

Agenda

Ordinary Meeting of Council

To be held in Council Chambers
54 Johnson Street, Bruce Rock
Thursday 21 October 2021
Commencing 3.00pm



Notice of Ordinary Meeting of Council

Dear President and Councillors,

The next Ordinary Meeting of Council will be held on **Thursday 21 October 2021 at 3.00pm** in Council Chambers, at 54 Johnson Street, Bruce Rock.

Please contact the undersigned for any enquiries regarding the Agenda prior to the meeting.

A handwritten signature in blue ink, appearing to read "Darren Mollenoyux".

Darren Mollenoyux
CHIEF EXECUTIVE OFFICER

DISCLAIMER

PLEASE READ THE FOLLOWING IMPORTANT DISCLAIMER BEFORE PROCEEDING:

Statements or decisions made at this meeting should not be relied or acted on by an applicant or any other person until they have received written notification from the Shire. Notice of all approvals, including planning and building approvals, will be given to applicants in writing. The Shire of Bruce Rock expressly disclaims liability for any loss or damages suffered by a person who relies or acts on statements or decisions made at a Council or Committee meeting before receiving written notification from the Shire.

The advice and information contained herein is given by and to Council without liability or responsibility for its accuracy. Before placing any reliance on this advice or information, a written inquiry should be made to Council giving entire reasons for seeking the advice or information and how it is proposed to be used.

Our Mission

We will achieve our vision by maintaining and enhancing the Bruce Rock lifestyle, increase business and employment opportunities and achieve population growth in an environmentally sustainable way.

Our Values

Respect, Inclusiveness, Fairness and Equality & Communication

SHIRE OF BRUCE ROCK

AGENDA – ORDINARY MEETING 21 OCTOBER 2021

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SHIRE OF BRUCE ROCK

AGENDA – ORDINARY MEETING 16 SEPTEMBER 2021

1. Declaration of Opening
2. Record of Attendance/Apologies/Leave of Absence (Previously Approved)

3. **Declarations of Interest**

In accordance with Section 5.65 of the Local Government Act 1995 the following disclosures of **financial** interest were made at the Council meeting.

Date	Name	Item No	Reason

In accordance with Section 5.65 of the Local Government Act 1995 the following disclosures of **Closely Association Person and Impartiality** interest were made at the Council meeting.

Date	Name	Item No	Reason

In accordance with Section 5.60B and 5.65 of the Local Government Act 1995 the following disclosures of **Proximity** interest were made at the Council meeting.

Date	Name	Item No	Reason

4. Response to Previous Public Questions Taken on Notice
5. Public Question Time
6. Petitions/Deputations/Presentations/Submissions
7. Applications for Leave of Absence
8. Announcements by Presiding Member
9. Confirmation of Minutes

Ordinary Meeting of Council held on Thursday 16 September 2021

Recommendation:

That the minutes of the Ordinary Meeting held Thursday 16 September 2021 be confirmed as a true and correct record.

10. Officers' Reports

10.1 Manager of Works and Services

No Item

10.2 Manager of Finance

Agenda Reference and Subject:	10.2.1 Statement of Financial Activity
File Reference:	8.2.6.2 Financial Reporting
Reporting Officer:	Jennifer Bow, Manager of Finance
Author:	Jennifer Bow, Manager of Finance
Disclosure of Interest	
Attachment:	<i>Nil</i>

Summary

A statement of financial activity must be produced monthly and presented to Council.

Background

In accordance with the Local Government Act 1995, a Statement of Financial Activity must be presented to each Council meeting, including a comparison of actual year to date to the budget year to date and variances from it. It must also include explanations of any variances and any other associated information that would be useful for readers of the report.

Comment

The Statement of Financial Activity for September 2021 will be presented to the Council meeting.

Consultation

Darren Mollenoyux, Chief Executive Officer
Alan O'Toole, Deputy Chief Executive Officer
David Holland, Manager of Works and Services
Julian Goldacre, Environmental Health Officer
Mike Darby, Senior Finance Officer and other staff

Statutory Implications

r. 34 Local Government (Financial Management) Regulations 1996

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.*

(4) A statement of financial activity, and the accompanying documents referred to in sub regulation (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.*

Policy Implications

Nil

Risk Implications

Risk: Financial performance is not monitored against approved budget		
Likelihood	Consequence	Rating
Possible	Minor	Moderate
Action / Strategy		
The monthly financial report tracks the Shire’s actual financial performance against its budgeted financial performance to ensure that the Council is able to monitor to Shire’s financial performance throughout the year.		

Financial Implications

Comparison of actual year to date to the 2021-22 Budget

Strategic Implications

Shire of Bruce Rock – Strategic Community Plan 2017-2027

Governance

Goal 12 Council leads the organisation in a strategic and flexible manner

Voting Requirements

Simple Majority

Officer Recommendation

That the Statements of Financial Activity for the months ending 30 September 2021.

Agenda Reference and Subject:	10.2.2 List of Payments
File Reference:	8.2.3.3 Accounts Payable (Creditors)
Reporting Officer:	Jennifer Bow, Manager of Finance Officer
Author:	Mike Darby, Senior Finance Officer
Disclosure of Interest:	
Attachments:	<i>Item 10.2.2 Attachment A – List of Payments September 2021</i>

Summary

List of payments made since the last Ordinary Council Meeting.

Background

As the Chief Executive Officer has been delegated the authority to make payments from the municipal and trust funds, a list of payments made is to be presented to Council each month. Also, in accordance with Finance Policy Number 2.3, included is a list of payments made with the CEO’s credit card.

Comment

Following is a list of payments made from Council’s Municipal and Trust Accounts and payments made with the CEO’s credit card for the month of September 2021.

If you have any queries regarding the list of payments, please advise prior to the meeting to enable staff to seek relevant information.

Consultation

Nil

Statutory Implications

s.6.10 Local Government Act 1995

r.13(1) Local Government (Financial Management) Regulations 1996

Policy Implications

Nil

Risk Implications

Risk: Payments are not monitored against approved budget and delegation.		
Likelihood	Consequence	Rating
Possible	Minor	Moderate
Action / Strategy		
The monthly list of payments provides an open and transparent record of payments made under the appropriate approved delegations.		

Financial Implications

Payments must be made in accordance with 2021/22 Budget

Strategic Implications

Shire of Bruce Rock – Strategic Community Plan 2017-2027

Governance

Goal 12 Council leads the organisation in a strategic and flexible manner

Voting Requirements

Simple Majority

Officer Recommendation

That Council endorse the list of payments from the:

- 1. Municipal Account consisting of:**
 - a. EFT voucher numbers EFT18137 to EFT18317 totalling \$593,017.27**
 - b. Cheque number 38 to 44 totalling \$8,603.14**
 - c. Trust Cheques**
 - d. Wages and Superannuation payments totalling \$286,263.22, and**
 - e. Credit Card payments \$881.35**

With all payments totalling \$887,883.63 for the month of September 2021.

Agenda Reference and Subject:	10.2.3 Request to Use the Settlers Court Amenities Building for Seniors Fitness and Set New Fee and Charge for Hire
File Reference:	A20104 Retirement Units Settlers Court
Reporting Officer:	Jennifer Bow, Manager of Finance Officer
Author:	Jennifer Bow, Manager of Finance Officer
Disclosure of Interest:	
Attachments:	<i>Nil</i>

Summary

Council is asked to consider to revoke their previous motion for the free use of the Settlers Court Amenities Building and resolve to set a new fee and charge for use of the building.

Background

At the June 2021 Ordinary Meeting of Council, Council resolved to allow Mrs Malene Vad Brownley free use of the Amenities Building at Settlers Court for a weekly half hour free fitness class until the end of Term 1, 2022.

OFFICER RECOMMENDATION AND COUNCIL DECISION

Resolution OCM Jun 21 – 11.3.8

Moved: Cr Rajagopalan

Seconded: Cr Kilminster

That Council;

- a. allow Malene Vad Brownley of MVB Personal Fitness and Training to use the Amenities Room at Settlers Court for “free of charge” seniors’ fitness classes for half an hour each Thursday during school terms; and
- b. request that Malene Vad Brownley;
 - i. provides numbers attending classes each week at the end of each school term; and
 - ii. that the usage arrangement is reviewed at the end of Term 1, 2022 to determine if the arrangement should continue.

Carried 9/0

Mrs Vad Brownley would now like to hire the building and charge for the fitness session. She did not run the classes in Term 3 however has had some requests from seniors and would now like to run the classes as part of her business. It will therefore be necessary to rescind the motion from the June Council Meeting.

Comment

Malene will provide the sessions for the seniors and the classes will be held each Thursday 11.30am to midday.

Malene has tried to host the sessions at her studio in Johnson Street, Bruce Rock however her room contains a step which was difficult for some members of the class to go up and down. She found that the Amenities Room worked well as she does not use equipment and only uses chairs for support during the exercises. She also does not have enough chairs in her studio.

The only electricity that would be consumed would be lighting and the use of the air-conditioner in the summer months.

The classes will only be run during the school term and will not be conducted during the Christmas holidays.

These classes are of benefit to the older members of the community has an increased level of fitness improves overall physical and mental health.

The building is also currently cleaned regularly due to the use of the Hydrotherapy pool.

The Retirement Units Committee does have meetings in this room however, if Council agree to Malene being allowed to use the room, the Committee will be made aware of the time it will be in use.

It is proposed that the new Fee and Charge for the hire of the Amenities Room is similar to the fee charged for hire of the indoor basketball court, \$26.00 (including GST) per hour.

Consultation

Darren Mollenoyux, Chief Executive Officer

Jennifer Bow, Manager of Finance

Statutory Implications

Local Government (Functions & General) Regulations 1996

10. *Revoking or changing decisions made at council or committee meetings — s. 5.25(1)(e)*

(1) If a decision has been made at a council or a committee meeting then any motion to revoke or change the decision must be supported —

(a) in the case where an attempt to revoke or change the decision had been made within the previous 3 months but had failed, by an absolute majority; or

(b) in any other case, by at least 1/3 of the number of offices (whether vacant or not) of members of the council or committee,

inclusive of the mover.

(1a) Notice of a motion to revoke or change a decision referred to in sub regulation (1) is to be signed by members of the council or committee numbering at least 1/3 of the number of offices (whether vacant or not) of members of the council or committee, inclusive of the mover.

(2) If a decision has been made at a council or a committee meeting then any decision to revoke or change the first-mentioned decision must be made —

(a) in the case where the decision to be revoked or changed was required to be made by an absolute majority or by a special majority, by that kind of majority; or

(b) in any other case, by an absolute majority.

(3) This regulation does not apply to the change of a decision unless the effect of the change would be that the decision would be revoked or would become substantially different.

Local Government Act 1995

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.*

(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

Risk Implications

Risk: That facilities in the Shire are underutilised.		
Likelihood	Consequence	Rating
Likely	Minor	Moderate
Action / Strategy		
This item has been evaluated against the Shire of Bruce Rock’s Risk Management Procedure’s Risk Matrix. The perceived level of risk is considered to be “Moderate” risk. As a Moderate Risk, the risk will be managed by specific monitoring.		

Financial Implications

Minor financial implications to cleaning costs as facility already cleaned due to Hydrotherapy Pool. Setting a new Fee and Charge as one has previously net been set for use of this facility.

Strategic Implications

Shire of Bruce Rock – Strategic Community Plan 2017-2027

Community

Goal 7: Our community are engaged and have a healthy lifestyle.

Voting Requirements Absolute Majority

Officer Recommendation

That Council, in accordance with Section 5.25 (1) (e) of the Local Government Act 1995 revokes Resolution OCM Jun 21 – 11.3.8 passed at its ordinary meeting held on Thursday 17 June 2021 as the free usage of the building and requirements to report usage are no longer required.

Officer Recommendation

That Council;

1. Adopt a new fee and charge for the use of the Settlers Court Amenities Room at \$26.00 per hour (including GST); and
2. Give public notice of 7 days of the intent to adopt the new fee and charge.

10.3 Environmental Health Officer

No Report

10.4 Deputy Chief Executive Officer

Agenda Reference and Subject:

10.4.1 Shire President Stamp

File Reference:

Reporting Officer:

Alan O’Toole, Deputy Chief Executive Officer

Author:

Melissa Schilling, Executive Assistant

Disclosure of Interest:

Attachments:

Nil

Summary

Use of Shire President Stamp September 2021.

Background

Nil

Comment

As per Council’s policy, the Shire President Stamp has been used during the months of September 2021 as follows:

- Notification of STED connected to property 39 Westral Street

Consultation

Nil

Statutory Implications

Council Policy

Policy Implications

Nil

Financial Implications

Nil

Strategic Implications

Shire of Bruce Rock Strategic Community Plan 2017-2027

Governance

Goal 12 Council leads the organisation in a strategic and flexible manner

Voting Requirements

Simple Majority

Officer Recommendation

That Council endorse the use of the Shire President Stamp during September 2021.

Agenda Reference and Subject:

10.4.2 Shire Common Seal

File Reference:

Reporting Officer:

Alan O’Toole, Deputy Chief Executive Officer

Author:

Melissa Schilling, Executive Assistant

Disclosure of Interest:

Attachments:

Nil

Summary

Use of Shire Common Seal in September 2021.

Background

Nil

Comment

As per Council’s policy, the Shire Common Seal has been used during the months of September 2021 as follows:

- Notification of STED connected to property 39 Westral Street

Consultation

Nil

Statutory Implications

Council Policy

Policy Implications

Nil

Financial Implications

Nil

Strategic Implications

Shire of Bruce Rock Strategic Community Plan 2017-2027

Governance

Goal 12 Council leads the organisation in a strategic and flexible manner

Voting Requirements

Simple Majority

Officer Recommendation

That Council endorse the use of the Shire Common Seal during September 2021.

Agenda Reference and Subject:

10.4.3 Request for reimbursement of costs relating to a burial at Bruce Rock Cemetery

File Reference: 1.7.1.2 Cemetery Enquiries

Reporting Officer: Alan O’Toole, Deputy Chief Executive Officer

Author: Alan O’Toole, Deputy Chief Executive Officer

Disclosure of Interest:

Attachments: *Item 10.4.3 CONFIDENTIAL Attachment A – Letter from Mr Laurence Nunn, 28 September 2021*

Summary

Council is asked to consider a request from Mr Laurence Nunn for reimbursement of costs relating to the burial of his mother, Mrs Margaret Nunn.

Background

Mr Nunn has written to the Shire following a telephone conversation with the DCEO held on the 16th September 2021 wherein he related the regrettable circumstances concerning the burial of his mother, Mrs Margaret Nunn. At the conclusion of the conversation Mr Nunn was informed that for Council to consider reimbursement of costs then it would be necessary for the request to be stated in writing which could then be presented at the next Council Meeting. Mr Nunn has written the letter attached to this item which relates the circumstances and also the request by the Nunn family for consideration for reimbursement of certain associated costs.

Comment

The circumstances of the burial of Melanie Nunn at the age of 6 months in 1965 are not known, but what has become evident is that at that time the internment was not at an adequate depth. This has subsequently led to the difficulties related by Mr Nunn, when this ground was being prepared for the burial of Mrs Margaret Nunn. As a consequence of this, the Nunn family experienced the upset of their mother not being able to be buried in her chosen plot, and also additional costs and delays associated with using another plot owned by the family.

Mr Nunn relates these issues in his letter, and asks Council to consider reimbursing the family for costs incurred in the original removal of the monumental headstone from Melanie Nunn’s grave, and also the making good of Melanie’s grave site, using the materials still available, to the state it was prior to it being disturbed for the proposed burial of Mrs Nunn. This disturbance need not have happened, and therefore the cost not incurred, if the family knew that the burial site would be unusable for the internment of Mrs Margaret Nunn.

For Council’s further consideration is that for burials conducted prior to 1980, it may not be possible to guarantee that a second internment would be possible given the item under discussion, and therefore whether this needs to be stated in advance to the applicant if this is requested in the future.

Consultation

Mr Laurence Nunn
Dave Holland, Manager of Works

Statutory Implications

Nil

Policy Implications

Nil

Risk Implications

Risk: That Council does not support the reimbursement of costs associated with the removal of the monument on Melanie Nunn’s grave site.		
Likelihood	Consequence	Rating
Possible	Moderate	Moderate
Action / Strategy		
This item has been evaluated against the Shire of Bruce Rock’s Risk Management Procedure’s Risk Matrix. The perceived level of risk is considered to be “Medium” and will be managed by specific monitoring.		

Financial Implications

The cost to the Nunn family of the unnecessary removal of the monument was \$905.

The work to make good the grave is not significant in the opinion of the Works Manager, and therefore the costs associated should be minor.

Strategic Implications

Shire of Bruce Rock – Strategic Community Plan 2017-2027

Governance

Goal 12 Council leads the organisation in a strategic and flexible manner.

Voting Requirements

Simple Majority

Officer Recommendation

That Council approves the reimbursement of \$905 to the Nunn family, and directs Council staff to make good the grave site of Melanie Nunn as per Mr Nunn’s letter.

Agenda Reference and Subject:

10.4.5 Mural for Shackleton Fire Brigade Shed

File Reference:

5.1.4.1 Shackleton Fire Brigade

Reporting Officer:

Alan O’Toole, Deputy Chief Executive Officer

Author:

Alan O’Toole, Deputy Chief Executive Officer

Disclosure of Interest:

Attachments:

Item 10.4.5 Attachment A – Indicative Mural design

Summary

Council is asked to consider a request from Mr Steven Ende to allow him to paint a mural on the side of Shackleton Fire Shed.

Background

The Shire has been approached by Mr Steven Ende, owner of the popular Steve’s Art Studio in Shackleton with a proposal that he paint a rural scene on the side of Shackleton Fire Shed. Mr Ende has been a long time contributor to the art and culture environment of the Shire, and has expressed the wish to give something back to Shackleton in particular, in the form of a mural that he would like to design and paint on the Shackleton Fire Shed.

Comment

Mr Ende first contacted the Shire last year with an early proposal for this project. In between then and now the Shackleton community has been consulted on their thoughts regarding this, and have been very supportive. DFES have also been consulted as to their thoughts, and they have said that although this is something they have no jurisdiction over as the Shed belongs to Council, they are aware of many Shires that have allowed this type of decoration on their Fire Brigade buildings, and overwhelmingly the community and visitor response to the decoration is very favourable.

Mr Ende is a recognised and successful artist who has lived and worked in the Shackleton community for several years, and his artworks are of the highest quality. He has proposed a design depicting a ‘rural scene’ in muted colours which will adorn the Shed on Jermyn Street and will add to the attractiveness of the Shackleton Townsite. It is proposed to be approximately 3m long by 1m tall. Mr Ende will contribute his labour and the materials for the project for free. The paint will be such as to be appropriate for this type of use, and can therefore be expected to have a lifespan of reasonable duration.

Consultation

Shackleton community, via members of the Shackleton Volunteer Bushfire Brigade
Mr Justin Corrigan, Area Officer, DFES

Statutory Implications

Nil

Policy Implications

Nil

Risk Implications

Risk: That Council does not support the proposal for the mural of Shackleton Fire Shed.		
Likelihood	Consequence	Rating
Unlikely	Minor	Low
Action / Strategy		
This item has been evaluated against the Shire of Bruce Rock’s Risk Management Procedure’s Risk Matrix. The perceived level of risk is considered to be “Low” risk and can be managed by routine procedure and is unlikely to need specific application of resources.		

Financial Implications

Nil

Strategic Implications

Shire of Bruce Rock – Strategic Community Plan 2017-2027

Community

Goal 6 Tourism helps to diversify our local economy

Governance

Goal 12 Council leads the organisation in a strategic and flexible manner.

Voting Requirements

Simple Majority

Officer Recommendation

That Council approves Mr Steven Ende’s proposal that he paints a rural scene mural, as per his indicative design, on the side of the Fire Brigade Shed on Jermyn Street in Shackleton.

10.5 Chief Executive Officer

Agenda Reference and Subject:	10.5.1 Development Assessment Panels
File Reference:	1.26.3.1
Reporting Officer:	Darren Mollenoyux, Chief Executive Officer
Author:	Darren Mollenoyux, Chief Executive Officer
Disclosure of Interest:	
Attachments:	<i>Nil</i>

Summary

Council is required to nominate Local Government Nominations to the Development Assessment Panel.

Background

Under the regulations our Local Government is required to nominate four elected members of Council, comprising two local members and two alternative local members to sit on a local Development Assessment Panel (DAP) as required.

The Minister has written as follows:

“Following the local government elections to be held on 16 October 2021, there may be a change in your local government DAP membership if the composition of your council changes. All existing local government DAP members are currently appointed for a term ending 26 January 2022. Prior to this expiry date, your local government will need to nominate four (4) DAP members for appointment by the Minister for Planning.

Representation of local interests is a key aspect of the DAPs system. Under regulation 24 of the Planning and Development (Development Assessment Panels) Regulations 2011 your local council is requested to nominate, as soon as possible following the elections, four elected council members to sit as DAP members for your local government. Using the attached form, nominations should be submitted via email to the DAPs Secretariat at daps@dplh.wa.gov.au.

All local government councils are requested to provide nominations for local government DAP members by Friday 19 November 2021, to ensure local interests are represented in future DAP determinations. If you are unable to provide nominations by the above date, please contact the DAPs Secretariat to discuss alternative arrangements and implications. Once nominations are received, the Minister will appoint local government DAP members for the term ending 26 January 2024.

The McGowan Government launched OnBoardWA as part of its commitment to increase the diversity and backgrounds of Government board and committees along with the total number of women appointed. I encourage you to consider diversity of representation when putting forward your local government nominations in supporting this important election commitment.

The WA Government is committed to continue implementing the Action Plan for Planning Reform to ensure the planning system continues to deliver great outcomes and great places for Western Australians. Changes to the DAP system, identified as part of the reform initiatives, aims to provide a more robust DAP process that promotes consistency and transparency in decision-making. Please note that the local government membership configuration on the DAP will not be affected by the reform initiatives.”

Comment

All nominated members are required to attend training prior to sitting on a DAP. Nominated members are entitled to payment of sitting, training and State Administrative Tribunal attendance fees.

With the Panels addressing applications in size from \$3m -\$7m, the likelihood of a Panel being required for Bruce Rock is unlikely.

Previously Council nominated the two local members being Cr Strange and Cr Rajagopalan, in addition Cr Kilminster and Cr Crooks were nominated as alternatives.

Consultation Nil

Statutory Implications

The Planning and Development (Development Assessment Panels) Regulations 2011

Policy Implications Nil

Risk Implications

Risk: If Council does not nominate Councillors to the DAP it would be in breach of the legislation and would impact any potential applications.		
Likelihood	Consequence	Rating
Likely	Major	High
Action / Strategy		
This item has been evaluated against the Shire of Bruce Rock’s Risk Management Procedure’s Risk Matrix. The perceived level of risk is considered to be “High” risk and will be managed by specific monitoring and response procedures.		

Financial Implications Nil

Strategic Implications

Shire of Bruce Rock Strategic Community Plan 2017-2027

4.1 Provide good strategic decision making, governance, leadership and professional management.

Governance

12.5 Lead the organisation in a financially responsible and viable manner

Voting Requirements Simple Majority

Officer Recommendation

That Council nominate Cr _____ and Cr _____ to sit on the Local Development Assessment Panel and Cr _____ and Cr _____ be nominated as alternative members. The nominations are to be forwarded to the Minister for Planning for his consideration.

Agenda Reference and Subject:

10.5.2 South West Native Title Settlement

File Reference:

7.1.2.4 Native Title Claims General Correspondence

Reporting Officer:

Darren Mollenoyux, Chief Executive Officer

Author:

Darren Mollenoyux, Chief Executive Officer

Disclosure of Interest:

Attachments:

Item 10.5.2 Attachment A - Reserve Details Report 17306

Item 10.5.2 Attachment B - Land Enquiry Reserve 17306

Summary

The Department of Planning, Lands and Heritage is seeking comments relating to the South West Native Title Settlement – Land Base Consultation – Land List 1031 relating to Reserve R17306 within the Shire of Bruce Rock.

Background

Council has received a letter from the Department of Planning, Lands and Heritage as follows:

“The South West Native Title Settlement (Settlement) is a landmark native title agreement reached between the State Government (State) and the six Noongar Agreement Groups. The six requisite Indigenous Land Use Agreements (ILUAs) were conclusively registered, leading to the Settlement commencing on 25 February 2021 after some years of delay. The Settlement recognises the Agreement Groups as the Traditional Owners of the south west of Western Australia, while resolving native title in exchange for a negotiated package of benefits. The area subject to the Settlement is depicted in the attached map.

A key negotiated benefit is the delivery of a 320,000 hectare Noongar Land Estate, in accordance with the Noongar Land Base Strategy (Annexure J to the ILUAs). The Noongar Land Estate will contain up to 300,000 hectares of land transferred in reserve or leasehold, and up to 20,000 hectares of land transferred in freehold. The Landholding Body for all land transferred is the Noongar Boodja Land Sub Pty Ltd, which will hold and manage the land in the Noongar Land Estate in consultation with the soon to be established Noongar Regional Corporations. All land will be used and managed in line with Noongar cultural, social and economic aspirations for the benefit of generations to come.

For more information on the Settlement, please refer to the Department of the Premier and Cabinet website: <https://www.wa.gov.au/organisation/departments-of-the-premier-and-cabinet/south-west-native-title-settlement>

Over the next five years, the Department of Planning, Lands and Heritage (Department) will progress selected land parcels through to transfer under the Settlement, subject to all necessary consultation and approvals with stakeholders. Land eligible for inclusion in the Noongar Land Estate includes:

- unallocated Crown land;*
- unmanaged reserves;*
- land owned or held by the Aboriginal Lands Trust / Aboriginal Affairs Planning Authority; and*
- land owned or held by State agencies or Local Government Authorities, at the discretion of the State agency or Local Government Authority.*

A key part of the process being followed by the Department involves the referral of land under consideration for inclusion in the Noongar Land Estate to relevant State agencies and Local Government Authorities. To that end, please find attached a spreadsheet comprising of land parcels

identified for possible transfer. It would be appreciated if you could provide comments on each of the land parcels directly into the column labelled 'Referee Comments' in relation to the following:

1. Is the 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? Please 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. Please 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. Please 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. Please provide any additional comments on the proposed transfer of this land as part of the Settlement.

Once you have considered the land identified, the South West Settlement Project team would be pleased to receive your comments by email to swsettlement@dplh.wa.gov.au. In accordance with the abovementioned Annexure J of the ILUAs, your advice is required to be returned within 40 days of receiving this email. As a result, please provide your comments by 25 October 2021. Should this timeframe not be achievable, please let me know as a matter of priority. Where no response is received from the Shire within the 40 day timeframe, this will be taken as having no comment on the land parcels referred."

Council has previously considered this matter in 2015 and again in 2017 with Council resolving as follows at the February 2017 Ordinary Meeting of Council:

Resolution Feb 17 - 11.5.3

Moved: Cr Buegge

Seconded: Cr Thornton

That Council responds to the Department of Lands and provides the below responses relating to the South West Native Title Settlement – Land Base Consultation for the Shire of Bruce Rock listed reserve.

Reserve 17306

1. Any future proposals for the land identified? If so, in what timeframe?

Council has no proposals for Reserve 17306.

2. Any proposed planning scheme amendments? If so, in what timeframe?

Council has no planning scheme amendments for Reserve 17306.

3. Any future proposals for either the creation or amendments to reserves?

Council has no future plan for the creation or amendment to Reserve 17306.

4. Any known land management issues e.g. Contamination etc.

Council staff are not aware of any current land management issues or contamination.

The only concern may be in regards to any potential change of Reserve purpose, such as camping. Potential could exist that in the future, should interest arise for the claimants' request to convert it to a camping ground implications could occur under the new Caravan and Camping Act and Health

Act which 'bind the crown' in a way that it could be incumbent of the Local Government to enforce the Acts and its regulations.

Council currently has ample camping grounds within the Shire and as Council has no future plans for this to become a camping ground it could be an additional cost and management issue outside of Council strategic directions.

Must comply with the firebreak regulations.

Comment

Staff have considered the information received and provide the following guidance on the questions asked:

1. Is the Shire supportive of the transfer of this land to the Noongar People under the Settlement?
Council has previously indicated that they had no objections to the transfer of Reserve R17306.
2. Does the Shire have any interest in the land?
When this was considered in 2017 Council has no interest in the land and staff do not believe there is any use for the land for Council.
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.
Staff are not aware of any existing infrastructure, or aware of any proposed for the land parcel.
4. Is the land parcel subject to any mandatory connection to services?
Council has no mandatory service connection requirements for Reserve R17306.
5. Are any future proposals for the land identified? Please provide detail of what is proposed and in what timeframe?
Staff are not aware of any proposals for Reserve R17306.
6. Are there any future proposals for adjoining land that may affect the land identified in the spreadsheet? If so, in what timeframe?
Staff are not aware of any future proposals on land adjoining Reserve R17306, however would recommend that the Department of Planning, Lands and Heritage undertake consultation with adjoining property owners to seek their comments and any proposals.
7. Please 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?
Council has no current or short term plans to amend its Town Planning Scheme.
8. Please 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).
Council staff are not aware of any previous issues, however as we are not the landowner we may not have been informed.
9. Please provide any additional comments on the proposed transfer of this land as part of the Settlement.
The only additional comments would be to reiterate previous resolution feedback being:

The only concern may be in regard to any potential change of Reserve purpose, such as camping. Potential could exist that in the future, should interest arise for the claimant’s request to convert it to a camping ground implication could occur under the new Caravan and Camping Act and Health Act which ‘bind the crown’ in a way that it could be incumbent of the Local Government to enforce the Acts and its regulations.

Council currently has ample camping grounds within the Shire and as Council has no future plans for this to become a camping ground it could be an additional cost and management issue outside of Council strategic directions.

Property owners must comply with the firebreak regulations.

Consultation

Julian Goldacre, Environmental Health Officer
 David Holland, Manager of Works and Services
 Jennifer Bow, Manager of Finance
 Mike Darby, Senior Finance Officer /Rates

Statutory Implications

Land Administration Act 1997 – Section 83

83. Transfer etc. of Crown land to advance Aboriginal people

- (1) The Minister may for the purposes of advancing the interests of any Aboriginal person or persons —
 - (a) transfer Crown land in fee simple; or
 - (b) grant a lease of Crown land, whether for a fixed term or in perpetuity,

to that person or those persons, or to an approved body corporate, on such conditions as the Minister thinks fit in the best interests of the person or persons concerned.

- (2) Subsection (1) does not limit the right of any Aboriginal person, or a body corporate, to apply for and acquire an interest in or the fee simple of Crown land under any other provision of this Act.

- (3) In subsection (1) —
 - approved body corporate means a body corporate that the Minister is satisfied —
 - (a) is to hold the land or the lease in trust for the Aboriginal persons concerned; or
 - (b) has a membership that comprises only the Aboriginal persons concerned.

Policy Implications Nil

Risk Implications

Risk: This is not a Council owned reserve and Council has previously resolved that it has no purpose for the land, therefore there is no direct impact to Council or its asset management		
Likelihood	Consequence	Rating
Unlikely	Minor	Low
Action / Strategy		
This item has been evaluated against the Shire of Bruce Rock’s Risk Management Procedure’s Risk Matrix. The perceived level of risk is considered to be “Low” risk and requires input only.		

Financial Implications Nil

Strategic Implications

Shire of Bruce Rock Strategic Community Plan 2017-2027

Infrastructure

Goal 2 Maintain Shire owned facilities in a strategic manner and meet community needs

Governance

13.1 Proactively manage reserves and natural bushland

Voting Requirements Simple Majority

Officer Recommendation

- 1) That Council has no objections and is not aware of any existing or future matters that would affect the transfer of Reserve R17306 as part of the South West Settlement – Land Base Consultation.
- 2) That the CEO writes to the Department of Planning, Lands and Heritage and responds to questions 1 – 9 as outlined in the comments of this item.
- 3) Council requests that the Department of Planning, Lands and Heritage ensures that it consults with all adjoining property owners to see comment on the proposed transfer of Reserve R17306.

Agenda Reference and Subject:

10.5.3 Superannuation for Elected Members – WALGA Proposal

File Reference: 2.3.3.1 Local Government Acts and Regulations

Reporting Officer: Darren Mollenoyux, Chief Executive Officer

Author: Darren Mollenoyux, Chief Executive Officer

Disclosure of Interest:

Attachments: *Item 10.5.3 Attachment A – Policy Paper Elected Member Superannuation*

Summary

Council is asked to consider and provide any comment on WALGA's Draft Policy Proposal for Superannuation for Elected Members.

Background

The WA Local Government Association (WALGA) has written to Councils seeking feedback on a draft policy proposal to advocate for Elected Members to be required to be paid superannuation.

The recommended advocacy approach is to propose that the Local Government Act 1995 be amended to facilitate the payment of superannuation to Elected Members in addition to fees and allowances.

This approach avoids the problems associated with the current arrangements around the need to withhold income tax and pay fringe benefits tax.

Feedback from the Local Government sector will inform a State Council agenda item, which will be considered at November Zone meetings and the 1 December 2021 meeting of State Council. Following a State Council decision, advocacy will be undertaken with the Minister for Local Government.

The submission period for Council to respond to WALGA is Friday 29th October 2021.

A copy of the Superannuation for Elected Members Draft Policy Proposal is attached for reference.

Comment

Council has not previously discussed or have a position on this proposal for the potential for Elected Members to be paid Superannuation and therefore this is presented for Council's consideration.

Staff do not have a position or direction in regard to this matter and would be guided by the information provided by WALGA and direction provided by Council.

Staff would however seek Council's consideration to the below comments from staff:

Currently, our employees are paid superannuation as it is generated as part of the payroll system. This captures the amount owing and generates the payment through the super clearing house, as required by the ATO. It is a relatively seamless process as once the amount is reconciled, the superannuation electronic file is uploaded and the amount of super is automatically deducted from our bank account. It has reduced the number of payments and cheques that we used to have to process for the payment of superannuation.

Currently, our payroll system would not be able to process the Councillors' super payments. We would have to manually process these through creditors.

This would also then tie into whether as a Council we should reduce the staff time involved in reconciling Councillors seeking reimbursement for Elected Members Fees and Charges. As discussed at the previous Council Meeting, an allowance that is automatically paid, and "opted out of", could reduce the time for Councillors and staff. This would increase the expenditure on Elected Members Fees and Charges. This would also simplify the amount and frequency of superannuation paid for Councillors.

If Council is to support WALGA's Position Paper, then serious consideration to move to an annual allowance which is paid unless Councillors opt out. This seems to be what more and more Councils are doing after looking into the requirements to post on the website amounts paid to Councillors and the associated policies regarding this.

Consultation

Jennifer Bow, Manager of Finance

Statutory Implications

Local Government Act 1995

Superannuation Guarantee Act 1992

Under the *Superannuation Guarantee (Administration) Act 1992*, Local Governments can unanimously resolve to be considered an 'eligible local governing body' through the *Taxation Administration Act 1953*.

Policy Implications

Nil

Council Policy 3.2 Superannuation Contributions

Risk Implications

Risk: There may be an increase in overall Councillor payments impacting Council's budget.		
Likelihood	Consequence	Rating
Likely	Moderate	Moderate
Action / Strategy		
This item has been evaluated against the Shire of Bruce Rock's Risk Management Procedure's Risk Matrix. The perceived level of risk is considered to be "Medium" risk and will be managed by specific monitoring and response procedures.		

Financial Implications

Under Council's current Meeting Fees arrangements and payments made in 2020/21 the implications of the proposed superannuation payment to elected members would have equated to an additional \$3,000.

However, it should be noted that not all Councillors take the Meeting fees and should Council change its approach to payment for Meeting Fees as an annual payment this would increase significantly more. This is hard to estimate as we would be unsure of how many Councillors would take the Meeting fees annually.

Strategic Implications

Shire of Bruce Rock – Strategic Community Plan 2017-2027

Governance

Goal 10 – Our organisation is well positioned and has capacity for the future

Goal 12 – Council leads the organisation in a strategic and flexible manner

Voting Requirements

Simple Majority

Officer Recommendation

1. That Council review the WA Local Government Association's Draft Policy Proposal for Superannuation to be paid to Elected Members and provide any comment; and
2. Supports or Not Supports WALGA's Motion *"That the Local Government Act 1995 be amended to require Local Governments to pay Elected Members, into a nominated superannuation account, an amount equivalent to the superannuation guarantee determined with reference to fees and allowances paid to each Elected Member"*.

11. Regional Reports

Agenda Reference and Subject:	11.1.1 CEACA Meeting Minutes
File Reference:	4.1.10.1 Minutes and Agendas CEACA
Reporting Officer:	Darren Mollenoyux, Chief Executive Officer
Author:	Darren Mollenoyux, Chief Executive Officer
Disclosure of Interest:	
Attachments:	<i>Item 11.1.1 CEACA Special Meeting 11 October 2021</i>

Summary

Council is asked to receive the minutes from the previous CEACA Inc. Meeting.

Background

The 10 member Councils of the Central Eastern Aged Care Alliance (CEACA Inc.) held a meeting on 11th October 2021 via Videoconference.

Comment

To assist with the Councillors' continued understanding and updates on CEACA Inc. and its associated projects, the minutes will be presented for receiving after each CEACA Inc. meeting.

The following items are highlighted for Councillors' attention:

External Audit

Information provided on the CEACA Audit

Financial Statements

The Interim CEO provided a report on the financial statements

Various other minor updates were provided at the meeting and included in the minutes.

A full copy of the minutes has been provided to Council for their reference.

Consultation

Discussions were held at the CEACA Inc. Committee Meeting

Statutory Implications Nil

Policy Implications Nil

Financial Implications Nil

Strategic Implications

Shire of Bruce Rock – Strategic Community Plan 2017-2027

Community

Goal 7 – Community are engaged and have a healthy lifestyle

7.1 Encourage and help facilitate the administration of the planned CEACA units

7.3 Continue to work towards achieving the strategies of the Age Friendly Community Plan

Governance

Goal 12 – Council leads the organisation in a strategic and flexible manner

12.2 Continue to build our voice and strategic projects within our regional groupings

Voting Requirements

Simple majority

Officer Recommendation:

That Council receives the minutes of the CEACA Inc General Meeting held on the 11th October 2021 via Videoconference.

12. New Business of an urgent nature introduced by discussion of the meeting

13. Confidential Items

Agenda Reference and Subject:

13.1 Waste Collection Service Key Performance Indicator Review for the September – October 2021

File Reference: 4.1.1 Waste Management

Reporting Officer: Julian Goldacre, Environmental Health Officer

Author: Julian Goldacre, Environmental Health Officer

Disclosure of Interest:

Attachments: *Item 13.1 Attachment A – CONFIDENTIAL Waste Collection Service KPI September/October 2021*
Item 13.1 Attachment B – Signed & Served letter to Mr P Fuchsbichler

Officer Recommendation

That in accordance with Section 5.23(2) of the Local Government Act 1995, the meeting is closed to the members of the public for this item as the following sub-section applied:

(e) a matter that if disclosed would reveal - ...

(ii) information that has a commercial value to a person; or

(iii) information about the business, professional, commercial or financial affairs of a person

Summary

Council accepts this report for the Contractor’s Landfill Contract Key Performance Indicators for the months of September to October 2021 and considers adjusting the KPI scoring for failed KPI outcomes.

Background

At the Ordinary Meeting of Council held on the 19 August 2021 Council resolved by Resolution OCM Aug 21 – 13.1.3 the following: “That a review of the Key Performance Indicators will be undertaken to include damage to bins caused by the Contractor’s equipment as grounds for termination of the Contract”. Consequently, the Environmental Health Officer (EHO), met with Mr Peter Fuchsbichler (Contractor) at his house and the Key Performance Indicators (KPIs) were amended in agreement with the Contractor with the following two new KPIs:

- 1) Notification of damaged Containers/s BEFORE Principle being notified by Container/s owner or custodian. *Inserted 8/9/2021 as agreed by Contractor & Principal’s Representative on the 8/9/2021;* and
- 2) Undertaking to ensure bin lift mechanism on collection vehicle is suitable to the task so that bin lifts and placements do not result in Container/s damaged reasonably determined to be caused by collection vehicle waste collection activity. *Inserted 8/9/2021 as agreed by Contractor & Principles Representative on the 8/9/2021*

Furthermore, correspondence as presented in Attachment B was served to the Contractor by mail, and in person by the EHO to explain the Council’s concerns and determine a commitment by the Contractor to resolve the matter of damaged bins.

Comment

The letter so served on the Contractor clearly details the concerns raised, repeatedly, and the consequences of not resolving the bin damage issue. Attachment A regrettably shows that as reported by the Senior Finance Officer Mr M Darby concerns have been reported about the scoring damage of bins. Furthermore, a Farrall Street address bin that was less than six months old was damaged with a crack in its side. As stated in the letter the Contractor has been notified three times about progress to stop bin damage and assurances were verbally given that the matter was being looked at. The EHO was approached by a relative of the Contractor who asked to see a picture of the damaged bins to assist with determining how to resolve, thus assistance has been given to the Contractor to resolve the matter.

Attachment B records the KPIs for Waste Collection Service (Contract) based on observations and reports received. The Contract achieved a score of 71.4%. Previously the score was weighted given 90% for one KPI fail would be more than 10%. Notwithstanding this, two issues have been identified, so even if weighted the required 90% has not been achieved. The reported broken bin on Farrall Street is recent and the report of scored bins was in the last two weeks, thus efforts to resolve the matter have not resulted in the desired outcome. With regards to KPI reporting, a recommendation to adjust the non-compliance with KPIs to be adjusted to ‘more than one KPI fail...’ or the like would assist with pragmatic reporting.

In the event the Contractor fails to meet 90% plus KPI compliance which is now the case, Council can consider terminating the Contract. In the event of the Contract being cancelled the Deputy Chief Executive Officer has investigated alternatives for the short term under essential services provisions, and the long term requiring re-advertising and reformatting of the tender documentation. There does exist an agreeable solution with minimal financial implications to the Shire of Bruce Rock.

Consultation

Mr Alan O’Toole, Deputy Chief Executive Officer.

Statutory Implications

Local Government Act 1995;
Commercial Arbitration Act 1985;
Environmental Protection Act 1986;
Civil Liability Act 2002 (WA);
Environmental Protection (Rural Landfill) Regulations 2002; and
Environmental Protection (Controlled Waste) Regulations 2004;

Policy Implications

Nil.

Risk Implications

Risk: Contractor fails to meet Key Performance Indicators as required under the signed Contract.		
Likelihood	Consequence	Rating
Almost Certain	Moderate	High
Action / Strategy		
This item has been evaluated against the Shire of Bruce Rock’s Risk Management Procedure’s Risk Matrix. The perceived level of risk is considered to be “High”. As a high-risk matter, the Chief Executive Officer and the Environmental Health Officer will be monitoring progress.		

Financial Implications

The DCEO investigations to the short and long term administrative and direct financial requirements are deemed to be reasonable and within previous costing received, plus CPI. The tender specifications are close to fully prepared pending final adjustments when advertising is required in the event of Contract termination.

Strategic Implications

Shire of Bruce Rock – Strategic Community Plan 2017-2027

Governance

Goal 12 Council leads the organisation in a strategic and flexible manner
12.2 Continue to build our voice and strategic projects within our regional groupings

Voting Requirements

Simple majority.

Officer Recommendation

That in accordance with Section 5.23(2) of the Local Government Act 1995, Council reopens the meeting to the members of the public.

Officer Recommendation

That Council resolves to:

- 1. Accept the Officer report for the Contractor Refuse Collection Contract Key Performance Indicators for the period of September to October 2021; and**

14. Closure of Meeting