



# SHIRE OF JERRAMUNGUP

## NOTICE OF COUNCIL MEETING

**To the President and Councillors,**

Please be advised that an Ordinary Meeting of the Council of the Shire of Jerramungup is to be held on

Wednesday, 27 September 2023

At the Council Chamber,

Jerramungup

Commencing at 2:00pm

### **Council Meeting Procedures**

1. All Council meetings are open to the public, except for matters raised by Council under “confidential items”.
2. Members of the public may ask a question at an ordinary Council meeting under “public question time”.
3. Members of the public who are unfamiliar with meeting procedures are invited to seek advice at the meeting. If unsure about proceeding, just raise your hand when the presiding member announces public question time.
4. All other arrangements are in accordance with the Council’s Code of Conduct, policies and decisions of the Shire.

Martin Cuthbert  
**CHIEF EXECUTIVE OFFICER**

21 September 2023

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## **OUR GUIDING VALUES**

Progressive, Prosperous and a Premium Place to Live and Visit

### **DISCLAIMER**

No responsibility whatsoever is implied or accepted by the Shire of Jerramungup (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 Jerramungup 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 Executive Assistant 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.”*

Regulation 34C (Impartiality) states;

*“interest means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association.”*

## 2023 MEETING DATES

At its Ordinary Meeting of Council on 26 October 2022, Council adopted the following meeting dates for 2023:

January	-	-	Council in Recess
Wednesday	22 February 2023	10.00am	Council Chambers, Jerramungup
Wednesday	22 March 2023	10.00am	Council Chambers, Jerramungup
Wednesday	26 April 2023	10.00am	Emergency Services Shed, Bremer Bay
Wednesday	24 May 2023	10.00am	Council Chambers, Jerramungup
Wednesday	28 June 2023	10.00am	Council Chambers, Jerramungup
Wednesday	26 July 2023	10.00am	Council Chambers, Jerramungup
Wednesday	23 August 2023	10.00am	Emergency Services Shed, Bremer Bay
Wednesday	27 September 2023	10.00am	Council Chambers, Jerramungup
Wednesday	25 October 2023	10.00am	Council Chambers, Jerramungup
Wednesday	22 November 2023	8.30am	Council Chambers, Jerramungup
Wednesday	20 December 2023	8.30am	Emergency Services Shed, Bremer Bay

Council's Audit 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.

## Shire of Jerramungup

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## **ORDINARY COUNCIL MEETING AGENDA**

### **1.0 DECLARATION OF OPENING, ANNOUNCEMENT OF VISITORS**

The meeting was opened at .....am by the Shire President.

I would like to begin today by acknowledging the Goreng people who are the Traditional Custodians of the land on which we meet today, and the Shire of Jerramungup would like to pay their respect to their Elders both past and present.

### **2.0 RECORD OF ATTENDANCE**

#### **2.1 ATTENDANCE**

**ELECTED MEMBERS:**

**STAFF:**

**VISITORS:**

**GALLERY:**

#### **2.2 APOLOGIES**

#### **2.3 APPROVED LEAVE OF ABSENCE**

#### **2.4 ABSENT**

#### **2.5 DISCLOSURE OF INTERESTS**

Section 5.65 and 5.70 of the *Local Government Act 1995* requires an Elected Member or officer who has an interest in any matter to be discussed at a Committee/Council Meeting that will be attended by the Elected Member or officer must disclose the nature of the interest in a written notice given to the Chief Executive Officer before the meeting; or at the meeting before the matter is discussed.

An Elected Member who makes a disclosure under section 5.65 or 5.70 must not preside at the part of the meeting relating to the matter; or participate in; or be present during, any discussion or decision making procedure relating to the matter, unless allowed by the Committee/Council. If Committee/Council allow an Elected Member to speak, the extent of the interest must also be stated.

**2.5.1 DECLARATIONS OF FINANCIAL INTERESTS****2.5.2 DECLARATIONS OF PROXIMITY INTERESTS****2.5.3 DECLARATIONS OF IMPARTIALITY INTERESTS****3.0 APPLICATIONS FOR LEAVE OF ABSENCE****4.0 ATTENDANCE VIA TELEPHONE/INSTANTANEOUS COMMUNICATIONS**

In accordance with regulation 14A of the *Local Government (Administration) Regulations 1996* Council must approve (by Absolute Majority) the attendance of a person, not physically present at a meeting of Council, by audio contact. The person must be in a 'suitable place' as approved (by Absolute Majority) by Council. A 'suitable place' means a place that is located in a townsite or other residential area and 150km or further from the place at which the meeting is to be held.

**OFFICER RECOMMENDATION**

That Cr Dawson be granted permission to be present at the Ordinary Council Meeting to be held on 27 September 2023 by audio contact.

**5.0 RESPONSES TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

Nil.

**6.0 PUBLIC TIME****6.1 PUBLIC QUESTION TIME****6.2 PETITIONS, DEPUTATIONS, PRESENTATIONS AND SUBMISSIONS****7.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS****7.1 ORDINARY COUNCIL MEETING HELD 23 AUGUST 2023**

That the Minutes of the Ordinary Council Meeting of the Shire of Jerramungup held in the Emergency Services Shed, Bremer Bay, on 23 August 2023 be CONFIRMED.

**7.2 LOCAL EMERGENCY MANAGEMENT COMMITTEE MEETING HELD 11 SEPTEMBER 2023**

Attachment 7.2 a)

That Council RECEIVE the Minutes of the Local Emergency Management Committee Meeting held on 11 September 2023.

**7.3 CEO REVIEW COMMITTEE MEETING HELD 27 SEPTEMBER 2023**

**Attachment 7.3 a)**

**That the Minutes of the CEO Review Committee Meeting of the Shire of Jerramungup held in the Council Chamber, Jerramungup, on 27 September 2023 be CONFIRMED.**

**8.0 RECOMMENDATIONS AND REPORTS OF COMMITTEES**

**OFFICER RECOMMENDATION:**

**That the meeting be closed to the general public to discuss Confidential Item 8.1 pursuant to the *Local Government Act 1995* section 5.23 (2)(a) relating to a matter affecting an employee or employees.**

**CONFIDENTIAL MATTERS****8.1 CHIEF EXECUTIVE OFFICER – CONTRACT RENEWAL**

<b>Location/Address:</b>	N/A
<b>Name of Applicant:</b>	N/A
<b>File Reference:</b>	Personnel File
<b>Author:</b>	Martin Cuthbert, Chief Executive Officer
<b>Responsible Officer:</b>	Martin Cuthbert, Chief Executive Officer
<b>Disclosure of any Interest:</b>	Financial – relates to the author’s contract of employment and salary package
<b>Date of Report:</b>	27 September 2023
<b>Attachments:</b>	a) Confidential – Draft Contract 2024 – 2029
<b>Authority/Discretion:</b>	Executive

**SUMMARY:**

The purpose of this report is for Council to renew the contract between the Shire of Jerramungup and Mr Martin Cuthbert that is due to expire on 16 April 2024 as per the recommendation from the CEO Review Committee.

**BACKGROUND:**

The Chief Executive Officer (Martin Cuthbert) commenced employment with the Shire of Jerramungup on 16 April 2018. The term of the contract was for three (3) years expiring 15 April 2021.

The Chief Executive Officer’s contract of employment states:

*2.2 Extension of Term*

- (3) *You must, not later than 9 months before the expiry of the Term, notify the Council in writing whether or not You seek a renewal of this Contract and, if so, for what term.*
- (4) *Within 2 months of the Council receiving that notification, the Council must advise You in writing of the Local Government’s intention to either advertise the Position or to offer You a renewal of this Contract and, if so, on what terms.*

On 29 June 2020 the Chief Executive Officer, Martin Cuthbert formally requested a renewal of this Contract for a further three (3) year period.

At the CEO Review Committee meeting held on 18 November 2020 the Committee agreed to endorse the process to renew the Contract and the remuneration package with the Chief Executive Officer, Martin Cuthbert for a term of three (3) years, expiring 15 April 2024 as per section 5.39 of the *Local Government Act 1995*.

On 14 June 2023 the Chief Executive Officer, Martin Cuthbert formally requested a renewal of this Contract for a further five (5) year period.

At the CEO Review Committee meeting held on 16 June 2023 the Committee agreed to endorse the process to renew the Contract and the remuneration package with the Chief Executive Officer, Martin Cuthbert for a term of five (5) years, expiring 15 April 2029 as per section 5.39 of the *Local Government Act 1995*.

**CONSULTATION:**

Elected Members

Chief Executive Officer

**COMMENT:**

The Chief Executive Officer is dedicated to remain with the Shire of Jerramungup and has sought a new five (5) year contract.

To formalise the process the Chief Executive Officer Appointment and Review Committee are required to formally recommend Council renew the Contract between the Shire of Jerramungup and Martin Cuthbert for a term of five (5) years commencing 16 April 2024 expiring 15 April 2029.

The Model Standards for CEO recruitment, performance and termination were adopted by Council at the Ordinary Council Meeting held 24 February 2021.

Regulation 13(2) of the *Local Government (Administration) Regulations 1996* Schedule 2 states:

*This clause applies if –*

- a) *Upon the expiry of the contract of employment of the person (the incumbent CEO) who holds the position of CEO –*
  - i. *The incumbent CEO will have held the position for a period of 10 or more consecutive years, whether that period commenced before, on or after commencement day; and*
  - ii. *A period of 10 or more consecutive years has elapsed since a recruitment and selection process for the position was carried out, whether that process was carried out before, on or after commencement day.*

The Chief Executive Officer was appointed on 16 April 2018 for a three-year term. A contract renewal for a further three years was given in April 2021 with that contract due for expiry on 16 April 2024.

At the time of the expiry of the current employment contract, the Chief Executive Officer would have been employed at the Shire of Jerramungup for six (6) years. This is less than the ten (10) years as stated in the above regulations, therefore there is no requirement to advertise for the position if Council wish to renew the contract with the incumbent CEO. Should Council support the new contract, on that contract's expiry the CEO position will be required to be advertised in 2029.

**STATUTORY ENVIRONMENT:*****Local Government Act 1995******Section 5.39. Contracts for CEO and senior employees***

- (1) *Subject to subsection (1a), the employment of a person who is a CEO or a senior employee is to be governed by a written contract in accordance with this section.*
  - (1a) *Despite subsection (1) –*
    - (a) *an employee may act in the position of a CEO or a senior employee for a term not exceeding one year without a written contract for the position in which he or she is acting; and*
    - (b) *a person may be employed by a local government as a senior employee for a term not exceeding 3 months, during any 2 year period, without a written contract.*
- (2) *A contract under this section –*
  - (a) *in the case of an acting or temporary position, cannot be for a term exceeding one year;*
  - (b) *in every other case, cannot be for a term exceeding 5 years.*
- (3) *A contract under this section is of no effect unless –*
  - (a) *the expiry date is specified in the contract; and*
  - (b) *there are specified in the contract performance criteria for the purpose of reviewing the person's performance; and*

- (c) *any other matter that has been prescribed as a matter to be included in the contract has been included.*
- (4) *A contract under this section is to be renewable and subject to subsection (5), may be varied.*
- (5) *A provision in, or condition of, an agreement or arrangement has no effect if it purports to affect the application of any provision of this section.*
- (6) *Nothing in subsection (2) or (3)(a) prevents a contract for a period that is within the limits set out in subsection 2(a) or (b) from being terminated within that period on the happening of an event specified in the contract.*
- (7) *A CEO is to be paid or provided with such remuneration as is determined by the Salaries and Allowances Tribunal under the Salaries and Allowances Act 1975 section 7A.*
- (8) *A local government is to ensure that subsection (7) is complied with in entering into, or renewing, a contract of employment with a CEO.*

#### **STRATEGIC IMPLICATIONS:**

This item relates to the following component from the Shire of Jerramungup Community Plan 2021 – 2031;  
*Governance and Leadership*

*Implement systems and processes that meet our legal and audit obligations.*

#### **FINANCIAL/BUDGET IMPLICATIONS:**

The annual cash salary for the Chief Executive Officer is factored into the municipal budget process.

#### **WORKFORCE IMPLICATIONS:**

The Chief Executive Officer is the position tasked with the responsibility of overall workforce management and leadership for the Shire of Jerramungup.

#### **POLICY IMPLICATIONS:**

Policy implications do not apply to this report and it is the opinion of the author that policy development is not required.

The Council's 24 February 2021 adopted 'Standards for CEO Recruitment, Performance and Termination' pursuant to Schedule 2 — Model standards for CEO recruitment, performance and termination [*Local Government Act 1995 S5.39A and Local Government (Administration) Regulations 1996 R18FA*] relates.

#### **VOTING REQUIREMENT:**

Absolute Majority

#### **OFFICER RECOMMENDATION:**

**That Council, BY AN ABSOLUTE MAJORITY:**

- 1. In accordance with sections 5.36 and 5.39(4) of the *Local Government Act 1995*, and clauses 2.2 of the Chief Executive Officer's employment contract, ENDORSE the new Contract, as attached to this report, with the current Chief Executive Officer Martin Cuthbert for a term of 5 years, commencing on 16 April 2024 and expiring 15 April 2029.**
- 2. Upon expiry of the current contract, Council AUTHORISES the Shire President and Chief Executive Officer to sign and affix the Shire's Common Seal to the new Chief Executive Officer Contract 16 April 2024 – 15 April 2029.**

#### **OFFICER RECOMMENDATION:**

**That the meeting again be opened to the general public.**

## 9.0 REPORTS

### 9.1 TECHNICAL SERVICES

#### 9.1.1 WORKS REPORT FOR AUGUST/SEPTEMBER 2023

<b>Location/Address:</b>	N/A
<b>Name of Applicant:</b>	N/A
<b>File Reference:</b>	
<b>Author:</b>	Gordon Capelli, Works Supervisor
<b>Responsible Officer:</b>	Martin Cuthbert, Chief Executive Officer
<b>Disclosure of any Interest:</b>	Nil
<b>Date of Report:</b>	15 September 2023
<b>Attachments:</b>	Nil
<b>Authority/Discretion:</b>	Information

#### SUMMARY:

For Council to note the works completed for the prior month.

#### BACKGROUND:

##### Road Construction

The Road Construction Crew have been busy starting a gravel resheet and drainage upgrade on Cuiss Road SLK 6.40 to 9.40.

They have also finished a gravel resheet on Jacup North Road SLK 15.60 to 18.70 and helped put in the new retaining wall at the Jerramungup Sports Complex.

##### Road Maintenance

The road maintenance grader has been grading Carlawillup Road, Carlawillup South Road and Cameron Road. A contractor was employed to grade Marnigarup South Road and Marnigarup East Road.

##### Town Services

Jerramungup

Over the last month, Town Services staff have been busy preparing the town for increased visitors, especially in response to an excellent start to the wildflower season.

This month's works projects include:

- The revitalization of the gardens at the Jerramungup Sports Complex.
- Weed control of Jerramungup streets and verges.
- Mowing and general tidy up of Roe Park, Cameron Business Centre grounds, Rootpickers Hall grounds and Lions Park grounds.
- Weed control of Jerramungup entry statements.
- General daily maintenance activities of all parks and gardens including rubbish removal.
- Clearing of weeds and rubbish from Jerramungup laneway access points.

Bremer Bay

In preparation for the school holidays and the expected high visitation of tourists to Bremer Bay, Town Services staff have been busy preparing the town's parks, gardens and reserves. Works projects include:

- Weed control and vegetation pruning along Bremer Bay streets, footpaths and verges.
- Fill in plantings and general tidy up of gardens, including the Bremer Bay CRC grounds, Pelican Park and Bremer Bay entry statements.
- Mowing of street verges, Paperbarks and associated reserves.

### **Environment**

Over the last four weeks, Town Services staff have been working on various invasive weed control projects both in Bremer Bay and Jerramungup. These include:

- Weed control of Vic Tea Tree and polygala within the Riparian Zones of the Wellstead Estuary. Note that work will continue over the following months to contain further spread within the Riparian Vegetation Zones.
- Vic Tea Tree outbreaks within the Bremer Bay Airstrip have been contained with hand spraying and physical removal of smaller plants.
- Weed control activities have also been carried out within the Green Waste tip, with a key focus on controlling the spread of several invasive weed species including Aniseed Weed, African Daisy, African Boxthorn, and Vic Tea Tree.
- Over the next couple of months Town Services staff will be conducting extensive weed control programs along the Shire’s rural road network. Staff will be targeting Vic Tea Tree along Gairdner South Road, Swamp Road and several retired gravel pits that support small populations of Vic Tea Tree.
- In response to a member of the public locating old car tyres embedded within the banks of the Wellstead Estuary, investigations were carried out and 60 tyres were revealed. Historically, car tyres were used to prevent erosion of river banks. Of the 60 tyres identified, 30 tyres were removed. As the remaining tyres become more exposed, they will also be removed.

### **CONSULTATION:**

Internal

### **COMMENT:**

This report is for information only to advise Council on the previous month’s works activities.

### **STATUTORY ENVIRONMENT:**

There are no statutory implications for this report.

### **STRATEGIC IMPLICATIONS:**

This item relates to the following component from the Shire of Jerramungup Community Plan 2021 – 2031;

*Economy*

*Advocate for improved road and communication connectivity to support rural and agricultural businesses and environmental tourism.*

*Environment Built*

*Design, construct and maintain infrastructure in a manner that maximise its life, capacity and function.*

*Environment Natural*

*Deliver a sustainable and progressive approach to natural resource and waste management.*

### **FINANCIAL/BUDGET IMPLICATIONS:**

The works completed are included in the 2023/2024 Shire of Jerramungup budget.



**WORKFORCE IMPLICATIONS:**

This report provides an overview of the outside workforce operations for the previous month.

**POLICY IMPLICATIONS:**

Policy implications do not apply to this report and it is the opinion of the author that policy development is not required.

**VOTING REQUIREMENT:**

Simple Majority

**OFFICER RECOMMENDATION:**

**That Council RECEIVE the works report for August/September 2023.**

**9.2 CORPORATE SERVICES****9.2.1 ACCOUNTS FOR PAYMENT – AUGUST 2023**

<b>Location/Address:</b>	N/A
<b>Name of Applicant:</b>	N/A
<b>File Reference:</b>	
<b>Author:</b>	Sarah Van Elden, Accounts Officer
<b>Responsible Officer:</b>	Charmaine Solomon, Deputy Chief Executive Officer
<b>Disclosure of any Interest:</b>	Nil
<b>Date of Report:</b>	1 September 2023
<b>Attachments:</b>	a) List of Accounts Paid to 31 August 2023 b) Credit Card Statement 27 July 2023 – 28 August 2023
<b>Authority/Discretion:</b>	Information

**SUMMARY:**

For Council to note the list of accounts paid under the Chief Executive Officer’s delegated authority during the month of August 2023.

**BACKGROUND:**

Council has delegated to the Chief Executive Officer the exercise of its power to make payments from the Shire’s municipal and trust funds. In accordance with regulation 13 of the *Local Government (Financial Management) Regulations 1996*, a list of accounts paid by the Chief Executive Officer is to be provided to Council.

**CONSULTATION:**

Internal consultation within the Finance Department.

**COMMENT:**

All municipal fund expenditure included in the list of payments is incurred in accordance with the 2023/24 Annual Budget as adopted by Council at its meeting held 26 July 2023 (Minute No. OCM230706 refers) and subsequently revised or has been authorised in advance by the President or by resolution of Council as applicable.

The table below summarises the payments drawn on the funds during the month of August 2023. Lists detailing the payments made are appended as an attachment.

<b>FUND</b>	<b>VOUCHERS</b>	<b>AMOUNTS</b>
<b>Municipal Account</b>		
Cheque Payments	28181	
EFT Payments	21080 – 21190	\$424,269.84
Direct Deposits		\$77,669.69
<b>Municipal Account Total</b>		<b>\$501,939.53</b>
<b>Trust Account</b>		
<b>Trust Account Total</b>		<b>\$0.00</b>
<b>Grand Total</b>		<b>\$501,939.53</b>

**CERTIFICATE**

This schedule of accounts as presented, which was submitted to each member of the Council, has been checked and is fully supported by vouchers and invoices which are submitted herewith and which have been duly certified as to the receipt of goods and the rendition of services and as to prices computation, and costings and the amounts shown have been paid.

**STATUTORY ENVIRONMENT:**

*Local Government (Financial Management) Regulations 1996*

**12. Payments from municipal fund or trust fund, restrictions on making**

*12(1) A payment may only be made from the municipal fund or a trust fund—*

- (a) if the local government has delegated to the Chief Executive Officer the exercise of its power to make payments from those funds—by the CEO: or*
- (b) otherwise, if the payment is authorised in advance by a resolution of the council.*

*The Chief Executive Officer has delegated authority to make payments from the municipal and trust fund.*

**13. Payments from municipal fund or trust fund by CEO, CEO's duties as to etc.**

*(1) If the local government has delegated to the CEO the exercise of its power to make payments from the municipal fund or the trust fund, a list of accounts paid by the CEO is to be prepared each month showing for each account paid since the last such list was prepared—*

- (a) the payee's name; and*
- (b) the amount of the payment; and*
- (c) the date of the payment; and*
- (d) sufficient information to identify the transaction.*

*(2) A list of accounts for approval to be paid is to be prepared each month showing—*

- (a) for each account which requires council authorisation in that month—*
  - (i) the payee's name; and*
  - (ii) the amount of the payment; and*
  - (iii) sufficient information to identify the transaction; and*
- (b) the date of the meeting of the council to which the list is to be presented.*

*(3) A list prepared under subregulation (1) or (2) is to be—*

- (a) presented to the council at the next ordinary meeting of the council after the list is prepared; and*
- (b) recorded in the minutes of that meeting.*

**STRATEGIC IMPLICATIONS:**

This item relates to the following component from the Shire of Jerramungup Community Plan 2021 – 2031;

*Governance and Leadership*

*Implement systems and processes that meet our legal and audit obligations.*

**FINANCIAL IMPLICATIONS:**

All expenditure from the municipal fund was included in the annual budget as adopted or revised by Council.

**WORKFORCE IMPLICATIONS:**

There are no workforce implications for Council.

**POLICY IMPLICATIONS:**

Finance Policy FP5 – Transaction Cards

Finance Policy FP6 – Procurement of Goods and Services

**VOTING REQUIREMENT:**

Simple Majority

**OFFICER RECOMMENDATION:**

**That Council, pursuant to regulation 13(1) of the *Local Government (Financial Management) Regulations 1996*, NOTES the Chief Executive Officer’s list of accounts paid under delegated authority being:**

- a) **The List of Accounts Paid to 31 August 2023 as detailed in Attachment 9.2.1(a).**
- b) **The Credit Card Statement 27 July 2023 – 28 August 2023 as detailed in attachment 9.2.1(b).**

**9.2.2 MONTHLY FINANCIAL REPORT – AUGUST 2023**

<b>Location/Address:</b>	N/A
<b>Name of Applicant:</b>	N/A
<b>File Reference:</b>	N/A
<b>Author:</b>	Tamara Pike, Senior Finance Officer
<b>Responsible Officer:</b>	Charmaine Solomon, Deputy Chief Executive Officer
<b>Disclosure of any Interest:</b>	Nil
<b>Date of Report:</b>	18 September 2023
<b>Attachments:</b>	a) Monthly Financial Report for the period ending 31 August 2023
<b>Authority/Discretion:</b>	Information

**SUMMARY:**

For Council to note the statement of financial activity for the period ended 31 August 2023 as required by the *Local Government Act 1995* ('the Act').

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

This report has been compiled to fulfil the statutory reporting requirements of the Act and associated Regulations, whilst also providing the Council with an overview of the Shire's financial performance on a year to date basis for the period ending 31 August 2023.

**BACKGROUND:**

At its meeting held 26 July 2023 (Minute No. OCM230706 refers), Council adopted the annual budget for the 2023/24 financial year. The figures in this report are compared to the adopted budget.

It should be noted that these reports do not represent a projection to the end of year position or that there are funds surplus to requirements. It represents the year-to-date position to 31 August 2023 and results from a number of factors identified in the report. There are a number of factors that influence any variances, but it is predominately due to the timing of revenue and expenditure compared to the budget estimates. The notes to the statement of financial activity identify and provide commentary on the individual key material revenue and expenditure variances to date.

The following detail is included in the financial report:

- The annual budget estimates.
- The operating revenue, operating income, and all other income and expenses.
- Any significant variations between year-to-date income and expenditure and the relevant budget provisions to the end of the relevant reporting period.
- Identify any significant areas where activities are not in accordance with budget estimates for the relevant reporting period.
- Provide likely financial projections to 30 June for those highlighted significant variations and their effect on the end of year result.
- Include an operating statement.
- Any other required supporting notes.

Additionally, and pursuant to regulation 34(5) of the Regulations, a local government is required to adopt a material variance reporting threshold in each financial year. At its meeting on 26 July 2023, Council adopted (Minute No. OCM230709 Officer Recommendation 4 refers) the following material variance reporting threshold for the 2023/24 financial year:

*Officer Recommendation 4: That Council ADOPT a material variance level of 10% with a minimum \$10,000.00 variance for the 2023/2024 financial year for monthly reporting purposes.*

**CONSULTATION:**

Internal consultation within the Finance Department and Council's financial records.

In accordance with section 6.2 of the *Local Government Act 1995*, the annual budget was prepared having regard to the Strategic Community Plan, prepared under section 5.56 of the *Local Government Act 1995*.

**COMMENT:**

The financial report contains annual budget estimates, actual amounts of expenditure, revenue and income to the end of the month. It shows the material differences between the budget and actual amounts where they are not associated to timing differences for the purpose of keeping Council abreast of the current financial position.

All expenditure included in the financial statements is incurred in accordance with Council's adopted budget or subsequent approval in advance.

**STATUTORY ENVIRONMENT:**

Section 34 of the *Local Government (Financial Management) Regulations 1996* provides:

**34. Financial activity statement required each month (Act s. 6.4)**

- (1) *A local government is to prepare each month a statement of financial activity reporting on the revenue and expenditure, as set out in the annual budget under regulation 22(1)(d), for that month in the following detail—*
  - (a) *annual budget estimates, taking into account any expenditure incurred for an additional purpose under section 6.8(1)(b) or (c); and*
  - (b) *budget estimates to the end of the month to which the statement relates;*

*and*

  - (c) *actual amounts of expenditure, revenue and income to the end of the month to which the statement relates; and*
  - (d) *material variances between the comparable amounts referred to in paragraphs (b) and (c); and*
  - (e) *the net current assets at the end of the month to which the statement relates.*
- (2) *Each statement of financial activity is to be accompanied by documents containing—*
  - (a) *an explanation of the composition of the net current assets of the month to which the statement relates, less committed assets and restricted assets; and*
  - (b) *an explanation of each of the material variances referred to in subregulation (1)(d); and*
  - (c) *such other supporting information as is considered relevant by the local government.*
- (3) *The information in a statement of financial activity may be shown—*
  - (a) *according to nature and type classification; or*
  - (b) *by program; or*
  - (c) *by business unit.*
- (4) *A statement of financial activity, and the accompanying documents referred to in subregulation (2), are to be—*
  - (a) *presented at an ordinary meeting of the council within 2 months after the end of the month to which the statement relates; and*

(b) *recorded in the minutes of the meeting at which it is presented.*

(5) *Each financial year, a local government is to adopt a percentage or value, calculated in accordance with the AAS, to be used in statements of financial activity for reporting material variances.*

**STRATEGIC IMPLICATIONS:**

This item relates to the following component from the Shire of Jerramungup Community Plan 2021 – 2031;

*Governance and Leadership*

*Implement systems and processes that meet our legal and audit obligations.*

**FINANCIAL IMPLICATIONS:**

Expenditure for the period ending 31 August 2023 has been incurred in accordance with the 2023/24 budget parameters, which have been structured on financial viability and sustainability principles.

Details of any budget variation in excess of \$10,000 (year to date) follow. There are no other known events which may result in a material non recoverable financial loss or financial loss arising from an uninsured event.

**WORKFORCE IMPLICATIONS:**

There are no workforce implications for Council.

**POLICY IMPLICATIONS:**

AP3 – Regional Price Preference

FP1 – Accounting for Non-Current Assets

FP2 – Debt Recovery

FP3 – Investments

FP6 – Procurement of Goods and Services Policy

Significant Accounting Policies as detailed within the Monthly Financial Report

**VOTING REQUIREMENT:**

Simple Majority

**OFFICER RECOMMENDATION:**

**That Council RECEIVE the Monthly Financial Report incorporating the Statement of Financial Activity for the period ending 31 August 2023 in accordance with section 6.4 of the *Local Government Act 1995*.**

**9.2.3 RENEWAL OF JERRAMUNGUP LIBRARY SERVICE LEVEL AGREEMENT**

<b>Location/Address:</b>	Jerramungup
<b>Name of Applicant:</b>	N/A
<b>File Reference:</b>	N/A
<b>Author:</b>	Charmaine Solomon, Deputy Chief Executive Officer
<b>Responsible Officer:</b>	Martin Cuthbert, Chief Executive Officer
<b>Disclosure of any Interest:</b>	Nil
<b>Date of Report:</b>	15 September 2023
<b>Attachments:</b>	a) 2023 Service Level Agreement – Jerramungup Community Resource Centre b) CONFIDENTIAL Attachment – Jerramungup CRC Library Acquittal 2022/2023
<b>Authority/Discretion:</b>	Executive

**SUMMARY:**

This item addresses the endorsement of a Service Level Agreement (the Agreement) with the Jerramungup Community Resource Centre for the delivery of library and associated services to the community. The recommendation is to endorse the Agreement and authorise the Chief Executive Officer and Shire President to execute the document.

**BACKGROUND:**

For a number of years the Jerramungup Community Resource Centre (CRC) has delivered library services to the community on behalf of the Shire. The previous Agreements have been in place for six years and all parties are happy with their operation and outcomes achieved.

The collocation of the CRC business and library services has been a successful model through most Western Australian regional areas. The integration of the two services provides the CRCs with additional staffing capabilities and enables the library to be accessible for longer hours.

Council also provides the following financial and/or resourcing assistance to the organisation:

1. Cleaning of facilities (which is carried out by the CRC and billed to the Shire).
2. Subsidised rental of the facility.
3. Payment of electricity associated with the building.
4. Maintenance and management of gardens and buildings.

**CONSULTATION:**

Consultation has been carried out with representatives of the CRC Committee and Shire Executive Staff to develop this Agreement.

**COMMENT:**

In negotiating the new Agreement with representatives of the Jerramungup CRC, the following amendments were agreed by both parties:

- Contract Price (Item 2) adjusted to \$30,000 with quarterly payments of \$7,500 plus GST.
- Inserted quarterly payment dates of 30 September, 31 December, 31 March and 30 June.
- Inserted term to be for three (3) years.
- Inserted further term to be three (3) years.
- Expanded on the provision in Item 2 paragraph (d) in relation to CPI review.
- Inserting a definition of 'CPI' in Clause 1.1.
- Inserting a definition of 'Further Term' in Clause 1.1.
- Item 4(b) (xvi) – Utilise \$500 annually from Contract Price for training.



The new Agreement will run a term of three (3) years from 1 July 2023 – 30 June 2026 with an option of a further term. The funding arrangements covered by the Service Level Agreement provide the CRC with a greater degree of certainty for future budgeting/financial planning purposes. There are also provisions within the Agreement for termination should either party be subject to structural changes within the industries.

**STATUTORY ENVIRONMENT:**

Nil.

**STRATEGIC IMPLICATIONS:**

This item relates to the following component from the Shire of Jerramungup Community Plan 2021 – 2031:

- Maintain facilities that connect people and promote an active and healthy lifestyle;
- Deliver programs and services that bring people together and support community health and wellbeing;
- Advocate for strategic projects that will benefit residents, workers and visitors to the Shire.

**FINANCIAL/BUDGET IMPLICATIONS:**

The financial impact of the Service Level Agreement has been factored into the 2023/2024 budget.

**WORKFORCE IMPLICATIONS:**

The provision of Library Services through the Community Resource Centre offsets the requirements for Council to provide staffing in this area.

**POLICY IMPLICATIONS:**

Policy implications do not apply to this report and it is the opinion of the author that policy development is not required.

**VOTING REQUIREMENT:**

Simple Majority.

**OFFICER RECOMMENDATION:**

**That Council:**

- 1. Endorse the service level agreement for Library Services with the Jerramungup Community Resource Centre for a term of three years.**
- 2. Authorise the Chief Executive Officer and Shire President to execute the service level agreement with the Jerramungup Community Resource Centre.**

**9.2.4 PROPOSED WRITE OFF OF RATES AND INTEREST**

<b>Location/Address:</b>	A1606243 Exploration Licence E70/4529, Jerramungup
<b>Name of Applicant:</b>	N/A
<b>File Reference:</b>	N/A
<b>Author:</b>	Kiara Pittard, Rates Officer
<b>Responsible Officer:</b>	Charmaine Solomon, Deputy Chief Executive Officer
<b>Disclosure of any Interest:</b>	Nil
<b>Date of Report:</b>	7 September 2023
<b>Attachments:</b>	Nil
<b>Authority/Discretion:</b>	Legislative

**SUMMARY:**

This item discusses the proposal to write off rates and interest owed for one (1) mining tenement. The mining tenement death occurred on 30 June 2022, and the tenement holder, Temple Resources Pty Ltd, is now deregistered.

**BACKGROUND:**

Temple Resources Pty Ltd became the registered holder of Exploration Licence 70/4529 on 18 May 2016.

On 14 July 2022, the Shire received a mining tenement schedule M2022/7 from Landgate advising that a mining tenement death occurred on 30 June 2022 for Exploration Licence 70/4529 (Shire of Jerramungup assessment number A1606243).

The rates and interest outstanding for A1606243 relate to the 2021/22 financial year.

**CONSULTATION:**

Internal consultation within the Finance Department and Council's financial records.

**COMMENT:**

On 30 August 2023, Hetherington advised that they no longer manage tenements for Temple Resources Pty Ltd and have no forwarding address.

It is recommended that this debt be written off, due to the inefficiencies and costs associated with further investigation into this account. As the company is now deregistered, the chance of successful collection would be low in the event this account was sent to debt collectors.

Under the *Local Government Act 1995*, Council can resolve to write off any amount of money which is owed to them, and it is recommended that this power be used in this instance.

**STATUTORY ENVIRONMENT:****Local Government Act 1995****6.12. Power to defer, grant discounts, waive or write off debts**

(1) *Subject to subsection (2) and any other written law, a local government may –*

- (a) *When adopting the annual budget, grant a discount or other incentive for the early payment of any amount of money;*
- (b) *Waive or grant concessions in relation to any amount of money; or*
- (c) *Write off any amount of money, which is owed to the local government.*

**STRATEGIC IMPLICATIONS:**

This item relates to the following component from the Shire of Jerramungup Community Plan 2021 – 2031;

*Governance and Leadership*

*Implement systems and processes that meet our legal and audit obligations.*

**FINANCIAL IMPLCATIONS:**

The outstanding amount for A1606243 - Exploration Licence E70/4529 - is \$792.68 as of 7 September 2023.

The recommendation to Council is to write off the outstanding debt of \$792.68.

**WORKFORCE IMPLICATIONS:**

There are no workforce implications for Council.

**POLICY IMPLICATIONS:**

Finance Policy FP2 – Debt Recovery Policy

**VOTING REQUIREMENT:**

Absolute Majority

**OFFICER RECOMMENDATION:**

**That Council, by ABSOLUTE MAJORITY, write off the outstanding debt associated with A1606243 – Exploration Licence E70/4529 – totalling \$792.68 as at 7 September 2023.**

### 9.3 DEVELOPMENT SERVICES

#### 9.3.1 CBH GAIRDNER – AMENDED DEVELOPMENT APPROVAL

<b>Location/Address:</b>	Lot 55 South Coast Highway, Gairdner
<b>Name of Applicant:</b>	Cooperative Bulk Handling (CBH)
<b>File Reference:</b>	
<b>Author:</b>	Noel Myers, Manager of Development
<b>Responsible Officer:</b>	Martin Cuthbert, Chief Executive Officer
<b>Disclosure of any Interest:</b>	None
<b>Date of Report:</b>	18 September 2023
<b>Attachments:</b>	a) CBH Gairdner - Site Plan
<b>Authority/Discretion:</b>	Administrative

#### SUMMARY:

Cooperative Bulk Handling (CBH) is seeking to amend their current planning approval for two time-limited storage bulkhead at its existing grain handling and storage facility located at Lot 55 (No. 33069) South Coast Highway, Gairdner by deleting the temporary use and permitting them to retain the use as a permanent one.

Approval is recommended.

#### BACKGROUND:

##### Subject Site

The subject property is located approximately 1km west of the intersection of South Coast Highway and Gairdner South Road and approximately 1.5km from the Gairdner townsite.

Lot 55 has an overall area of 82.3046ha and is developed with the existing CBH grain storage facility. The subject site fronts South Coast Highway which is controlled by Main Roads WA (MRWA).

##### Zoning and Scheme Requirements:

- The subject site and surrounding properties are zoned 'Rural' under the Shire of Jerramungup Local Planning Scheme No. 2 (the Scheme);
- The proposed open bulkhead can be considered to be an extension of the existing 'Industry-Rural' land use and is a discretionary land use that requires public advertising before consideration by Council.

#### CONSULTATION:

Consultation was previously undertaken in relation to the proposed temporary expansion of the Gairdner facility. That consultation was concluded with no objections being received from any stakeholders including MRWA.

Given that the current proposal represents only a relatively minor amendment to that previously considered, it is not proposed that any additional consultation be undertaken. This decision is arrived at having regard to the current use and activity undertaken from the property that has operated without incident or complaint since the time of Council's initial approval.

#### COMMENT:

CBH are proposing to retain the previously approved temporary emergency open bulkheads (OBH's) at their existing Gairdner site on a permanent basis in preparation for the 2023 and future harvests. No change is proposed to the capacity of those facilities beyond that previously approved.

CBH advise that there has been record back-to-back harvests over the last two years where its existing storage infrastructure was not enough to keep up with the record crop.

CBH further advise that current modelling suggests that this year’s harvest will be close to their five-year average and noting the large amount of carryover grain that remains at many of their facilities from previous years, it is likely that CBH’s permanent storage will not be able to accommodate the crop coming in.

**Assessment**

The proposal has been assessed against the requirements of the Shire of Jerramungup Local Planning Scheme No.2 and generally complies.

The closest definition for the proposed land use is considered to be ‘Industry-Rural’ under the Scheme, it is defined as follows:

“industry-rural means –

- a) an industry handling, treating, processing or packing rural products; or
- b) a workshop servicing plant or equipment used for rural purposes;”

‘Industry-Rural’ is an ‘A’ use or a “use that is not permitted unless the local government has exercised its discretion by granting planning approval after giving special notice in accordance with clause 9.4.”

The relevant objectives of the ‘Rural’ zone are:

- “To ensure the continuation of broad-hectare farming as the principal land use in the district and encouraging where appropriate the retention and expansion of agricultural activities where the land is capable of such development.”
- “To consider non-rural uses where they can be shown to be of benefit to the district and not detrimental to the natural resources or the environment.”

The proposed land use has little potential impact on the local environment and supports the broad-hectare farming in the district.

The Scheme Development Requirements and pertinent clauses are explored in the table below.

Scheme Clause	Officer Comment
5.26.1 Site Requirements The minimum building setbacks are to be: Front: 20.0m Rear: 20.0m Side: 10.0m	Complies
5.26.2 (a) In considering an application for planning approval the local government will have due regard for the following, in addition to the provisions of the Scheme: (i) any sensitive or incompatible uses that may require buffer separation from the proposed use,	Complies  Distance to closest residence greater than 1km and complies with EPA Guidelines.

The proposed development is relatively minor in scale and is consistent with the current approved use of the site. The existing access arrangements to and from the site are being retained and the open bulkhead will help to better manage the storage and transport of grain from growers to market.

### **Traffic Impact Statement**

As the existing access and egress to the property is taken from the South Coast Highway which falls to the management of MRWA, the applicant engaged SHAWMAC, a Consulting Civil and Traffic Engineering company, to prepare a Traffic Impact Statement (TIS). The purpose of the TIS was to consider the impacts of traffic moving to and from the site on the surrounding road network.

A key takeaway from the TIS was that the volume of the anticipated 2021 harvest was expected to generate an additional 1,630 trucking movements to and from this site within the harvest period for out-loading. If the emergency OBH was constructed, then those movements would still need to occur to move the grain for export, but this would occur outside the harvest period when there are less trucks on the road network.

The TIS concluded:

- The estimated traffic generation could be accommodated within the capacity of the adjacent road network.
- The additional traffic generated by the site was not considered to increase the likelihood of crashes to unacceptable levels.
- The sealed widths of the surrounding road are equal to or above the minimum road width for their relative RAV categories.
- Existing sight distances at the intersections are deemed satisfactory.
- The estimated traffic volumes do not warrant the installation of additional auxiliary lanes.
- Existing intersection geometry is adequate and no further widening required.

As previously identified, the South Coast Highway falls to the management of MRWA and the Shire would generally rely upon the advice of MRWA as to the whether the conclusions of the TIS are acceptable, and whether conditions should be applied to any planning approval.

MRWA had previously accepted the TIS and did not require any change or modifications to access and egress points from the facility onto the highway. An updated TIS has not been provided by the applicant given the nature of this application does not propose any variations to the capacity of the site.

### **STATUTORY ENVIRONMENT:**

*Planning and Development Act 2005*

*Planning and Development (Local Planning Scheme) Regulations 2015*

Shire of Jerramungup Local Planning Scheme No.2

EPA Guidance Statement No.3 – Separation Distances between Sensitive Land Uses

### **STRATEGIC IMPLICATIONS:**

This item relates to the following component from the Shire of Jerramungup Strategic Community Plan 2021 – 2031;

*Environment Built: Deliver sustainable long-term planning for the built environment that meets the needs of the community.*

### **FINANCIAL/BUDGET IMPLICATIONS:**

There are no financial implications for Council.

**WORKFORCE IMPLICATIONS:**

There are no workforce implications for Council.

**POLICY IMPLICATIONS:**

Policy implications do not apply to this report and it is the opinion of the author that policy development is not required.

**VOTING REQUIREMENT:**

The administration has considered the potential for a number of Councillors to have a conflict of interest through their affiliations with the applicant. As such, investigations into whether it would be necessary to seek a specific dispensation from the Minister to allow Councillors to vote on the application were undertaken.

On review, it is the advice of the administration that the application may be considered under s.5.68 b (ii) of the *Local Government Act 1995* that deals with issues ‘in common’ which enables the Council to determine the application without having to seek special dispensations from the Minister.

In arriving at this advice, the following matters are considered to be relevant.

- The primary and major economic activity within the Shire is broad acre farming;
- The broader economy within the Shire provides goods and services to support the activities of the farming sector, thus there is a shared community interest in the industry;
- In this particular case, the proposed temporary OBH is being installed in response to an anticipated higher than average harvest and the installation of the OBH does not influence that level of production, rather it provides a better outcome for the local and broader community in terms of managing additional trucking movements during the harvest period when heavy road congestion already exists – thus there is an interest in common in managing that impact.

It is open to individual Councillors to accept or reject this advice. The relevant section of the *Local Government Act 1995* is set out below:

*5.68 Councils and committees may allow members disclosing interests to participate etc. in Meetings:*

- (1) *If a member has disclosed, under section 5.65, an interest in a matter, the members present at the meeting who are entitled to vote on the matter –*
- (a) *may allow the disclosing member to be present during any discussion or decision making procedure relating to the matter; and*
- (b) *may allow, to the extent decided by those members, the disclosing member to preside at the meeting (if otherwise qualified to preside) or to participate in discussions and the decision making procedures relating to the matter if –*
- (i) *the disclosing member also discloses the extent of the interest; and*
- (ii) *those members decide that the interest –*
- (I) *is so trivial or insignificant as to be unlikely to influence the disclosing member’s conduct in relation to the matter; or*
- (II) *is common to a significant number of electors or ratepayers.***

- (1A) *Subsection (1) does not apply if —*
- (a) *the interest disclosed is an interest relating to a gift; and*
  - (b) *either —*
    - (i) *the amount of the gift exceeds the amount prescribed for the purposes of this subsection; or*
    - (ii) *the gift is 1 of 2 or more gifts made by 1 person to the disclosing member at any time during a year and the sum of the amounts of those 2 or more gifts exceeds the amount prescribed for the purposes of this subsection.*
- (2) *A decision under this section is to be recorded in the minutes of the meeting relating to the matter together with —*
- (a) *the extent of any participation allowed by the council or committee; and*
  - (b) *if the decision concerns an interest relating to a gift, the information prescribed for the purposes of this paragraph.*
- (3) *This section does not prevent the disclosing member from discussing, or participating in the decision making process on, the question of whether an application should be made to the Minister under section 5.69.*

On the basis that the advice is accepted that the matter may be reasonably dealt with under s.5.68 (ii) of the *Local Government Act 1995* then the decision would be by way of Simple Majority.

**SUMMARY:**

Having regard to the matters set out above, it is the recommendation of the Administration that the proposed development may be approved without condition, as it is:

- Of a form and scale that will not unreasonably impact on the amenity of the locality;
- Consistent with the Scheme objectives for the Rural zone; and
- Consistent with the Council’s Community Strategic Plan.

**OFFICER RECOMMENDATION:**

**That Council approve the application lodged by Cooperative Bulk Handling for two (2) permanent open storage bulkheads (Industry Rural) at Lot 55 South Coast Highway, Gairdner.**



### 9.3.2 CBH JACUP – AMENDED DEVELOPMENT APPROVAL

<b>Location/Address:</b>	Lot 10 South Coast Highway, Jacup
<b>Name of Applicant:</b>	Cooperative Bulk Handling (CBH)
<b>File Reference:</b>	A1604695
<b>Author:</b>	Noel Myers, Manager of Development
<b>Responsible Officer:</b>	Martin Cuthbert, Chief Executive Officer
<b>Disclosure of any Interest:</b>	None
<b>Date of Report:</b>	17 September 2023
<b>Attachments:</b>	a) CBH Jacup – Amended Site Plan
<b>Authority/Discretion:</b>	Administrative

#### SUMMARY:

Cooperative Bulk Handling (CBH) is seeking an amended development approval for an extension to a time-limited storage bulkhead at its existing grain handling and storage facility located at Jacup.

The application also seeks approval to extend the capacity of the additional open bulkhead (OBH) at the facility that is required to cater for the anticipated needs of the 2023 and future harvests.

Conditional approval is recommended.

#### BACKGROUND:

##### Subject Site

The subject property is located 30km east of Jerramungup townsite and 1km west of the intersection of Jacup Road North and South Coast Highway.

Lot 10 has an overall area of 14.9279ha and is developed with the existing Cooperative Bulk Handling (CBH) grain storage facility. The subject site fronts South Coast Highway, which is controlled by Main Roads WA (MRWA).

##### Zoning and Scheme Requirements:

- The subject site and surrounding properties are zoned 'Rural' under the Shire of Jerramungup Local Planning Scheme No. 2 (the Scheme);
- More recently, land at the eastern end of the facility was excised from the adjoining farmland in order to facilitate the construction of the Jacup Volunteer Fire Brigades new fire shed;
- The proposed open bulkhead can be considered to be an extension of the existing 'Industry-Rural' land use and is a discretionary land use that may be considered by Council.

#### CONSULTATION:

Consultation was undertaken regarding the proposed expansion of the Jacup facility when considering the initial approval for the temporary OBH. That consultation was concluded with no objections being received from any stakeholders including MRWA.

Given that the current proposal represents only a relatively minor amendment to that previously considered, it is proposed that consultation only be extended to MRWA regarding this current matter. This decision is arrived at having regard to the nature of the works proposed being both consistent in form and use as that which already exists and is undertaken from the site.

Should any issues arise from consultation with MRWA that cannot be satisfactorily resolved between the parties and to the satisfaction of the CEO, then the matter would be referred back to Council for determination.

**COMMENT:**

CBH are proposing to retain the previously approved temporary emergency open bulkhead (OBH) at their existing Jacup site on a permanent basis in preparation for the 2023 and future harvests.

CBH advise that there has been record back-to-back harvests over the last two years where its existing storage infrastructure was not enough to keep up with the record crop.

They further advise that current modelling suggests that this year's harvest will be close to their five-year average and noting the large amount of carryover grain that remains at many of their facilities from previous years, it is likely that CBH's permanent storage will not be able to accommodate the crop coming in.

It is proposed to upgrade the capacity of the previous single emergency OBH which will utilise the existing site access/exit and marshal/sample/weigh facilities.

The scope of works involves switching out the existing 1.2m high panels that form the OBH with 1.8m high panels.

Council has previously granted two previous approvals for this site:

1. Planning Approval No.P21- 028 – Temporary OBH Expansion, issued 28 July 2021; and
2. Planning Approval No.P21-028 – Temporary OBH Expansion - Extension of Term, issued 26 July 2022.

**Assessment**

The proposal has been assessed against the requirements of the Shire of Jerramungup Local Planning Scheme No.2 and generally complies.

The closest definition for the proposed land use is considered to be 'Industry-Rural' under the Scheme, it is defined as follows:

"industry-rural means –

- a) an industry handling, treating, processing or packing rural products; or
- b) a workshop servicing plant or equipment used for rural purposes;"

'Industry-Rural' is an 'A' use or a "use that is not permitted unless the local government has exercised its discretion by granting planning approval after giving special notice in accordance with clause 9.4."

The relevant objectives of the 'Rural' zone are:

- "To ensure the continuation of broad-hectare farming as the principal land use in the district and encouraging where appropriate the retention and expansion of agricultural activities where the land is capable of such development."
- "To consider non-rural uses where they can be shown to be of benefit to the district and not detrimental to the natural resources or the environment."

The proposed land use has little potential impact on the local environment and supports the broad-hectare farming in the district.

The Scheme Development Requirements and pertinent clauses are explored in the table below.

Scheme Clause	Officer Comment
5.26.1 Site Requirements The minimum building setbacks are to be: Front: 20.0m Rear: 20.0m Side: 10.0m	Complies
5.26.2 (a) In considering an application for planning approval the local government will have due regard for the following, in addition to the provisions of the Scheme: (i) any sensitive or incompatible uses that may require buffer separation from the proposed use,...	Complies Distance to closest residence greater than 1km and complies with EPA Guidelines

The proposed development and changes are relatively minor in scale and are consistent with the current approved use of the site. The existing access arrangements to and from the site are being retained and the open bulkhead will help to better manage the storage and transport of grain from growers to market.

#### **Traffic Impact Statement**

As the existing access and egress to the property is taken from the South Coast Highway which falls to the management of MRWA, the applicant had previously engaged SHAWMAC, a Consulting Civil and Traffic Engineering company, to prepare a Traffic Impact Statement (TIS). The purpose of the TIS was to consider the impacts of the proposed emergency OBH storage on the surrounding road network.

A key takeaway from the TIS was that the volume of the anticipated 2021 harvest was expected to generate an additional 1,114 trucking movements to and from the site within the harvest period for out-loading. If the emergency OBH was constructed, then those 1,114 movements would still need to occur to move the grain for export, but this would occur outside the harvest period when there are less trucks on the road network.

The TIS concluded:

- The estimated traffic generation could be accommodated within the capacity of the adjacent road network.
- The additional traffic generated by the site was not considered to increase the likelihood of crashes to unacceptable levels.
- The sealed and carriageway widths of the surrounding road met the relevant RAV network requirements.
- There was sufficient sight distance at the site exit onto South Coast Highway.
- The swept path assessments for the entry movements showed that the designated movements could be completed satisfactorily.
- The swept path assessments for the exit movements showed encroachment over the shoulders and centreline and consideration should be given to widening the seal accordingly.

- Indicated that the designated RAV movements could be completed satisfactorily.
- The existing BAR/BAL configuration of the site access off South Coast Highway was appropriate to cater for the proposed additional traffic.
- Acceleration lanes on South Coast Highway were not considered warranted.

The following comments are provided by CBH in relation to traffic considerations associated with the new development.

Traffic Management:

Comments from CBH:

*“Regardless of the total storage capacity of a site, the same average delivery movements to the Jacup facility will occur during harvest. Additional site storage at the CBH Jacup facility means more grain can be stored through the harvest and inefficient out-loading movements within the harvest period (harvest essential moves) are avoided. If the site capacity is reached during harvest, grain would need to be out-loaded via truck during the harvest to allow grain to continue to be received from nearby farms.*

*This double handling of grain is inefficient in terms of cost and adds additional traffic to the surrounding road network during the busy harvest period. The effect of constructing additional storage is that out-loading movements by road are removed during the busy harvest period with the out-loading task instead performed over the remaining 9 months of the year.*

*Whilst the out-loading task increases proportional to the level of receivals, we are able to reduce these harvest essential moves by holding more grain at the site. The same volume of grain is out turned at a lower intensity which results in less trucks on road during the harvest period. The development therefore does not increase traffic intensity or trucks per day. Instead, the same out-loading is spread over a greater period.”*

As previously identified, the South Coast Highway falls to the management of MRWA. The Shire would generally rely upon their advice to determine whether the conclusions of the applicant and that detailed within a TIS are acceptable and whether conditions should be applied to any planning approval.

MRWA had previously accepted the TIS and did not require any change or modifications to access and egress points from the facility onto the South Coast Highway. An updated TIS has not been provided by the applicant given the nature of the proposed upgrade and have relied upon the findings and rationales provided.

At the time of preparing this report, MRWA had not formalised their response however preliminary discussions with officers from MRWA indicated that upgrading works to the South Coast Highway around the Jacup site had been scheduled.

Notwithstanding, it is proposed that any Council planning approval is conditioned such that any advice or recommendations provided by MRWA can be applied, and that delegation is granted to the CEO to include any recommendations proposed by MRWA on the planning approval.

**STATUTORY ENVIRONMENT:**

*Planning and Development Act 2005*

*Planning and Development (Local Planning Scheme) Regulations 2015*

Shire of Jerramungup Local Planning Scheme No.2

EPA Guidance Statement No.3 – Separation Distances between Sensitive Land Uses

**STRATEGIC IMPLICATIONS:**

This item relates to the following component from the Shire of Jerramungup Strategic Community Plan 2021 – 2031;

*Environment Built: Deliver sustainable long-term planning for the built environment that meets the needs of the community.*

**FINANCIAL/BUDGET IMPLICATIONS:**

There are no financial implications for Council.

**WORKFORCE IMPLICATIONS:**

There are no workforce implications for Council.

**POLICY IMPLICATIONS:**

Policy implications do not apply to this report and it is the opinion of the author that policy development is not required.

**VOTING REQUIREMENT:**

The administration has considered the potential for a number of Councillors to have a conflict of interest through their affiliations with the applicant. As such, investigations into whether it would be necessary to seek a specific dispensation from the Minister to allow Councillors to vote on the application were undertaken.

On review, it is the advice of the administration that the application may be considered under s.5.68 b (ii) of the *Local Government Act 1995* that deals with issues ‘in common’ which enables the Council to determine the application without having to seek special dispensations from the Minister.

In arriving at this advice, the following matters are considered to be relevant.

- The primary and major economic activity within the Shire is broad acre farming;
- The broader economy within the Shire provides goods and services to support the activities of the farming sector, thus there is a shared community interest in the industry;
- In this particular case, the OBH is being installed in response to an anticipated higher than average harvest and the installation of the OBH does not influence that level of production, rather it provides a better outcome for the local and broader community in terms of managing additional trucking movements during the harvest period when heavy road congestion already exists – thus there is an interest in common in managing that impact.

It is open to individual Councillors to accept or reject this advice. The relevant section of the *Local Government Act 1995* is set out below:

**5.68 Councils and committees may allow members disclosing interests to participate etc. in Meetings:**

- (1) *If a member has disclosed, under section 5.65, an interest in a matter, the members present at the meeting who are entitled to vote on the matter –*
  - (a) *may allow the disclosing member to be present during any discussion or decision making procedure relating to the matter; and*
  - (b) *may allow, to the extent decided by those members, the disclosing member to preside at the meeting (if otherwise qualified to preside) or to participate in discussions and the decision making procedures relating to the matter if –*
    - (i) *the disclosing member also discloses the extent of the interest; and*
    - (ii) *those members decide that the interest –*
      - (I) *is so trivial or insignificant as to be unlikely to influence the disclosing member’s conduct in relation to the matter; or*
      - (II) ***is common to a significant number of electors or ratepayers.***

(1A) *Subsection (1) does not apply if —*

(a) *the interest disclosed is an interest relating to a gift; and*

(b) *either —*

(i) *the amount of the gift exceeds the amount prescribed for the purposes of this subsection; or*

(ii) *the gift is 1 of 2 or more gifts made by 1 person to the disclosing member at any time during a year and the sum of the amounts of those 2 or more gifts exceeds the amount prescribed for the purposes of this subsection.*

(2) *A decision under this section is to be recorded in the minutes of the meeting relating to the matter together with —*

(a) *the extent of any participation allowed by the council or committee; and*

(b) *if the decision concerns an interest relating to a gift, the information prescribed for the purposes of this paragraph.*

(3) *This section does not prevent the disclosing member from discussing, or participating in the decision making process on, the question of whether an application should be made to the Minister under section 5.69.*

On the basis that the advice is accepted that the matter may be reasonably dealt with under s.5.68 (ii) of the *Local Government Act 1995* then the decision would be by way of Simple Majority.

#### **SUMMARY:**

Having regard to the matters set out above, it is the recommendation of the Administration that the proposed development may be approved subject to conditions as set out in the officer recommendation, as it is:

- Of a form and scale that will not unreasonably impact on the amenity of the locality;
- Consistent with the Scheme objectives for the Rural zone; and
- Consistent with the Council's Community Strategic Plan.

#### **OFFICER RECOMMENDATION:**

**That Council:**

- 1. Approve the application lodged by Cooperative Bulk Handling (CBH) for permanent retention and expansion of an open bulkhead (Industry-Rural) at Lot 10 South Coast Highway, Jacup subject to the following condition:**
  - a) Development shall be carried out and fully implemented in accordance with the approved plan numbered as follows:**
    - **594-ENG-C1-DC0-002 Rev B.**
- 2. Delegate authority to the Chief Executive Officer to issue the Development Approval upon receipt of formal advice from Main Roads Western Australia, on the basis that:**
  - a) There is no substantial objection to the proposal from MRWA;**
  - b) Any condition required by MRWA could be reasonably applied without having to make substantive amendments to the plans considered by Council in support of the application;**
  - c) Should there be any issues that cannot be satisfactorily resolved between the parties then the matter be referred back to Council for determination.**

### 9.3.3 SOUTH WEST SETTLEMENT LAND LISTS 12650 AND 12658

<b>Location/Address:</b>	Various land parcels
<b>Name of Applicant:</b>	Department of Planning, Lands and Heritage (DPLH)
<b>File Reference:</b>	CP.AD.2
<b>Author:</b>	Noel Myers, Manager of Development
<b>Responsible Officer:</b>	Martin Cuthbert, Chief Executive Officer
<b>Disclosure of any Interest:</b>	None
<b>Date of Report:</b>	17 September 2023
<b>Attachments:</b>	a)-m) PIN Lot Location Plans n) Submission Table
<b>Authority/Discretion:</b>	Administrative

#### SUMMARY:

The purpose of this report is for Council to consider the possible future disposition of a number of Crown Land parcels at various location across the Shire to create the Noongar Estate as part of the South West Native Title Settlement.

This is the eighth such List of Land Parcels the Council has been requested to provide comment on.

This report provides recommendations as to the possible transfer of thirteen (13) properties which are detailed on land lists numbers 12650 and 12658.

#### BACKGROUND:

The State of Western Australia has committed to allocating up to 320,000 hectares of Crown Land to the Noongar People to create the Noongar Land Estate in accordance with the six registered Indigenous Land Use Agreements (ILUA) for the South West Native Title Settlement (the Settlement).

The six ILUAs comprising the Settlement were conclusively registered on 27 January 2021. With the ILUAs conclusively registered, the Settlement became effective and commenced from 25 February 2021.

The Noongar Boodja Trust (NBT) was appointed as Trustee for the Noongar Land Estate on 15 March 2021 and since that time, the Western Australian Government has made the first financial payments into the Trust and commenced the process to transfer land assets for the establishment of the Noongar Land Estate (NBT).

#### The Noongar Land Estate:

Over five years of implementation, the Department of Planning Lands and Heritage (DPLH) Project Team will continue the work required to establish the NBT in accordance with the Noongar Land Base Strategy. This involves ongoing consultation with key stakeholders, including the Shire, in relation to land that is potentially suitable for inclusion into the NBT.

It is noted that the Shire has previously been consulted and provided responses on possible land parcels that may be eligible for transfer to the NBT on seven separate occasions:

- Ordinary Council Meeting 20 February 2013 Item 10.3.5
- Ordinary Council Meeting 18 March 2020 Item 9.3.1
- Ordinary Council Meeting 15 April 2020 Item 9.3.1
- Ordinary Council Meeting 24 February 2021 Item 9.3.1
- Ordinary Council Meeting 27 October 2021 Item 9.3.1
- Ordinary Council Meeting 26 October 2022 Item 9.3.1
- Ordinary Council Meeting 22 February 2023 Item 9.3.1

The DPLH Project Team have prepared a spreadsheet comprising of land parcels identified for possible transfer. The Shire is being requested to provide comments on each of the land parcels in relation to the following:

1. Is the Shire of Jerramungup (Shire) supportive of the transfer of this land to the Noongar People under the Settlement?
2. Does the Shire have any interest in the land?
3. Does the Shire have existing or planned infrastructure within the land parcel that requires protection? If yes, please provide details and advise if access to this infrastructure will need to be maintained.
4. Is the land parcel subject to any mandatory connection to services?
5. Are any future proposals for the land identified? If so - provide detail of what is proposed and in what timeframe?
6. Are there any future proposals for adjoining land that may affect the land identified in the spreadsheet? If so, in what timeframe?
7. Advise of any proposed planning scheme amendments that may affect the zoning of this land at a State or Local government level. If a scheme amendment is to occur, what is the change proposed and when will it come into effect?
8. Advise of any known land management issues such as site contamination, hazards, debris or rubbish dumping, unauthorised land use and environmental considerations (such as inundation or similar site constraints).
9. Provide any additional comments on the proposed transfer of this land as part of the Settlement.

**CONSULTATION:**

The Shire acts as a referral body in this instance providing advice back to the South West Native Title Settlement team within the DPLH.

**COMMENT:**

The conclusive registration of the six Indigenous Land Use Agreements for the South West Native Title Settlement is a significant matter for the Native Title holders.

An objective of the Noongar Land Estate (NBT) is to provide the Noongar People with an asset base that may be developed in line with Noongar cultural, social and economic aspirations for the benefit of generations to come.

Council is currently being asked to provide comment on the future possible transfer of thirteen (13) parcels of Vacant Crown Lots, all of which are variously located in rural areas and one lot being located towards the western end of the Bremer Bay townsite.

Location plans that identify each of the lots subject to this current consideration are attached.

An overview of the lots under consideration for transfer follows:

**Land List 12650:** PIN Lots 624580, 624625, 624997, 625069, 62566, 625274, 625561, 644381, 644456, 644482, and 12210164

**Land List 12568:** - PIN Lots 11990490 and 11990660

With the exception of PIN Lot 625561, the balance of properties are variously located in Rural Zoned areas, generally around the Bremer, Boxwood and Jerramungup townsites.



- PIN Lot 624580 (*attachment 9.3.3 a*) is a 447ha parcel of Rural Zoned Vacant Crown Land (VCL) located North West of the Penliup South Road/Marnigarup West Road intersection. The lot is undeveloped and fully vegetated;
- PIN Lot 624625 (*attachment 9.3.3 b*) is a 223ha parcel of Rural Zoned VCL located north of the South Coast Hwy/Cowalellup Road intersection and approximately 5km west of the CBH Gairdner Grain Handling complex. The property is undeveloped and fully vegetated and is immediately adjacent to southern boundary of Reserve 29500 which is similarly vacant and fully vegetated;
- PIN Lot 624997 (*attachment 9.3.3 c*) is a 38ha parcel of Rural Zoned VCL located on the western side of Borden Bremer Bay Road and is approximately 5km north-west of the Boxwood Hill townsite. The property is undeveloped and fully vegetated and Zoned Rural. The property is bound on all sides with lots with similar characteristics in respect to vegetation and tenure;
- PIN Lot 625069 (*attachment 9.3.3 d*) is a 498ha parcel of land. The land is a Crown Reserve – Reserve No.13106 that is has the Purpose of Water with the responsible agency being the Water Corporation. The land appears free of infrastructure and is covered with native vegetation.
- PIN Lot 62566 (*attachment 9.3.3 e*) is a 752ha parcel of land. The land is located south west of the Bremer Bay/Warramurup Road intersection. The land is an unmanaged Crown Reserve – Reserve No.26935 with the nominated land use being Water Supply. The land is undeveloped and covered with native vegetation. Freehold rural land abuts the lot to the east and west whilst land immediately to the north is a similar parcel of VCL. Land to south is Reserve 27102 which is an extensive unmanaged Reserve with a Common and Recreation land use purpose;
- PIN Lot 625274 (*attachment 9.3.3 f*) is a 14ha parcel of Rural Zoned land. The lot is located on the southern side of Bremer Bay Road and is approximately 3km west of the Dillon Bay/Bremer Bay Road intersection. The property has access to Bremer Bay Road by an unconstructed/unnamed public road. The property contains the headwaters of a swamp located on the adjoining southern property which is also a parcel of VCL that is undeveloped and vegetated;
- PIN Lot 625561 (*attachment 9.3.3 g*) is a 40ha lot that is located at the western end of the Bremer Bay townsite. The land is located on the northern side of Mary Road and west of the Goorie Way intersection and extends down to the Wellstead Estuary. The land is presently an unmanaged Crown Reserve, (Reserve No. 25216) with the nominated land use being Public Utility. The property is bisected by Mary Road and also a strategic fire break. The balance of the land is undeveloped and vegetated.

Key issues relating to PIN Lot 625561:

- i) The land is proposed to be transferred in freehold;
- ii) A portion of the land at its southern extent, adjacent to Mary Road, is Zoned R2/15 whilst the balance of the Reserve is zoned Rural;
- iii) The Shire's Local Planning Strategy (LPS) identifies the land parcel as *Area 7 – Long Term Residential*;
- iv) Commentary within the LPS identifies that further land capability investigations are required to be undertaken to establish the capacity of the land to be developed for residential land uses. The LPS identifies a number of significant and complex issues affect the land which include the high flora and fauna values, the proximity of the land to the Fitzgerald National Park, the topography, hydrology issues, the high bushfire risk and indigenous cultural heritage values and local community values.

It is considered that the current Residential/Rural Zoning is highly speculative in the current planning environment and there is concern that should the transfer of the land occur in freehold title that this may incorrectly infer that the land has a higher development potential than it is actually capable of.

It is put that from a proper and orderly planning perspective, a more appropriate land use would be for the land to be amended to a Recreation and Open Space Reserve in the future review of the Local Planning Scheme.

Given the matters set out above, it is recommended that the transfer of the land in freehold title *not be supported*. There would be no substantive objection to the land being transferred as a Reserve, as that tenure would better serve and accommodate the various values and constraints that affect the land.

- PIN Lot 644381 (*attachment 9.3.3 h*) is a 52ha parcel of Rural Zoned land and is located immediately to the north east of the Stock Road/Chittowurrup Road intersection. The land is a Crown Reserve (Reserve No.15177), with the nominated land use being Water Supply and the Water Corporation the nominated responsible agency. The land is undeveloped and covered with native vegetation. Freehold rural land abuts the lot on all boundaries;
- PIN Lot 644456 (*attachment 9.3.3 i*) is a 1.5ha Rural Zoned parcel of VCL located in the south east corner of the Monkey Rock Road/South Coast Hwy intersection. The land is a triangular lot that is bound by the two roads and the Gairdner River to the east, is undeveloped and vegetated;
- PIN Lot 644482 (*attachment 9.3.3 j*) is 2.7ha Rural Zoned parcel of VCL that is located immediately to the south of the Cameron Road/Woolshed Road intersection. The land is a lineal parcel that lies between the western boundary of Cameron road and the Gairdner River to the west. The land is undeveloped and lightly vegetated. Any use or development of the land likely to be highly constrained by virtue of its shape and proximity to the adjacent water course.
- PIN Lot 12210164 (*attachment 9.3.3 k*) is a 99ha Rural Zoned parcel of VCL . The lot is immediately east of PIN Lot 624997 considered in this report. The land is undeveloped and vegetated.
- PIN Lot 11990490 (*attachment 9.3.3 l*) is a 81ha Rural Zoned parcel of VCL located south of the Gordon Inlet and adjacent to the southern end of Tooregullup Beach. The property does not have any legal access and is bound all sides by Reserve 32666 which is an unmanaged reserve. The property is undeveloped and vegetated.
- PIN Lot 11990660 (*attachment 9.3.3 m*) is a 4000m<sup>2</sup> Rural Zoned parcel of VCL. The lot is in similar location and circumstance to PIN 11990490 above – has no legal access, is undeveloped and vegetated and bound on all sides by Reserve 32666.

Notwithstanding the possible transfer of ownership, all current scheme, local and state policy provisions will continue to apply to all of the lots and a change in ownership does not infer any additional development rights or exemptions from having to obtain land use and development approvals. This statement excludes any rights afforded to the traditional owners under the terms of the Settlement.

As a general comment, no issues or objections arise from the transfer of those Rural Zoned and remotely located properties as Crown Reserves with the Power to Lease.

Support towards the transfer of PIN Lot 625561 (Mary Road location) in freehold title is, however, not supported on planning grounds, given that there is incomplete knowledge of the capacity and capability of that land to be developed. There would be less cause for concern should the transfer occur as a Crown Reserve with the Power to Lease, as that form of tenure would better reflect the best use of the land for the present. If the land was to be transferred under that tenure it would remain open to the land manager to seek a later conversion of the title to freehold if the question of land capacity was duly investigated and resolved. This course of action would be at the proponent's cost.

Table 1 (attachment 9.3.3 n)) sets out the responses to the nine questions put by the Project team pertaining to each of the lots proposed to be transferred to the NBT.

It is the recommendation of the Administration that the comments within Table 1 form the Shire's response to the DPLH regarding the suite of land parcels proposed to be transferred to the NBT.

**STATUTORY ENVIRONMENT:**

*Native Title Act 1993*

**STRATEGIC IMPLICATIONS:**

This item relates to the following component from the Shire of Jerramungup Strategic Community Plan 2021 – 2031;

*Environment Built: Deliver sustainable long-term planning for the built environment that meets the needs of the community.*

**FINANCIAL/BUDGET IMPLICATIONS:**

The Noongar Boodja Trust will be required to meet the standard costs such as rates and service charges associated with owning freehold title.

**WORKFORCE IMPLICATIONS:**

There are no workforce implications for Council.

**POLICY IMPLICATIONS:**

Policy implications do not apply to this report and it is the opinion of the author that policy development is not required.

**VOTING REQUIREMENT:**

Simple majority

**OFFICER RECOMMENDATION:**

**That COUNCIL endorses the comments provided in Table 1 in respect to the possible transfer of the thirteen (13) nominated land parcels detailed in Land Lists 12650 and 12568 to the Noongar Boodja Trust as its formal response to the Department of Planning, Lands and Heritage (DPLH).**

**9.3.4 PROPOSED MODIFICATION TO RESTRICTIVE COVENANT DP76616**

<b>Location/Address:</b>	Lots 151-157 Point Henry Road, Bremer Bay
<b>Name of Applicant:</b>	Craig Pursey Planning P/L on behalf of G Yardley and M Swarbrick
<b>File Reference:</b>	
<b>Author:</b>	Noel Myers, Manager of Development
<b>Responsible Officer:</b>	Martin Cuthbert, Chief Executive Officer
<b>Disclosure of any Interest:</b>	None
<b>Date of Report:</b>	17 September 2023
<b>Attachments:</b>	<ul style="list-style-type: none"> <li>a) Deposited Plan – WAPC DP76616</li> <li>b) Plan Showing Modified Restrictive Covenant Location</li> <li>c) Development Plans</li> <li>d) Proposed Building Envelope</li> <li>e) BAL Assessment Report</li> </ul>
<b>Authority/Discretion:</b>	Administrative

**SUMMARY:**

The landowners of Lot 152 Point Henry Road, Bremer Bay have requested that the Shire of Jerramungup supports the modification of a restrictive covenant as it applies to the Lots 151 to 157 Point Henry Road, Bremer Bay.

It is the recommendation of the Administration that Council may provide ‘in principle’ support towards the proposed modification.

**BACKGROUND:**Original Subdivision

- The subject lots are located towards the southern end of Point Henry Road and are to the western side of Point Henry Road. Two lots that form part of the subdivision are located to the south of Little Boat Harbour Road;
- Lots 151 to 157 Point Henry Road were subdivided in 2013 under WAPC approval 142871;
- That approval conditioned building envelopes to be secured by restrictive covenants. The Shire at the time felt that it was impractical to nominate building envelopes as part of the subdivision process due to the topography and presence of rock and vegetation, making it extremely difficult to identify building envelopes on 10ha lots accurately;
- The conditions of approval applied to that subdivision required the preparation of a Fire Management Plan. This Fire Management Plan (prepared under the guidance of the then operative WAPC document Planning for Bush Fire Protection Edition 2, 2010) recommended that building envelopes be restricted to the area between a north-south strategic break and Point Henry Road for ease of access;
- Finally, a restrictive covenant applied under section 129BA of the *Transfer of Land Act 1893* (as amended), was placed on the new Titles restricting development to a portion of the lots only. This was applied chiefly in response to the recommendations of the Fire Management Plan.
- The subdivision was completed in June 2013 with the creation of Deposited Plan 76616 (DP76616), as found in attachment a). DP76616 shows Lots 151 to 157 with a series of strategic firebreaks secured by easements and a restrictive covenant restricting development to a 200m strip along Point Henry Road.

### Current Planning Framework

Lots 151 to 157 are zoned Rural Residential Zone No.1 (RR1) by the Shire of Jerramungup Local Planning Scheme No.2 (the Scheme).

The Scheme and associated local planning policies (including Point Henry Fire Management (LPP18) along with the Planning Regulations 'Deemed Provisions' apply controls to development in this area, including the following:

1. Restrictions on development to within a nominated and approved 3,000m<sup>2</sup> building envelope. These are to be located in a manner that minimises clearing, potential for erosion and are not visually prominent when viewed from tourist routes, major roads, roads to beaches or reserved land;
2. Buildings are not to exceed five (5) metres from natural ground level to the apex of the roof unless the local government is satisfied that a higher building will not be visually obtrusive;
3. The materials and colours of all buildings' external walls and roofs are to be non-reflective and blend with the landscape;
4. Minimum setbacks that achieve 20m from all boundaries; and
5. Compliance with bushfire planning requirements (which now reference State Planning Policy 3.7 and associated Guidelines).

### Bushfire Planning Framework

This Framework includes State Planning Policy 3.7 - Planning in Bushfire Prone Areas (SPP3.7), the accompanying Guidelines for Planning in Bushfire Prone Areas (the Guidelines) and the Shire's Local Planning Policy 18 - Point Henry Fire Management (LPP18).

This series of policies replaced the 2010 version of the Guidelines in 2015.

The relevant bushfire management controls applicable to Lots 151 and 157 include:

- A requirement to provide housing in a BAL-29 location or safer with a compliant Asset Protection Zone (APZ), a 4m wide driveway (6m clear), a turnaround and dedicated firefighting water.
- Importantly, provided private driveways meet the acceptable development criteria of the guidelines, there is no maximum length. The restrictions include 20m long passing lanes every 200m, 4m trafficable surface, 6m horizontal clearance, 4.5m vertical clearance, and a maximum gradient of 1:10.

Essentially, development in this area is to have a small environmental footprint, be bushfire safe and not be visually prominent from surrounding public vantage points.

### **PROPOSAL**

The restrictive covenant applied at the time of subdivision may be considered overly restrictive. It was based on the recommendations of a Fire Management Plan formulated using (now) superseded Bushfire Guidelines. The new Bushfire Planning Framework enables a more flexible approach to development on these properties (as explored below).

The Scheme and Policy requirements that guide development in Rural Residential Zone No.1 adequately control development without the complication of the current restrictive covenant.

However, rather than removing the covenant, Council's support is sought to modify the existing restrictive covenant.

The new location, shown in attachment b), responds to the current planning framework while allowing landowners greater flexibility in choosing their housing locations. The revised covenant would keep development out of steeply sloping land or potentially visually sensitive land.

## JUSTIFICATION

- A modified covenant would prohibit development from more steeply sloping land closer to the coast which may result in greater clearing, earthworks and visual prominence while allowing development on more of the flatter, accessible portions of the properties.
- The Fire Management Plan adopted at the time of subdivision pre-dated SPP3.7 and the current bushfire planning framework. The current bushfire planning framework access requirements do not limit the distance for a driveway and opens up a larger area for compliant development.
- The limitations on the location of housing in this area should be based on landscape values and steeply sloping land as guided by the Scheme.
- There are large areas on Lots 151-157 where development would not readily be seen from Point Henry Road or the beaches below. A large ridge runs east-west through these lots up from Garibaldi Rocks which will screen a good portion of the lots or serve as a backdrop to appropriately located housing, thereby protecting the landscape values of the subdivision.
- The lots are long and relatively thin; increasing the development area will allow for greater privacy between future housing.
- All development is restricted to an approved building envelope, so the Shire has the ability to determine on a case-by-case basis whether the development of a site meets with the topography and landscape values. Also relevant is that the lots are very large compared to the remainder of Point Henry; the development scale will appear less intense.
- Modifying the covenant, rather than removing it, provides landowners with some greater flexibility while assisting the Shire to prohibit development from inappropriate areas.

### Lot 152 Point Henry Road

In order to demonstrate the validity of the request being put, a development proposal has been prepared in accordance with the current and proposed planning framework.

The landowners of Lot 152 are proposing this modification to the covenanted area to allow for the construction of a single-storey house in a bushfire-compliant position on the property that meets all the requirements of the applicable planning framework, except for the requirements of the existing restrictive covenant.

Plans of a proposed building envelope and single house with a BAL Assessment from BioDiverse Solutions have been provided with this request to demonstrate that a fully compliant house can be built outside of the covenanted area. The development proposal is provided in attachment c).

Should the proposal to modify the restrictive covenant progress, the landowner intends to lodge a (future) development application as per the plans in attachment c).

This proposal clearly shows that compliant development can occur outside of the covenanted area, as evidenced by the following:

- The building envelope is less than 3,000m<sup>2</sup>, setback 20m from the closest boundary and is not seen from any public place. It is located much lower in the landscape than approved houses and will not interrupt views from these properties.
- The house is single-storey, and the colours blend with the landscape.
- The BAL Assessment identifies Lot 152 as a legacy lot created before the enacting bushfire provisions of SPP 3.7. It confirms that with fuel reduction, the proposed building envelope can achieve a house with a BAL-29 rating or safer.

- The development site utilises existing cleared areas as part of the APZ and access/turnaround.
- The house site has a hill behind it so it would blend into the topography rather than be silhouetted against the skyline.

### Preliminary Consultation

The applicant has undertaken consultation with the Manager of Development.

The applicant has also consulted with several landowners in this area with general support received so far. In particular, the owners of Lot 157 and 151 have given support by email and phone at this point.

If the Council supports the proposal, formal letters will be circulated to all parties with a registered interest in the properties.

### **PROCESS**

The process is the same to remove or modify a restrictive covenant.

It is addressed by s.129BB, Div 3A, Part IV of the *Transfer of Land Act 1893* (as amended).

If the Council is supportive, only a statement of support is required pursuant to this Act.

Should Council support this request, the applicant will also need to seek the written consent of each person with a registered interest in any land burdened by the restrictive covenant as part of any application to Landgate to modify the restrictive covenant.

### **STATUTORY ENVIRONMENT:**

*Transfer of Land Act 1893* (as amended)

### **STRATEGIC IMPLICATIONS:**

This item relates to the following component from the Shire of Jerramungup Strategic Community Plan 2021 - 2031;

*Environment Built: Deliver sustainable long-term planning for the built environment that meets the needs of the community.*

### **FINANCIAL/BUDGET IMPLICATIONS:**

Nil in respect to the consideration of this request.

As the amendment to the restrictive covenant is of benefit to the landowners to which the land is burdened by the covenant, any costs arising with advertising, documentation, lodgement and administration associated with the proposed action would be for the care of the applicants making the request.

Should Council support the request, it is recommended that it be conditioned upon all costs associated with the modification being the responsibility of the applicant/beneficiaries.

### **WORKFORCE IMPLICATIONS:**

As detailed above, the beneficiaries of the modifications are the landowners whose properties are burdened by the restrictive covenant.

As such it is proposed that any support to the request would be conditioned so that the responsibility to fulfil all actions required to modify the restrictive covenant as required under s.129BB, Div 3A, Part IV of the *Transfer of Land Act 1893* will fall on the applicant/landowners.

### **POLICY IMPLICATIONS:**

Nil

**VOTING REQUIREMENT:**

Simple majority

**SUMMARY:**

Having regard to the matters set out above, it is the recommendation of the administration that there are reasonable grounds to support the request to modify restrictive covenants that affect the subject lots.

By providing in principle support now, Council will give the applicant a level of confidence when commencing the various actions required under the applicable legislation to effect the amendment.

Any support provided towards the action would need to be caveated with the advice that the Shire does not warrant that the action would be finalised or be successful and that the applicants/landowners proceed at their own cost and risk.

Council would preserve its right to review its support towards the modification if further unforeseen matters arose from the process that is required to be followed as set out under s.129BB, Div 3A, Part IV of the *Transfer of Land Act 1893*, or any other matter that Council believed relevant. Should such circumstances arise, a further report would be provided to Council for consideration.

The administration provides its support to the request for this proposal in principle, as it would allow landowners greater flexibility to build compliant housing that meets the requirements of the current planning framework while prohibiting development from areas that would not comply with the intent of the Scheme provisions.

**OFFICER RECOMMENDATION:**

**That Council advise the applicant that it provides in-principle support to the modification of a restrictive covenant as shown on Deposited Plan 76616 and as it applies to the Lots 151 to 157 Point Henry Road, Bremer Bay, subject the following conditions:**

- 1. All costs associated with the modification being for the care of the applicant/beneficiaries;**
- 2. The responsibility to fulfil all actions required to modify the restrictive covenant as required under s.129BB, Div 3A, Part IV of the *Transfer of Land Act 1893* will be for the care of the applicant/landowners;**
- 3. The Shire does not warrant that the action to modify the restrictive covenant would be finalised or be successful and that the applicants/landowners proceed at their own cost and risk; and**
- 4. Council preserves its right to review its support towards the modification if further unforeseen matters arise from the process that is required to be followed as set out under s.129BB, Div 3A, Part IV of the *Transfer of Land Act 1893* or any other matter that the Council believes relevant. Should such circumstances arise, a further report would be provided to Council for consideration.**



**9.3.5 PROPOSED OUTBUILDING – LOT 30 (No. 167) RIDGEWAY DRIVE, BREMER BAY**

<b>Location/Address:</b>	Lot 30 (No. 167) Ridgeway Drive, Bremer Bay
<b>Name of Applicant:</b>	Albany Sheds and Garages on behalf of GEJ and J Roberts
<b>File Reference:</b>	A110303
<b>Author:</b>	Noel Myers, Manager of Development
<b>Responsible Officer:</b>	Martin Cuthbert, Chief Executive Officer
<b>Disclosure of any Interest:</b>	None
<b>Date of Report:</b>	17 September 2023
<b>Attachments:</b>	a) Location Plan b) Elevation Plan c) Site Plan
<b>Authority/Discretion:</b>	Administrative

**SUMMARY:**

Council has received an application to construct an outbuilding which requires approval to vary the Shire's Policy in respect to the maximum permitted wall height and ridge height on the abovementioned property.

The application is recommended for approval subject to conditions.

**BACKGROUND:**

- Lot 30 Ridgeway Drive, Bremer Bay is 3ha in area and is zoned Rural Residential under the Shire of Jerramungup Local Planning Scheme No.2 (the Scheme).
- The property is located on the south-east corner of Ridgeway Drive and Short Beach Road, with access from Ridgeway Drive.
- The property is developed with a two storey residential dwelling.
- Surrounding properties in the Short Beach area are of similar dimensions and there has been a number of approvals granted more recently for the further development of the area with dwellings and outbuildings.
- Building Permit No.07087 was issued 15/10/2008 for construction of a dwelling.
- Planning Approval P23-013 was issued 06/04/2023 for preliminary earthworks to be undertaken in preparation for the construction of the new outbuilding.

**CONSULTATION:**

As a departure from the adopted Local Planning Policy No.16 – Outbuildings is proposed, plans of the development were referred to neighbouring landowners for comment in accordance with Council Policy No.11 – Consultation.

No submissions objecting to the proposal have been received in response to advertising. One verbal submission in support of the application was received (by the author of this report) from the neighbour located immediately across the road from the subject site.

Where no submissions are received, it is to be taken that there is no objection to the proposal.

**COMMENT:**Proposal:

- The proposal entails the construction of an outbuilding, primarily to store a large private fishing boat;
- The new building proposes the use of skillion roof design with a maximum ridge height of 5.68m that reduces to a wall height of 4.5m;
- The shed is to be located within the footprint of the existing approved building envelope and immediately forward of the two-storey dwelling which is centrally located on the block;

- Planning Approval (P23-013) was issued 06 April 2023 for preparatory earthworks associated with the new Outbuilding that involved cutting the site to achieve a level building pad. Those works have reduced the natural ground level in the area of the lot where the new building is to be constructed. This, in turn, will provide a reduction to the overall height of the new building from the previous natural ground level, meaning that the new building will sit lower than the roof height of the existing adjacent two-storey dwelling.

Local Planning Policy 16 – Outbuildings:

Council adopted a revised Local Planning Policy No 16 for final approval on 19 April 2017. The objective of this policy is:

- to establish clear guidelines for the development of outbuildings in the Residential, Townsite, Rural Residential and Rural zones; and
- to achieve a balance between providing for the various legitimate needs of residents for outbuildings, and minimising any adverse impacts outbuildings may have on neighbours, a street, a neighbourhood or locality, of the Shire as a whole.

The table below shows the applicable size requirements for Outbuildings on lots zoned Rural Residential and over 3ha in area.

	<b>LPP requirement</b>	<b>Proposed</b>
Floor Area	240m <sup>2</sup> max	121m <sup>2</sup>
Roof Height	5.0m to apex	5.68m
Wall Height	4.2m	4.5m

As detailed above, the construction of the new outbuilding seeks to vary the wall and ridge heights permitted as by right and therefore the development must be considered on its planning merits.

It is important that Council recognises that the Policy is a guideline only and each application still needs to be based on its individual merit. The main considerations in examining the proposed outbuilding are compliance with the Policy objectives, visual impact and streetscape.

The Policy states that *'Any variations to the policy will require the applicant to demonstrate exceptional circumstances as to why the policy should be relaxed with the proposal being presented to an Ordinary Meeting of Council for determination. Assessment of the application will require consultation with adjoining and affected landowners.'*

Assessment:

Part (b) of the objective of the Outbuilding Policy is to 'achieve a balance between providing for the various legitimate needs of residents for outbuildings, and minimising any adverse impacts outbuildings may have on neighbours, a street, a neighbourhood or locality, of the Shire as a whole.'

This is the statement that everything else in the Policy is trying to achieve. In this case there appears to be a 'legitimate need' insofar that the applicant has outlined their particular personal circumstances that give rise to the variation and those reasons are accepted without further comment.

Amenity:

The Policy and the Scheme require that Council has due regard to the potential impact that a development proposing a variation may have upon adjoining properties and the streetscape in general.

The subject lot is located on the corner of Short Beach Road and Ridgeway Drive with access taken from Ridgeway Drive. The orientation of the driveway to the adjoining roadway means the view from the street towards the existing and proposed development is largely obscured which in turn minimises the presence of the structure in the streetscape and the surrounding landscape generally.

The proposed outbuilding has been designed and located so as to blend seamlessly with the existing natural landscape and architectural features of the property. Furthermore, the building materials and colour scheme will be selected to complement the aesthetics of the area, ensuring it remains in harmony with its surroundings.

An essential aspect of this application is the natural screening provided by dense fringing vegetation that surrounds the property boundaries. This vegetation effectively conceals the structure from adjoining roadways, ensuring that the outbuilding will not be readily visible to passers-by. As a result, it is considered that the visual impact on the surrounding area will be minimal.

The outbuilding's location and size have been carefully planned to minimise any adverse effects on neighbouring properties. The existing vegetation, combined with the placement of the structure, ensures that neighbouring properties will not experience any significant loss of privacy or visual intrusion into views of significance.

**STATUTORY ENVIRONMENT:**

- Shire of Jerramungup Local Planning Scheme No.2
- *Planning and Development (Local Planning Schemes) Regulations 2015*
- Local Planning Policy No.16 – Outbuildings
- Local Planning Policy No.11 - Consultation

The applicant has a right of review to the State Administrative Tribunal if aggrieved by any decision made by Council.

**STRATEGIC IMPLICATIONS:**

This item relates to the following component from the Shire of Jerramungup Strategic Community Plan 2021 – 2031;

*Environment Built: Deliver sustainable long-term planning for the built environment that meets the needs of the community.*

**FINANCIAL/BUDGET IMPLICATIONS:**

There are no financial implications for Council.

**WORKFORCE IMPLICATIONS:**

There are no workforce implications for Council.

**POLICY IMPLICATIONS:**

Policy implications do not apply to this report and it is the opinion of the author that policy development is not required.

**VOTING REQUIREMENT:**

Simple Majority

**OFFICER RECOMMENDATION:**

**That Council APPROVE the application for an outbuilding on Lot 30 (No.167) Ridgeway Drive, Bremer Bay subject to the following conditions:**

- (a) Development shall be carried out in full and fully implemented in accordance with the approved plans and details submitted with the planning application;**
- (b) The outbuilding being used for domestic storage only and not for commercial or industrial use or human habitation;**
- (c) All stormwater from roofed and paved areas shall be collected and disposed of on-site to the satisfaction of Council; and**
- (d) The outbuilding is to be finished in colours and materials compatible with those approved for the future dwelling and colour pallets to be used are to be submitted and approved by the Manager of Development prior to the Building Permit being lodged for approval.**

## 9.4 EXECUTIVE SERVICES

### 9.4.1 INFORMATION BULLETIN AUGUST/SEPTEMBER 2023

<b>Location/Address:</b>	N/A
<b>Name of Applicant:</b>	N/A
<b>File Reference:</b>	N/A
<b>Author:</b>	Glenda Gray, Executive Assistant
<b>Responsible Officer:</b>	Martin Cuthbert, Chief Executive Officer
<b>Disclosure of any Interest:</b>	Nil
<b>Date of Report:</b>	15 September 2023
<b>Attachments:</b>	a) Information Bulletin August/September 2023
<b>Authority/Discretion:</b>	Information

#### SUMMARY:

To advise Council on the information items for August/September 2023 including actions that have been undertaken in relation to decisions of Council and actions performed under delegated authority.

#### BACKGROUND:

There is no specific requirement to report on actions performed under delegated authority to Council. However, to increase transparency this report has been prepared for Council and includes actions performed under delegated authority for the month of August/September 2023.

#### CONSULTATION:

Internal, all officers that have been deemed responsible for enacting each Council decision has provided an update on its status.

#### COMMENT:

The Council Resolution Register is an important administrative tool used by the Shire to monitor the implementation of Council decisions. Any Council resolution that has not yet been fully implemented will remain on the list until it has been completed.

Once the minutes of each Council meeting have been completed, the Executive Assistant uploads each decision of Council into the spreadsheet and allocates it to the relevant Shire office for actioning and comment. The spreadsheet is accessible by all relevant Shire officers.

The Shire enters into various agreements by affixing its Common Seal. The *Local Government Act 1995* states that the Shire is a body corporate with perpetual succession and a Common Seal. Those documents that are to be executed by affixing the Common Seal or signed by the Shire President and the Chief Executive Officer are reported to Council for information on a regular basis.

#### STATUTORY ENVIRONMENT:

##### ***Local Government (Administration) Regulations 1996***

##### ***19. Delegates to keep certain records (Act s. 5.46(3))***

*Where a power or duty has been delegated under the Act to the CEO or to any other local government employee, the person to whom the power or duty has been delegated is to keep a written record of —*

- a) how the person exercised the power or discharged the duty; and*
- b) when the person exercised the power or discharged the duty; and*
- c) the persons or classes of persons, other than council or committee members or employees of the local government, directly affected by the exercise of the power or the discharge of the duty.*

**STRATEGIC IMPLICATIONS:**

This item relates to the following component from the Shire of Jerramungup Community Plan 2021 – 2031;

*Governance and Leadership*

*Provide informed and transparent decision making that meets our legal obligations and the needs of our diverse community.*

*Implement systems and processes that meet our legal and audit obligations.*

**FINANCIAL IMPLICATIONS:**

There are no financial implications for this report.

**WORKFORCE IMPLICATIONS:**

There are no workforce implications for this report.

**POLICY IMPLICATIONS:**

Policy implications do not apply to this report and it is the opinion of the author that policy development is not required.

**VOTING REQUIREMENT:**

Simple Majority

**OFFICER RECOMMENDATION:**

**That Council RECEIVE the Information Bulletin including the actions performed under delegated authority for the months of August/September 2023.**

#### **9.4.2 PURCHASE OF 1 X NEW CONSTRUCTION LOADER AND/OR OUTRIGHT PURCHASE OF 1 X 2015 JOHN DEERE LOADER 624K**

<b>Location/Address:</b>	Shire of Jerramungup
<b>Name of Applicant:</b>	Shire of Jerramungup
<b>File Reference:</b>	PE.AC.1
<b>Author:</b>	Charmaine Solomon, Deputy Chief Executive Officer
<b>Responsible Officer:</b>	Martin Cuthbert, Chief Executive Officer
<b>Disclosure of any Interest:</b>	Nil
<b>Date of Report:</b>	19 September 2023
<b>Attachments:</b>	a) Request for E-Quote b) – i) CONFIDENTIAL – E-Quote Submissions Received (x8)
<b>Authority/Discretion:</b>	Executive

#### **SUMMARY:**

For Council to consider the purchase of one new construction loader and the outright purchase of Council's existing John Deere Loader.

#### **BACKGROUND:**

Quotations were sought via the WALGA eQuotes system from 18 August 2023 to 13 September 2023. The new machine specifications were to be no less than the trade, John Deere Loader 624K. The request was for a loader of similar size to Komatsu WA380-8, John Deere 624K or Volvo L70F or other.

A total of eight (8) responses were received by the closing date with a trade –in valuation provided on each.

#### **CONSULTATION:**

Consultation has occurred between the Shire's Executive team and the Works Department.

#### **COMMENT:**

Eight (8) responses in total were received from the following suppliers by the closing date:

- AFGRI Equipment Australia
- McIntosh and Son
- Construction Equipment Australia
- Hitachi Construction Machinery (3 separate submissions received)
- Wes Trac Pty Ltd
- CJD Equipment

Five (5) suppliers provided a trade-in valuation for Council's John Deere 624K Loader. One (1) supplier provided an offer to keep the trade and sell it privately.

The submissions were reviewed by an Evaluation Panel consisting of Shire of Jerramungup staff: Chief Executive Officer, Deputy Chief Executive Officer and Works Supervisor.

Each submission was evaluated, the key qualitative criteria were as follows:

Qualitative Criteria		Weighting
a)	<b>Relevant Experience</b> <ul style="list-style-type: none"> <li>• Capability to complete delivery on schedule</li> <li>• Demonstrated suitability for local government works use, parts and service.</li> <li>• Suitability for operator.</li> <li>• Operational requirements.</li> <li>• Scheduled maintenance</li> </ul>	<b>20%</b>
b)	<b>Cost</b> Complete the price schedule.	<b>80%</b>

The table below provides the results of the assessment undertaken by the panel:

Supplier	Qualitative Score	Ranking
AFGRI Equipment Australia	16	1
Wes Trac Pty Ltd	14	2
Construction Equipment Australia	12	3
CJD Equipment	10	4
Hitachi Construction Machinery (Model ZW220-7)	7	5
McIntosh and Son	6	6
Hitachi Construction Machinery (Model ZW180-5)	5	7
Hitachi Construction Machinery (Model ZW180-7)	5	7

In consideration of additional whole-of-life factors, such as parts, servicing, Council’s existing fleet and delivery time of April 2024 it is therefore recommended to purchase the John Deere 624K–11 Wheel Loader.

As the majority of Council’s current heavy plant items are John Deeres, this will allow for any maintenance personnel that travel to Jerramungup to service all machines in the same visit, which in turn will result in reduced down time and maintenance costs, ensuring better value for money overall.



**STATUTORY ENVIRONMENT:****Local Government Act 1995****3.57. Tenders for providing goods or services**

- (1) A local government is required to invite tenders before it enters into a contract of a prescribed kind under which another person is to supply goods or services.*
- (2) Regulations may make provision about tenders.*

**Local Government (Functions and General) Regulations 1996****Part 4 – Provision of goods and services***Division 2 – Tenders for providing goods or services (s. 3.57)**11. When tenders have to be publicly invited*

- (1) Tenders are to be publicly invited according to the requirements of this Division before a local government enters into a contract for another person to supply goods or services if the consideration under the contract is, or is expected to be, more, or worth more, than \$150 000 unless subregulation (2) states otherwise.*

*12. Anti-avoidance provision for r. 11(1)*

- (1) This regulation applies if a local government intends to enter into 2 or more contracts (the contracts) in circumstances such that the desire to avoid the requirements of regulation 11(1) is a significant reason for not dealing with the matter in a single contract.*

*14. Publicly inviting tenders, requirements for*

- (1) When regulation 11(1), 12(2) or 13 requires tenders to be publicly invited, Statewide public notice of the invitation is to be given.*
- (2) If the CEO has, under regulation 23(4), prepared a list of acceptable tenderers, instead of giving Statewide public notice the CEO is required to give notice of the invitation to each acceptable tenderer listed.*

*(2a) If a local government –*

- (a) is required to invite a tender; or*
- (b) not being required to invite a tender, decides to invite a tender, the local government must, before tenders are publicly invited, determine in writing the criteria for deciding which tender should be accepted.*
- (3) The notice, whether under subregulation (1) or (2), is required to include –*
  - (a) a brief description of the goods or services required; and*
  - (b) particulars identifying a person from whom more detailed information as to tendering may be obtained; and*
  - (c) information as to where and how tenders may be submitted; and*
  - (d) the date and time after which tenders cannot be submitted.*
- (4) In subregulation (3)(b) a reference to detailed information includes a reference to –*
  - (a) for deciding which tender should be accepted; and*
  - (b) such information as the local government decides should be disclosed to those interested in submitting a tender; and*
  - (c) detailed specifications of the goods or services required; and*
  - (d) the criteria whether the local government has decided to submit a tender.*

- (5) *After a notice has been given under subregulation (1) or (2), a local government may vary the information referred to in subregulation (3) by taking reasonable steps to give each person who has sought copies of the tender documents or each acceptable tenderer, as the case may be, notice of the variation.*
15. *Minimum time to be allowed for submitting tenders*
- (1) *If a notice under regulation 14(1) is given, the date and time referred to in regulation 14(3)(d) has to be at least 14 days after the notice is first published in the newspaper circulating generally throughout the State.*
- (2) *If a notice under regulation 14(2) is given to a person listed as an acceptable tenderer, the date and time referred to in regulation 14(3)(d) has to be at least 14 days after the notice is given.*
16. *Receiving and opening tenders, procedure for*
- (1) *The CEO is responsible for keeping any tender submitted including a tender submitted by facsimile or other electronic means in safe custody, and for ensuring that it remains confidential.*
- (2) *Tenders are not to be opened, examined, or assessed until the time after which further tenders cannot be submitted.*
- (3) *When tenders are opened —*
- (a) *there must be present —*
- (i) *at least 2 employees of the local government; or*
- (ii) *one employee of the local government and at least one person authorised by the CEO to open tenders;*
- and*
- (b) *members of the public are entitled to be present; and (c) details of the tenders (other than the consideration sought in the tender) are to be immediately recorded in a register to be known as the tenders register.*

#### **STRATEGIC IMPLICATIONS:**

This item relates to the following component from the Shire of Jerramungup Community Plan 2021 – 2031; *Maintenance and renewal of assets is environmentally and financially sustainable.*

#### **FINANCIAL IMPLICATIONS:**

\$340,000 ex GST was allocated in the 2023-2024 Annual Budget to purchase a new construction loader. If the officer recommendation is accepted this will see a cash saving of \$22,000.

\$85,000 ex GST was identified in the 2023-2024 Annual Budget to dispose of Council's existing 2015 John Deere Loader 624K. If the officer recommendation is accepted this will see a loss on asset disposal of \$2,500.

#### **WORKFORCE IMPLICATIONS:**

There are no additional workforce implications as a result of this item.

#### **POLICY IMPLICATIONS:**

Policy implications do not apply to this report and it is the opinion of the author that policy development is not required.

#### **VOTING REQUIREMENT:**

Absolute Majority

**OFFICER RECOMMENDATION:**

**That Council, by ABSOLUTE MAJORITY:**

- 1. Accepts AFGRI Equipment Australia’s quotation for a John Deere 624K-11 Wheel Loader at \$318,000 ex GST.**
- 2. Accepts AFGRI Equipment Australia’s outright purchase for Council’s John Deere 624K Loader at \$82,500 ex GST.**
- 3. Delegates authority to the CEO to execute the transaction with AFGRI Equipment Australia.**

### 9.4.3 WORK, HEALTH AND SAFETY POLICY REVIEW

<b>Location/Address:</b>	Shire of Jerramungup
<b>Name of Applicant:</b>	Shire of Jerramungup
<b>File Reference:</b>	N/A
<b>Author:</b>	Martin Cuthbert, Chief Executive Officer
<b>Responsible Officer:</b>	Martin Cuthbert, Chief Executive Officer
<b>Disclosure of any Interest:</b>	Nil
<b>Date of Report:</b>	19 September 2023
<b>Attachments:</b>	a)-g) Existing Occupational Safety and Health Policies h)-m) Proposed Work, Health and Safety Policies
<b>Authority/Discretion:</b>	Legislative

#### SUMMARY:

The purpose of this report is for Council to consider rescinding policies deemed redundant and adopt new and reviewed policies as detailed in this report.

#### BACKGROUND:

Although not a requirement of the *Local Government Act 1995*, it is considered good practice for Council to review its Policy Manual on a regular basis. It is intended to review the Policy Manual by each section on a monthly basis until all policies have been reviewed during 2023.

In addition to any annual review, any changes to existing policies or the need for new policies identified during the course of the year will be presented through the appropriate meetings for Council consideration.

Policies are determined by Council and may be amended or waived according to circumstances. This power is conveyed to Council in section 2.7(2)(b) of the *Local Government Act 1995*. Policies cannot be made in relation to those powers and duties given directly to the CEO by the Act.

The objectives of the Council's Policy Manual are:

- to provide Council with a formal written record of all policy decisions;
- to provide the staff with clear direction to enable them to respond to issues and act in accordance with Council's general direction;
- to enable Councillors to adequately handle enquiries from electors without undue reference to the staff or the Shire;
- to enable Council to maintain a continual review of Council policy decisions and to ensure they are in keeping with community expectations, current trends and circumstances;
- to enable electors to obtain immediate advice on matters of Council Policy.
- Policies are to relate to issues of an on-going nature; policy decisions on single issues are not to be recorded in the manual.

Policies should not be confused with management practices or operational procedures, which are determined by the CEO, as a mechanism for good management, and implementation of Council policies.

Changes to Council Policy shall be made only on:

1. the outcome of the Annual Review or
2. an agenda item clearly setting out details of the proposed amendment

Users should be mindful of the fact that, in simple terms:

- Policy provides what can be done;
- Procedures provide for how to do it;
- Delegation provides for who can do it.

It is important to note that the Shire’s adopted policies have been made to facilitate:

- Consistency and equity in decision making;
- Promptness in responding to customer needs; and
- Operational efficiency.

**CONSULTATION:**

Internal – Relevant Shire staff have been consulted.

**COMMENT:**

A review has been conducted of the Shire of Jerramungup’s existing Occupational Safety and Health Policies. All these policies have been updated to reflect the current *Work Health and Safety Act 2020*. Council Policies are developed to assist Council in achieving its strategic goals and contribute to meeting mandatory obligations with the ‘Objective’ providing the reason why the Policy has been developed.

Policies guide the discretionary powers of Council’s decision making and are defined as “A course of principle of action”, while Management Practices explain the steps and the considerations to be followed by management when applying Policy to a matter and are defined as “A series of actions conducted in a certain order or manner to give effect to Policy”.

***Amended Policies:***

**WHS01 – Work, Health, and Safety Policy**

**WHS02 – Fitness for Work Policy**

**WHS04 – Workplace Bullying, Harassment and Discrimination Policy**

**WHS05 – Sexual Harassment Policy**

**WHS06 – Injury Management and Rehabilitation Policy**

**WHS07 – Contractor Work Health and Safety Policy**

These policies have been reviewed and amended to reflect current industry standard.

**STATUTORY ENVIRONMENT:**

*Local Government Act 1995 s.2.7(2)(b)*

*2.7. Role of council*

1. *The council —*
  - (a) governs the local government’s affairs; and*
  - (b) is responsible for the performance of the local government’s functions.*
2. *Without limiting subsection (1), the council is to —*
  - (a) oversee the allocation of the local government’s finances and resources; and*
  - (b) determine the local government’s policies.*

**STRATEGIC IMPLICATIONS:**

This item relates to the following components from the Shire of Jerramungup Community Plan 2021 – 2031;  
*Provide informed and transparent decision making that meets our legal obligations, and the needs of our diverse community.*

*Implement systems and processes that meet our legal and audit obligations.*

**FINANCIAL IMPLICATIONS:**

There are no financial implications for this report.

**WORKFORCE IMPLICATIONS:**

Policies provide direction for all Shire of Jerramungup employees.

**POLICY IMPLICATIONS:**

As detailed in each policy.

**VOTING REQUIREMENT:**

Simple Majority

**OFFICER RECOMMENDATION:**

That Council, pursuant to section 2.7(2)(b) of the *Local Government Act 1995* reaffirm the continued application and operation of each of the following current Council Policies as amended in the report and attached to this report for a further two (2) years or such earlier date as Council may determine from time to time:

**WHS01 – Work, Health, and Safety Policy**

**WHS02 – Fitness for Work Policy**

**WHS04 – Workplace Bullying, Harassment and Discrimination Policy**

**WHS05 – Sexual Harassment Policy**

**WHS06 – Injury Management and Rehabilitation Policy**

**WHS07 – Contractor Work Health and Safety Policy**

**10.0 MATTERS FOR WHICH THE MEETING MAY BE CLOSED  
(CONFIDENTIAL MATTERS)**

**11.0 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

**12.0 COUNCILLOR REPORTS**

**13.0 NEW BUSINESS OF AN URGENT NATURE**

**14.0 CLOSURE**

**14.1 DATE OF NEXT MEETING**

The next ordinary meeting of Council will be held Wednesday, 25 October 2023, commencing at 10.00am, in Jerramungup.

**14.2 CLOSURE OF MEETING**

The Presiding Member closed the meeting at .....am

These minutes were confirmed at a meeting held

.....

Signed: .....

Presiding Person at the meeting at which these minutes were confirmed

Date: .....