SHIRE OF IRWIN
DONGARA-PORT DENISON
A BRILLIANT BLEND

# MINUTES

## Ordinary Council Meeting

held on

**Tuesday 26 March, 2024**

in the

**Council Chambers**
11-13 Waldeck Street, Dongara

I certify that this copy of the Minutes is a true and correct record of the meeting held on Tuesday, 26 March 2024

*Signed:* .....
Presiding Elected Member

23 April 2024
*Date:* .....

# Disclaimer

The Shire of Irwin advises that the purpose of an Ordinary Council Meeting is to discuss and, where possible, make resolutions about items appearing in the agenda. No person should rely or act on the basis of any decision, advice or information provided by a Member or Officer, or on the content of any discussion occurring during the course of the meeting. No person should rely on the decisions made by Council until formal written advice of the Council is received by that person.

The Shire of Irwin expressly disclaims any liability for any loss or damage 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.

Shane Ivers
**CHIEF EXECUTIVE OFFICER**



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# MINUTES

of the

# ORDINARY COUNCIL MEETING

Held on

# 26 March 2024

## 1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

The Shire President welcomed Councillors, Staff and Members of the Gallery then declared the meeting open at 6.00pm.

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

**Members**

| | |
|---|---|
| Councillor M Leonard | President |
| Councillor B Wyse | Deputy President |
| Councillor I Scott | |
| Councillor A J Gillam | |
| Councillor E Tunbridge | |
| Councillor P Summers | |

**Staff**

| | |
|---|---|
| Mr S D Ivers | Chief Executive Officer |
| Miss P Machaka | Manager Finance |
| Mr M Connell | Manager Development |
| Ms S Stubbs | Community Emergency Services Manager |
| Ms F Boksmati | Acting Manager Community Services |
| Mr M Jones | Acting Manager Operations |
| Ms S Mearns | Acting Executive Assistant |

**Guests**

Nil

**Apologies**

Nil

**Approved Leave of Absence**

Nil

**Gallery**

Lauren Palmer
Helen Tunbridge
Ray Cooper
Roy Wolczyk
Kevin Penny

## 3. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

**Question 1:** Mr Richard Burt, Chief Executive Officer, Fowler Group of Companies
Why is the Big 4 Port Denison required to pay a higher rent for a much smaller site area compared to the other two parks in Dongara/Denison?

***Response:*** *In essence your query is in relation to the discrepancy between the terms of your lease and those of the other two Shire leased caravan parks.*

*It is the Shire's understanding that the current lease from circa 2005 has always had the rental terms (from years 6 to 21) being the greater amount of $20,000 or 6% of the gross sales for the preceding year. This principle of the 'greater amount' is not proposed to be changed with the draft lease that is currently being prepared.*

*It is acknowledged that these terms do differ from the other two Shire lease caravan parks, however this is in recognition of the unique circumstances of the BIG4 park. As you would be aware the park is located immediately adjacent to the ocean and has, and will continue to be, subject to significant coastal erosion issues. In response to this issue the Shire has expended substantial public monies to construct a rock wall for the benefit of protecting the caravan park.*

*Over time these protection works will need to be maintained by the Shire at the ratepayer's expense. It is therefore considered appropriate for the Shire to recover, at least a portion of the envisaged funds by applying the rental terms as proposed.*

**Question 2:** Mr Richard Burt, Chief Executive Officer, Fowler Group of Companies
If our company is contributing towards the construction and maintenance of the seawall, why is Item 10.1 (2-4) '*Coastal Hazard Area'* required if our company has previously and continues to contribute towards the seawall's existence?

***Response:*** *The matters contained in Item 10.1 of the draft lease are essential in order to disclose to the Lessee the potential coastal hazard factors that may affect the future use of the site.*

## 4. DECLARATIONS OF INTEREST

Nil

## 5. PUBLIC QUESTION TIME

**Question 1:** Ms Bev Ewen, Osborne Way, Port Denison
Has there been any further information pursuant to the council's decision made on December 11th 2023 that a 1.8 metre fence must be erected along the entirety of the boundary between the properties at 3b and 5 Osborne Way for the owners of 3b to gain permission to establish a short term accommodation business that mitigates privacy and safety risks to young children sleeping in the building at the back of the main house and playing in the yard of no 5 Osborne Way that warrants a change to that decision, and if so, what is the new information?

***Response:*** The matter has been the subject of a review and mediation by the State Administrative Tribunal who have invited Council to reconsider its decision. The additional information that has been provided by the applicant is contained in Attachment 1 of Council item ID03-03/24.

## 6. APPLICATIONS FOR LEAVE OF ABSENCE

Nil

## 7. PETITIONS AND DEPUTATIONS

Nil

## 8. CONFIRMATION OF MINUTES

### 8.1 Minutes of the Ordinary Council Meeting held 27 February 2024

The Minutes of the Ordinary Council Meeting held 27 February 2024 have been provided to all Councillors under separate cover.

| **OFFICER RECOMMENDATION AND COUNCIL DECISION** | **010324** |
|---|---|
| **MOVED: Cr Wyse** | **SECONDED: Cr Summers** |
| **That Council confirms the Minutes of the Ordinary Council Meeting held 27 February 2024.** | |
| **VOTING DETAILS:** | **CARRIED: 6/0** |
| **For: Cr Leonard, Cr Wyse, Cr Scott, Cr Gillam, Cr Summers, Cr Tunbridge** | |
| **Against: Nil** | |

### 8.2 Minutes of the Special Council Meeting held 19 March 2024

The Minutes of the Special Council Meeting held 19 March 2024 have been provided to all Councillors under separate cover.

| **OFFICER RECOMMENDATION AND COUNCIL DECISION** | **020324** |
|---|---|
| **MOVED: Cr Tunbridge** | **SECONDED: Cr Wyse** |
| **That Council confirms the Minutes of the Special Council Meeting held 19 March 2024.** | |
| **VOTING DETAILS:** | **CARRIED: 6/0** |
| **For: Cr Leonard, Cr Wyse, Cr Scott, Cr Gillam, Cr Summers, Cr Tunbridge** | |
| **Against: Nil** | |

## 9. ANNOUNCEMENTS BY THE PERSON PRESIDING WITHOUT DISCUSSION

| | |
|---|---|
| 29 February 2024 | Shire President and CEO attended Monthly MWDC Catch Up |
| 1 March 2024 | Shire President and CEO attended Infinity Green Presentation |
| 6 March 2024 | Manager Development attended SAT Mediation Meeting |
| 12 – 13 March 2024 | CEO attended Mid West Development Housing Forum |
| 15 March 2024 | CEO attended Regional Road Group – Coastal Sub Group Meeting (Geraldton) |
| 20 March 2024 | Shire President conducted a Citizenship Ceremony for Mr Samuel May |
| 20 March 2024 | Deputy President, Cr Scott, Cr Summers and CEO attended Audit Committee Meeting |
| 20 March 2024 | Shire President and CEO attended MEPAU Monthly Meeting |
| 21 March 2024 | Mid West Development Commission visited the Shire – Councillors and CEO in attendance |
| 22 March 2024 | Shire President attended in Geraldton a review of regional telecommunications chaired by Alannah McTiernan. |
| 25 March 2024 | Cr Gillam and CEO attended the Main Regional Road Group Meeting in Geraldton |

# 10. REPORTS

## 10.1 Officer Reports

| CORPORATE AND COMMUNITY | CC01-03/24 |
|---|---|
| **Subject:** | **CC01-03/24 Accounts for Payment** |
| **Author:** | **S Clarkson, Senior Finance Officer** |
| **Responsible Officer:** | **P Machaka, Manager Finance** |
| **File Reference:** | **2.00057** |
| **Voting Requirements:** | **Simple Majority** |

**Council Role:**

| | | |
|---|---|---|
| ☐ | **Advocacy** | When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency. |
| ☒ | **Executive** | The substantial direction setting and oversight role of the Council e.g., performance of the Local Government's function under law, administration of Local Laws, adopting plans and reports, accepting tenders, directing operations, setting and amending budgets. |
| ☐ | **Legislative** | Includes adopting local laws and local planning schemes. |
| ☐ | **Review** | When Council reviews decisions made by Officers. |
| ☐ | **Quasi-judicial** | When Council determines an application/matter that directly affects a person's rights and interests. The judicial character arises from the obligation to abide by the principles of natural justice e.g., local planning applications, building permits, other permits/licences (e.g. under the Health Act, Dog Act or local laws) and other decisions that may be appealable to the State Administrative Tribunal (SAT). |

**Report Purpose:**
For Council to receive the list of accounts paid under delegated authority during February 2024.

**Background:**
A list of accounts paid under delegated authority is attached showing all payments made during the month of February 2024.

**Officer's Comment:**
Nil

**Consultation:**
Nil

**Statutory Environment:**
The *Local Government (Financial Management) Regulations 1996* provides as follows:

*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;*

*(b) the amount of the payment;*

*(c) the date of the payment; and*

*(d) sufficient information to identify the transaction.*

*(3) A list prepared under sub-regulation (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.*

**Policy Implications:**
Under Delegation CEO101 Council has delegated authority to the Chief Executive Officer to authorise payments from the municipal or trust fund.

**Financial/Resource Implications:**
Nil

**Strategic Implications:**
Our Brilliant Future – Strategic Community Plan 2021 – 2031
Strategy 4.2.1 Ensure compliance whilst embracing innovation and better practice principles
Strategy 4.3.2 Adopt and follow better practice processes

**Attachments:**
*Attachment Booklet – March 2024*
CC01-03/24 Attachment 1 Accounts for Payment – February 2024

**OFFICER RECOMMENDATION AND COUNCIL DECISION 030324**

**MOVED: Cr Gillam** **SECONDED: Cr Summers**

**That Council, by Simple Majority, receives the Accounts paid during February 2024 as contained in CC01-12/23 Attachment 1 of the Attachment Booklet – March 2024, represented by:**

| Payment Type/Numbers | Total Amount |
|---|---|
| EFT 31601 – 31777 | $1,142,892.89 |
| Muni Cheques – 32185 – 32188 | $51,262.32 |
| Direct Debit – Telstra | $365.08 |
| Direct Debit – WA Treasury Corporation | $20,727.35 |
| Direct Debit – Credit Card | $22,529.80 |
| Direct Debit – N-Able Pty Ltd | $1,088.74 |
| Direct Debit – Australian Phone Company | $225.23 |
| Direct Debit – Insurance Premium Repayments | $54,988.22 |
| Direct Debit – Rental Allowance | $1,800.00 |
| Direct Debit – Superannuation | $54,740.45 |
| Grand Total | $1,350,620.08 |

**VOTING DETAILS:** **CARRIED: 6/0**

**For:** **Cr Leonard, Cr Wyse, Cr Scott, Cr Tunbridge, Cr Gillam, Cr Summers**

**Against:** **Nil**

| CORPORATE AND COMMUNITY | CC02-03/24 |
|---|---|
| **Subject:** | **CC02-03/24 Monthly Financial Statements for the Period Ended 29 February 2024** |
| **Author:** | **P Machaka, Manager Finance** |
| **Responsible Officer:** | **S Ivers, Chief Executive Officer** |
| **File Reference:** | **2.00057** |
| **Voting Requirements:** | **Simple Majority** |

**Council Role:**

| | | |
|---|---|---|
| ☐ | **Advocacy** | When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency. |
| ☒ | **Executive** | The substantial direction setting and oversight role of the Council e.g., performance of the Local Government's function under law, administration of Local Laws, adopting plans and reports, accepting tenders, directing operations, setting and amending budgets. |
| ☐ | **Legislative** | Includes adopting local laws and local planning schemes. |
| ☐ | **Review** | When Council reviews decisions made by Officers. |
| ☐ | **Quasi-judicial** | When Council determines an application/matter that directly affects a person's rights and interests. The judicial character arises from the obligation to abide by the principles of natural justice e.g., local planning applications, building permits, other permits/licences (e.g. under the Health Act, Dog Act or local laws) and other decisions that may be appealable to the State Administrative Tribunal (SAT). |

**Report Purpose:**
For Council to consider and receive the Monthly Financial Statements for the period 1 July 2023 to 29 February 2024.

**Background:**
The Monthly Financial Statements to 29 February 2024 are prepared in accordance with the requirements of the *Local Government Act 1995* and the *Local Government (Financial Management) Regulations 1996* and includes the following statutory reports:

- Statement of Financial Activity by Nature & Type
- Statement of Financial Position
- Explanation of Material Variances
- Net Current Funding Position

The Statements also include various other financial information not required by legislation, but for Council information.

**Officer's Comment:**
The financial position to the end of February 2024 is detailed in the attached report and summarised as follows relative to year to date budget expectations:

| 29/02/2024 | YTD Budget | YTD Actual | Variance YTD to Budget |
|---|---|---|---|
| Operating Revenue | 8,948,143 | 8,955,875 | 0% |
| Operating Expenditure | (8,726,075) | (10,045,780) | 15% |
| Net Operating | 222,068 | (1,089,905) | |
| | | | |
| Non-Operating Revenue | 345,872 | 370,234 | 7% |
| Non-Operating Expenditure | (8,726,075) | (10,045,780) | 15% |
| Net Non-Operating | (8,380,203) | (9,675,545) | |
| | | | |
| | | | |
| Cash at Bank | | 2,014,194 | |
| Cash at Bank Restricted | | 704,270 | |
| Reserve Bank | | 1,649,296 | |
| Total Cash Funds | | 4,367,760 | |

The attached statements provide explanatory notes for items greater than 10% or $10,000. This commentary provides Council with an overall understanding of how the financial position is situated in relation to the adopted budget.

**Consultation:**
Nil

**Statutory Environment:**
*Local Government Act 1995*
- *Section 6.4 Financial report*

*Local Government (Financial Management) Regulations*
- *Section 34 Financial activity statement report provides as follows:*

*(1) A local government is to prepare each month a statement of financial activity reporting on the sources and applications of funds, 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);*
- *(b) budget estimates to the end of the month to which the statement relates;*
- *(c) actual amounts of expenditure, revenue and income to the end of the month to which the statement relates;*
- *(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;*
- *(b) an explanation of each of the material variances referred to in sub-regulation (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;*
- *(b) by program; or*
- *(c) by business unit.*

*(4) A statement of financial activity, and the accompanying documents referred to in sub-regulation (2), are to be -*

*(a) presented to the council -*

*(i) at the next ordinary meeting of the council following the end of the month to which the statement relates; or*

*(ii) if the statement is not prepared in time to present it to the meeting referred to in subparagraph (i), to the next ordinary meeting of the council after that meeting; and*

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

**Policy Implications:**
Nil

**Financial/Resource Implications:**
Any issues in relation to expenditure and revenue allocations or variance trends are identified and addressed each month.

**Strategic Implications:**
Our Brilliant Future - Strategic Community Plan 2021 – 2031
Strategy 4.2.1 Ensure compliance whilst embracing innovation and better practice principles
Strategy 4.3.2 Adopt and follow better practice processes

**Attachments:**
*Attachment Booklet – March 2024*
CC02-03/24 Attachment Financial Statements for the Period Ended 29 February 2024.

| **OFFICER RECOMMENDATION AND COUNCIL DECISION** | **040324** |
|---|---|
| **MOVED: Cr Wyse** | **SECONDED: Cr Tunbridge** |
| **That Council by Simple Majority, receives the Monthly Financial Statements for the period 1 July 2023 to 29 February 2024 as contained in Attachment Booklet – March 2024.** | |
| **VOTING DETAILS:** | **CARRIED: 6/0** |
| **For:** | **Cr Leonard, Cr Wyse, Cr Scott, Cr Tunbridge, Cr Gillam, Cr Summers** |
| **Against:** | **Nil** |

| CORPORATE AND COMMUNITY | CC03-03/24 |
|---|---|
| **Subject:** | **CC03-03/24 Budget Review 2023/24** |
| **Author:** | **Patience Machaka, Manager Finance** |
| **Responsible Officer:** | **S Ivers, Chief Executive Officer** |
| **File Reference:** | **2.0061** |
| **Voting Requirements:** | **Absolute Majority** |

**Council Role:**

| | | |
|---|---|---|
| ☐ | **Advocacy** | When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency. |
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**Report Purpose:**
To consider and adopt the annual budget review for the 2023/24 financial year as presented in Attachment Booklet – March 2024.

**Background:**
Regulation 33A of the *Local Government (Financial Management) Regulations 1996* requires Council to conduct a review of its budget between 1 January and the last day of February in each financial year. The Regulation requires that the results be submitted to Council to determine whether to adopt the review and recommendations made. Within 14 days of the review a copy of the review and determination is to be provided to the Department of Local Government, Sport and Cultural Industries.

**Officer's Comment:**
The budget review has been prepared to include information required by the *Local Government Act 1995*, *Local Government (Financial Management) Regulations 1996* and *Australian Accounting Standards*. Council adopted a 10% and $10,000 variance level for the reporting of material variances to be used in the statements of financial activity and the annual budget review.

- This report provides information by nature and is based on the eight-month period from 1 July 2023 to 29 February 2024.
- The budget review reflects a view of the position of the Shire of Irwin – projected full year income and expenditure against full year original budget.
- The Shire expects to achieve a Surplus of $574 which is on par with the 2023-24 Original Budget Surplus of $549. To achieve this, overspend in some arears will be offset by reduced expenditure in some areas. In addition, the deferment of some grant funded capital works will make municipal funds that were originally allocated available to fund other works.

Attachment 1 is an explanation of identified major expenditure and revenue variations and a review of the capital program – showing all budgeted items and any expected variation to the budget. Projected variations to the original budget include:

Revenue

- Lower Reimbursement Operating Revenue
- An increase in Interest Earnings due to higher cash rate increases.
- Higher Profit on Disposal of Assets as additional assets are expected to be disposed.
- Lower Capital Revenue due to:
    - Lotterywest Foreshore Precinct - $700k -grant did not materialise.
    - Mount Adams Road, Main Roads $300k – grant did not materialise.
    - Water Supply Road, RTR $106k – grant is projected to be less than budget.
    - Point Leander Road $1m – Works deferred.
    - The LRCI – Phase 4 grant funding originally allocated to the Foreshore Precinct project $251k, will be allocated to the Vegetation program project $156k and Mount Horner $95k.

Operating Expenditure

Increase in cost due to:

- Airstrip Emergency repairs $45k
- Enterprise Resource Planning (ERP) System $300k
- Higher Information Technology Costs $78k
- Irwin Arrow Smith Advisory Council $150k (this is offset by contributions from Industry)

Capital Expenditure

Overall, total capital expenditure is projected to be a $2.8m lower. Some projects are forecast to be above budget due to inflationary increases, while some projects are expected to expend less due to deferment of works.

Reduced forecast expenditure include:

- Point Leander Road $989k – deferred works
- Foreshore Precinct $1.4m – deferred works
- Mount Adams $450k – deferred works.
- ERP System $300k - reclassification from capital to operating

Increase in expenditure include:

- Playground Replacement $35k
- Mount Horner $80k – inflationary increases
- Water Supply $130k – Inflationary increases

Reserve movements

- Reserve transfer from the Asset Management Reserve $199k and the Foreshore Reserve $250k, pertaining to the Foreshore projects will not be required to top up funding for these projects, since the Lotterywest grant funding did not materialise.
- The Shire budgeted to transfer proceeds from the disposal of land and building assets into the Asset Management Reserve. Disposal of these land assets will not eventuate in 2023-24 as planned and therefore the transfer to reserve of $2m will not be effected.

**Consultation:**
Responsible officers have predicted the balances on their activities.

**Statutory Environment:**
*Local Government Act 1995*

*Local Government (Financial Management) Regulations 1996*

*33A. Review of budget*

*(1) Between 1 January and the last day of February in each financial year a local government is to carry out a review of its annual budget for that year.*

*(2A) The review of an annual budget for a financial year must -*

*(a) consider the local government's financial performance in the period beginning on 1 July and ending no earlier than 31 December in that financial year; and*

*(b) consider the local government's financial position as at the date of the review; and*

*(c) review the outcomes for the end of that financial year that are forecast in the budget.*

*(2) The review is to be presented to council by 31 March in that financial year.*

*(3) A council is to consider a review submitted to it and is to determine* whether or not to adopt the review, any parts f the review or any recommendations made in the review.*
**Absolute majority required.*

*(4) Within 14 days after a Council has made a determination, a copy of the review and determination is to be provided to the Department.*

*Australian Accounting Standards*

**Policy Implications:**
Nil

**Financial/Resource Implications:**
The adoption of this budget review will forecast the budget with an estimated surplus of $574. To achieve this, the following reserve transfers are proposed in addition to those already budgeted:

- $199,066 transfer back to the Asset Management Reserve
- $250,000 transfer back to the Port Denison Foreshore Development
- $2,030,677 transfer out of the Asset Management Reserve – Disposal of land and building assets not going ahead as budgeted.

**Strategic Implications:**
Strategic Community Plan 2021 - 2031
Strategy 4.2.1 Ensure compliance whilst embracing innovation and better practice principles
Strategy 4.3.3 Adopt and follow better practice processes

**Attachments:**
*Attachment Booklet – March 2024*
CC03-03/24 Attachment 1 – Annual Budget Review 2023/24

| **OFFICER RECOMMENDATION AND COUNCIL DECISION** | **050324** |
|---|---|

**MOVED: Cr Gillam** **SECONDED: Cr Summers**

**That Council, by Absolute Majority:**

**a) Adopts the 2023/24 Annual Budget Review presented as Attachment 1 in Attachment Booklet – March 2024;**

**b) Amends the budget accordingly, by Nature as reflected in the estimated year amount column; and**

**c) Amends the capital budget as listed in the capital program details.**

**VOTING DETAILS:** **CARRIED: 6/0**

**For:** **Cr Leonard, Cr Wyse, Cr Scott, Cr Tunbridge, Cr Gillam, Cr Summers**

**Against:** **Nil**

| CORPORATE AND COMMUNITY | CC04-03/24 |
|---|---|
| **Subject:** | **CC04-03/24 Fees and Charges** |
| **Author:** | **F Boksmati, Acting Manager Community Services** |
| **Responsible Officer:** | **S Ivers, Chief Executive Officer** |
| **File Reference:** | **3.00227** |
| **Voting Requirements:** | **Absolute Majority** |

**Council Role:**

| | | |
|---|---|---|
| ☐ | **Advocacy** | When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency. |
| ☒ | **Executive** | The substantial direction setting and oversight role of the Council e.g., performance of the Local Government's function under law, administration of Local Laws, adopting plans and reports, accepting tenders, directing operations, setting and amending budgets. |
| ☐ | **Legislative** | Includes adopting local laws and local planning schemes. |
| ☐ | **Review** | When Council reviews decisions made by Officers. |
| ☐ | **Quasi-judicial** | When Council determines an application/matter that directly affects a person's rights and interests. The judicial character arises from the obligation to abide by the principles of natural justice e.g., local planning applications, building permits, other permits/licences (e.g. under the Health Act, Dog Act or local laws) and other decisions that may be appealable to the State Administrative Tribunal (SAT). |

**Report Purpose:**
For Council to consider the addition of the Dongara Denison Drive-in Cinema patron ticketing fees to the adopted 2023/24 Fees and Charges.

**Background:**
In accordance with section 6.16 of the *Local Government Act 1995:*

(1) *A local government may impose and recover a fee or charge for any goods or service it provides or proposes to provide, other than a service for which a service charge is imposed and*

(3) *Fees and charges are to be imposed when adopting the annual budget but may be —*
*(a) imposed during a financial year; and*
*(b) amended from time to time during a financial year.*

At the Ordinary Council Meeting held 8 August 2023, Council adopted the 2023/24 Schedule of Fees and Charges. At this time, the Dongara Denison Drive-in Cinema was not operational due to the transition from a third party operator and ongoing equipment failures.

As a re-opening date had not been determined at the time that Council adopted the 2023/24 Schedule of Fees and Charges, the ticketing fees for Drive-in patrons had not been anticipated or included in the document.

Due to community demand, the Shire advanced the Dongara Drive-in's reinstatement as a priority for the December 2023 holiday period and the cinema was reopened under Shire of Irwin operation on 20 December 2023. The Dongara Denison Drive-in Cinema has remained in operation since, with

movies being screened weekly to the public during the Christmas school holiday period through to the upcoming season's end in April 2024.

**Officer's Comment:**
The reopening of the Dongara Denison Drive-in Cinema hosts a range of benefits for residents, local not-for-profit and sporting groups and is a major drawcard for local tourism. The operation of the Dongara Denison Drive-in Cinema gate is also offered as a fundraising opportunity to local community groups and sporting clubs who rely on the funds to provide essential services in addition to contributing towards community projects.

To ensure the Shire of Irwin can continue the operation of the Dongara Denison Drive-in Cinema whilst sustainably covering operational costs (including labour, sponsorship and costs associated with hiring of the movie, the entrance fee was reviewed and set at Kids 0-3 free, Kids 4-15 $10 and Adults 16+ $15, being an increase of $5 each.

Social media and community feedback were considered and were contributory factors to the Dongara Denison Drive-in Cinema's early reinstatement in the 2023/24 season.

It is recommended that Council approve the addition of the Dongara Denison Drive-in Cinema fees to the 2023/24 Fees and Charges to ensure the Drive-in can remain open until the end of season in April 2024.

**Consultation:**
Consultation and review by the Community Development Officer and the Manager Community Services has ensured that the entrance fee remained minimal while still ensuring coverage of known associated drive-in operation costs. The set fees proposed are more competitive than other standard cinema fees.

**Statutory Environment:**
Local Government Act 1995
Part 6, Division 5 – Financing local government activities

*6.16. Imposition of fees and charges*
*(1) A local government may impose* and recover a fee or charge for any goods or service it provides or proposes to provide, other than a service for which a service charge is imposed.*
** Absolute majority required.*

*(2) A fee or charge may be imposed for the following —*
*(a) providing the use of, or allowing admission to, any property or facility wholly or partly owned, controlled, managed or maintained by the local government;*
*(b) supplying a service or carrying out work at the request of a person;*
*(c) subject to section 5.94, providing information from local government records;*
*(d) receiving an application for approval, granting an approval, making an inspection and issuing a licence, permit, authorisation or certificate;*
*(e) supplying goods;*
*(f) such other service as may be prescribed.*
*(3) Fees and charges are to be imposed when adopting the annual budget but may be —*
*(a) imposed* during a financial year; and*
*(b) amended* from time to time during a financial year.*
** Absolute majority required.*

*6.19. Local government to give notice of fees and charges*
*If a local government wishes to impose any fees or charges under this Subdivision after the annual budget has been adopted it must, before introducing the fees or charges, give local public notice of –*
*(a) its intention to do so; and*
*(b) the date from which it is proposed the fees or charges will be imposed.*

**Policy Implications:**
Nil

**Financial/Resource Implications:**
Nil

**Strategic Implications:**
Our Brilliant Future – Strategic Community Plan 2021 – 2031
Strategy 1.1.1 Identify and support services, events and programs for building capacity, social inclusion and wellbeing.
Strategy 4.1.1 Enhance the Shire's profile through marketing initiatives and community engagement.
Strategy 4.2.1 Ensure compliance whilst embracing innovation and better practice principles.
Strategy 4.3.2 Adopt and follow better practice processes.

**Attachments:**
Nil

| **OFFICER RECOMMENDATION AND COUNCIL DECISION** | **060324** |
|---|---|

**MOVED: Cr Tunbridge** **SECONDED: Cr Summers**

**That Council, by Absolute Majority;**

a) **Approves the amendment of the 2023/24 Schedule of Fees and Charges in accordance with Section 6.16(3) of the *Local Government Act 1995* to advertise:**
Dongara Denison Drive-in entry per child aged 0-3 $0
Dongara Denison Drive-in entry per child aged 4-15 $10
Dongara Denison Drive-in per entry aged 16+ $15
Function & Use of Projector – Price on application

b) **Authorises the Chief Executive Officer advertise the Amendment to the Schedule of Fees and Charges for the 2023/24 financial year in accordance with Section 6.19 of the *Local Government Act 1995.***

**VOTING DETAILS:** **CARRIED: 6/0**

**For:** **Cr Leonard, Cr Wyse, Cr Scott, Cr Tunbridge, Cr Gillam, Cr Summers**

**Against:** **Nil**

The Shire President at this point advised those in attendance:

*I would like to bring to the attention of the Gallery and Councillors the following matter.*

*Attachment 1 of this report the Compliance Audit Return (CAR) 2023 was signed on the 18 March 2024.*

*Please note that in accordance with section 14 (3A) of the Local Government (Audit) Regulations 1996, the Local government's audit committee is to review the compliance audit return and is to report to the council the results of that review.*

*Given that the Compliance Audit Return was signed before it was adopted by Council. The compliance audit return for the period 1 January – 31 December 2023 will be counter signed by myself the Shire President and the Chief Executive Officer. Ensuring that the Shire is compliant with section 14(3) of the Local Government (Audit) Regulations 1996.*

| **OFFICE OF CEO** | **CEO01-03/24** |
|---|---|
| **Subject:** | **CEO 01-03/24 Compliance Audit Return (CAR) 2023** |
| **Author:** | **S Mearns, Acting Executive Assistant**<br>**L Hos, Governance Officer** |
| **Responsible Officer:** | **S Ivers, Chief Executive Officer** |
| **File Reference:** | **3.00270** |
| **Voting Requirements:** | **Absolute Majority** |

**Council Role:**

| | | |
|---|---|---|
| ☐ | **Advocacy** | When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency. |
| ☒ | **Executive** | The substantial direction setting and oversight role of the Council e.g., performance of the Local Government's function under law, administration of Local Laws, adopting plans and reports, accepting tenders, directing operations, setting and amending budgets. |
| ☒ | **Legislative** | Includes adopting local laws and local planning schemes. |
| ☐ | **Review** | When Council reviews decisions made by Officers. |
| ☐ | **Quasi-judicial** | When Council determines an application/matter that directly affects a person's rights and interests. The judicial character arises from the obligation to abide by the principles of natural justice e.g., local planning applications, building permits, other permits/licences (e.g. under the Health Act, Dog Act or local laws) and other decisions that may be appealable to the State Administrative Tribunal (SAT). |

**Report Purpose:**
For Council to consider and adopt the 2023 Compliance Audit Return as per the *Local Government Act 1995*, Section 7.13 and the *Local Government (Audit) Regulations*, Regulation 14.

**Background:**
Local governments are required by legislation to complete a statutory compliance return (Compliance Audit Return or CAR) annually and have the return adopted by Council. The return is a checklist of a local government's compliance with the requirements of the Act and its Regulations, concentrating on areas of compliance considered "high risk".

The Audit Committee is required to review the annual CAR and report to Council the results of that review, prior to adoption by Council.

After adoption the return is to be signed by the Shire President and the CEO prior to it being forwarded to the Department of Local Government, Sport and Cultural Industries (DLGSCI) by no later than 31 March 2024.

**Officer's Comment:**
The Shire of Irwin Audit Committee reviewed the 2023 CAR at a meeting held on 20 March 2024 and resolved to support the responses in the CAR, provided as CEO01-03/24 - Attachment 1 – Compliance Audit Return (CAR) 2023.

The following list provides an outline of the mandatory reporting sections addressed in the 2023 Compliance Audit Return:

Commercial Enterprises by Local Governments
Two business plans were prepared in 2023 and were subsequently presented to Council at the Ordinary Council Meeting held 27 February 2024.

Delegation of Power/Duty
As no delegations to committees were made during 2023, 'Not Applicable' responses were provided.

Disclosure of Interest
During 2023 the Minutes of Meetings recorded the departure and return of persons who disclosed an interest. They did not however record the nature or details of the disclosure (Financial, Proximity or Disclosure). This oversight has been rectified to ensure that disclosures of interest are recorded appropriately in both the Minutes and Declaration of Interest Register.

Three relevant persons did not submit annual returns by the 31 August 2023 as required under s5.76 of the *Local Government (Administration) Regulations 1996*. The relevant authorities were subsequently notified as required.

Disposal of Property
The Shire did not dispose of any property, other than by public auction or tender during 2023, therefore 'Not Applicable' responses were provided.

Elections
The Shire of Irwin held an Ordinary election on 21 October 2023.

As required, an up to date version of the Electoral Gift Register was published on the Shires website with no entries recorded as no electoral gift forms were submitted.

Finance
The Shire complies with all areas relating to the Audit Committee.

Local Government Employees
This section relates to the recruitment of the CEO or designated senior employees. All responses are recorded as 'Not Applicable' as there were no appointments of either a CEO or senior employees during the reporting period.

Official Conduct
The Shire is considered to be compliant with all sections of the Act relating to complaints.

Tenders for Providing Goods and Services
The Shire is considered to be fully compliant in all areas relating to tenders.

Adoption of the CAR is a statutory requirement of Council which could have major compliance implications for the Shire and is therefore considered to have a high-risk rating, however the completion of this return annually helps to ensure that the local government is following sound governance practices and is complying with the relevant Acts and Regulations.

**Consultation:**
The 2023 CAR was presented to the Shire of Irwin Audit Committee on Wednesday 20 March 2024.

The committee reviewed the return and resolved to support the responses provided.

**Statutory Environment:**
*Local Government Act 1995*
- Section 7.13 – Regulations as to audits

*Local Government (Audit) Regulations*
- Regulation 14 - Compliance audits by local governments

**Policy Implications:**
Nil

**Financial/Resource Implications:**
Nil

**Strategic Implications:**
Strategic Community Plan 2017 – 2027
Strategy 4.2.1 Ensure compliance whilst embracing innovation and better practice principles
Strategy 4.3.3 Adopt and follow better practice processes.

**Attachments:**
*Attachment Booklet – March 2024*
CEO01-03/24 - Attachment 1 – Compliance Audit Return (CAR) 2023

| **COMMITTEE RECOMMENDATION AND COUNCIL DECISION** | **070324** |
|---|---|
| **MOVED: Cr Scott** | **SECONDED: Cr Wyse** |
| **That Council by Simple Majority, adopts the Shire of Irwin's Compliance Audit Return for the 2023 calendar year.** | |
| **VOTING DETAILS:** | **CARRIED: 6/0** |
| **For:** **Cr Leonard, Cr Wyse, Cr Scott, Cr Tunbridge, Cr Gillam, Cr Summers** | |
| **Against:** **Nil** | |

| DEVELOPMENT SERVICES | ID01-03/24 |
|---|---|
| **Subject:** | **ID 01-03/24 Delegated Authority Report – Development, February 2024** |
| **Author:** | **M Connell, Manager Development** |
| **Responsible Officer:** | **S Ivers, Chief Executive Officer** |
| **File Reference:** | **3.00125** |
| **Voting Requirements:** | **Simple Majority** |

**Council Role:**

| | | |
|---|---|---|
| ☐ | **Advocacy** | When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency. |
| ☒ | **Executive** | The substantial direction setting and oversight role of the Council e.g., performance of the Local Government's function under law, administration of Local Laws, adopting plans and reports, accepting tenders, directing operations, setting and amending budgets. |
| ☐ | **Legislative** | Includes adopting local laws and local planning schemes. |
| ☐ | **Review** | When Council reviews decisions made by Officers. |
| ☐ | **Quasi-judicial** | When Council determines an application/matter that directly affects a person's rights and interests. The judicial character arises from the obligation to abide by the principles of natural justice e.g., local planning applications, building permits, other permits/licences (e.g. under the Health Act, Dog Act or local laws) and other decisions that may be appealable to the State Administrative Tribunal (SAT). |

**Report Purpose:**
For Council to receive the Delegated Authority Report – Development, February 2024

**Background:**
Local governments utilise levels of delegated authority to undertake day-to-day statutory functions, thereby allowing Council to focus on policy development, representation, strategic planning and community leadership, with the organisation focussing on the day-to-day operations of the Shire.

The use of delegated authority means the large volume of routine work can be effectively managed and acted on promptly, which in turn facilitates efficient service delivery to the community.

**Officer's Comment:**
This report presents the details of development functions made under delegated authority for the month of February 2024, with 7 building permits and 8 applications for development approval having been issued.

**Consultation:**
Nil

**Statutory Environment:**
- *Local Government Act 1995*
- *Local Government (Administration) Regulations 1996*

**Policy Implications:**
Nil

**Financial/Resource Implications:**
Nil

**Strategic Implications:**
Our Brilliant Future – Strategic Community Plan 2021 – 2031
Strategy 4.2.1 Ensure compliance whilst embracing innovation and better practice principles
Strategy 4.3.2 Adopt and follow better practice processes

**Attachments:**
*Attachment Booklet – March 2024*
ID01-03/24 Attachment 1: Delegated Authority Report – Development, February 2024

| **OFFICER RECOMMENDATION AND COUNCIL DECISION** | **080324** |
|---|---|
| **MOVED: Cr Wyse** | **SECONDED: Cr Summers** |
| **That Council by Simple Majority receives the Delegated Authority Report – Development, February 2024 as contained in ID01-03/24 Attachment 1 of the Attachment Booklet – March 2024.** | |
| **VOTING DETAILS:** | **CARRIED: 6/0** |
| **For:** | **Cr Leonard, Cr Wyse, Cr Scott, Cr Tunbridge, Cr Gillam, Cr Summers** |
| **Against:** | **Nil** |

| REGULATORY SERVICES | ID02-03/24 |
|---|---|
| **Subject:** | **ID 02-03/24 Proposed Outbuilding – Lot 780 (No. 52) Seahorse Loop, Port Denison** |
| **Author:** | **M Connell, Manager Development** |
| **Responsible Officer:** | **S Ivers, Chief Executive Officer** |
| **File Reference:** | **P1318 – A1424** |
| **Voting Requirements:** | **Simple Majority** |

**Council Role:**

| | | |
|---|---|---|
| ☐ | **Advocacy** | When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency. |
| ☐ | **Executive** | The substantial direction setting and oversight role of the Council e.g., performance of the Local Government's function under law, administration of Local Laws, adopting plans and reports, accepting tenders, directing operations, setting and amending budgets. |
| ☐ | **Legislative** | Includes adopting local laws and local planning schemes. |
| ☐ | **Review** | When Council reviews decisions made by Officers. |
| ☒ | **Quasi-judicial** | When Council determines an application/matter that directly affects a person's rights and interests. The judicial character arises from the obligation to abide by the principles of natural justice e.g., local planning applications, building permits, other permits/licences (e.g. under the Health Act, Dog Act or local laws) and other decisions that may be appealable to the State Administrative Tribunal (SAT). |

**Report Purpose:**
For Council to determine an application for development approval for an 'Outbuilding' on Lot 780 (No. 52) Seahorse Loop, Port Denison.

This report recommends refusal of the application.

**Background:**
The Shire has received an application for development approval for an 'Outbuilding' on Lot 780 (No. 52) Seahorse Loop, Port Denison.

The site has an obscure pentagon shape and has an area of 1,116m$^2$. The site has access from, and is located at a bend of Seahorse Loop. A small road closure was approved by Council at its meeting held on 27 February 2024 which will result in the front boundary being 'straightened' and the site eventually increasing in area to 1,159m$^2$.

The site is currently vacant and generally flat, and construction of a single storey dwelling has commenced. To the north and south are existing residences and to the rear the land is vacant.

The site is located in the established southern part of Port Denison which is characterised by single dwellings with outbuildings. There are a number of vacant lots and the area is intended for future low density housing.

Proposal

The proposed development comprises a Colorbond trimdeck clad outbuilding with an area of 128m$^2$ (16m x 8m), with a wall height of 4.2m and a ridge height of 4.9m. The outbuilding is proposed to be located to the rear of the site with a setback 1.5m from the northern (side) boundary and 1m from the and eastern (rear) boundary. It will be located to the northern side of the future dwelling some 22m from Seahorse Loop. There are no details as to the proposed means of access from Seahorse Loop to the outbuilding.

The application is seeking a variation to the setback provisions of the Scheme and maximum standards in the Shire's outbuildings local planning policy as follows:

| **Development Standard** | **Required** | **Proposed** |
|---|---|---|
| Rear setback | 6m | 1m |
| Side setback | 1.7m | 1.5m |
| Size | 90m$^2$ enclosed plus 30m$^2$ unenclosed | 128m$^2$ enclosed |
| Wall height | 3.6m | 4.2m |
| Total height | 4.5m | 4.9m |

The justification provided by the applicant for the increase in size and height is summarised as follows:

- Want to store a motorhome, trailer, car and trailer with boat each separately in the shed.
- Height of motorhome is 3.7m.
- Insurance company will not insure motorhome unless locked in a shed.

The application for development approval is contained in ID02-03/24 Attachment 1 and includes a photo of the vehicles proposed to be stored and the road closure plan.

The following is an outline of the application.

| | |
|---|---|
| Applicant / Owner | Midwest Sheds and Garages / D & R Hird |
| Local Planning Scheme No. 5 | 'Residential' R12.5 zoning |
| Use Class and Permissibility | Single House – 'P' use |
| Structure Plan/Precinct Plan | No |
| Lot Size | 1,116m$^2$ (existing) 1,159m$^2$ (proposed with road closure) |
| Existing Land Use | Vacant |
| State Heritage Register | No |
| Local Heritage | No |
| Bushfire Prone Area | Yes |

Location Plan




**Officer's Comment:**
In considering an application for development approval, cl. 67(2) of the deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* requires a local government to have due regard to the following matters that are relevant to the application as detailed below.

*(a) The aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area*

The following aims and provisions of the Shire of Irwin Local Planning Scheme No. 5 (LPS5) are relevant to this application:

*1.6 The Aims of the Scheme*
- *c) to provide for housing choice and variety with a community identity and high levels of amenity;*
- *h) to safeguard and enhance the character and amenity of the built and natural environment of the Scheme area.*

*4.2 Objectives of the Zones*
*4.2.1 Residential Zone*
- *a) To ensure that the zone be predominantly residential in use.*

*d) To ensure that all residential development within the zone, shall be of a standard that does not adversely affect the overall amenity of other residential development in the zone.*

The above matters of character and amenity are detailed further in this report.

*4.3 Zoning Table*

The application seeks approval for an outbuilding which is a use that is ancillary to a 'Single House' use class. The Zoning Table of LPS5 lists 'Single House' as an 'P' use under the 'Residential' zone which means that the use is permitted providing the use complies with the relevant development standards and the requirements of the Scheme.

*5.2 Residential Design Codes*

*5.2.2 Unless otherwise provided for in the Scheme, the development of land for any of the residential purposes dealt with by the Residential Design Codes is to conform with the provisions of those Codes.*

*5.18 Outbuildings*
*The local government may approve outbuildings consistent with the following development requirements. Outbuildings that are deemed to conflict or exceed the development requirements require development approval and may be required to be advertised in accordance with Clause 9.4.*

| ***Zone*** | ***Development Requirements for Outbuildings*** |
|---|---|
| *All relevant zones* | *The location, design, external colour and appearance, scale and bulk of the Outbuilding shall not have adverse amenity impacts on adjoining properties or the area when viewed from public roads.* |
| *Residential* | *As per the Residential Design Codes.* |

The Residential Design Codes (R-Codes) is dealt with further in this report.

*(c) any approved State planning policy*

*State Planning Policy 7.3 Residential Design Codes* (R-Codes) apply to all residential development throughout Western Australia.

Where a proposal does not satisfy the deemed-to-comply provisions of the R-Codes and proposes to address a design principle, the decision-maker is required to exercise judgement to determine the proposal. Judgement of merit is exercised only for specific element(s) of a proposal which do not satisfy the relevant deemed-to-comply provision(s).

Outbuildings are defined in the R-Codes as:

*An enclosed non-habitable structure that is detached from any dwelling.*

The relevant objective of the R-Codes is set out in cl. 5.4(c) as follows:

*To maintain the amenity of streetscapes and views along the street by ensuring that associated outbuildings and other fixtures attached to buildings do not detract from the streetscape and are not visually intrusive to neighbouring properties or adjoining public spaces.*

The applicable design principle as set out in cl. 5.4.3, P3, of the R-Codes is:

*Outbuildings that do not detract from the streetscape or the visual amenity of residents or neighbouring properties.*

Clause 2.5 of the R-Codes deals with the exercise of judgement. The relevant parts are as follows:

> *2.5.1 Subject to clauses 2.5.2 and 2.5.3, the decision-maker is to exercise its judgement to consider the merits of proposals having regard to objectives and balancing these with the consideration of design principles provided in the R-Codes Volume 1.*
>
> *The decision-maker, in its assessment of a proposal that addresses the design principle(s), should not apply the corresponding deemed-to-comply provision(s).*
>
> *2.5.2 In making a determination on the suitability of a proposal, the decisionmaker shall exercise its judgement, having regard to the following:*
>
> *(a) any relevant purpose, objectives and provisions of the scheme;*
> *(b) any relevant objectives and provisions of the R-Codes Volume 1;*
> *(c) a provision of a local planning policy adopted by the decision-maker consistent with and pursuant to the R-Codes Volume 1; and*
> *(d) orderly and proper planning.*

The R-Codes are supplemented by 'Explanatory Guidelines' which explain and assist interpretation and application of the R-Codes. The guidelines support relaxed standards for outbuildings. However, there are limits to the relaxation, and the guidelines explain the guiding principle as being

> *'any outbuilding that is to be exempt from the standards of the dwelling should be: relatively small in area; relatively low in height; sited so as to preserve the use and amenity of open space; and setback sufficiently from boundaries'.*

In assessing the application it is important to note that the focus should not be the number of variations sought or the extent to which the variations differ from those set out in the R-Codes (or Council policy), but rather if the development meets the performance criteria and objectives of the R-Codes.

More importantly it is incumbent upon the applicant to demonstrate that the performance criteria have been satisfied and that the proposed development meets the objectives of the R-Codes. The application contains no assessment of the development against the provisions of the R-Codes.

In terms of the applicable design principle as set out in R-Codes ('outbuildings that do not detract from the streetscape or the visual amenity of residents or neighbouring properties'), it is noted that within the locality there are some outbuildings that are visible in the streetscape however these are smaller in size to what is proposed. For the most part, outbuildings in the locality are located either completely or partially behind existing dwellings.

Whilst it is acknowledged that the outbuilding would be located at the rear of the lot it is proposed to be to sited to the northern side of the dwelling and therefore will appear visually prominent in the streetscape. Although the application states that '*the owner has plans in place for landscaping and planting of trees*' no further details were provided and there is no other information on how it is proposed to mitigate any visual amenity impacts.

It is considered that the impact of the proposed development on the streetscape would be unacceptable as the development would not be consistent with the siting of other outbuildings in the locality and appear at odds with other development in the streetscape.

*(g) any local planning policy for the Scheme area*

Clause 7.3.1 of the R-Codes allows local planning policies (among other things) to contain provisions that amend or replace the deemed-to-comply provisions relating to outbuildings and requires that amendments or replacements to the deemed-to-comply provisions are to be consistent with the design principles.

The Shire's 'Outbuildings' local planning policy was approved on 21 September 2023 and sets out acceptable development standards in terms of size and height which when met, do not require development approval as follows:

| | Zone | Conditions |
|---|---|---|
| 1 | Residential R10 and higher | a. Individually or collectively does not exceed 90m$^2$ in area (plus an additional 30m$^2$ unenclosed lean-to-area) or 15% in aggregate of the site area, whichever is the lesser.<br>b. Maximum 3.6m wall height and maximum 4.5m total height. |

The proposed development is seeking approval for:

- 128m$^2$ area (variation of 38m$^2$ or 42%)
- 4.2m wall height (variation of 600mm or 17%)
- 4.9m total height (variation of 400mm or 9%)

In addition the policy states that variations to the maximum standards will only be considered in exceptional circumstances and the accumulation of personal items or vehicles is not considered an exceptional circumstance. Exceptional circumstances means circumstances that are, individually or together, uncommon, unusual, special or out of the ordinary.

The justification provided by the applicant centres on the desire to store personal vehicles, being a motorhome (3.7m high) that tows a car on a trailer with a further boat and trailer on top.

In the wider municipality the storage of recreational vehicles, boats, trailers and cars is a regular and common occurrence. It is for this very reason that the outbuildings policy has significantly increased the deemed-to-comply provisions of the R-Codes.

The applicant also purports that insurance for the motorhome will only be given if the vehicle is stored in a lockable garage. Officers have enquired about this aspect and found that insurance can be provided if the vehicle is locked in a garage, or parked behind a lockable gate, or parked in a secured storage yard.

The existence of a policy cannot replace the discretion of the decision-maker in the sense that it is to be inflexibly applied regardless of the merits of the particular case. However, the relevant consideration for Council is why the standards prescribed in the policy should not be applied and why the principles of the policy are not relevant to this particular application.

Based on the information provided by the applicant, there are no sound reasons as to why Council should depart from the provisions of the policy.

It is considered that there are opportunities for the applicant to achieve their objectives through other design measures (such as sliding doors, reducing the floor below natural ground level and a lean-to area) which may meet the performance criteria of the R-Codes.

*(m) the compatibility of the development with its setting, including –*
*(i) the compatibility of the development with the desired future character of its setting; and*
*(ii) the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development*
*(n) the amenity of the locality including the following –*
*(ii) the character of the locality*

The impact of the proposed development on the amenity of the locality is at the heart of the issues with this application. Amenity is defined as '*all of those factors which combine to form the character of an area and include the present and likely future amenity*'.

The locality is characterised by unobtrusive outbuildings located behind existing dwellings. When considering the development of outbuildings in the locality it is noteworthy that there are no other outbuildings of the size proposed, and the vast majority conform to the standards as prescribed in the Shire's outbuildings policy. These established standards inform the reasonable expectations for this type of development in the locality. There is nothing in the planning framework that is likely to change this established character in the foreseeable future and the expected pattern of future development will generally reflect current development in the locality.

Significant departure from the established standards (based on the reasons provided with this particular application) would create an undesirable precedent and be contrary to the safeguarding and enhancement of the character and amenity of the built environment of not only this locality, but the entire Scheme area.

The dwelling when completed will have a total height of around 5m and floor area of 300m$^2$. The height of the proposed development is 4.9m with an area of 128m$^2$. The bulk of the outbuilding is not considered to be relatively small in area nor relatively low in height in comparison with the dwelling. The scale of the outbuilding is excessive in relationship to the dwelling and other existing outbuildings making it inconsistent with the character and amenity of the locality.

It has been common practice to allow variations to side and rear setbacks. The variation to the side setback is considered very minor in nature and would have little impact on the amenity of the adjoining neighbour as it would be located in close proximity to an existing outbuilding. The rear setback of 6m for the R12.5 coding is considered excessive in most instances and variations to this requirement are common. As the land to the rear is vacant crown land (and likely to remain as such for some time) there would be no impact.

Conclusion

If the exercise of discretion is to be an orderly and proper one, the planning principles identified as relevant to this application should not be lightly departed from without the demonstration of a sound basis for doing so and which basis has some planning merit.

The Shire has demonstrated a consistent interpretation of the appropriate size for outbuildings and in this instance, the scale and bulk of the outbuilding are excessive in the context of the site and the locality.

Having considered the impact of the proposed development on the character and amenity of the locality it is concluded that the proposed development would be out of harmony with the existing and desired future character of the residential locality.

The application is inconsistent with the requirements of orderly and proper planning, having considered the planning framework applicable to the site.

The *Planning and Development (Local Planning Schemes) Regulations 2015* states that the local government is to be taken to have refused to grant development approval if it has not made a determination within 60 days of acceptance of the application (in this instance being 5 April 2024). Deferring the matter is therefore not recommended.

**Consultation:**
The application was advertised in accordance with Part 4 of the R-Codes. The adjoining owner to the north and the owner on the opposite side of Seahorse Loop were invited to make comment.

No submissions were received.

**Statutory Environment:**
In accordance with cl. 68 of the deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* the local government may grant development approval with or without conditions or refuse the application.

**Policy Implications:**
Nil

**Financial/Resource Implications:**
Nil, however costs may be imposed on the Shire should the applicant/owner review Council's decision through the State Administrative Tribunal in accordance with Part 14 of the *Planning and Development Act 2005*.

**Strategic Implications:**
Our Brilliant Future - Strategic Community Plan 2021 – 2031
Strategy 2.1.1 Continuously improve approval processes.

**Attachments:**
*Attachment Booklet – March 2024*
ID02-03/24 Attachment 1: Application for Development Approval

**OFFICER RECOMMENDATION AND COUNCIL DECISION 090324**

**MOVED: Cr Summers** **SECONDED: Cr Gillam**

**That Council, by Simple Majority refuse the application for development approval for an 'Outbuilding' on Lot 780 (No. 52) Seahorse Loop, Port Denison for the following reasons:**

1. **The application is inconsistent with the aims of the Scheme specifically 'to safeguard and enhance the character and amenity of the built and natural environment of the Scheme area'.**
2. **The application is inconsistent with the objectives of the Residential zone specifically 'to ensure that all residential development within the zone, shall be of a standard that does not adversely affect the overall amenity of other residential development in the zone'.**
3. **The application is inconsistent with the relevant objective and applicable design principle of the R-Codes.**
4. **The application is inconsistent with the Shire's outbuildings local planning policy.**
5. **The application is inconsistent with the requirements of orderly and proper planning, having considered the planning framework applicable to the site.**
6. **Approval of this application (based on the justification provided) would set an undesirable precedence for further oversized outbuildings which in time could prove detrimental to the amenity of the locality.**

**VOTING DETAILS: CARRIED: 5/1**

**For: Cr Leonard, Cr Wyse, Cr Tunbridge, Cr Gillam, Cr Summers**

**Against: Cr Scott**

*The Shire President asked Councillors if they would like to speak to the item.*

*Cr Summers declined.*

*Cr Gillam spoke of his concerns especially in relation to Item 6 relating to setting a precedence if application was approved.*

| REGULATORY SERVICES | ID03-03/24 |
|---|---|
| **Subject:** | **ID 03-03/24 Reconsideration of Decision – Holiday Accommodation – Lot 502 (No. 3b) Osborne Way, Port Denison** |
| **Author:** | **M Connell, Manager Development** |
| **Responsible Officer:** | **S Ivers, Chief Executive Officer** |
| **File Reference:** | **P1316 – A2191** |
| **Voting Requirements:** | **Simple Majority** |

**Council Role:**

| | | |
|---|---|---|
| ☐ | **Advocacy** | When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency. |
| ☐ | **Executive** | The substantial direction setting and oversight role of the Council e.g., performance of the Local Government's function under law, administration of Local Laws, adopting plans and reports, accepting tenders, directing operations, setting and amending budgets. |
| ☐ | **Legislative** | Includes adopting local laws and local planning schemes. |
| ☐ | **Review** | When Council reviews decisions made by Officers. |
| ☒ | **Quasi-judicial** | When Council determines an application/matter that directly affects a person's rights and interests. The judicial character arises from the obligation to abide by the principles of natural justice e.g., local planning applications, building permits, other permits/licences (e.g. under the Health Act, Dog Act or local laws) and other decisions that may be appealable to the State Administrative Tribunal (SAT). |

**Report Purpose:**
For Council to reconsider its decision regarding the approval of the application for development approval for a 'Holiday Accommodation' on Lot 502 (No. 3b) Osborne Way, Port Denison.

**Background:**
In October 2023 the Shire received an application for development approval for a 'Holiday Accommodation' on Lot 502 (No. 3b) Osborne Way, Port Denison.

Council considered the application at its meeting held on 11 December 2023 (Item ID03-12/23) and resolved to grant development approval subject to seven (7) conditions.

On 4 January 2024 the applicant applied to the State Administrative Tribunal (SAT) for a review of condition No. 6 of the development approval which states:

> 6. *Prior to the commencement of the use or the end of February 2024, whichever is the later, a dividing fence on the boundary at 1.8m high is to be installed between Lots 501 and 502 Osborne Way, Port Denison.*

On 9 February 2024 the SAT held a Directions Hearing to establish how the matter will be dealt with and subsequently made orders that the matter be referred to mediation.

Mediation occurred on 6 March 2024 with Officers remotely in attendance. The outcome of the mediation required the applicant to provide additional information for the purpose of reconsideration and for Council to reconsider its decisions with regard to condition No. 6.

The additional information provided by the applicant is contained in ID03-03/24 Attachment 1 which includes a proposed fence plan and site photos taken by Officers on 21 February 2024.

Proposal

The applicant is seeking to construct a 1.8m high dividing fence only on that 23m portion of the boundary as indicated on fence plan. The front section of the boundary has an existing 1.3m high masonry wall and the rear section of the boundary has an existing steep slope that acts as a physical barrier between the neighbouring property.

It is anticipated that the fence will be constructed by the end of June 2024.

Location Plan




**Officer's Comment:**
The proposal by the applicant is consistent with the original recommendation from Officers in the agenda for the Council meeting held on 11 December 2023.

The existing front masonry section of the fence is sufficient and in any event the holiday accommodation unit is to the rear of the site.

The steepness of the rear portion of the site is such that it would provide an effective barrier to persons moving between the lots.

The 90 day construction period is seen as reasonable given the current constraints faced in the building industry.

The SAT orders are that the Shire is invited to reconsider its decision on or before 5 April 2024 and deferring the matter is therefore not recommend.

**Consultation:**
The original application was publicly advertised and the owner of the neighbouring Lot 501 objected to the application and specifically asked Council at the meeting held on 11 December 2023 to condition that a dividing fence at a height of 1.8 metres be installed along the entire boundary joining Lots 501 and 502 Osborne Way.

Officers advised the neighbour on 12 February 2024 that the applicant had chosen to have the Council decision regarding the fencing condition reviewed by SAT, and that they were free to lodge an application to be party to the deliberations. The SAT was not aware of any such application being made.

**Statutory Environment:**
SAT's functions and powers are established by the *State Administrative Tribunal Act 2004*. Under section 31 the Tribunal may invite the Shire to reconsider its decision as follows:

*31. Tribunal may invite decision-maker to reconsider decision*
*(1) At any stage of a proceeding for the review of a reviewable decision, the Tribunal may invite the decision-maker to reconsider the decision.*
*(2) Upon being invited by the Tribunal to reconsider the reviewable decision, the decision-maker may –*
*(a) affirm the decision; or*
*(b) vary the decision; or*
*(c) set aside the decision and substitute its new decision.*

**Policy Implications:**
Nil

**Financial/Resource Implications:**
Nil, however costs may be imposed on the Shire through the State Administrative Tribunal process should the applicant/owner not accept Council's reviewed decision.

**Strategic Implications:**
Our Brilliant Future - Strategic Community Plan 2021 – 2031.
Strategy 2.1.1 Continuously improve approval processes.

**Attachments:**
*Attachment Booklet – March 2024*
ID03-03/24 Attachment 1: Additional Information

| **OFFICER RECOMMENDATION AND COUNCIL DECISION** | **100324** |
|---|---|

**MOVED: Cr Wyse** **SECONDED: Cr Gillam**

**That Council, in respect to the State Administrative Tribunal matter number DR 15/2024, reconsider its decision of 11 December 2023 regarding the application for development approval for a 'Holiday Accommodation' on Lot 502 (No. 3b) Osborne Way, Port Denison and:**

1. **Amend condition No. 6 by substituting it with the following:**

   ***On or before 1 July 2024, a 1.8m high dividing fence is to be installed between Lots 501 and 502 Osborne Way, Port Denison in the location as depicted on the fence plan contained in ID03-03/24 Attachment 1 of the Attachment Booklet – March 2024 .***

2. **Include an Advice Note as follows:**

   ***The applicant is encouraged to retain as much vegetation as possible on the rear steep portion of Lot 501.***

**VOTING DETAILS:** **CARRIED: 6/0**

**For:** **Cr Leonard, Cr Wyse, Cr Scott, Cr Tunbridge, Cr Gillam, Cr Summers**

**Against:** **Nil**

| INFRASTRUCTURE AND OPERATIONS | IO01-03/24 |
|---|---|
| **Subject:** | **IO01-03/24 RFQ 05-2023 General Waste & Front Lift Services Quotation** |
| **Author:** | **Lynda Anderson, Procurement & Tenders Officer** |
| **Responsible Officer:** | **Mark Jones, Acting Manager Operations** |
| **File Reference:** | **4.00433** |
| **Voting Requirements:** | **Absolute Majority** |

**Council Role:**

| | | |
|---|---|---|
| ☐ | **Advocacy** | When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency. |
| ☒ | **Executive** | The substantial direction setting and oversight role of the Council e.g., performance of the Local Government's function under law, administration of Local Laws, adopting plans and reports, accepting tenders, directing operations, setting and amending budgets. |
| ☐ | **Legislative** | Includes adopting local laws and local planning schemes. |
| ☐ | **Review** | When Council reviews decisions made by Officers. |
| ☐ | **Quasi-judicial** | When Council determines an application/matter that directly affects a person's rights and interests. The judicial character arises from the obligation to abide by the principles of natural justice e.g., local planning applications, building permits, other permits/licences (e.g. under the Health Act, Dog Act or local laws) and other decisions that may be appealable to the State Administrative Tribunal (SAT). |

**Report Purpose:**
Accept Quotation 05-2023-General Waste & Front Lift Services.

**Background:**
The Shire of Irwin sought a suitable contractor for the provision of waste services to provide weekly collections for the following services:

- Transfer station waste
- Public Place Front Lift receptacles

The Shire is also hosting the development of a large industrial and resources precinct to the south of Dongara. As a result of this, is expecting significant growth and a corresponding increase in population. RFQ 05-2023 General Waste and Front Lift Services was released via Vendor Panel (VP395026) on 18 December 2023. The request for quotation subsequently closed at 2.00pm (AWST) on Thursday 11 January 2024 at which time two employees undertook the opening of the quotation via Teams. Three (3) submissions were received at the close of quotation. Of these, two met the required compliance criteria and were assessed against the qualitative criteria.

An evaluation panel comprising three voting members of staff individually assessed each quotation submission. Evaluation Panel Members formally met, the Procurement & Tenders Officer facilitated the meeting on 09 February 2024. The consensus evaluation involved ranking respondents before pricing was applied to determine the best value for money and most advantageous respondent as recommended in the Evaluation Report provided in Confidential Attachment 1.

**Officer's Comment:**
The recommended submission from Respondent 1 ranked the highest in the qualitative criteria as set out in the Request for Quotation (RFQ) document. The submission from Respondent 1 also met the requirement for a Local Price Preference detailed in section 1.9 of the RFQ document provided as Attachment (IO01-03/24 Attachment 1: RFQ 05-2023 General Waste & Front Lift Services VP395026).

Confidential attachment 1: RFQ 05-2023 General Waste & Front Lift Services Evaluation Report Contains:

- further details regarding the compliance and qualitative criteria for all quotations submitted; and
- evaluation final scores and rankings.

**Consultation:**
Nil

**Statutory Environment:**
s.3.57 of the Local Government Act 1995
Part 4 of the Local Government (Functions and General) Regulations 1996

**Policy Implications:**
CP 20 Purchasing
CP01 – Localised Purchasing (Regional Price Preference)

**Financial/Resource Implications:**
Reducing costs by engaging a new contractor.

**Strategic Implications:**
Our Brilliant Future - Strategic Community Plan 2021 – 2031

**Attachments:**
*Attachment Booklet – March 2024*
IO01-03/24 Attachment 1: RFQ 05-2023 General Waste & Front Lift Services (VP395026)

*Confidential Attachment Booklet – March 2024*
IO01-03/24 Confidential Attachment 1: RFQ 05-2023 General Waste & Front Lift Services Evaluation Report

| **OFFICER RECOMMENDATION AND COUNCIL DECISION** | **110324** |
|---|---|

**MOVED: Cr Tunbridge** **SECONDED: Cr Gillam**

**That Council by Absolute Majority:**

1. **Accepts the Quotation for RFQ 05-2023 - General Waste and Front Lift Services, received from Respondent 1 as named in the Evaluation Report recommendation detailed in the Confidential Attachment and identified as the most advantageous, to the value of $167,030.60 (inc GST) as per schedule of rates for the first year.**

2. **Delegates authority to the Chief Executive Officer to negotiate minor variations to the contract for Quotation 05-2023 - General Waste and Front Lift Services before and / or after its execution in accordance with Regulations 20 and 21A of the *Local Government (Functions and General) Regulations 1996.***

3. **Authorises the Chief Executive Officer to execute the contract for Quotation 05-2023 General Waste and Front Lift Services and any optional extensions, in accordance with section 9.49A of the *Local Government Act 1995*.**

**VOTING DETAILS:** **CARRIED: 6/0**

**For:** **Cr Leonard, Cr Wyse, Cr Scott, Cr Tunbridge, Cr Gillam, Cr Summers**

**Against:** **Nil**

## 10.2 Committee Reports

### 10.2.1 Audit Committee Meeting

The Minutes of the Audit Committee Meeting held 20 March 2024 have been provided to Councillors under separate cover.

| **OFFICER RECOMMENDATION AND COUNCIL DECISION** | **120324** |
|---|---|
| **MOVED: Cr Scott** | **SECONDED: Cr Wyse** |
| **That Council receives the minutes of the Audit Committee Meeting held 20 March 2024.** | |
| **VOTING DETAILS:** | **CARRIED: 6/0** |
| **For: Cr Leonard, Cr Wyse, Cr Scott, Cr Tunbridge, Cr Gillam, Cr Summers** | |
| **Against: Nil** | |

### 10.2.2 Local Emergency Management Committee (LEMC) Meeting

The Minutes of the Local Emergency Management Committee (LEMC) Meeting held 21 February 2024 have been provided to Councillors under separate cover.

| **OFFICER RECOMMENDATION AND COUNCIL DECISION** | **130324** |
|---|---|
| **MOVED: Cr Wyse** | **SECONDED: Cr Summers** |
| **That Council receives the minutes of the Local Emergency Management Committee (LEMC) Meeting held 21 February 2024.** | |
| **VOTING DETAILS:** | **CARRIED: 6/0** |
| **For: Cr Leonard, Cr Wyse, Cr Scott, Cr Tunbridge, Cr Gillam, Cr Summers** | |
| **Against: Nil** | |

## 11. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

## 12. QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN

Nil

## 13. URGENT BUSINESS APPROVED BY PERSON PRESIDING OR BY DECISION

Nil

## 14. MATTERS FOR WHICH THE MEETING IS CLOSED TO THE PUBLIC

*The following matter at CEO02-03/24 will be considered behind closed doors in accordance with Section 5.23(2) (a) and (c) of the Local Government Act 1995 as it relates to the personal affair of a person and a contract that may be entered into.*

*The Chief Executive Officer, Mr Shane Ivers declared a financial interest in this item and left the meeting.*

| **OFFICER RECOMMENDATION AND COUNCIL DECISION** | **140324** |
|---|---|

**MOVED: Cr Scott** **SECONDED: Cr Gillam**

**That Council close the meeting to the public at 6.22pm in accordance with section 5.23(2) (a) and (c) of the *Local Government Act 1995.***

**VOTING DETAILS:** **CARRIED: 6/0**

**For:** **Cr Leonard, Cr Wyse, Cr Scott, Cr Tunbridge, Cr Gillam, Cr Summers**

**Against:** **Nil**

*Shire Staff and Members of the Gallery left the Chambers at 6.22pm.*
*The Minute Taker remained in the Chambers to record recommendations.*

| **COUNCIL DECISION** | **150324** |
|---|---|

**MOVED: Cr Wyse** **SECONDED: Cr Summers**

**That Council suspends Clause 10.2 of the Shire of Irwin Meeting Procedures Local Law 2016 at 6.24pm.**

**VOTING DETAILS:** **CARRIED: 6/0**

**For:** **Cr Leonard, Cr Wyse, Cr Scott, Cr Tunbridge, Cr Gillam, Cr Summers**

**Against:** **Nil**

| **COUNCIL DECISION** | **160324** |
|---|---|

**MOVED: Cr Wyse** **SECONDED: Cr Gillam**

**That Council reconvenes Clause 10.2 of the Shire of Irwin Meeting Procedures Local Law 2016 at 6.35pm.**

**VOTING DETAILS:** **CARRIED: 6/0**

**For:** **Cr Leonard, Cr Wyse, Cr Scott, Cr Tunbridge, Cr Gillam, Cr Summers**

**Against:** **Nil**

| OFFICER RECOMMENDATION AND COUNCIL DECISION | 170324 |
|---|---|
| **MOVED: Cr Tunbridge** | **SECONDED: Cr Scott** |
| **That Council open the meeting to the public at 6.38pm.** | |
| **VOTING DETAILS:** | **CARRIED: 6/0** |
| **For:** | **Cr Leonard, Cr Wyse, Cr Scott, Cr Tunbridge, Cr Gillam, Cr Summers** |
| **Against:** | **Nil** |

*The Chief Executive Officer, Shire Staff and Members of the Gallery returned to the Chambers at 6.38pm.*

| OFFICER RECOMMENDATION AND COUNCIL DECISION | 180324 |
|---|---|
| **MOVED: Cr Wyse** | **SECONDED: Cr Summers** |
| **That Council adopt the recommendation made behind closed doors in relation to Item CEO02-03/24.** | |
| **VOTING DETAILS:** | **CARRIED: 6/0** |
| **For:** | **Cr Leonard, Cr Wyse, Cr Scott, Cr Tunbridge, Cr Gillam, Cr Summers** |
| **Against:** | **Nil** |

## 15. CLOSURE

There being no further business, the Presiding Member closed the meeting at 6.41pm.