing an acting CEO will limit the Shire's capacity to satisfactorily manage the organisation and undertake the Council's directions.	Rare	Major	Low	Appoint a suitably qualified A/CEO to support operations and efficient decision making.

CONSULTATION

Shire President.

COMMENT

The CEO has requested leave from 13 October 2023 to 4 November 2023 inclusive adequate Annual Leave is accrued to take the requested leave.

It is a requirement under the Local Government Act that an Acting Chief Executive Officer be appointed during these periods of absence.

The Director of Strategic Business is adequately qualified and will provide sound support and strategic direction if required, during the CEO's absence.

VOTING REQUIREMENT

Simple majority

ATTACHMENTS

Nil

RECOMMENDATION

That Council:

- 1. Approve the executive and annual leave of the Chief Executive Officer, Amanda Dexter for the period commencing on the 13 October 2023 to 4 November 2023, inclusive;**
- 2. Appoint the Director of Strategic Business, Neil Hartley, as the Acting Chief Executive Officer for the period from 13 October 2023 to 4 November 2023, inclusive; and**
- 3. Approve the payment of higher duties to the Director of Strategic Business, equivalent to the current CEO, during this period.**

13 TECHNICAL SERVICES

13.1 REQUEST FOR ACROD PARKING BAY IN FRONT OF FAR NORTH COMMUNITY SERVICES - CLARENDON STREET

File Number: 8120

Author: Wayne Neate, Director Technical and Development Services

Responsible Officer: Amanda Dexter, Chief Executive Officer

Authority/Discretion: Executive

SUMMARY

This item is for Council to consider constructing an ACROD parking bay in front of Far North Community Services (FNCS) on Clarendon Street. Officer's recommend that the construction of the ACROD bay not be undertaken and that it be recommended that FNCS as the landowner construct an ACROD bay onsite and ensure compliance for the property.

DISCLOSURE OF ANY INTEREST

Nil by Author and Responsible Officer.

BACKGROUND

Clarendon Street was redeveloped in 2016 with numerous modifications being made to make the area safer and slow down the traffic following incidents involving pedestrians prior to 2015. At the time the upgrades occurred the public were consulted as to the most appropriate location for the ACROD parking bays as part of the redevelopment. The locations decided upon were on the southern side of the street in between Rusty's IGA and the Pharmacy and on the northern side of the street in front of the Derby Arcade on Clarendon Street.

The reasoning behind the placement of these bays were based around the long-term services located within the streetscape. No allowance was made for any premises beyond these two bays as decided upon by the community. It should be noted that the current building legislation does require that new or redeveloped premises requiring building approval that provision for ACROD accessible bays and accessible buildings is built into the legislation.

STATUTORY ENVIRONMENT

Under Western Australian Planning Legislation there are requirements for proposals to include onsite parking or pay for offsite parking when initial proposed. This property was developed requiring onsite parking at the time of its initial development.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

If the Shire was to agree to the implementation of an ACROD bay on Clarendon Street the modifications to the bays, installation of bollard, modification to kerbing to include compliant ramp costs are estimated to be in the vicinity of \$30,000 mostly due to the ramp from the road.

STRATEGIC IMPLICATIONS

GOAL	OUR PRIORITIES	WE WILL
4. Environment	4.2 Liveable Communities	4.2.3 Encourage and facilitate the maintenance and development of infrastructure that connects our communities

RISK MANAGEMENT CONSIDERATIONS

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Reputation: Providing an ACROD parking bay at the request of a tenant could leave Council open to numerous requests therefore causing reputational damage if installing them everywhere in the community.	Possible	Moderate	Medium	That Council not undertake the works as requested but continue a longer-term approach to parking requirements which does involve the owners of properties undertaking some works.

CONSULTATION

There has been consultation between FNCS and Officers. Officers have suggested that FNCS as the owner install an ACROD bay onsite.

COMMENT

Council agreed several years ago to the location of its ACROD bays on Clarendon Street when the street underwent its redevelopment and it is hoped in the near future that the bays will be remarked in front of the pharmacy and the Arcade.

FNCS requested the installation of a bay in front of their new premises on Clarendon Street initially in April this year and it has taken some time to work through the details of its initial request and to also estimate the pricing of the proposal as it is complicated with ramp detail. Included as an attachment is an aerial image of the site and the proposed ACROD bay would be placed within the area currently set aside for parking in front of the existing building.

Currently in front of the building there are five bays, which will be reduced to three (potentially two) if an ACROD bay is installed. The aerial image also highlights that there is minimal footpath and verge in this area. It is noted that FNCS do own the property and are therefore able to install an ACROD bay on their property instead of the bays on the street.

It is the Officer's recommendation that FNCS be advised that the Shire will not install the ACROD bay on Clarendon Street, and that FNCS as the property owner be advised they should if it is required, install appropriate ACROD parking bay within the property.

VOTING REQUIREMENT

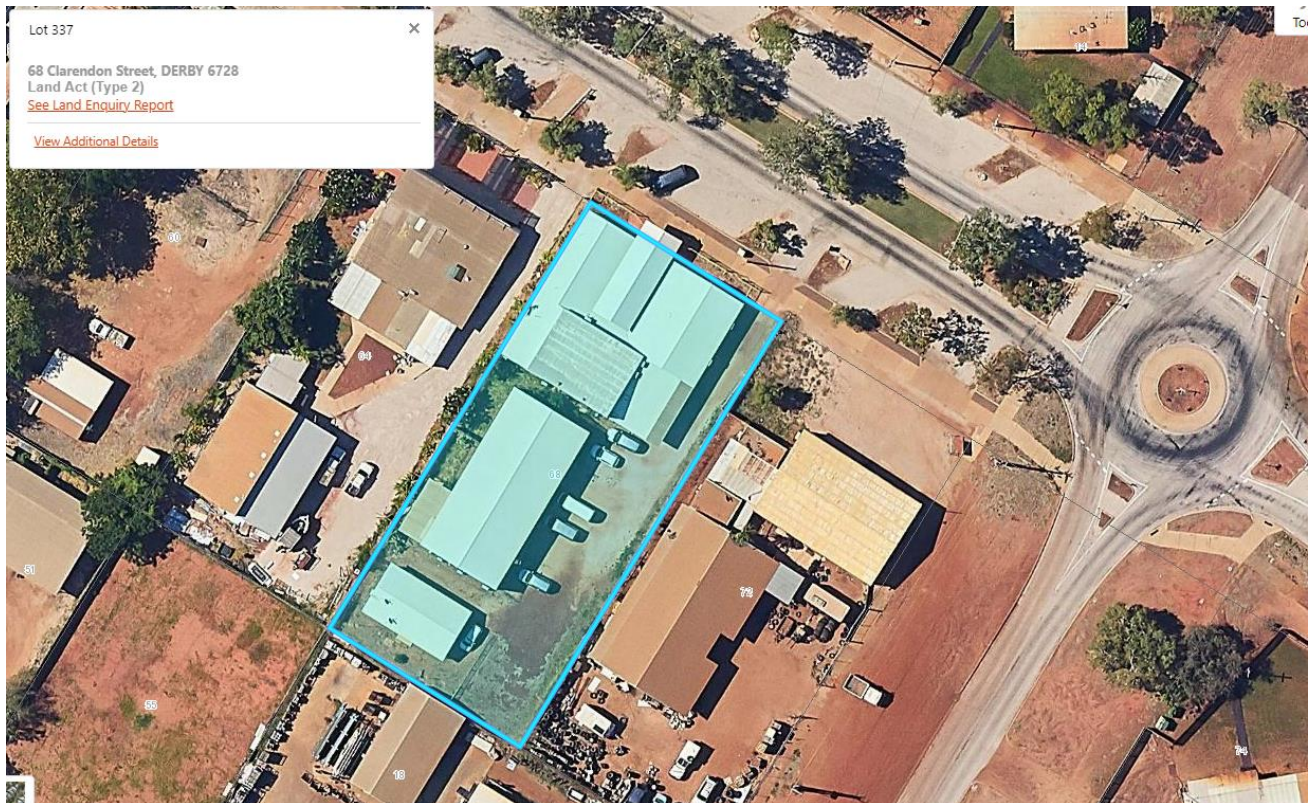
Simple majority

ATTACHMENTS

1. Aerial Image - Clarendon Street [↓](#) 

RECOMMENDATION

That Council rejects the request to install ACROD parking bay within the road reserve in front of Lot 337 Clarendon Street, Derby, and that Far North Community Services be advised they should install appropriate ACROD parking bay within the property.



13.2 SHIRE OF DERBY/WEST KIMBERLEY - ROADWISE COUNCIL**File Number: 5290****Author: Wayne Neate, Director Technical and Development Services****Responsible Officer: Amanda Dexter, Chief Executive Officer****Authority/Discretion: Administrative****SUMMARY**

This Item is for Council to consider becoming a Roadwise Council under the new Western Australian Local Government Association (WALGA) proposal.

DISCLOSURE OF ANY INTEREST

Nil by Author or Responsible Officer.

BACKGROUND

Council has been a Roadwise Council for a number of years under the current WALGA program, which has been encouraging local governments to look at road safety in their program of works as an everyday consideration.

The current Shire of Derby/West Kimberley Roadwise Committee of which Councillor White is the current member, also includes the WALGA Roadwise Officer, Main Roads Western Australia, Derby and Fitzroy Crossing Police, School Education Officers and Community members. The current committee considers issues across the shire relating to road safety and the possible improvements to the road network.

Some projects that have been undertaken as a result of the committee's involvement in the past have been;

- Panton, Swain and Villiers Street intersection;
- Skuthorpe and Sandford Road intersection;
- Russ and Geikie Gorge Road Intersection; and
- Clarendon Street – pedestrian improvements.

The Committee has been involved in lobbying for change to the lighting at intersections on the Derby Highway, lighting improvements around town and support for Blackspot Funding initiatives. There is no proposal to change this structure, however the new program has been revamped to provide greater resources to Council with no further cost or impost on it.

STATUTORY ENVIRONMENT

Nil

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

GOAL	OUR PRIORITIES	WE WILL
4. Environment	4.2 Liveable Communities	4.2.3 Encourage and facilitate the maintenance and development of infrastructure that connects our communities

RISK MANAGEMENT CONSIDERATIONS

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Reputation: Not participating might lead to negative perceptions about Council's interest in road safety.	Possible	Moderate	Medium	Continue participation as a Roadwise Council.

CONSULTATION

Consultation has occurred with the Roadwise Officer from WALGA and the Shire of Derby/West Kimberley Roadwise Committee.

COMMENT

Council has participated in the current Roadwise Program for a number of years and throughout all of its projects attempted to make changes to the network to improve safety.

The biggest change to the program is that the WALGA Roadwise Officer will be able to undertake work on behalf of Council, being five days per quarter or four weeks per year. This will mean that the Officer will or can work with Shire Officers to assist with funding, policy development or as a general resource to assist in the area of road safety.

The rationale behind this shift is to aid local governments that generally do not have those resources and to try and achieve greater outcomes in the area of road safety across the state, noting that each journey nearly always begins and ends on a local shire-controlled road.

There will be a letter from the Chief Executive Officer of WALGA, Nick Sloan, requesting the endorsement of the new program by Council, which is supported by Officers and will have minimal impact on the finances and workload of the Shire, but should complement the outcomes that officers are seeking to achieve.

VOTING REQUIREMENT

Simple majority

ATTACHMENTS

1. Notification from WALGA - Outlining changes to Roadwise Program  

RECOMMENDATION

That Council;

- 1. Endorse the Shire of Derby/West Kimberley becoming a “Roadwise Council” and continue to adopt improvements to road safety across the Shire, noting there will be no further cost impost to Council from the new proposed program;**
- 2. Authorise the Shire President and the Chief Executive Officer to sign the agreement to become a “Roadwise Council”; and**
- 3. Nominate Wayne Neate, Director of Technical and Development Services and Councillor _____ to represent the Shire of Derby/West Kimberley.**

Wayne Neate

From: Greg Hayes <GHayes@walga.asn.au>
Sent: Thursday, 15 June 2023 10:31 AM
To: Amanda Dexter
Cc: Wayne Neate; Paul White
Subject: RoadWise Councils - A fresh approach to road safety
Categories: Wayne to check

Good Morning Amanda,

The WALGA RoadWise Program is evolving in how it goes about its business and has developed a fresh approach to proactively engage, prepare and position Local Governments to make an effective and sustainable contribution to the achievement of road safety goals and targets in WA.

We're calling it RoadWise Councils – a bit like Waterwise Councils – and I invite the Shire to become a RoadWise Council

A RoadWise Councils Framework has been developed and is aligned to safe systems thinking, and has been established to assist, guide, and encourage Local Government road safety effort towards best practice.

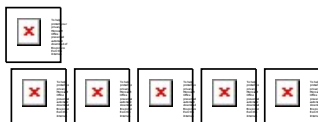
Local Governments that register as a RoadWise Council, will be entitled to:

- Access to WALGA's road safety services (up to 1 week per quarter of Road Safety Advisor time to assist delivery) with a minimum of one meeting per quarter to discuss and record progress as a RoadWise Council
- Access to WALGA's suite of road safety products (resources and tools).
- Access to participate in WALGA's road safety training, professional development forums and other seminars/workshops/networking.
- Participate in 'RoadWise Recognised' program, a Local Government Road Safety Recognition, and Incentive Program (more details at a later date).
- The use of the RoadWise logo.

It will not affect the already established local Road Safety Working Group but will complement it – and remain the Local Government link to other road safety stakeholders in the community.

If you would like any further information, I am available anytime on 0419192759

Greg Hayes | Regional Road Safety Advisor | WALGA
20 Hammersley Street, Broome, Western Australia, 6725
0419 192 759 | ghayes@walga.asn.au | www.roadwise.asn.au



www.walga.asn.au | www.youreveryday.com.au

WALGA acknowledges the continuing connection of Aboriginal people to Country, culture and community. We embrace the vast Aboriginal cultural diversity throughout Western Australia, including Boorloo (Perth), on the land of the Whadjuk Noongar People, where WALGA is located and we acknowledge and pay respect to Elders past and present.

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13.3 AWARDING OF TENDER T8-2023 DEPOT ACCOMMODATION**File Number: 0480****Author: Steve Ross, Asset Coordinator****Responsible Officer: Wayne Neate, Director Technical and Development Services****Authority/Discretion: Executive****SUMMARY**

This item is for Council to consider the awarding of tender T08-2023 being for the relocation and repair of 4 bedroom dongas, located at the Derby Airport, to the Derby Depot and the Fitzroy Crossing Depot, following event Australian Government Reference Number 1044 (AGRN 1044). It is proposed that the tender be awarded to Bugardi Contracting PTY LTD.

DISCLOSURE OF ANY INTEREST

Nil by Author and Responsible Officer.

BACKGROUND

The dongas, that have been sitting idle for some years at the Derby Airport, were given to the Shire after the Detention centre closed. The Shire offered these dongas to various community groups in the Shire, however they remained at the airport with the various community groups taking additional time to remove them and relocate them to their various sites.

Due to the 2023 Fitzroy Floods, the lack of accommodation in both Fitzroy Crossing and Derby became a critical component in hampering efforts to rebuild the town and provide much needed services. A decision was then made to repair the dongas and relocate them to the respective depots, for additional accommodation.

The community groups were written to and all agreed to return ownership of the dongas to the Shire. The transporting of the Dongas to both the Fitzroy Crossing and Derby depots will increase the Shire's accommodation by another twelve (eight in Derby and four in Fitzroy Crossing) rooms. The rooms will be available for remote staff and consultants visiting the each of the townsites.

FINANCIAL IMPLICATIONS

In the 2023/2024 budget funds have been set aside for this project with some funding already received.

With the ongoing lack of accommodation and the consistent need to engage with people outside the Shire, costs of accommodation will be expected to increase over the next few years and beyond.

STRATEGIC IMPLICATIONS

GOAL	OUR PRIORITIES	WE WILL
1. Leadership and Governance	4.2 Liveable Communities	2.1.4 Manage and respond to emergency situations

RISK MANAGEMENT CONSIDERATIONS

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Business Interruption: Need required for the accommodation of staff and contractors	Possible	Moderate	High	Ability of the Shire to house staff and contractors for efficient project management

CONSULTATION

The tender was advertised through the public forum with the use of Tenderlink and advertised for a period of 28 days, closing date on the 27/7/2023 at 12.00pm.

Local Companies were advised of the tender closing date and following the closing time one submission was received.

COMMENT

It is recommended that the tender be awarded to the contractor that provides the best value for money, using the approved tender scoring criteria.

The criteria and weighting for this tender were as follows:

Criteria	Weighting
Relevant Experience	20%
Key Personnel Skills and Experience	20%
Tender Resources and capacity	15%
Demonstrated Understanding	15%
Local Supplier Details	10%
Quality Management System	10%
Risk	10%

Bugardi Contracting PTY LTD are a Western Australian company specializing in the renovation and installation of new single person quarters and were the only tenderer who visited our sites prior to the tender closing.

They recently completed the installation of new modular buildings for Chichester Metals PTY LTD and the refurbishment of managed facilities in Meekatharra.

Bugardi Contracting PTY LTD offered two prices, a conforming tender as per the specifications to renovate the existing dongas and place on the appropriate sites. They also provided an alternative tender which was to supply brand new dongas. It is felt that the existing dongas will have greater insulation qualities between the rooms, making the stay in them more comfortable for visitors.

The Shire will make a considerable saving by using its own internal accommodation to provide for staff and consultants where by normally the Shire would have been charged the going rate of accommodation in the two towns.

It is proposed that the Derby depot is to receive two dongas (being eight rooms) and a smaller donga to house the kitchen and laundry facilities. In the Fitzroy Crossing depot, it is proposed that

it receive one donga to extend the capacity of the existing short stay units which is currently four rooms to eight rooms.

Noting the benefits and the capability of Bugardi Contracting PTY LTD the officer recommends that Council endorse the awarding of T8-2023 tender to Bugardi PTY LTD.

VOTING REQUIREMENT

Simple majority

ATTACHMENTS

- 1. Scoring Sheets - Confidential**
- 2. Pricing Sheet - Confidential**

RECOMMENDATION

That Council:

- 1. Award Tender T8-2023 to Bugardi Contracting for the re-location and renovation of the old airport dongas to the Derby and Fitzroy Crossing Depots.**
- 2. Authorise the Chief executive Officer to enter into a contract with Bugardi Contracting as per the conforming submission for Tender T8-2023.**

14 DEVELOPMENT SERVICES

14.1 CONSIDERATION OF SERVICE LEVEL CHANGES TO WASTE MANAGEMENT SERVICES

File Number: 7190

Author: Wayne Neate, Director Technical and Development Services

Responsible Officer: Amanda Dexter, Chief Executive Officer

Authority/Discretion: Administrative

SUMMARY

This item is for Council to consider changes to the service level for its waste management sites at Derby and Fitzroy Crossing. It will be recommended that operational hours be reduced for Derby from its current hours of 8am to 4pm to 8am to 12pm, and that Fitzroy Crossing be closed on Sundays, for a trial period of twelve months.

DISCLOSURE OF ANY INTEREST

Nil by Author or Responsible Officer.

BACKGROUND

Council is currently entering into a new waste management contract with Cleanaway for seven years with three, one-year options. The previous contract, from 1 July 2013, was for 10 years until its expiry on the 30 June 2023.

The change to the new contract includes both the collection of bins as well as the landfill management of both Derby and Fitzroy Crossing waste management sites. The new contract had sizeable increases in costs to the service as the result of accumulated consumer price index changes over the last few years. These cost increases have had a significant impact on the Council's overall budget and Officers were requested to investigate options to reduce the costs to the Shire's operations.

Within the contract there are only a few areas where cost savings might be made and one of those is to change the service levels within the contract, with Sunday operations at both waste management sites being investigated.

STATUTORY ENVIRONMENT

Nil

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

There are potential cost savings to Council if the service is modified from the full operational hours on a Sunday to either 8am to 12pm, or closed for all of that day. The full details of those savings are presented in the Attachment 1 (confidential) to this item.

STRATEGIC IMPLICATIONS

GOAL	OUR PRIORITIES	WE WILL
1. Leadership and Governance	1.2 Capable, inclusive and effective organisation	1.2.2 Provide strong governance

RISK MANAGEMENT CONSIDERATIONS

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Financial: Council is under considerable strain with its finances and modifying the operation of both Waste Management Sites could alleviate some of these issues.	Possible	Severe	High	Undertake the changes to each site to reduce the costs of waste management to Council.

CONSULTATION

Consultation has occurred with Cleanaway to ascertain where cost savings could be made and figures have been collected of visitations on Sundays to enable an informed decision to be made.

No community consultation has occurred at this point. Consultation will occur throughout the proposed trial period.

COMMENT

Officers have considered potential savings in conjunction with Cleanaway staff and the changes that can be made when modifying the operational hours of each of the waste management sites.

These changes as quantified in the confidential attachment that may provide cost savings to Council on an annual basis. Each of the sites had a total number of entries and raised the following income for the financial year 2022/23 on Sundays:


- Derby Waste Management site – 1669 visits for an income of \$25,530 on Sundays; and
- Fitzroy Crossing Waste Management site – 129 visits for an income of \$2,674 on Sundays.

Attachment 2 details the number of visits and hours per site. It is considered that removing Sunday hours completely would be a large adjustment for the community in Derby but would have a somewhat lesser impact on the operation in Fitzroy Crossing. It is therefore recommended that the operational hours of Derby Waste Management site be reduced to 8am to 12pm and Fitzroy Crossing closed entirely on Sundays. The trial's implementation date of 1 November 2023 is suggested as this will enable a two month transition and community advertising program to occur prior to the new hours commencing.

VOTING REQUIREMENT

Simple majority

ATTACHMENTS

1. Waste Management Hours - Confidential
2. Statistics for Sunday operation - Fitzroy and Derby [↓](#) 

RECOMMENDATION

That Council:

1. Change, for a trial period of 12 months, the operational hours for the Derby Waste Management site from its current hours of 8am to 4pm, to 8am to 12noon on Sundays, and the Fitzroy Crossing Waste Management site from seven days a week to six days a week, noting it will be closed on Sundays;
2. Following a period of advertising, implement those changes from the 1 November 2023 for each site; and
3. Modify the contract with Cleanaway to reflect the changes as outlined above.

FINANCIAL YEAR 2023

FITZROY CROSSING LANDFILL



FINANCIAL YEAR 2023

DERBY LANDFILL



15 COMMUNITY AND RECREATION SERVICES

15.1 DERBY SHARKS SWIMMING CLUB - USER AGREEMENT 2023/2024

File Number: CP/095/3

Author: Sian Edwards, Team Leader Aquatics and Recreation

Responsible Officer: Christie Mildenhall, Acting Director of Community Services

Authority/Discretion: Executive

SUMMARY

This report is to seek endorsement of a draft 2023/2024 user agreement between the Shire of Derby/West Kimberley (SDWK) and the Derby Amateur Swimming Club Inc. (The Club).

DISCLOSURE OF ANY INTEREST

Nil by Author and Responsible Officer.

BACKGROUND

The Club has been established for a number of years, however over the last 15 months they have been successful in strengthening themselves as a sporting club due to an injection of a consistent group of volunteers, coaches and participants.

Prior to 2022, The Club had been utilising the Derby Memorial Swimming Pool (Pool) on an ad-hoc basis and has not been charged for lane hire. It was identified that a structured user agreement should be put in place, specifically to identify the days, times and space being utilised. However, in order to enable this, The Club needed to undertake a number of governance tasks, such as forming a committee, taking memberships and endorsing a new constitution to ensure compliance with the *Associations Incorporation Act 2015*. The Club also needed to become affiliated with the Western Australian Swimming Association, as well as training coaches and other administration to support the activities of the club.

In supporting the club's development over the previous twelve months the Shire agreed to waive hire fees in 2021 while the committee worked through the tasks required to get the club to an operational capacity.

During 2022/2023 a user agreement was put in place between The Club and SDWK. The agreement stipulated fees to be charged and the days and times the club had access to the Pool. This consisted of club development training days twice a week for two hours using three lanes, club time trials, race nights and development workshops with visiting specialists. Council endorsed this agreement at the 28 July 2022 Ordinary Council Meeting.

RESOLUTION 99/22**Moved: Cr Paul White****Seconded: Cr Rowena Mouda****That Council:**

- 1. Endorses the draft 2022/23 Derby Swimming Club User Agreement as outlined in Attachment 1 with the lane provision amended from four lanes to three lanes for all afternoon sessions; and**
- 2. Acknowledges the need for the current swimming facility to cater for both the Swimming Club operation but also to provide an appropriate amount of access to the wider community.**

In Favour: Crs Geoff Haerewa, Paul White, Geoff Davis, Andrew Twaddle, Rowena Mouda, Pat Riley and Keith Bedford

Against: Nil

CARRIED 7/0

The cost of this user agreement has been included in the 2023/24 Schedule of Fees and Charges, adopted by Council on 17 August 2023. Recently, The Club has requested additional lane usage in excess of that covered in the previous agreement so it is necessary to review the arrangement.

STATUTORY ENVIRONMENT

The *Associations Incorporation Act (WA) 2015* applies to the operation of DASC.

Part 6, division 5 of the *Local Government Act 1995* deals with financing local government activities. Subdivision 2 deals specifically with setting fees and charges.

POLICY IMPLICATIONS

No applicable policies were identified.

FINANCIAL IMPLICATIONS

User agreements provide the opportunity for community-based sporting groups to obtain regular facility bookings at a discounted rate. It allows the Shire to recover some of the costs associated with facility use while supporting important community activities.

This report recommends the allocation of three lanes on Tuesdays and Thursdays. At full cost the value of this agreement is \$9,645.00. As this agreement is essentially the same as last year, it is recommended the associated fees for The Club at the Pool remain the same as the current user agreement;

- \$1,200.00 per annum hire fee; and
- \$500.00 refundable facility bond (if the bond from the 2022/23 agreement has been previously refunded).

Should Council decide to allocate four lanes to The Club the value of the agreement is \$11,685.00, representing a 21% increase in value. It is recommended that the annual hire fee be increased to \$1,450.00.

Additional usage outside of the times stipulated within the agreement will be charged at the hourly or daily rate (whichever is applicable) identified in the Schedule of Fees and Charges.

STRATEGIC IMPLICATIONS

GOAL	OUR PRIORITIES	WE WILL
2. Community	2.2 Healthy Communities	2.2.1 Build, maintain and maximise the use of community facilities
2. Community	2.2 Healthy Communities	2.2.2 Facilitate a range of accessible sporting and recreational activities
2. Community	2.2 Healthy Communities	2.4.1 Support and assist volunteer, community and sporting groups

RISK MANAGEMENT CONSIDERATIONS

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Organisation's Operations: Shire Programs and public access are limited during the times The Club is utilising the pool.	Almost Certain	Moderate	High	The Pool will organise dates/times and space accordingly to balance the needs of the community and the user groups to ensure that all parties are satisfied.
Reputation: Providing excessive use of pool facilities to one group may alienate community members who utilise the pool for recreation purposes.	Almost Certain	Moderate	High	Communication to members of the public to ensure information remains up to date of best times to attend the facility.
Reputation: Failure to approve The Club's request may impact negatively on the relationship between the Shire and The Club.	Likely	Moderate	High	Approve a realistic/workable User Agreement that allows the Club to operate effectively and grow.
People Health & Safety: Risk of incident or injury to the pool patrons due to overcrowding for lack of pool space from The	Almost Certain	Major	Extreme	Reduced the number of lanes that The Club uses from 4 to 3 lanes, to ensure there is appropriate space for all other user groups, maintain active

Club using four lanes during peak times.				supervision of patrons and apply preventative supervision.
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CONSULTATION

Discussions have been held between Officers and the President of the Derby Amateur Swimming Club Inc. over the last two months to gather required information and update the User Agreement.

COMMENT

The Shire is seeking to establish a twelve-month User Agreement with The Club for access and usage of the Pool. The agreement is expected to come into effect from 30 September 2023. This agreement would attempt to balance lane usage and availability for the club and the general public usage. The Club is requesting the following lane access;

Date Range	Lane request
30 September 2023 – 31 May 2024 (Excluding School Holidays)	Provision of 4 lanes each Tuesday and Thursday (3:30pm-5:30pm) Provision of 2 lanes each Wednesday (6:00am-7:00am)
30 September 2023 – 30 September 2024	Friday club race nights with a total of nine events over the term of the User Agreement. Bookings completed in advanced with Derby Memorial Pool Employees. If exceed the agreed limit the user will pay standard booking fees
1 June 2024 – 1 August 2024	Provision of 3 lanes once a week for 2 x 1-hour sessions if required based on needs and will be invoiced separately to User Agreement. (Times and dates to be negotiated with employees)
1 August 2024 – 30 September 2024 (Excluding School Holidays)	Provision of 4 lanes each Tuesday and Thursday (3:30pm-5:30pm) Provision of 2 lanes each Wednesday (6:00am-7:00am)

This is an increase on last years' agreement where they had access to three lanes on Tuesdays and Thursdays for two hours, two lanes on Wednesday mornings and an unspecified number of Friday race nights.

As an older pool there are issues balancing the use of the pool by distinct user groups that cannot be easily rectified without a major renovation on the pool. While there are six lanes within the pool, these lanes are not the standard width of competition pools. It is difficult for adults and larger children to swim two abreast or in opposite directions. It is not uncommon for people to accidentally clash body parts with each other in the process which can result in minor injury.

To allow egress and exit to the pool for young children or people with mobility issues, steps are located in lane one. These steps are the width of the lane, meaning this lane can only be practically used by walkers or for leisure purposes (e.g. children playing around).

The pool also has a very steep and deep drop off. At the 12.5m mark the pool is 1.5 metres deep which means effectively only half of the pool can be used for walking or exercise unless a floatation device is being worn.

At the commencement of the 2021/22 season The Club requested access to three lanes, which was accommodated by the Shire. As the club's size increased they petitioned for increased lane access. As such, a six-week trial was approved to allow The Club access to four lanes of the pool for training purposes. Due to the pool design issues outlined above this left only two lanes for general community use; one walking / leisure lane and one lane for general public lap swimming.

Since the trial commenced Officers have been monitoring usage during this time and the associated implications. This has continued during the last User Agreement period. It was noted there was a number of general public lap swimmers who left once the squad commenced due to the lack of public swimming lanes. A number of people chose not to enter the facility as soon as they saw the squad in progress. Verbal complaints have also been received about the lack of lane space and some people have cancelled their memberships.

The Shire also operates a Learn to Swim Program after school, and Tuesdays is one of the more popular days. Should four lanes be allocated to The Club it is unlikely we will be able to operate the Learn to Swim Program on that day. This in turn may impact future participation as individuals become competent enough to join The Club.

The Shire had previously investigated the option of allowing The Club to operate outside of standard operating hours, as happens at many other regional pools. Discussions with the Club has indicated this is not their preference.

It is acknowledged that The Club has worked hard to establish themselves as a viable and operational entity. The training provided by the club provides valuable opportunities for another stream of physical activity for young people in Derby. This program attracts a different target market from other after-school programs and should be supported. While not formally engaging with the club the activities also attract siblings and parents who will often also utilise the pool during the club training times. However, indications are that The Club member numbers are likely to be lower this year due to some swimmers no longer continuing the training.

As noted, the Club has requested Council allow four lanes of the pool for exclusive use by its members. This would leave only two lanes (one walking / leisure and one lap) for public use while the Club was accessing the pool. This would unreasonably limit public access to those swimmers that are not members of the Club, yet like to swim laps. It is recommended that the User Agreement allows for access to three lanes for each of the afternoon session. It is open for Council to allow the Club exclusive access to four (or more) lanes should it believe that the Club be prioritised over public access.

A copy of the proposed draft User Agreement where three lanes have been allocated have been provided as Attachment 1. A copy of the proposed draft User Agreement where four lanes have been allocated have been provided as Attachment 2.

VOTING REQUIREMENT

Simple majority

ATTACHMENTS

1. **2023/2024 Derby Amateur Swimming Club Inc. User Agreement - 3 lane allocation** [!\[\]\(896151ec231b70900e969d67696ca48d_img.jpg\)](#) [!\[\]\(a852c5461f8be0331350e2cc706daa68_img.jpg\)](#)
2. **2023/2024 Derby Amateur Swimming Club Inc. - User Agreement - 4 lane allocation** [!\[\]\(ea6e8863987d5c963d93ad4125360939_img.jpg\)](#) [!\[\]\(7d2ec212cb950e0dc0d0fb2c13137ad5_img.jpg\)](#)

RECOMMENDATION**That Council:**

- 1. Refuses the Derby Amateur Swimming Club Inc's request for four lanes on Tuesday and Thursday training nights; and**
- 2. Endorses the draft 2023/2024 Derby Amateur Swimming Club User Agreement as outlined in Attachment 1, allocating three lanes to the club on Tuesday and Thursday training nights and other lane allocations as requested by the Club.**

Licence Agreement to use Community Facility

Between Shire of Derby/West Kimberley,
and Derby Amateur Swimming Club Inc.

Derby Memorial Swimming Pool

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Parties

Shire of Derby/West Kimberley, a body corporate pursuant to the Local Government Act 1995 of PO Box 94, Derby, Western Australia, 6728 (**Shire**).

Derby Memorial Swimming Club Inc., a community based sporting organisation pursuant to the Associations Incorporation Act 2015 of PO Box 1219, Derby Western Australia, 6728 (**Licensee**)

Background

- A The Shire owns or manages the Land which includes the Community Facility.
- B The Shire has agreed to grant to the Licensee the right to use and occupy the Licensed Area subject to the terms and conditions contained in this Licence.

Operative provisions

1 Definitions and interpretation

Definitions

- 1.1 In this Licence the following definitions apply:

Authorised Persons means:

- (a) an agent, employee, licensee, contractor or invitee of the Licensee;
- (b) any person visiting the Licensed Area with the express or implied consent of any person referred to in paragraph (a) of this definition;
- (c) any person claiming under or through the Licensee.

Authorised Use is defined in Item 9 of Schedule 1.

Commencement Date is defined in Item 6 of Schedule 1.

Community Facility is defined in Item 1 of Schedule 1.

Council means the council of the Shire.

Default Interest Rate means 10% per annum above the Reserve Bank of Australia target cash rate from time to time.

End Date is defined in Item 8 of Schedule 1.

Event of Default means any of the events or occurrences set out in clause 18.1 of this Licence.

GST means goods and services tax or similar value added tax levied or imposed in Australia pursuant to the GST Law or otherwise on a supply.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST Law has the same meanings as in the GST Act.

Land is defined in Item 2 of Schedule 1 and where the context so requires includes the Community Facility.

Laws mean all statutes, rules, regulations, proclamations, ordinances, local laws, or by-laws present or future and includes applicable Australian Standards and Codes of Practice as varied from time to time.

Licence means this agreement and the Schedules and, where applicable, any appendices, plans or other attachments to this agreement as amended from time to time.

Licensed Area is defined in Item 3 of Schedule 1.

Licence Fee is defined in Item 4 of Schedule 1.

Minister means Minister for Lands.

Occupiers mean any person (other than the Licensee) with a right to use any part of the Land from time to time.

Party or Parties means respectively a party or parties to this Licence.

Plant and Equipment means the plant and equipment used in connection with the provision of any utilities or services or the heating, cooling, lighting, power or plumbing for the Licensed Area.

Relevant Authority means any government, statutory, public or other authority or body having jurisdiction over the Land or any matter or thing relating to the Land on the Land.

Requirements mean any requirements, notices, orders or directions of any Relevant Authority.

Review Dates is defined in Item 5 of Schedule 1.

Special Conditions means the special conditions set out in Schedule 2.

Term is defined in Item 7 of Schedule 1.

Written Law has the same meaning given to that term in the *Interpretation Act 1984* (WA) as varied from time to time

Interpretation

- 1.2 In the interpretation of this Licence, the following provisions apply unless the context otherwise requires:
 - 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Licence.
 - 1.2.2 A reference in this Licence to a business day means a day other than a Saturday, Sunday or public holiday in Perth, Western Australia.

- 1.2.3 If the day on which any act, matter or thing is to be done under this Licence is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Licence to dollars or \$ means Australian dollars and all amounts payable under this Licence are payable in Australian dollars.
- 1.2.5 A reference in this Licence to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.6 A reference in this Licence to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced.
- 1.2.7 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Licence.
- 1.2.8 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.9 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.10 A word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders.
- 1.2.11 A reference to the word 'include' or 'including' is to be construed without limitation.
- 1.2.12 Any schedules and attachments form part of this Licence.

2 Grant of Licence

- 2.1 The Shire grants to the Licensee, subject to the consent of the Minister (where relevant) and the Licensee accepts, a licence to use the Licensed Area for the Term from the Commencement Date to the End Date solely for the Authorised Use on the terms and conditions of this Licence.
- 2.2 The rights under this Licence are in contract only and no estate or interest in the Licensed Area is conferred on the Licensee by this Licence.
- 2.3 This Licence shall relate only to the Licensed Area and the Shire shall at all times be entitled to use, occupy and deal with the remainder of the Land and the Community Facility without reference to the Licensee.

3 Conditions Precedent

Local Government Condition

- 3.1 This Licence is subject to and expressly conditional on the Shire complying with the procedures set out in section 3.58 of the *Local Government Act 1995* (WA) relating to disposal of property.

Land Administration Act

- 3.2 If the Land is subject to the provisions of the *Land Administration Act 1997* (WA) then this Licence is subject to and expressly conditional on the Minister granting his or her consent to this Licence.

Best Endeavours

- 3.3 The Parties covenant and agree that where relevant, the Parties will each use their best endeavours to satisfy the conditions precedent in clauses 3.1 and 3.2.

Costs

- 3.4 The Shire will bear all costs associated with satisfying the conditions precedent in clauses 3.1 and 3.2.

Refusal or granted subject to conditions

- 3.5 If any approval:
- 3.5.1 is refused; or
 - 3.5.2 granted subject to a condition that the Licensee in its reasonable opinion is unable to comply with, and the Licensee within 10 business days after being notified of the condition elects, by notice in writing to the Shire, to withdraw from this Licence;
- 3.6 then, this Licence, except this clause, ceases to have effect and no party has any claim against the other party.

4 Licence Fee

- 4.1 The Licensee must pay the stipulated User Agreement Fee to the Shire as outlined in Item 4 of Schedule 1, without any deduction or set-off by way or direct payment to the Shire or as the Shire may direct.

5 Licence Fee Review

- 5.1 On a Review Date the Licence Fee shall be reviewed in accordance with the provisions of clauses 5.2 to 5.5 (inclusive).

Licence Fee Review

- 5.2 With effect from each Review Date, the Shire shall review the Licence Fee so that it is an amount determined or calculated in accordance with the then current Shire of

Derby/West Kimberley adopted annual fees for licensing of Shire assets (facilities, buildings and land) and in line with Policy ES5 and any other relevant Policies, which have been passed by resolution of Council.

- 5.3 The Shire shall give the Licensee a notice setting the Licence Fee, however the failure of the Shire to give such a notice before the Review Date does not preclude the Shire from giving such a notice in respect of that Review Date at any later time.

Payment of Reviewed Licence Fee

- 5.4 The Licensee will be liable to pay the reviewed annual Licence Fee from the relevant Review Date whether or not the Shire has notified the Licensee of the amount to which the annual Licence Fee has been varied.
- 5.5 If the Shire has not given notice of the reviewed annual Licence Fee to the Licensee and the Licensee continues to pay Licence Fee at the rate of the current annual Licence Fee until the Shire notifies the Licensee of the reviewed annual Licence Fee, the Licensee will not be in default for non-payment of Licence Fee provided that when the Shire notifies the Licensee of the amount of the reviewed annual Licence Fee, any necessary adjustment is made within 10 business days of service of the Licence Fee review notice.

6 Licensee Covenants

Use

- 6.1 The Licensee must not use or permit the Licensed Area to be used for any purpose other than the Authorised Use.

Improvements and Additions

- 6.2 The Licensee must not erect, construct, build, install or bring any buildings or structures of a permanent nature on the Licensed Area or make any other alterations, additions or improvements on the Licensed Area except in accordance with clause 13 of this Licence.
- 6.3 Unless otherwise agreed in writing, every building and fitting, fixture or structure erected, fixed or placed upon the Licensed Area shall become the absolute property of the Shire and shall not be removed from the Licensed Area or moved to any other part of the Land except with the prior written consent of the Shire.

Maintenance

- 6.4 The Licensee must:
- 6.4.1 maintain the Licensed Area in a good condition and state of repair, except in respect of:
- (i) fair wear and tear; and
 - (ii) damage which is or will be reinstated from the proceeds of insurance;

- 6.4.2 promptly repair any damage to the Licensed Area for which the Licensee is responsible to the satisfaction of the Shire;
- 6.4.3 keep the Licensed Area clean and free from rubbish;
- 6.4.4 not do or omit to do anything which might cause the Licensed Area to deteriorate or become impaired except for fair wear and tear, to be obstructed, or to be in a condition other than a good and sanitary condition;
- 6.4.5 not without the Shire's prior consent, interfere with or modify the electricity supply or its reticulation, or install any electrical equipment on the Licensed Area which might overload the cables, switchboards or sub-boards through which electricity is connected to the Licensed Area;
- 6.4.6 not without the Shire's prior written consent interfere with or modify the drainage or water supply facilities (if any) serving the Licensed Area or any equipment connected to such facility;
- 6.4.7 not without the Shire's prior consent, erect or place on or in the Licensed Area any radio or television aerial or antenna;
- 6.4.8 keep all roads, driveways and access ways (if any) on the Land free of rubbish and debris and ensure that they are not obstructed; and
- 6.4.9 if this Licence is in respect of the whole of the Land, maintain all roads, driveways and access ways (if any) on the Licensed Area.

Report to the Shire

- 6.5 The Licensee shall report promptly to the Shire in writing:
 - 6.5.1 all damage or defects in the Licensed Area of which the Licensee is or ought to be aware; and
 - 6.5.2 any circumstances likely to be a danger or cause any damage or danger to the Licensed Area and the Licensee's fixtures or any person in or on the Licensed Area and the Licensee's fixtures of which the Licensee is aware.
- 6.6 The Licensee must also report all damage, defects or maintenance requests or suggestions to the Shire by submitting an email with the relevant information to SDWK@SDWK.wa.gov.au.

Nuisance

- 6.7 The Licensee must take all reasonable precautions against the outbreak of fire on the Licensed Area and (where it is relevant and required by the Shire) to make firebreaks upon the Licensed Area and at the locations and to the specifications required by the Shire, and, to permit the entry of the Shire its officers and servants or agents on to the Licensed Area for the purpose of abating any fire on or in the vicinity of the Licensed Area.
- 6.8 The Licensee shall not do or permit anything to be done on or in relation to the Land, which may be or may become a danger or a nuisance to the Shire or other persons authorised by the Shire to enter or use the Land or to the owner or occupier of any adjoining or nearby land.

Unlawful Activities

- 6.9 The Licensee must not do or carry on in the Licensed Area any activity which might be harmful, offensive or illegal, or cause a nuisance, damage or disturbance to the Shire or the Occupiers or the owners or occupiers of any nearby properties.

Rubbish

- 6.10 The Licensee must not:
- 6.10.1 place any rubbish on or in any part of the Licensed Area except in a suitable receptacle; or
 - 6.10.2 burn any rubbish in or on the Licensed Area.

Floor Overloading

- 6.11 The Licensee must not do any act or thing which might result in overloading any part of the floor of the Licensed Area.

Goods and Chemicals

- 6.12 The Licensee must not:
- 6.12.1 except for reasonable quantities for normal applications in connection with the Authorised Use of the Licensed Area, bring onto, store or use any chemical or inflammable substance in or on the Licensed Area; and
 - 6.12.2 store goods on or in the Licensed Area other than those necessary for the Authorised Use.
- 6.13 On request, the Licensee must supply the Shire with material safety data sheets for any chemicals or inflammable substance which the Licensee is permitted to bring onto, store or use in or on the Licensed Area under clause 6.12.1 of this Licence.

Signs, advertisements or notices

- 6.14 The Licensee must not display from or affix to the Licensed Area any signs, advertisements or notices visible from outside the Licensed Area without the prior consent of the Shire which the Shire may not unreasonably withhold in the case of a notice:
- 6.14.1 stating the Licensee's name; and
 - 6.14.2 affixed in a place immediately adjacent to the Licensed Area.
- 6.15 If approved, the signage, advertisement or notice must be secured in a substantial and proper manner so as not to cause any damage to the Community Facility or any person and the Licensee must at the end or earlier termination of the Term remove the signage, advertisement or notice and make good any damage.

Inspection by the Shire

- 6.16 The Licensee must permit the Shire to inspect the Licensed Area at all reasonable times.

Security of Licensed Area

- 6.17 The Licensee must securely lock all doors, gates or other openings in, to or on the Licensed Area when the Licensed Area is unoccupied.
- 6.18 The Shire may enter the Licensed Area at any time for any purpose in relation to security, but nothing in this clause makes the Shire responsible in any way for the security of the Licensed Area.

Public Events

- 6.19 The Licensee must not hold any public event at the Licensed Area except with the prior written consent of the Shire and the Minister (where relevant).

Annual General Meeting

- 6.20 On the Commencement Date of this Licence, and at the commencement of any new Term of this Licence, if the Licensee is a community or sports organisation, the Licensee must provide the Shire with a copy of the minutes of each Annual General Meeting, an end of year financial statement report, and also provide updated contact details for each of the persons holding the positions of President, Vice President, Secretary and Treasurer in the community or sports organisation.

Toilets

- 6.21 The toilets, sinks and drains shall be used for their designed purposes only and the Licensee must keep them clear and unobstructed and ensure no substance is deposited into them which could damage or block them.
- 6.22 If toilets are comprised within the Licensed Area, the Licensee must ensure that the toilet facility is kept clean and tidy for the duration of the hire period. Any issues with appropriate toiletries and sanitary bins should be advised to the SDWK as soon as practicable by email SDWK@sdwk.wa.gov.au.

7 Licensee to pay for utilities and services**Utilities and services separately assessed**

- 7.1 In accordance with the proportions outlined in Schedule 2 (Special Conditions) the Licensee must pay to the Shire within 30 days of issue of a tax invoice or, if demand is made by a service provider, the service provider all charges for water, gas, electricity, telephones and other utilities or services, including line charges and the cost of installation of any meter, wiring or other device necessitated by the use of a utility and service or rubbish collection charges which are separately charged or assessed in respect of the Licensed Area or the Licensee.

Utilities and services not separately assessed

- 7.2 In accordance with the proportions outlined in Schedule 2 (Special Conditions) where any charges for water, gas, electricity, telephones and other utilities or services, including line charges and the cost of installation of any meter, wiring or other device necessitated by the use of a utility and service or rubbish collection charges are not separately charged or assessed in respect of the Licensed Area or the Licensee then, the Licensee must pay to the Shire within 30 days of issue of a tax invoice such fair

proportion of those utilities and services as determined by the Shire (acting reasonably).

8 Comply with Laws

- 8.1 The Licensee must promptly observe and comply in all respects with all Laws, Requirements and rules relating to the Land and the Community Facility and the Licensee's use of it.

9 Risk

- 9.1 The Licensee agrees to occupy and use the Licensed Area at the Licensee's sole risk.

10 Insurance

Public Risk insurance

- 10.1 The Licensee must during the Term, effect and maintain adequate public risk insurance cover applicable to the Licensee's use of the Licensed Area for at least \$20,000,000 (being the amount which may be paid out arising from any single accident or event) or any increased amount that the Shire may from time to time require.
- 10.2 The Licensee must supply the Shire with a certificate of currency from the insurer on request.

Licensee's Obligation to effect other insurances

- 10.3 In addition to public risk insurance, the Shire may at any time require the Licensee by notice in writing to effect and maintain other policies of insurance relating to the Licensed Area and the Licensee's fixtures or contents or otherwise as reasonably required by the Shire from time to time, including policies of insurance for:
 - 10.3.1 employers' indemnity insurance including workers' compensation insurance in respect of all employees and volunteers of the Licensee employed in or about the Licensed Area; and
 - 10.3.2 any other matter or thing which the Shire reasonably requires by notice to the Licensee.
- 10.4 If the Shire has issued a written notice to the Licensee to effect other insurance under clause 10.3, the Licensee must:
 - 10.4.1 supply to the Shire the current details of all insurance effected in accordance with this clause, including copies of certificates of insurance or policy documents and receipts for premiums as updated, amended or varied from time to time;
 - 10.4.2 not without the Shire's prior consent, alter the terms or conditions of any policy; and

- 10.4.3 ensure that each policy of insurance includes a provision for cross liability and waiver of subrogation rights in favour of the Shire.

Licensee not to invalidate insurance

- 10.5 The Licensee must not by any act or omission cause or allow anything to be done which might result in any insurance policy effected under this Licence or in respect of the Licensed Area and the Licensee's fixtures becoming void or voidable or which might increase the premium on any policy.

11 Limit of Shire's liability

No warranties or representations

- 11.1 The Licensee acknowledges and agrees that:

- 11.1.1 all the Licensee's fixtures and other Licensee's property in or on the Licensed Area shall be at the sole risk of the Licensee during the Term and the Shire shall not be liable for any claim, loss or damage that the Licensee may suffer as a result of:

- (i) any fault in the construction or state of repair of the Licensed Area, the Licensee's fixtures or the Shire's fixtures;
- (ii) any defect in any of the Plant and Equipment;
- (iii) any flow, overflow, leakage or breakdown of any water, air-conditioning, gas, power or other source of energy whether from the Licensed Area or otherwise;

- 11.1.2 the Licensee has not relied on any representation or warranty of the Shire in entering into this Licence and, for this purpose, the Licensee acknowledges that:

- (i) the Licensee has relied on the Licensee's own skill and judgment and has made the Licensee's own enquiries in determining the suitability of the Licensed Area for the Authorised Use; and
- (ii) the Licensee's occupation of the Licensed Area is conclusive evidence of the Licensee's acceptance of the Licensed Area as being in good order, repair and condition at the Commencement Date.

Shire Not Liable

- 11.2 The Shire is not liable to the Licensee and the Licensee will not make a claim against the Shire in respect of any liability resulting from any accident, death, injury, damage to any property (including water damage), equipment, or machinery malfunction, interruption of services, theft or other event of a similar nature in or affecting or the Licensed Area.

Licensee acts at own risk

- 11.3 Unless this Licence provides otherwise, whenever the Licensee is obligated or required by this Licence to do or omit to do any act or thing, the doing or the omission of the act or thing will be at the sole risk and expense of the Licensee.

12 Indemnity and release

General indemnity

- 12.1 The Licensee indemnifies, and shall keep indemnified the Shire and the Minister against all actions, losses, claims, damages, proceedings, suits, demands, costs and expenses for which the Shire or the Minister become liable in respect of loss or damage to property or death or injury of any nature and however or wherever sustained:
- 12.1.1 which are caused or contributed to by the use or occupancy of the Licensed Area by the Licensee or any Authorised Persons;
 - 12.1.2 resulting from an act or omission of the Licensee; or
 - 12.1.3 resulting from a notice, claim or demand against the Licensee to do or refrain from doing anything except to the extent that the Shire is obliged by this Licence to pay for or contribute to the cost of compliance with the notice, claim or demand and fails to do so.

Nature of indemnity

- 12.2 The obligation of the Licensee to indemnify the Shire and the Minister under this Licence or at law is not affected by the obligation of the Licensee to effect insurance and all indemnities shall survive the termination of this Licence.

13 Alterations by the Licensee

- 13.1 The Licensee must obtain the Shire's prior written approval (as distinct from any consent that the Licensee may require from the Shire as Relevant Authority) if the Licensee wishes to carry out any work not provided for in any plans previously approved by the Shire.
- 13.2 The Shire may in its absolute discretion decline consent, or may require a variation of this licence or require a new licence be entered into at the cost of the Licensee to record any such alteration.
- 13.3 For the avoidance of any doubt, the Licensee must obtain and comply with all necessary consents and will be responsible for all costs in carrying out any approved alterations and must comply with the Shire's reasonable directions in carrying out any work.

14 Assignment

- 14.1 The Licensee shall not transfer or assign or sub-licence its rights under this Licence except with the prior written consent of the Shire and the Minister (where relevant), which may be withheld at the absolute discretion of the Shire or the Minister.

15 Costs**Costs**

- 15.1 The Licensee must pay or reimburse the Shire on demand for all the Shire's reasonable costs and expenses (including the Shire's legal and consultancy costs and expenses) in relation to:
- 15.1.1 the preparation, execution, negotiation, and stamping of this Licence;
 - 15.1.2 the exercise or enforcement by the Shire of any right under this Licence;
 - 15.1.3 any act or omission by the Licensee causing cost or expense to the Shire; and
 - 15.1.4 obtaining or giving any consent or approval under this Licence, or a variation or surrender of this Licence.

Duty and other costs

- 15.2 The Licensee must pay or reimburse the Shire on demand for all duty, taxes, levies, charges and fees, and fines and penalties in respect of any of them, which may be payable in connection with this Licence.

Interest on other moneys

- 15.3 If any monies payable by the Licensee remain unpaid for 30 days after their due date then the Licensee shall pay to the Shire interest on those payments at the Default Interest Rate calculated from their due date to the date of payment and such interest shall be compounded monthly.

16 GST

- 16.1 The Licence Fee and other moneys payable under this Licence may have been calculated without regard to GST, and the Shire and the Licensee agree that the Shire shall be entitled to charge an additional amount if the Shire becomes subject to GST as a result of the grant of this Licence or any supply to the Licensee under or in connection with this Licence, and the following provisions shall apply.
- 16.2 The Licensee must do everything reasonably requested by the Shire to ensure this Licence is treated as taxable for the purposes of the GST, the Licensee must pay the GST to the Shire at the same time as the payment to which the GST relates, and the Licence Fee and other amounts payable under this Licence are exclusive of GST.
- 16.3 The Licensee must pay to the Shire on demand any GST charged on goods and services acquired or payable or paid by the Shire in connection with this Licence or the Licensed Area, including but not limited to any GST payable in connection with or in respect of the provision of any utilities and services and the Licence Fee;
- 16.4 Words used in this clause which have a defined meaning in the GST Law have the same meanings as in the GST Law unless the context indicates otherwise.

17 Shire's covenants

Shire's responsibility for repairs and maintenance

- 17.1 The Shire must keep and maintain the building, all building services and the Shire's improvements on the Land in good order and condition but the Shire shall not be liable or responsible for any:
 - 17.1.1 repair or maintenance of any alterations carried out by the Licensee in accordance with clause 13;
 - 17.1.2 repair or maintenance which the Licensee is responsible for under the terms of this Licence; or
 - 17.1.3 repair or maintenance that is not reasonably necessary for the Licensee's use of the Licensed Area as determined by the Shire (acting reasonably).
- 17.2 Unless otherwise provided in this Licence, the Shire is responsible for organising and paying for annual pest control inspections, servicing of fire extinguishers, exit lights, security lights, fire hydrants, air conditioners (not owned by the Licensee) and recertification of any fall arrest systems located in the Community Facility.

Shire's Right of Access

- 17.3 The Shire and the Shire's employees and contractors may at all reasonable times (and at any time in the case of an emergency) enter the Licensed Area with all necessary equipment to carry out repairs, maintenance or improvements to the Licensed Area (or adjacent areas), including to:
 - 17.3.1 carry out any repairs or maintenance to the building or building services on the Land that is not the Licensee's responsibility under the terms of this Licence;
 - 17.3.2 construct new structures on the Licensed Area;
 - 17.3.3 alter, add to, extend, reduce the size of, or otherwise modify, existing structures on the Licensed Area; or
 - 17.3.4 carry out any other works that the Shire considers necessary.

Shire's right to remedy default

- 17.4 The Shire may, if the Licensee is in default of any repair notice given by the Shire under this Licence or, if any repairs that the Licensee is responsible for under this Licence are required to be undertaken as a matter of urgency then, without prejudice to the Shire's rights under this Licence, the Shire and the Shire's employees and contractors with all necessary equipment at all reasonable times may enter the Licensed Area to carry out such works and the costs of carrying out such works shall be payable by the Licensee to the Shire on demand.

Shire's right to deal with Land

- 17.5 The Shire may grant easements of support or any other easements or similar rights over any part of the Land or the Licensed Area or dedicate, transfer or otherwise deal

with any part of the Land or the Licensed Area in favour of another person for any reason whatsoever.

No undue interference

- 17.6 In exercising the Shire's rights in clause 17.3 to clause 17.5 (inclusive), the Shire must use its reasonable endeavours not to cause any undue interference with the Authorised Use but in no event will the Shire be responsible for any compensation or liable for any loss suffered by the Licensee.

18 Events of Default

Default

- 18.1 An event of default occurs if:
- 18.1.1 the Licence Fee is at any time unpaid for 30 days after becoming due whether formally demanded or not;
 - 18.1.2 the Licensee fails to comply with any of its other obligations under this Licence and that failure is not, in the reasonable opinion of the Shire, remediable;
 - 18.1.3 the failure described in clause 18.1.2 is remediable, and the Licensee does not remedy the failure within 30 days, or a longer period reasonably determined by the Shire after receipt by the Licensee of a notice from the Shire specifying the failure;
 - 18.1.4 in the event of insolvency, receivership, bankruptcy or liquidation of the Licensee; or
 - 18.1.5 if the Licensee makes or enters into or endeavour to make or enter into any composition assignment or other arrangement with or for the benefit of the Licensee's creditors.

Shire's right to terminate

- 18.2 If an event of default occurs, the Shire may terminate this Licence by written notice to the Licensee.

Other rights of Shire

- 18.3 Any action taken by the Shire under clause 17 is without prejudice to any other rights of the Shire and does not release the Licensee from liability under this Licence.

19 Termination

Licensed Area

- 19.1 At the end or earlier termination of this Licence, the Licensee must ensure that the Licensed Area is in a condition consistent with the compliance of the Licensee's obligations during the Term and deliver to the Shire all keys, access cards and other security devices for the Licensed Area.

Removal of Licensee's fixtures, fittings and chattels

- 19.2 At the end or earlier termination of this Licence, the Licensee must remove all the Licensee's chattels and, if required by the Shire, any fixture, fitting or structure erected by the Licensee during the Term, and make good at the Licensee's cost any resulting damage and if not removed within five business days or a longer period as reasonably determined by the Shire after the date of termination, ownership of those chattels, fixtures, fittings and structures may at the Shire's election pass to the Shire or the Shire may in a proper and workmanlike manner remove them from the Licensed Area and either store them or forward them to a refuse collection centre.
- 19.3 The cost of making good the resulting damage and the cost of removal, storage and disposal shall be recoverable from the Licensee as a debt due on demand and the Shire shall not be responsible for any compensation or liable for any loss suffered by the Licensee.

Survival

- 19.4 The covenants contained in this Licence which expressly or impliedly survive termination shall remain in full force and effect after the termination of this Licence without limit in time and shall not be or be deemed to be waived, merged or extinguished upon such termination.

20 Disputes**Mediation**

- 20.1 If a dispute arises in relation to this Licence, either Party may give the other a notice requiring that an attempt be made to resolve the dispute with the help of a mediator to be appointed jointly by the Parties.
- 20.2 If the Parties do not agree on a mediator within seven days after the notice is given, either Party is entitled to ask the Australian Commercial Disputes Centre (ACDC) or such other body that has similar powers at the time of the dispute to appoint the mediator.
- 20.3 The mediation is to be conducted in accordance with the procedure set out in the ACDC Commercial Mediation Agreement or, if at the relevant time there is no such agreement or an agreement substituted for it, in accordance with the procedure determined by the mediator in consultation with the Parties. Each of the Parties must co-operate fully with the mediator.
- 20.4 The Parties must each pay an equal share of the fees and expenses to which the mediator is entitled.

Arbitration

- 20.5 If the dispute has not been resolved by mediation under clause 20.3 within two months of a party requiring mediation, either Party may give the other Party a notice requiring that a dispute be resolved by arbitration under the *Commercial Arbitration Act 2012* (WA) by an arbitrator appointed jointly by the Parties.

- 20.6 If the Parties do not agree on an arbitrator within seven days after the notice of arbitration is given, either Party is entitled to ask the ACDC or such other body that has similar powers at the time of the dispute to appoint the arbitrator.
- 20.7 The arbitration must be conducted in accordance with the *Commercial Arbitration Act 2012* (WA). Each of the Parties must co-operate fully with the arbitrator.
- 20.8 Either Party is entitled to appeal to the Court of competent jurisdiction on any question of law arising out of an award.

Right to seek injunctions

- 20.9 For the avoidance of any doubt, nothing in this clause 20 shall be construed as limiting the rights of either Party to seek urgent injunctive orders from a Court of competent jurisdiction to restrain the other Party from an ongoing or repetitive breach of this Licence where an order for damages would not be an adequate remedy.

21 Holding Over

- 21.1 If the Licensee continues to use the Licensed Area after the expiry of the Term with the consent of the Shire, the Licensee will be a monthly licensee of the Shire at the same rate as the then Licence Fee payable by the Licensee immediately prior to expiry of the Term.

22 Notices

Giving notices

- 22.1 Any notice or communication given to a Party under this Licence is only given if it is in writing and sent in one of the following ways:
 - 22.1.1 Delivered or posted to that Party at its address and marked for the attention of the relevant department or officer (if any) set out below.
 - 22.1.2 Emailed to that Party at its email address and marked for the attention of the relevant department or officer (if any) set out below.

The Shire

Name: Shire of Derby/West Kimberley
 Address: Post Office Box 94
 Derby, WA 6728
 Email: SDWK@sdwk.wa.gov.au
 Attention: Team Leader Aquatics and Recreation

The Licensee

Name: Derby Amateur Swimming Club
 Address: PO Box 1219, Derby WA 6728
 Email: derbysharksswimming@gmail.com
 Attention: President

Change of physical or email address

- 22.2 If a Party gives the other Party three business days' notice of a change of its address or email address, any notice or communication is only given by that other Party if it is delivered, posted or emailed to the latest address.

Time notice is given

- 22.3 Any notice or communication is to be treated as given at the following time:
- 22.3.1 If it is delivered, when it is left at the relevant address; or
 - 22.3.2 If it is sent by post, five business days after it is posted; or
 - 22.3.3 If it is sent by email, as soon as the sender receives from the sender's email address, a report of an error free transmission to the correct email address.
- 22.4 However, if any notice or communication is given, on a day that is not a business day or after 5pm on a business day, in the place of the Party to whom it is sent it is to be treated as having been given at the beginning of the next business day.

Copies of notices etc

- 22.5 If a Party is required by any term of this Licence to give a copy of any notice or communication to a person, the failure to give the copy of it to the person may not be raised to rebut that it was effectively given.

23 Special Conditions

- 23.1 The Parties acknowledge and agree that the Special Conditions (as provided in Schedule 2) form part of this Licence.
- 23.2 In the event that the Special Conditions are inconsistent with the terms of the Licence, then the Special Conditions shall prevail to the extent of such inconsistency.

24 Discretion of the Shire in its capacity as a Relevant Authority

- 24.1 Nothing in this Licence shall fetter or be construed as an attempt to fetter the discretion or the powers of the Shire in its capacity as a Relevant Authority under any Written Law and in particular does not fetter the Shire in its capacity as a Relevant Authority with regard to the approval or imposition of conditions on any approval required for the development of the Land or carrying out of any alterations, additions or improvements on the Licensed Area in accordance with the terms of this Licence.

25 Miscellaneous**Approvals and consents**

- 25.1 Unless this Licence expressly provides otherwise, a Party may give or withhold an approval or consent in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding a consent or approval or for giving a consent or approval subject to conditions.
- 25.2 Where this Licence refers to a matter being to the 'satisfaction' of a Party, this means to the satisfaction of that Party in its absolute discretion.

Entire agreement

- 25.3 This Licence contains everything the Parties have agreed in relation to the subject matter it deals with. No Party can rely on an earlier written document or anything said or done by or on behalf of another Party before this Licence was executed.

Further acts

- 25.4 Each party must at its own expense promptly execute all documents and do or use reasonable endeavours to cause a third party to do all things that another Party from time to time may reasonably request in order to give effect to, perfect or complete this Licence and all transactions incidental to it.

Governing law and jurisdiction

- 25.5 This Licence is governed by the law of Western Australia. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

Joint and individual liability and benefits

- 25.6 Except as otherwise set out in this Licence, any agreement, covenant, representation or warranty under this Licence by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

Severability

- 25.7 Each provision of this Licence is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this Licence in the relevant jurisdiction, but the rest of this Licence will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

Counterparts

- 25.8 This Licence may be executed in any number of counterparts each of which is an original and all of which constitute one and the same agreement.

Variation

- 25.9 No variation of this Licence will be of any force or effect unless it is in writing and signed by each Party to this Licence.

Waivers

- 25.10 A waiver of any right, power or remedy under this Licence must be in writing signed by the Party granting it. A waiver is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 25.11 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Licence does not amount to a waiver.

Execution and date

Executed as an agreement.

Date:

Signature of Chief Executive Officer

Print Name of Chief Executive Officer

Date:

Signature of President

Print Name of President

Schedule 1 - Items**Item 1** **Community Facility**

Derby Memorial Swimming Pool,

Corner Clarendon and Johnson Street, Derby WA 6728

Item 2 **Land**

A portion of Reserve 6929 comprised in Lot 500 on Loch Street.

Item 3 **Licensed Area**

The Licensee has access to lane at the Derby Memorial Swimming Pool in accordance with the following Schedule;

Date Range	Provision
30 September 2023 – 31 May 2024 (Except School Holidays)	Provision of 3 lanes each Tuesday and Thursday (3:30pm-5:30pm) Provision of 2 lanes each Wednesday (6:00am- 7:00am)
30 September 2023 – 30 September 2024	Friday club race nights with a total of 9 events over the term of the User Agreement. Bookings completed in advanced with Derby Memorial Pool Staff.
1 June 2024- 1 Aug2024	Provision of 3 lanes once a week for 2 x 1-hour sessions if required based on needs and will be invoiced separately to User agreement. (Times and dates to be negotiated with staff)
1 August 2024 – 30 September 2024	Provision of 3 lanes each Tuesday and Thursday (3:30pm-5:30pm) Provision of 2 lanes each Wednesday (6:00am- 7:00am)

Item 4 **Licence Fee**

The Licence Fee is \$1,200 per annum including GST.

Item 5 **Review Date**

On each date that the adopted fees for licensing of Shire assets (facilities, buildings and land) in Policy ES5 is reviewed during the Term of this Licence and any holding over period.

Item 6 **Commencement Date**

30 September 2023

Item 7 **Term**

Twelve months

Item 8 **End Date**

29 September 2024

Item 9

Authorised Use

Swimming training and race / competition nights.

Schedule 2 – Special Conditions**Special Conditions are set out below****A Conditions Precedent**

Nil

B Utilities and Services

The Licensee must pay the cost of the utilities and services as set out in the table below. For the avoidance of any doubt, if there are any inconsistencies between clause 7 of this Licence and the table set out below, the Parties agree that the table will prevail.

Utility or service	Amount payable by Licensee
WA State Government Land Tax	0%
WA State Government DFES Levy	0%
Water Corporation – Annual Water/Sewerage Rates Charge (or appropriate similar charge if Shire supplied service)	0%
Water Corporation - Water Consumption Charges (or appropriate similar charge if Shire supplied service)	0%
Gas Charges (Annual Charge and Consumption)	0%
Electricity (Annual/Fixed Charges and Consumption)	0%
Telephones (Annual/Fixed Charges and Consumption)	0%
Cost of installation of any meter, wiring or other device necessitated by the use of a utility and service	0%
Cost of annual pest control inspections, servicing of fire extinguishers, exit lights, security lights, fire hydrants, air conditioners (not owned by the Lessee) and recertification of any fall arrest systems in place	0%

Shire of Derby/West Kimberley's Annual Local Government Rates	0%
Cost of rubbish collection including emptying wheelie bins and 1100 bins	0%
Cost of annual licences (e.g. food surveillance fee)	0%

C Other special conditions

- (a) All club members are required to have a current, valid pool membership or pool pass with the Derby Memorial Swimming Pool for the duration of their participation in the Derby Amateur Swimming Club. Where a current membership or pool pass is not held standard pool entry fees apply.
- (b) The user is permitted to store approved club equipment in a contained storage space. The user is to store items at their own risk and will store items in such a manner as not to impede other users of the facility or the operational standards set out by Shire Derby West/Kimberley. Storage will be of an agreed size requirement and must have the ability to be moved without added risk to Shire Derby West/Kimberley personnel and other equipment or building requirements.

Licence Agreement to use Community Facility

Between Shire of Derby/West Kimberley,
and Derby Amateur Swimming Club Inc.

Derby Memorial Swimming Pool

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Parties

Shire of Derby/West Kimberley, a body corporate pursuant to the Local Government Act 1995 of PO Box 94, Derby, Western Australia, 6728 (**Shire**).

Derby Memorial Swimming Club Inc., a community based sporting organisation pursuant to the Associations Incorporation Act 2015 of PO Box 1219, Derby Western Australia, 6728 (**Licensee**)

Background

- A The Shire owns or manages the Land which includes the Community Facility.
- B The Shire has agreed to grant to the Licensee the right to use and occupy the Licensed Area subject to the terms and conditions contained in this Licence.

Operative provisions

1 Definitions and interpretation

Definitions

- 1.1 In this Licence the following definitions apply:

Authorised Persons means:

- (a) an agent, employee, licensee, contractor or invitee of the Licensee;
- (b) any person visiting the Licensed Area with the express or implied consent of any person referred to in paragraph (a) of this definition;
- (c) any person claiming under or through the Licensee.

Authorised Use is defined in Item 9 of Schedule 1.

Commencement Date is defined in Item 6 of Schedule 1.

Community Facility is defined in Item 1 of Schedule 1.

Council means the council of the Shire.

Default Interest Rate means 10% per annum above the Reserve Bank of Australia target cash rate from time to time.

End Date is defined in Item 8 of Schedule 1.

Event of Default means any of the events or occurrences set out in clause 18.1 of this Licence.

GST means goods and services tax or similar value added tax levied or imposed in Australia pursuant to the GST Law or otherwise on a supply.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST Law has the same meanings as in the GST Act.

Land is defined in Item 2 of Schedule 1 and where the context so requires includes the Community Facility.

Laws mean all statutes, rules, regulations, proclamations, ordinances, local laws, or by-laws present or future and includes applicable Australian Standards and Codes of Practice as varied from time to time.

Licence means this agreement and the Schedules and, where applicable, any appendices, plans or other attachments to this agreement as amended from time to time.

Licensed Area is defined in Item 3 of Schedule 1.

Licence Fee is defined in Item 4 of Schedule 1.

Minister means Minister for Lands.

Occupiers mean any person (other than the Licensee) with a right to use any part of the Land from time to time.

Party or Parties means respectively a party or parties to this Licence.

Plant and Equipment means the plant and equipment used in connection with the provision of any utilities or services or the heating, cooling, lighting, power or plumbing for the Licensed Area.

Relevant Authority means any government, statutory, public or other authority or body having jurisdiction over the Land or any matter or thing relating to the Land on the Land.

Requirements mean any requirements, notices, orders or directions of any Relevant Authority.

Review Dates is defined in Item 5 of Schedule 1.

Special Conditions means the special conditions set out in Schedule 2.

Term is defined in Item 7 of Schedule 1.

Written Law has the same meaning given to that term in the *Interpretation Act 1984* (WA) as varied from time to time

Interpretation

- 1.2 In the interpretation of this Licence, the following provisions apply unless the context otherwise requires:
 - 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Licence.
 - 1.2.2 A reference in this Licence to a business day means a day other than a Saturday, Sunday or public holiday in Perth, Western Australia.

- 1.2.3 If the day on which any act, matter or thing is to be done under this Licence is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Licence to dollars or \$ means Australian dollars and all amounts payable under this Licence are payable in Australian dollars.
- 1.2.5 A reference in this Licence to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.6 A reference in this Licence to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced.
- 1.2.7 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Licence.
- 1.2.8 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.9 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.10 A word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders.
- 1.2.11 A reference to the word 'include' or 'including' is to be construed without limitation.
- 1.2.12 Any schedules and attachments form part of this Licence.

2 Grant of Licence

- 2.1 The Shire grants to the Licensee, subject to the consent of the Minister (where relevant) and the Licensee accepts, a licence to use the Licensed Area for the Term from the Commencement Date to the End Date solely for the Authorised Use on the terms and conditions of this Licence.
- 2.2 The rights under this Licence are in contract only and no estate or interest in the Licensed Area is conferred on the Licensee by this Licence.
- 2.3 This Licence shall relate only to the Licensed Area and the Shire shall at all times be entitled to use, occupy and deal with the remainder of the Land and the Community Facility without reference to the Licensee.

3 Conditions Precedent

Local Government Condition

- 3.1 This Licence is subject to and expressly conditional on the Shire complying with the procedures set out in section 3.58 of the *Local Government Act 1995* (WA) relating to disposal of property.

Land Administration Act

- 3.2 If the Land is subject to the provisions of the *Land Administration Act 1997* (WA) then this Licence is subject to and expressly conditional on the Minister granting his or her consent to this Licence.

Best Endeavours

- 3.3 The Parties covenant and agree that where relevant, the Parties will each use their best endeavours to satisfy the conditions precedent in clauses 3.1 and 3.2.

Costs

- 3.4 The Shire will bear all costs associated with satisfying the conditions precedent in clauses 3.1 and 3.2.

Refusal or granted subject to conditions

- 3.5 If any approval:
- 3.5.1 is refused; or
 - 3.5.2 granted subject to a condition that the Licensee in its reasonable opinion is unable to comply with, and the Licensee within 10 business days after being notified of the condition elects, by notice in writing to the Shire, to withdraw from this Licence;
- 3.6 then, this Licence, except this clause, ceases to have effect and no party has any claim against the other party.

4 Licence Fee

- 4.1 The Licensee must pay the stipulated User Agreement Fee to the Shire as outlined in Item 4 of Schedule 1, without any deduction or set-off by way or direct payment to the Shire or as the Shire may direct.

5 Licence Fee Review

- 5.1 On a Review Date the Licence Fee shall be reviewed in accordance with the provisions of clauses 5.2 to 5.5 (inclusive).

Licence Fee Review

- 5.2 With effect from each Review Date, the Shire shall review the Licence Fee so that it is an amount determined or calculated in accordance with the then current Shire of

Derby/West Kimberley adopted annual fees for licensing of Shire assets (facilities, buildings and land) and in line with Policy ES5 and any other relevant Policies, which have been passed by resolution of Council.

- 5.3 The Shire shall give the Licensee a notice setting the Licence Fee, however the failure of the Shire to give such a notice before the Review Date does not preclude the Shire from giving such a notice in respect of that Review Date at any later time.

Payment of Reviewed Licence Fee

- 5.4 The Licensee will be liable to pay the reviewed annual Licence Fee from the relevant Review Date whether or not the Shire has notified the Licensee of the amount to which the annual Licence Fee has been varied.
- 5.5 If the Shire has not given notice of the reviewed annual Licence Fee to the Licensee and the Licensee continues to pay Licence Fee at the rate of the current annual Licence Fee until the Shire notifies the Licensee of the reviewed annual Licence Fee, the Licensee will not be in default for non-payment of Licence Fee provided that when the Shire notifies the Licensee of the amount of the reviewed annual Licence Fee, any necessary adjustment is made within 10 business days of service of the Licence Fee review notice.

6 Licensee Covenants

Use

- 6.1 The Licensee must not use or permit the Licensed Area to be used for any purpose other than the Authorised Use.

Improvements and Additions

- 6.2 The Licensee must not erect, construct, build, install or bring any buildings or structures of a permanent nature on the Licensed Area or make any other alterations, additions or improvements on the Licensed Area except in accordance with clause 13 of this Licence.
- 6.3 Unless otherwise agreed in writing, every building and fitting, fixture or structure erected, fixed or placed upon the Licensed Area shall become the absolute property of the Shire and shall not be removed from the Licensed Area or moved to any other part of the Land except with the prior written consent of the Shire.

Maintenance

- 6.4 The Licensee must:
- 6.4.1 maintain the Licensed Area in a good condition and state of repair, except in respect of:
- (i) fair wear and tear; and
 - (ii) damage which is or will be reinstated from the proceeds of insurance;

- 6.4.2 promptly repair any damage to the Licensed Area for which the Licensee is responsible to the satisfaction of the Shire;
- 6.4.3 keep the Licensed Area clean and free from rubbish;
- 6.4.4 not do or omit to do anything which might cause the Licensed Area to deteriorate or become impaired except for fair wear and tear, to be obstructed, or to be in a condition other than a good and sanitary condition;
- 6.4.5 not without the Shire's prior consent, interfere with or modify the electricity supply or its reticulation, or install any electrical equipment on the Licensed Area which might overload the cables, switchboards or sub-boards through which electricity is connected to the Licensed Area;
- 6.4.6 not without the Shire's prior written consent interfere with or modify the drainage or water supply facilities (if any) serving the Licensed Area or any equipment connected to such facility;
- 6.4.7 not without the Shire's prior consent, erect or place on or in the Licensed Area any radio or television aerial or antenna;
- 6.4.8 keep all roads, driveways and access ways (if any) on the Land free of rubbish and debris and ensure that they are not obstructed; and
- 6.4.9 if this Licence is in respect of the whole of the Land, maintain all roads, driveways and access ways (if any) on the Licensed Area.

Report to the Shire

- 6.5 The Licensee shall report promptly to the Shire in writing:
 - 6.5.1 all damage or defects in the Licensed Area of which the Licensee is or ought to be aware; and
 - 6.5.2 any circumstances likely to be a danger or cause any damage or danger to the Licensed Area and the Licensee's fixtures or any person in or on the Licensed Area and the Licensee's fixtures of which the Licensee is aware.
- 6.6 The Licensee must also report all damage, defects or maintenance requests or suggestions to the Shire by submitting an email with the relevant information to SDWK@SDWK.wa.gov.au.

Nuisance

- 6.7 The Licensee must take all reasonable precautions against the outbreak of fire on the Licensed Area and (where it is relevant and required by the Shire) to make firebreaks upon the Licensed Area and at the locations and to the specifications required by the Shire, and, to permit the entry of the Shire its officers and servants or agents on to the Licensed Area for the purpose of abating any fire on or in the vicinity of the Licensed Area.
- 6.8 The Licensee shall not do or permit anything to be done on or in relation to the Land, which may be or may become a danger or a nuisance to the Shire or other persons authorised by the Shire to enter or use the Land or to the owner or occupier of any adjoining or nearby land.

Unlawful Activities

- 6.9 The Licensee must not do or carry on in the Licensed Area any activity which might be harmful, offensive or illegal, or cause a nuisance, damage or disturbance to the Shire or the Occupiers or the owners or occupiers of any nearby properties.

Rubbish

- 6.10 The Licensee must not:
- 6.10.1 place any rubbish on or in any part of the Licensed Area except in a suitable receptacle; or
 - 6.10.2 burn any rubbish in or on the Licensed Area.

Floor Overloading

- 6.11 The Licensee must not do any act or thing which might result in overloading any part of the floor of the Licensed Area.

Goods and Chemicals

- 6.12 The Licensee must not:
- 6.12.1 except for reasonable quantities for normal applications in connection with the Authorised Use of the Licensed Area, bring onto, store or use any chemical or inflammable substance in or on the Licensed Area; and
 - 6.12.2 store goods on or in the Licensed Area other than those necessary for the Authorised Use.
- 6.13 On request, the Licensee must supply the Shire with material safety data sheets for any chemicals or inflammable substance which the Licensee is permitted to bring onto, store or use in or on the Licensed Area under clause 6.12.1 of this Licence.

Signs, advertisements or notices

- 6.14 The Licensee must not display from or affix to the Licensed Area any signs, advertisements or notices visible from outside the Licensed Area without the prior consent of the Shire which the Shire may not unreasonably withhold in the case of a notice:
- 6.14.1 stating the Licensee's name; and
 - 6.14.2 affixed in a place immediately adjacent to the Licensed Area.
- 6.15 If approved, the signage, advertisement or notice must be secured in a substantial and proper manner so as not to cause any damage to the Community Facility or any person and the Licensee must at the end or earlier termination of the Term remove the signage, advertisement or notice and make good any damage.

Inspection by the Shire

- 6.16 The Licensee must permit the Shire to inspect the Licensed Area at all reasonable times.

Security of Licensed Area

- 6.17 The Licensee must securely lock all doors, gates or other openings in, to or on the Licensed Area when the Licensed Area is unoccupied.
- 6.18 The Shire may enter the Licensed Area at any time for any purpose in relation to security, but nothing in this clause makes the Shire responsible in any way for the security of the Licensed Area.

Public Events

- 6.19 The Licensee must not hold any public event at the Licensed Area except with the prior written consent of the Shire and the Minister (where relevant).

Annual General Meeting

- 6.20 On the Commencement Date of this Licence, and at the commencement of any new Term of this Licence, if the Licensee is a community or sports organisation, the Licensee must provide the Shire with a copy of the minutes of each Annual General Meeting, an end of year financial statement report, and also provide updated contact details for each of the persons holding the positions of President, Vice President, Secretary and Treasurer in the community or sports organisation.

Toilets

- 6.21 The toilets, sinks and drains shall be used for their designed purposes only and the Licensee must keep them clear and unobstructed and ensure no substance is deposited into them which could damage or block them.
- 6.22 If toilets are comprised within the Licensed Area, the Licensee must ensure that the toilet facility is kept clean and tidy for the duration of the hire period. Any issues with appropriate toiletries and sanitary bins should be advised to the SDWK as soon as practicable by email SDWK@sdwk.wa.gov.au.

7 Licensee to pay for utilities and services**Utilities and services separately assessed**

- 7.1 In accordance with the proportions outlined in Schedule 2 (Special Conditions) the Licensee must pay to the Shire within 30 days of issue of a tax invoice or, if demand is made by a service provider, the service provider all charges for water, gas, electricity, telephones and other utilities or services, including line charges and the cost of installation of any meter, wiring or other device necessitated by the use of a utility and service or rubbish collection charges which are separately charged or assessed in respect of the Licensed Area or the Licensee.

Utilities and services not separately assessed

- 7.2 In accordance with the proportions outlined in Schedule 2 (Special Conditions) where any charges for water, gas, electricity, telephones and other utilities or services, including line charges and the cost of installation of any meter, wiring or other device necessitated by the use of a utility and service or rubbish collection charges are not separately charged or assessed in respect of the Licensed Area or the Licensee then, the Licensee must pay to the Shire within 30 days of issue of a tax invoice such fair

proportion of those utilities and services as determined by the Shire (acting reasonably).

8 Comply with Laws

- 8.1 The Licensee must promptly observe and comply in all respects with all Laws, Requirements and rules relating to the Land and the Community Facility and the Licensee's use of it.

9 Risk

- 9.1 The Licensee agrees to occupy and use the Licensed Area at the Licensee's sole risk.

10 Insurance

Public Risk insurance

- 10.1 The Licensee must during the Term, effect and maintain adequate public risk insurance cover applicable to the Licensee's use of the Licensed Area for at least \$20,000,000 (being the amount which may be paid out arising from any single accident or event) or any increased amount that the Shire may from time to time require.
- 10.2 The Licensee must supply the Shire with a certificate of currency from the insurer on request.

Licensee's Obligation to effect other insurances

- 10.3 In addition to public risk insurance, the Shire may at any time require the Licensee by notice in writing to effect and maintain other policies of insurance relating to the Licensed Area and the Licensee's fixtures or contents or otherwise as reasonably required by the Shire from time to time, including policies of insurance for:
 - 10.3.1 employers' indemnity insurance including workers' compensation insurance in respect of all employees and volunteers of the Licensee employed in or about the Licensed Area; and
 - 10.3.2 any other matter or thing which the Shire reasonably requires by notice to the Licensee.
- 10.4 If the Shire has issued a written notice to the Licensee to effect other insurance under clause 10.3, the Licensee must:
 - 10.4.1 supply to the Shire the current details of all insurance effected in accordance with this clause, including copies of certificates of insurance or policy documents and receipts for premiums as updated, amended or varied from time to time;
 - 10.4.2 not without the Shire's prior consent, alter the terms or conditions of any policy; and

- 10.4.3 ensure that each policy of insurance includes a provision for cross liability and waiver of subrogation rights in favour of the Shire.

Licensee not to invalidate insurance

- 10.5 The Licensee must not by any act or omission cause or allow anything to be done which might result in any insurance policy effected under this Licence or in respect of the Licensed Area and the Licensee's fixtures becoming void or voidable or which might increase the premium on any policy.

11 Limit of Shire's liability

No warranties or representations

- 11.1 The Licensee acknowledges and agrees that:

- 11.1.1 all the Licensee's fixtures and other Licensee's property in or on the Licensed Area shall be at the sole risk of the Licensee during the Term and the Shire shall not be liable for any claim, loss or damage that the Licensee may suffer as a result of:

- (i) any fault in the construction or state of repair of the Licensed Area, the Licensee's fixtures or the Shire's fixtures;
- (ii) any defect in any of the Plant and Equipment;
- (iii) any flow, overflow, leakage or breakdown of any water, air-conditioning, gas, power or other source of energy whether from the Licensed Area or otherwise;

- 11.1.2 the Licensee has not relied on any representation or warranty of the Shire in entering into this Licence and, for this purpose, the Licensee acknowledges that:

- (i) the Licensee has relied on the Licensee's own skill and judgment and has made the Licensee's own enquiries in determining the suitability of the Licensed Area for the Authorised Use; and
- (ii) the Licensee's occupation of the Licensed Area is conclusive evidence of the Licensee's acceptance of the Licensed Area as being in good order, repair and condition at the Commencement Date.

Shire Not Liable

- 11.2 The Shire is not liable to the Licensee and the Licensee will not make a claim against the Shire in respect of any liability resulting from any accident, death, injury, damage to any property (including water damage), equipment, or machinery malfunction, interruption of services, theft or other event of a similar nature in or affecting or the Licensed Area.

Licensee acts at own risk

- 11.3 Unless this Licence provides otherwise, whenever the Licensee is obligated or required by this Licence to do or omit to do any act or thing, the doing or the omission of the act or thing will be at the sole risk and expense of the Licensee.

12 Indemnity and release

General indemnity

- 12.1 The Licensee indemnifies, and shall keep indemnified the Shire and the Minister against all actions, losses, claims, damages, proceedings, suits, demands, costs and expenses for which the Shire or the Minister become liable in respect of loss or damage to property or death or injury of any nature and however or wherever sustained:
- 12.1.1 which are caused or contributed to by the use or occupancy of the Licensed Area by the Licensee or any Authorised Persons;
 - 12.1.2 resulting from an act or omission of the Licensee; or
 - 12.1.3 resulting from a notice, claim or demand against the Licensee to do or refrain from doing anything except to the extent that the Shire is obliged by this Licence to pay for or contribute to the cost of compliance with the notice, claim or demand and fails to do so.

Nature of indemnity

- 12.2 The obligation of the Licensee to indemnify the Shire and the Minister under this Licence or at law is not affected by the obligation of the Licensee to effect insurance and all indemnities shall survive the termination of this Licence.

13 Alterations by the Licensee

- 13.1 The Licensee must obtain the Shire's prior written approval (as distinct from any consent that the Licensee may require from the Shire as Relevant Authority) if the Licensee wishes to carry out any work not provided for in any plans previously approved by the Shire.
- 13.2 The Shire may in its absolute discretion decline consent, or may require a variation of this licence or require a new licence be entered into at the cost of the Licensee to record any such alteration.
- 13.3 For the avoidance of any doubt, the Licensee must obtain and comply with all necessary consents and will be responsible for all costs in carrying out any approved alterations and must comply with the Shire's reasonable directions in carrying out any work.

14 Assignment

- 14.1 The Licensee shall not transfer or assign or sub-licence its rights under this Licence except with the prior written consent of the Shire and the Minister (where relevant), which may be withheld at the absolute discretion of the Shire or the Minister.

15 Costs**Costs**

- 15.1 The Licensee must pay or reimburse the Shire on demand for all the Shire's reasonable costs and expenses (including the Shire's legal and consultancy costs and expenses) in relation to:
- 15.1.1 the preparation, execution, negotiation, and stamping of this Licence;
 - 15.1.2 the exercise or enforcement by the Shire of any right under this Licence;
 - 15.1.3 any act or omission by the Licensee causing cost or expense to the Shire; and
 - 15.1.4 obtaining or giving any consent or approval under this Licence, or a variation or surrender of this Licence.

Duty and other costs

- 15.2 The Licensee must pay or reimburse the Shire on demand for all duty, taxes, levies, charges and fees, and fines and penalties in respect of any of them, which may be payable in connection with this Licence.

Interest on other moneys

- 15.3 If any monies payable by the Licensee remain unpaid for 30 days after their due date then the Licensee shall pay to the Shire interest on those payments at the Default Interest Rate calculated from their due date to the date of payment and such interest shall be compounded monthly.

16 GST

- 16.1 The Licence Fee and other moneys payable under this Licence may have been calculated without regard to GST, and the Shire and the Licensee agree that the Shire shall be entitled to charge an additional amount if the Shire becomes subject to GST as a result of the grant of this Licence or any supply to the Licensee under or in connection with this Licence, and the following provisions shall apply.
- 16.2 The Licensee must do everything reasonably requested by the Shire to ensure this Licence is treated as taxable for the purposes of the GST, the Licensee must pay the GST to the Shire at the same time as the payment to which the GST relates, and the Licence Fee and other amounts payable under this Licence are exclusive of GST.
- 16.3 The Licensee must pay to the Shire on demand any GST charged on goods and services acquired or payable or paid by the Shire in connection with this Licence or the Licensed Area, including but not limited to any GST payable in connection with or in respect of the provision of any utilities and services and the Licence Fee;
- 16.4 Words used in this clause which have a defined meaning in the GST Law have the same meanings as in the GST Law unless the context indicates otherwise.

17 Shire's covenants

Shire's responsibility for repairs and maintenance

- 17.1 The Shire must keep and maintain the building, all building services and the Shire's improvements on the Land in good order and condition but the Shire shall not be liable or responsible for any:
 - 17.1.1 repair or maintenance of any alterations carried out by the Licensee in accordance with clause 13;
 - 17.1.2 repair or maintenance which the Licensee is responsible for under the terms of this Licence; or
 - 17.1.3 repair or maintenance that is not reasonably necessary for the Licensee's use of the Licensed Area as determined by the Shire (acting reasonably).
- 17.2 Unless otherwise provided in this Licence, the Shire is responsible for organising and paying for annual pest control inspections, servicing of fire extinguishers, exit lights, security lights, fire hydrants, air conditioners (not owned by the Licensee) and recertification of any fall arrest systems located in the Community Facility.

Shire's Right of Access

- 17.3 The Shire and the Shire's employees and contractors may at all reasonable times (and at any time in the case of an emergency) enter the Licensed Area with all necessary equipment to carry out repairs, maintenance or improvements to the Licensed Area (or adjacent areas), including to:
 - 17.3.1 carry out any repairs or maintenance to the building or building services on the Land that is not the Licensee's responsibility under the terms of this Licence;
 - 17.3.2 construct new structures on the Licensed Area;
 - 17.3.3 alter, add to, extend, reduce the size of, or otherwise modify, existing structures on the Licensed Area; or
 - 17.3.4 carry out any other works that the Shire considers necessary.

Shire's right to remedy default

- 17.4 The Shire may, if the Licensee is in default of any repair notice given by the Shire under this Licence or, if any repairs that the Licensee is responsible for under this Licence are required to be undertaken as a matter of urgency then, without prejudice to the Shire's rights under this Licence, the Shire and the Shire's employees and contractors with all necessary equipment at all reasonable times may enter the Licensed Area to carry out such works and the costs of carrying out such works shall be payable by the Licensee to the Shire on demand.

Shire's right to deal with Land

- 17.5 The Shire may grant easements of support or any other easements or similar rights over any part of the Land or the Licensed Area or dedicate, transfer or otherwise deal

with any part of the Land or the Licensed Area in favour of another person for any reason whatsoever.

No undue interference

- 17.6 In exercising the Shire's rights in clause 17.3 to clause 17.5 (inclusive), the Shire must use its reasonable endeavours not to cause any undue interference with the Authorised Use but in no event will the Shire be responsible for any compensation or liable for any loss suffered by the Licensee.

18 Events of Default

Default

- 18.1 An event of default occurs if:
- 18.1.1 the Licence Fee is at any time unpaid for 30 days after becoming due whether formally demanded or not;
 - 18.1.2 the Licensee fails to comply with any of its other obligations under this Licence and that failure is not, in the reasonable opinion of the Shire, remediable;
 - 18.1.3 the failure described in clause 18.1.2 is remediable, and the Licensee does not remedy the failure within 30 days, or a longer period reasonably determined by the Shire after receipt by the Licensee of a notice from the Shire specifying the failure;
 - 18.1.4 in the event of insolvency, receivership, bankruptcy or liquidation of the Licensee; or
 - 18.1.5 if the Licensee makes or enters into or endeavour to make or enter into any composition assignment or other arrangement with or for the benefit of the Licensee's creditors.

Shire's right to terminate

- 18.2 If an event of default occurs, the Shire may terminate this Licence by written notice to the Licensee.

Other rights of Shire

- 18.3 Any action taken by the Shire under clause 17 is without prejudice to any other rights of the Shire and does not release the Licensee from liability under this Licence.

19 Termination

Licensed Area

- 19.1 At the end or earlier termination of this Licence, the Licensee must ensure that the Licensed Area is in a condition consistent with the compliance of the Licensee's obligations during the Term and deliver to the Shire all keys, access cards and other security devices for the Licensed Area.

Removal of Licensee's fixtures, fittings and chattels

- 19.2 At the end or earlier termination of this Licence, the Licensee must remove all the Licensee's chattels and, if required by the Shire, any fixture, fitting or structure erected by the Licensee during the Term, and make good at the Licensee's cost any resulting damage and if not removed within five business days or a longer period as reasonably determined by the Shire after the date of termination, ownership of those chattels, fixtures, fittings and structures may at the Shire's election pass to the Shire or the Shire may in a proper and workmanlike manner remove them from the Licensed Area and either store them or forward them to a refuse collection centre.
- 19.3 The cost of making good the resulting damage and the cost of removal, storage and disposal shall be recoverable from the Licensee as a debt due on demand and the Shire shall not be responsible for any compensation or liable for any loss suffered by the Licensee.

Survival

- 19.4 The covenants contained in this Licence which expressly or impliedly survive termination shall remain in full force and effect after the termination of this Licence without limit in time and shall not be or be deemed to be waived, merged or extinguished upon such termination.

20 Disputes**Mediation**

- 20.1 If a dispute arises in relation to this Licence, either Party may give the other a notice requiring that an attempt be made to resolve the dispute with the help of a mediator to be appointed jointly by the Parties.
- 20.2 If the Parties do not agree on a mediator within seven days after the notice is given, either Party is entitled to ask the Australian Commercial Disputes Centre (ACDC) or such other body that has similar powers at the time of the dispute to appoint the mediator.
- 20.3 The mediation is to be conducted in accordance with the procedure set out in the ACDC Commercial Mediation Agreement or, if at the relevant time there is no such agreement or an agreement substituted for it, in accordance with the procedure determined by the mediator in consultation with the Parties. Each of the Parties must co-operate fully with the mediator.
- 20.4 The Parties must each pay an equal share of the fees and expenses to which the mediator is entitled.

Arbitration

- 20.5 If the dispute has not been resolved by mediation under clause 20.3 within two months of a party requiring mediation, either Party may give the other Party a notice requiring that a dispute be resolved by arbitration under the *Commercial Arbitration Act 2012* (WA) by an arbitrator appointed jointly by the Parties.

- 20.6 If the Parties do not agree on an arbitrator within seven days after the notice of arbitration is given, either Party is entitled to ask the ACDC or such other body that has similar powers at the time of the dispute to appoint the arbitrator.
- 20.7 The arbitration must be conducted in accordance with the *Commercial Arbitration Act 2012* (WA). Each of the Parties must co-operate fully with the arbitrator.
- 20.8 Either Party is entitled to appeal to the Court of competent jurisdiction on any question of law arising out of an award.

Right to seek injunctions

- 20.9 For the avoidance of any doubt, nothing in this clause 20 shall be construed as limiting the rights of either Party to seek urgent injunctive orders from a Court of competent jurisdiction to restrain the other Party from an ongoing or repetitive breach of this Licence where an order for damages would not be an adequate remedy.

21 Holding Over

- 21.1 If the Licensee continues to use the Licensed Area after the expiry of the Term with the consent of the Shire, the Licensee will be a monthly licensee of the Shire at the same rate as the then Licence Fee payable by the Licensee immediately prior to expiry of the Term.

22 Notices**Giving notices**

- 22.1 Any notice or communication given to a Party under this Licence is only given if it is in writing and sent in one of the following ways:
- 22.1.1 Delivered or posted to that Party at its address and marked for the attention of the relevant department or officer (if any) set out below.
- 22.1.2 Emailed to that Party at its email address and marked for the attention of the relevant department or officer (if any) set out below.

The Shire

Name: Shire of Derby/West Kimberley
Address: Post Office Box 94
Derby, WA 6728
Email: SDWK@sdwk.wa.gov.au
Attention: Team Leader Aquatics and Recreation

The Licensee

Name: Derby Amateur Swimming Club
Address: PO Box 1219, Derby WA 6728
Email: derbysharksswimming@gmail.com
Attention: President

Change of physical or email address

- 22.2 If a Party gives the other Party three business days' notice of a change of its address or email address, any notice or communication is only given by that other Party if it is delivered, posted or emailed to the latest address.

Time notice is given

- 22.3 Any notice or communication is to be treated as given at the following time:
- 22.3.1 If it is delivered, when it is left at the relevant address; or
 - 22.3.2 If it is sent by post, five business days after it is posted; or
 - 22.3.3 If it is sent by email, as soon as the sender receives from the sender's email address, a report of an error free transmission to the correct email address.
- 22.4 However, if any notice or communication is given, on a day that is not a business day or after 5pm on a business day, in the place of the Party to whom it is sent it is to be treated as having been given at the beginning of the next business day.

Copies of notices etc

- 22.5 If a Party is required by any term of this Licence to give a copy of any notice or communication to a person, the failure to give the copy of it to the person may not be raised to rebut that it was effectively given.

23 Special Conditions

- 23.1 The Parties acknowledge and agree that the Special Conditions (as provided in Schedule 2) form part of this Licence.
- 23.2 In the event that the Special Conditions are inconsistent with the terms of the Licence, then the Special Conditions shall prevail to the extent of such inconsistency.

24 Discretion of the Shire in its capacity as a Relevant Authority

- 24.1 Nothing in this Licence shall fetter or be construed as an attempt to fetter the discretion or the powers of the Shire in its capacity as a Relevant Authority under any Written Law and in particular does not fetter the Shire in its capacity as a Relevant Authority with regard to the approval or imposition of conditions on any approval required for the development of the Land or carrying out of any alterations, additions or improvements on the Licensed Area in accordance with the terms of this Licence.

25 Miscellaneous**Approvals and consents**

- 25.1 Unless this Licence expressly provides otherwise, a Party may give or withhold an approval or consent in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding a consent or approval or for giving a consent or approval subject to conditions.
- 25.2 Where this Licence refers to a matter being to the 'satisfaction' of a Party, this means to the satisfaction of that Party in its absolute discretion.

Entire agreement

- 25.3 This Licence contains everything the Parties have agreed in relation to the subject matter it deals with. No Party can rely on an earlier written document or anything said or done by or on behalf of another Party before this Licence was executed.

Further acts

- 25.4 Each party must at its own expense promptly execute all documents and do or use reasonable endeavours to cause a third party to do all things that another Party from time to time may reasonably request in order to give effect to, perfect or complete this Licence and all transactions incidental to it.

Governing law and jurisdiction

- 25.5 This Licence is governed by the law of Western Australia. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

Joint and individual liability and benefits

- 25.6 Except as otherwise set out in this Licence, any agreement, covenant, representation or warranty under this Licence by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

Severability

- 25.7 Each provision of this Licence is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this Licence in the relevant jurisdiction, but the rest of this Licence will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

Counterparts

- 25.8 This Licence may be executed in any number of counterparts each of which is an original and all of which constitute one and the same agreement.

Variation

- 25.9 No variation of this Licence will be of any force or effect unless it is in writing and signed by each Party to this Licence.

Waivers

- 25.10 A waiver of any right, power or remedy under this Licence must be in writing signed by the Party granting it. A waiver is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 25.11 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Licence does not amount to a waiver.

Execution and date

Executed as an agreement.

Date:

Signature of Chief Executive Officer

Print Name of Chief Executive Officer

Date:

Signature of President

Print Name of President

Schedule 1 - Items**Item 1** **Community Facility**

Derby Memorial Swimming Pool,

Corner Clarendon and Johnson Street, Derby WA 6728

Item 2 **Land**

A portion of Reserve 6929 comprised in Lot 500 on Loch Street.

Item 3 **Licensed Area**

The Licensee has access to lane at the Derby Memorial Swimming Pool in accordance with the following Schedule;

Date Range	Provision
30 September 2023 – 31 May 2024 (Except School Holidays)	Provision of 4 lanes each Tuesday and Thursday (3:30pm-5:30pm) Provision of 2 lanes each Wednesday (6:00am- 7:00am)
30 September 2023 – 30 September 2024	Friday club race nights with a total of 9 events over the term of the User Agreement. Bookings completed in advanced with Derby Memorial Pool Staff.
1 June 2024- 1 Aug2024	Provision of 3 lanes once a week for 2 x 1-hour sessions if required based on needs and will be invoiced separately to User agreement. (Times and dates to be negotiated with staff)
1 August 2024 – 30 September 2024	Provision of 4 lanes each Tuesday and Thursday (3:30pm-5:30pm) Provision of 2 lanes each Wednesday (6:00am- 7:00am)

Item 4 **Licence Fee**

The Licence Fee is \$1,450.00 per annum including GST.

Item 5 **Review Date**

On each date that the adopted fees for licensing of Shire assets (facilities, buildings and land) in Policy ES5 is reviewed during the Term of this Licence and any holding over period.

Item 6 **Commencement Date**

30 September 2023

Item 7 **Term**

Twelve months

Item 8 **End Date**

29 September 2024

Item 9

Authorised Use

Swimming training and race / competition nights.

Schedule 2 – Special Conditions**Special Conditions are set out below****A Conditions Precedent**

Nil

B Utilities and Services

The Licensee must pay the cost of the utilities and services as set out in the table below. For the avoidance of any doubt, if there are any inconsistencies between clause 7 of this Licence and the table set out below, the Parties agree that the table will prevail.

Utility or service	Amount payable by Licensee
WA State Government Land Tax	0%
WA State Government DFES Levy	0%
Water Corporation – Annual Water/Sewerage Rates Charge (or appropriate similar charge if Shire supplied service)	0%
Water Corporation - Water Consumption Charges (or appropriate similar charge if Shire supplied service)	0%
Gas Charges (Annual Charge and Consumption)	0%
Electricity (Annual/Fixed Charges and Consumption)	0%
Telephones (Annual/Fixed Charges and Consumption)	0%
Cost of installation of any meter, wiring or other device necessitated by the use of a utility and service	0%
Cost of annual pest control inspections, servicing of fire extinguishers, exit lights, security lights, fire hydrants, air conditioners (not owned by the Lessee) and recertification of any fall arrest systems in place	0%

Shire of Derby/West Kimberley's Annual Local Government Rates	0%
Cost of rubbish collection including emptying wheelie bins and 1100 bins	0%
Cost of annual licences (e.g. food surveillance fee)	0%

C Other special conditions

- (a) All club members are required to have a current, valid pool membership or pool pass with the Derby Memorial Swimming Pool for the duration of their participation in the Derby Amateur Swimming Club. Where a current membership or pool pass is not held standard pool entry fees apply.
- (b) The user is permitted to store approved club equipment in a contained storage space. The user is to store items at their own risk and will store items in such a manner as not to impede other users of the facility or the operational standards set out by Shire Derby West/Kimberley. Storage will be of an agreed size requirement and must have the ability to be moved without added risk to Shire Derby West/Kimberley personnel and other equipment or building requirements.

15.2 CHANGE TO SERVICE DELIVERY MODEL OF FITZROY CROSSING PUBLIC LIBRARY**File Number:** CS/035/6**Author:** Christie Mildenhall, Acting Director of Community Services**Responsible Officer:** Amanda Dexter, Chief Executive Officer**Authority/Discretion:** Executive**SUMMARY**

Due to the flood recovery response the Fitzroy Crossing Public Library service has been downgraded to facilitate the 'Flood Hub'. This report is to seek Council endorsement for the continuation of this closure for the duration of the recovery period.

DISCLOSURE OF ANY INTEREST

Nil by Author or Authoriser.

BACKGROUND

The Fitzroy Crossing Public Library operates from one half of the Fitzroy Crossing Visitors Centre. Dependant on staffing the library is open during the following hours;

- Monday - 1.30pm to 4.30pm
- Tuesday - 8.30am to 12pm
- Wednesday - 8.30am to 12pm
- Friday – 1.30pm to 4.30pm.
- Closed – Thursday, weekends and public holidays.

The library is managed by the Coordinator Library and Heritage Services. Officers from the Fitzroy Crossing Visitors Centre operate the library during open hours.

Library membership is open to all Shire of Derby/West Kimberley residents. Visitors are also able to access membership, although have differing membership requirements. Members are able to loan books, DVDs and other physical resources. Members also have access to online resources, such as audio books, eBooks, e-Magazines, on-demand videos and early years activities.

The library does not currently offer any programs or activities, such as Story Time or Rhyme Time.

STATUTORY ENVIRONMENT

Library services are delivered under the *Library Board of Western Australia Act 1951* (the Act), which was enacted to facilitate the establishment of a free public library network in Western Australia. There are currently three sets of regulations under this Act, the most relevant to this report being the *Library Board (Registered Public Libraries) Regulations 1985* (the Regulations). These regulations outline minimum operating requirements of public libraries.

While not a legislative requirement, public library services throughout Australia are delivered in line with the *Standards and Guidelines for Australian Public Libraries May 2021* (the Standards) which were developed by the Australian Library and Information Association (ALIA). The Standards provide an evidence-based framework which acknowledges the evolving role of public libraries and provides direction in the planning, design and development of library services.

POLICY IMPLICATIONS

There are no policies which directly impact this report, however consideration may be given to the Library Collection Development Guidelines, which Council endorsed. These guidelines outline the curation of the Library Collection, including the disposal of excess stock.

FINANCIAL IMPLICATIONS

The temporary closure being recommended in this report is unlikely to have cost savings for the Shire, nor will it cost the Shire anything additional. Operations costs in terms of the physical building will still remain regardless of the use. The library in Fitzroy Crossing is generally staffed by one of the Customer Service team, with the support of officers based from the Derby Library. Most of the library materials are provided by the State Library through the Public Library Service Tier Model. A number of the resources funded by the Shire are shared between the Derby and Fitzroy Crossing libraries, therefore will still exist. The income generated through the library is also minimal and will have limited financial implications.

STRATEGIC IMPLICATIONS

GOAL	OUR PRIORITIES	WE WILL
1. Leadership and Governance	1.2 Capable, inclusive and effective organisation	1.2.4 Attract and effectively use resources to meet community needs
2. Community	2.2 Healthy Communities	2.2.3 Provide access to a range of places and spaces where people can meet, recreate, socialise, learn and connect

RISK MANAGEMENT CONSIDERATIONS

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Business Interruption: Lack of a 'Flood Hub' style location will impact the ability of the Shire to effectively perform flood recovery functions.	Almost Certain	Major	Extreme	Utilise the library space as the Flood Hub.
Business Interruption: Use of the Library as a 'Flood Hub' will reduce the library services offered by the Shire.	Almost Certain	Insignificant	Medium	Ensure service available are well communicated to the community. Maintain revised level of service including, some resources in the Visitors Centre, inter library loans (Derby) and online resources.

Community: Lack of a dedicated library space may result in less awareness of library resources.	Likely	Minor	Medium	Maintains availability of resources through the Visitors' Centre, inter library loans (Derby) and online.
Community: Lack of a 'Flood Hub' style location risks effective communications with the community on the recovery efforts.	Likely	Major	High	Utilise the library space as the Flood Hub.

CONSULTATION

The identified need for a one-stop shop for the flood recovery was identified during the flooding event. It needed to be implemented quickly. Whilst a formal consultation process was not undertaken due to the emergency situation Shire officers consulted widely within the community, including residents, community organisations, Aboriginal Community Controlled Organisations and State Government departments. It was determined that the library was the best and most appropriate location for the Flood Hub to be located.

COMMENT

Following the January 2023 flooding event in Fitzroy Crossing it was determined that a 'one stop shop' was required to provide flood affected residents in Fitzroy Crossing and surrounding communities with assistance and information in the recovery process. Work spaces were also required to accommodate staff of other agencies assisting in the recovery process but did not have existing office space in Fitzroy Crossing.

Due to a lack of suitable locations it was determined that the Fitzroy Crossing Library was the most appropriate location for this. At the conclusion of the 2022/23 financial year the Fitzroy Crossing Library had 21 active members and 234 inactive members. An active member is regarded as someone who has borrowed a resource in the past 12 months. In considering the low number of regular usage compared to the on-going impact and recovery of the flood it was felt that the cost-benefit analysis fell in favour of using the library facility as the Flood Hub (the Hub).

The agencies based out of the Hub are engaging community members on a daily basis, providing a central location where services can be easily accessed. The Hub is a dynamic environment which focusses on supporting the community in different ways as the recovery progresses. The Department of Fire and Emergency, Department of Communities and the Shire of Derby / West Kimberley have had a constant presence in the Hub, assisting with housing needs, donations, accessing grants, accommodating bookings for the barge services and providing general information. It has also hosted 'pop-up' style visits by agencies, such as Legal Aid, National Disability Insurance Scheme, Department of Justice, among others as the need arises. The Hub also hosts the Fitzroy Crossing Flood Recovery Executive Officer. It is anticipated that the Flood Hub will remain a vital location in the recovery for the foreseeable future.

The Shire has been able to maintain a level of library services for those who do wish to utilise the resources. Two library shelves have been located in the Fitzroy Crossing Visitors Centre where members are able to view and borrow materials. These shelves largely house DVDs, which are the

most popularly borrowed item, along with new and popular books. The Shire also operates in Inter-Library loan system with the Derby Public Library (and occasionally the Broome Public Library). Members are able view the Shire's online catalogue and request to loan an item from the Derby Library where the bulk of the books have been relocated to. With staff constantly travelling between Derby and Fitzroy Crossing requested books can usually be delivered within a couple of days. All members also have access to a wide range of online resources, such as audio books, eBooks, e-Magazines, on-demand videos, early years activities.

VOTING REQUIREMENT

Simple majority

ATTACHMENTS

Nil

RECOMMENDATION

That Council:

- 1. Approves the temporary reduction in library services to accommodate the Fitzroy Crossing Flood Hub for the duration of the recovery;**
- 2. Notes that library services will return to normal operations at the completion of the flood recovery; and**
- 3. Instructs the Chief Executive Officer to write to the Board of the State Library Western Australia to advise of the temporary change in service delivery model.**

15.3 REQUEST FOR FINANCIAL SUPPORT - DERBY MEDIA ABORIGINAL CORPORATION**File Number:** GS/010/1**Author:** Paris Millar, Team Leader Community Development Derby**Responsible Officer:** Christie Mildenhall, Acting Director of Community Services**Authority/Discretion:** Executive**SUMMARY**

This report is for Council to consider a funding request from Derby Media Aboriginal Corporation for \$5,000 (ex GST) as a contribution towards the 6DBY 20th Year Anniversary Celebration: Community Fun Day.

DISCLOSURE OF ANY INTEREST

Nil by Author and Responsible Officer.

BACKGROUND

This year Derby Media Aboriginal Corporation will be celebrating the 20th year anniversary of 6DBY radio. To celebrate this, Derby Media Aboriginal Corporation are planning a Community Open Day at the 6DBY studio to show their appreciation for the community for their continued support. The event will be scheduled for September 2023 and will include the launch of newly renovated studio.

STATUTORY ENVIRONMENT

Part 6 – Financial Management of the *Local Government Act 1995* applies to this report in that each year Council allocates an annual budget to donate to community organisations through the Community Funding Scheme (6.2).

POLICY IMPLICATIONS

Requests for funding by community, not-for-profit organisations are dealt with under Shire Policy F19 – Community Funding Scheme and the Management Guidelines for the Community Development Grants Program. Where funding requests do not meet the funding guidelines requests can be presented to Council for consideration where they do not meet the funding programs guidelines. This project was deemed not eligible for the Community Grants Program as the activity covered in the funding request was not within the specified timeframe for the program open at the time of submitting their application.

FINANCIAL IMPLICATIONS

A budget of \$45,000 was allocated to the Community Grants Program in the 2023/24 financial year, with an additional \$30,000 allocated to events. To date none of the budget has been utilised. This request for funding of \$5,000 (ex GST) can therefore be allocated within the current financial year's budget.

STRATEGIC IMPLICATIONS

GOAL	OUR PRIORITIES	WE WILL
2. Community	2.1 Safe Communities	2.1.3 Provide activities, programs,

		places and spaces that engage young people
2. Community	2.2 Healthy Communities	2.2.1 Build, maintain and maximise the use of community facilities
2. Community	2.3 Vibrant and culturally rich communities	2.3.1 Support the growth and development of arts and cultural programs, services, places and spaces
2. Community	2.3 Vibrant and culturally rich communities	2.3.2 Facilitate and/ or contribute to community events, cultural activities and festivals
2. Community	2.4 Sustainable Communities	2.4.2 Collaborate with key agencies, groups and service providers to improve community services, programs and facilities

RISK MANAGEMENT CONSIDERATIONS

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Reputation: Public perception of Shire if contribution is denied.	Possible	Moderate	Medium	Council to provide contributions as requested.

CONSULTATION

Relevant Officer has been in direct consultation with the Manager of Derby Media Aboriginal Corporation regarding this funding request.

COMMENT

The 6DBY 20th Year Anniversary Community Open Day is a free event that will offer the community the chance to become engaged with the service and activities that 6DBY has to offer. Celebrating 20 years of the station the event will take place at the 6DBY Radio Station and will provide attendees the opportunity to participate in music workshops and live broadcasting experiences. This aims to attract people to the service and music/broadcasting industry, whilst also thanking the community for their support of the station. Derby Media Aboriginal Corporation will also be working closely with artist to provide them with the opportunity to perform at the event, to promote local talent and foster their professional development. The event, which will run from 10am to 8pm, will also be strictly promoted as a drug and alcohol-free event, as this will minimise general risks and ensure a safe environment for the community.

The event is estimated to cost \$15,500. This covers hire fees for equipment required for the event, first aid and security costs, catering, hosting fees, Welcome to country and the Mowanjum Dancers and Singers. Funding for the event has already been secured from Mount Gibson Iron Ore and First Nations Media, leaving a short fall of \$8,500. The Derby Media Aboriginal Corporation is requesting a contribution from the Shire of \$5,000. Additional in-kind donations have been

sourced from the Water Corporation, Derby Aboriginal Health Service and Winun Ngari Aboriginal Corporation Inc.

The event is in line with several of the identified actions within the Strategic Community Plan as outlined above and would ordinarily be appropriate for funding through the Community Funding Program.

Derby Media Aboriginal Corporation were successful in receiving \$5,000 (ex GST) during 2022/23 financial year through the Community Development Grants program. This funding was used to facilitate and deliver the Larrkardi Sounds Workshops and Showcase. All expenditures relating to this project have been acquitted and the application has now been closed.

VOTING REQUIREMENT

Absolute majority

ATTACHMENTS

1. **Request for Financial Support - Derby Media Aboriginal Corporation - Proposal** [↓](#) 

RECOMMENDATION

That Council:

1. **Approves a \$5,000 (ex GST) contribution to Derby Media Aboriginal Corporation to deliver the 6DBY 20th Year Anniversary Community Fun Day subject to;**
 - (a) **Relevant event approvals being obtained;**
 - (b) **Suitable promotional recognition of the Shire's contributions; and**
 - (c) **Submission of an acquittal at the conclusion of the event.**

Celebrating 20 Years of 6DBY: Community Fun Day Proposal

6DBY, Derby's own and only radio station, has been an essential part of our community for two decades, embracing a distinctly local feel and flavor. We take immense pride in actively participating in and supporting various community events. As we approach our 20th anniversary in September, we are excited to celebrate this momentous milestone with the entire community. To mark the occasion and express our gratitude, we are organizing a Drug and Alcohol free, Community Fun Day at 6DBY Radio Station, inviting everyone to partake in a day filled with family-oriented activities, live music, and cultural festivities.

The primary objective of the Community Fun Day is to commemorate our 20th anniversary and extend our heartfelt appreciation to the community for their unwavering support. Through this event, we aim to foster stronger connections between 6DBY and the people of Derby, reaffirming our station's position as an integral thread in the town's cultural fabric. The speeches and bands will also be broadcast live on 6DBY and streamed across the PAKAM network and the community Radio app.

Event Details:

- Date: 29.9.23
- Time: 2:00 Pm – 8Pm
- Venue: 6DBY Radio Station, Lot 2 Wodehouse Street, Derby, WA
-

Event Schedule:

1. **Morning Session (10:00 – 2:00 pm):** The day will begin with engaging activities tailored for the RSAS kids, encouraging active participation and enjoyment.
2. **Afternoon Session (2:00 PM - 4:00 PM):** We will host an open day, welcoming visitors to tour our recently upgraded studio, record station IDs, and even have the opportunity to greet our listeners on-air. During this session, our esteemed chairman will deliver a speech, and the talented Mary G will provide captivating entertainment. Special recognition and appreciation will be extended to our dedicated board members and volunteers, including a lifetime achievement award for Mr. Gordon Marshall, who has been a broadcasting and chairing stalwart for two decades. Additionally, we will present a posthumous award in honor of the late Mr. Cyril Archer, whose unwavering dedication ensured the station's continuity and success.
3. **Afternoon Break (4:00 PM - 5:00 PM):** A BBQ and refreshments will be provided.
4. **Evening Showcase (5:00 PM - 8:00 PM):** The day will culminate in a sensational musical extravaganza, featuring talented bands from across the West Kimberley, celebrating the region's rich musical heritage.

Budget and Funding:

To ensure the seamless execution of this momentous event while prioritizing safety and mitigating risks, we have meticulously crafted the following budget:

1. Chairs and Portable Toilets: \$1,200
2. Security: \$1,200
3. Sound Hire: \$1,500
4. Band Fees: \$3,000
5. Catering (Opening Ceremony): \$2,000
6. Mary G Hosting Fee: \$900
7. First Aid Officer and Security Guard: Covered through the budget allocation for security and event management.
8. Mowanjum Dancers and Singers, Welcome to Country: \$3,000
9. Miscellaneous Expenses: \$700 (Estimated costs for event-related logistics)

Total Estimated Cost: \$15,500

Donations:

We are thankful for the generous contributions from the following organizations:

1. Water Corp Bottled Water: In-kind donation, providing bottled water to keep attendees hydrated throughout the event.
2. DAHS (Derby Aboriginal Health Service) BBQ: In-kind donation, providing a BBQ for the concert part of the night.
3. Winun Ngari Activities for RSAS Kids: In-kind donation, offering engaging activities for the RSAS kids in the morning.

Secured Funding:

We have successfully secured funding from the following entities:

1. Mt. Gibson: \$5,000
2. First Nations Media: \$2,000

Request for Support:

To bridge the remaining funding gap of \$8,500 and ensure the resounding success of this alcohol and drug-free event, we kindly request additional financial support amounting to \$5,000 from the Shire of Derby and West Kimberley. As part of our commitment to the community's well-being and safety, all appropriate event proposals will be promptly submitted to the Shire once funding is secured. The police will also be informed of the event to further promote a safe and enjoyable gathering.

We firmly believe that the Community Fun Day perfectly aligns with the Shire's dedication to nurturing arts, culture, and music in our region. By extending your support to this celebration, the Shire would significantly contribute to fostering community engagement, cultural appreciation, and the promotion of local artistic talent.

As we approach this momentous milestone in 6DBY's journey, we envision the Community Fun Day as an event that will bring our community together, celebrate our achievements, and fortify our bonds. With your support, we can make this celebration truly memorable and a testament to the strength of our community. We appreciate your consideration and eagerly anticipate the opportunity to collaborate on this memorable occasion.

15.4 DERBY TENNIS REQUEST FOR FEE WAIVER**File Number:** CP/095/8**Author:** Shane Edwards, Manager Community Development**Responsible Officer:** Christie Mildenhall, Acting Director of Community Services**Authority/Discretion:** Executive**SUMMARY**

This report is for Council to consider a request from Derby Tennis Club to waive fees for hire of the Derby Tennis Courts for an August/September coaching program.

DISCLOSURE OF ANY INTEREST

Nil by Author and Responsible Officer.

BACKGROUND

Derby Tennis Club previously ran a program in Derby a number of years ago. However, the organiser left town and the program ended as a result. Recently the Derby Tennis Club, who are currently unincorporated, engaged the services of Sun City Tennis Academy to attempt to reactivate the club through coaching sessions in the school holidays. Tennis coaches are provided from Broome for the programs. Uptake has been fair and the club believe that with Shire support they can achieve suitable numbers needed to reactivate the club. At present the fees charged only cover the coaches time and travel from Broome.

STATUTORY ENVIRONMENT

Part 6 – Financial Management of the *Local Government Act 1995* applies to this report in that 6.12(1)(b) grants Council the power to waive or grant concession in relation to any amount of money.

POLICY IMPLICATIONS

NIL

FINANCIAL IMPLICATIONS

Projected Shire income from the coaching sessions held each Sunday from 27 August to 17 September inclusive (4 sessions total).

Derby Court Hire Commercial and Government Use - per day - 6am to 6pm \$240 = \$960.00 (4 x full day hire). If Council waivers the entry fee there will be no financial income (\$0.00) from this event for the Shire.

STRATEGIC IMPLICATIONS

GOAL	OUR PRIORITIES	WE WILL
2. Community	2.1 Safe Communities	2.1.3 Provide activities, programs, places and spaces that engage young people

2. Community	2.2 Healthy Communities	2.2.1 Build, maintain and maximise the use of community facilities
2. Community	2.2 Healthy Communities	2.2.2 Facilitate a range of accessible sporting and recreational activities
2. Community	2.2 Healthy Communities	2.2.3 Provide access to a range of places and spaces where people can meet, recreate, socialise, learn and connect
2. Community	2.2 Healthy Communities	2.2.4 Conduct and/or promote healthy lifestyle initiatives and living standards
2. Community	2.4 Sustainable Communities	2.4.1 Support and assist volunteer, community and sporting groups

RISK MANAGEMENT CONSIDERATIONS

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Reputation: Public perception around supporting the establishment of sporting clubs within the Shire.	Likely	Minor	Low	Through community engagement, ensure it is clear that it is a one-off support to assist in the establishment of the club.

CONSULTATION

Multiple conversations have been had with Derby Tennis and Sun City Tennis Academy representatives. It has been identified that the initial reactivation of the club and attendance at programs has been costly and the club approached the Shire about the possibility of a fee waiver for the upcoming August/September coaching program. There was also discussion about the Shire assisting with the marketing and promotion of both the club and coaching sessions. Sun City Tennis Academy have offered to co-brand their marketing material with the Shire. Consultation has identified a fee waiver as a way of assisting the club to get established at which point they will be more financial and, in a position, to make hire charge payments.

A request was also made from an independent community member for the Shire to provide assistance to get the program running.

COMMENT

The waiver of hire fees, whilst having an impact on Shire income would assist a local club that was once active to reactivate and build a club membership base. By building this base it will allow the club to become operational again, move towards incorporation and be able to pay hire fees and user agreement fees for Shire facilities.

The Shire will also assist with the marketing and promotion of coaching sessions to attract larger numbers of participants. The Shire will also look to support the club through the community capacity building program we are operating which is funded by the Department of Local

Government, Sports and Cultural Industries which is aimed at building the capacity of sporting organisations within the Shire to deliver community-based sporting organisations.

VOTING REQUIREMENT

Simple majority

ATTACHMENTS

1. **Derby Tennis Coaching Sessions Flyer** [↓](#) 

RECOMMENDATION

That Council:

1. **Approves the waiver of the facility hire fees of \$960 for Derby Tennis Club and Sun City Tennis Academy in relation to their upcoming tennis coaching sessions to be held on every Sunday from 27 August 2023 to 17 September 2023 (inclusive).**

REMOTE TENNIS SERVICES AUS.

WA's Leading Regional High Performance Tennis Academy & the Pilbara's Highest Qualified Coaching Team!

Term 3 2023 Coaching Schedule

Derby Tennis Club

4 week Program

Sunday August 27th - Sunday September 17th



3-5yrs Red Ball 30mins \$12.10 per session	5-8yrs Orange Ball 45mins \$14.30 per session	8-12yrs Green Ball 60mins \$17.60 per session	Teens Tennis Yellow Ball 60mins \$17.60 per session	Adult Sessions \$17.60 per session
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Sunday 3:00-3:30pm 3:30-4:15pm 4:15-5:15pm 5:15-6:15pm 6:15-7:15pm

**Players may be encouraged to consider different sessions that the Coach may suggest for a better fit.*

**Extra sessions may be added to accommodate large groups or extra bookings.*

Private sessions are available & scheduled around this timetable - Bookings are essential.

30mins \$44.00 60mins \$77.00

***All Bookings are Invoiced for the Term Block**

For all bookings & enquiries:

Subject: Derby Tennis Coaching

tennis@suncitytennisacademy.com.au

kimberley@suncitytennisacademy.com.au

Contact Details:

- Vinny (Coach): 0448 599 570

- Jarron (Director): 0409 485 117

- Maranda (Accounts): 0448 772 464

accounts@suncitytennisacademy.com.au

Facebook:

<https://www.facebook.com/tennisderby>

<https://www.facebook.com/suncitytennis>

When Booking in Please Provide:

- Participants Name & Age
- Preferred Session type
- Guardians Name, email & mobile number
- Any Medical information we may need to be aware of
- YES or NO Photo/Video Consent



**COME
AND TRY
TENNIS**

16 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

17 NEW BUSINESS OF AN URGENT NATURE

18 MATTERS FOR WHICH THE MEETING MAY BE CLOSED (CONFIDENTIAL MATTERS)

RECOMMENDATION

That Council considers the confidential report(s) listed below in a meeting closed to the public in accordance with Section 5.23(2) of the Local Government Act 1995:

18.1 Option to Purchase Property - Fitzroy Crossing

This matter is considered to be confidential under Section 5.23(2) - e(ii) and e(iii) of the Local Government Act, and the Council is satisfied that discussion of this matter in an open meeting would, on balance, be contrary to the public interest as it deals with a matter that if disclosed, would reveal information that has a commercial value to a person, where the information is held by, or is about, a person other than the local government and a matter that if disclosed, would reveal information about the business, professional, commercial or financial affairs of a person, where the information is held by, or is about, a person other than the local government.

19 CLOSURE

19.1 Date of Next Meeting

The next ordinary meeting of Council will be held Thursday, 28 September 2023 in the Fitzroy Crossing.

19.2 Closure of Meeting