



# AGENDA

and

## Notice of Ordinary Council Meeting

to be held

**Tuesday 10 December, 2019**

in the

### **Council Chambers**

11-13 Waldeck Street, Dongara

5.00pm – Annual Electors' Meeting

5.45pm – Agenda Briefing Session *(only if time permits)*

6.00pm – Ordinary Council Meeting

# AGENDA & BUSINESS PAPERS

Welcome to the Ordinary Council Meeting of the Shire of Irwin.

Please be advised that Ordinary Council Meetings during 2019 will be held on the following dates in the Council Chambers at 11-13 Waldeck Street, Dongara, commencing at **6.00pm**.

DATES	
26 February 2019	23 July 2019
26 March 2019	27 August 2019
30 April 2019	24 September 2019
28 May 2019	22 October 2019
25 June 2019	26 November 2019
	10 December 2019

Members of the public are most welcome to attend the Agenda Briefing, the Councillor Information session and the Ordinary Council Meetings.

## 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**

## Council Meeting Information

1. Your Council generally handles all business at Ordinary or Special Council Meetings.
2. From time to time Council may form a Committee, Working Party or Steering group to examine specific subjects and then report to Council.
3. Generally all meetings are open to the public; however, from time to time Council will be required to deal with personal, legal and other sensitive matters. On those occasions Council will generally close that part of the meeting to the public. Every endeavour will be made to do this as the last item of business of the meeting.
4. **Public Question Time:** It is a requirement of the Local Government Act 1995 to allow at least fifteen (15) minutes for public question time following the opening and announcements at the beginning of the meeting. Should there be a series of questions the period can be extended at the discretion of the Presiding Member. If presenting questions to Council please note the following, as guided by the *Shire of Irwin Meeting Procedures Local Law 2016*:
  - Public Question Time occurs early in the meeting so please arrive at least 5 minutes before the advertised meeting start time (Ordinary Meetings are scheduled for a **6.00pm** start, unless otherwise advised).
  - Record your full name and suburb of residence on the Attendance Form available in the public seating area.
  - When invited by the Presiding Member to ask your question/s, please state your full name for the benefit of the minute taker and those present.
  - Only questions can be addressed to Council, not statements.
  - A minimum of 15 minutes is allocated to Public Question Time. A member has 2 minutes to submit a question.
  - You may ask up to 2 questions before other members of the public will be invited to ask their questions to ensure all have an equal and fair opportunity to ask questions.
  - The Presiding Member may elect for written questions to be responded to as normal business correspondence.
  - The Presiding member may decide that a question shall not be responded to where:
    - the same or similar question has been asked at a previous meeting and a response has already been provided;
    - a statement has been made and is not reformed into a question; or
    - a question is offensive or defamatory in nature and is not reformed into a question.
  - A question may be taken on notice by Council for a later response. Responses will be provided in writing to the member and a summary will be included in the agenda of the next meeting of Council.
  - Members of the public are encouraged to raise matters relating to operations and administration through the Shire's Customer Request system.
  - At a Special Meeting of Council, only questions relating to the purpose of that meeting may be raised.
  - Should you wish to provide written questions prior to the meeting so that an appropriate response can be prepared, please submit them at least 72 hours prior to the Council meeting at which you wish them to be presented.
5. **Councillors** may from time to time have a financial interest in a matter before Council. Councillors must declare an interest and the extent of the interest in the matter on the Agenda. However, the Councillor can request the meeting to declare the matter **trivial, insignificant or in common with a significant number of electors or ratepayers**. The Councillor must leave the meeting whilst the matter is discussed and cannot vote unless those present agree as above.
6. **Members of staff**, who have delegated authority from Council to act on certain matters, may from time to time have a financial interest in a matter on the Agenda. The Officer must declare that interest and generally the Presiding Member will advise the Officer if he/she is to leave the meeting.
7. Agendas are delivered to Councillors within the requirements of the Local Government Act 1995, i.e. seventy-two (72) hours prior to the advertised commencement of the meeting.
8. Agendas for Ordinary Meetings are available to the public from the Shire of Irwin Administration Centre and on the website [www.irwin.wa.gov.au](http://www.irwin.wa.gov.au) seventy-two (72) hours prior to the meeting.
9. Agenda items submitted to Council will include a recommendation for Council consideration. Electors should not interpret and/or act on the recommendations until after they have been considered by Council and ideally received written confirmation of the outcome. Please note the Disclaimer in the Agenda (page 3).
10. Public Inspection of Unconfirmed Minutes (Reg 13): A copy of the unconfirmed Minutes of Ordinary and Special Meetings will be available for public inspection at the Shire of Irwin Administration Centre and on the website [www.irwin.wa.gov.au](http://www.irwin.wa.gov.au) within ten (10) working days after the Meeting.

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FORM - Declaration of Interest

FORM - Leave of Absence Request

# ORDINARY COUNCIL MEETING

to be held

**10 December 2019**

at 6.00pm

## **AGENDA**

### **1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS**

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

#### **Members**

Councillor M T Smith  
Councillor B Wyse  
Councillor G S Eva  
Councillor A J Gillam  
Councillor M Leonard  
Councillor I Scott  
Councillor H M Wells  
Councillor I F West

Shire President  
Deputy Shire President

#### **Staff**

Mr S D Ivers  
Mr B Jeans  
Mrs D K Chandler

Chief Executive Officer  
Manager Regulatory Services  
Governance & Executive Coordinator

#### **Guests**

#### **Apologies**

#### **Approved Leave of Absence**

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

**4.1** K Wilson – Quondong Road, Springfield: With the Sustainable Environment Committee potentially disbanding, what will happen with the funds received from the Pop Up Shop?

Response: The Shire will investigate an appropriate project for the donated funds in consultation with the Pop Up Shop in due course.

**4.2** K Wilson – Quondong Road, Springfield: If the Sustainable Environment Committee is disbanded, would the Placemaking Working Group be able to take on environmental tasks as a community group?

Response: The Shire does not administer community groups. The Shire would encourage the establishment of an environmental community group.

**4.3** J Rossiter – Point Leander Drive, Port Denison: Why is Council responding to emails sent in by fictitious persons, such as Petrer By?

Response: In accordance with section 5.23 (1)(a) of the *Local Government Act 1995*, all Council Meetings are to be open to members of the public unless the meeting, or part of the meeting, deals with any of the situations listed in section 5.23 (2). In accordance with Regulation 7(3) of the *Local Government (Administration) Regulations 1996*, each member of the public who wishes to ask a question is to be given an equal and fair opportunity to ask the question and receive a response.

**4. PUBLIC QUESTION TIME**

**5. APPLICATIONS FOR LEAVE OF ABSENCE**

**6. PETITIONS AND DEPUTATIONS**

**7. CONFIRMATION OF MINUTES**

**7.1. Minutes of the Ordinary Council Meeting held 26 November 2019**

A copy of the Minutes of the Ordinary Council Meeting held 26 November 2019 have been provided to all Councillors under separate cover.

**RECOMMENDED:**

**That the Minutes of the Ordinary Council Meeting, held 26 November 2019, as previously circulated, be adopted as a true and accurate recording of that meeting.**

**8. ANNOUNCEMENTS BY THE PERSON PRESIDING WITHOUT DISCUSSION**

## 9. REPORTS

### 9.1. Officer Reports

<b>CORPORATE AND COMMUNITY</b>		<b>CC01-12/19</b>
<b>Subject:</b>	<b>CC01-12/19 Accounts for Payment</b>	
<b>Author:</b>	<b>S Clarkson, Finance Officer</b>	
<b>Responsible Officer:</b>	<b>S Ivers, Chief Executive Officer</b>	
<b>File Reference:</b>	<b>Minute Book</b>	
<b>Voting Requirements:</b>	<b>Simple Majority</b>	

#### 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. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.
- Legislative** Includes adopting local laws, local planning schemes and policies.
- 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 Health Act, Dog Act or local laws) and other decisions that may be appealable to the State Administrative Tribunal (SAT).

#### Report Purpose:

To receive the list of accounts paid under delegated authority during November 2019.

#### Background:

A list of accounts paid under delegated authority is attached, showing all payments made during the month of November 2019.

#### 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 CEO3 Council has delegated authority to the Chief Executive Officer to authorise all payments by Council.

**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

4.3.2 Adopt and follow better practice processes

**Attachments:**

*Attachment Booklet – December 2019*

- CC01 – Accounts for Payment – November 2019

**Officer Recommendation:**

**RECOMMENDED:**

That Council receives the accounts paid during November 2019 as presented in Attachment Booklet – December 2019, represented by:

Payment Type/Numbers	Total Amount
EFT 25132 – 25274	\$909,420.44
Muni Cheques - 31953 – 31960	\$63,056.21
Direct Debit – Solar Panel Repayments 09/19	\$1,947.66
Direct Debit – Credit Card	\$2,149.04
Direct Debit - Transport – PL260919 – PL291019	\$62,016.75
<b>Grand Total</b>	<b>\$1,038,590.10</b>



<b>CORPORATE AND COMMUNITY</b>		<b>CC02-12/19</b>
<b>Subject:</b>	<b>CC02-12/19 Monthly Financial Report for the Period Ended 30 November 2019</b>	
<b>Author:</b>	<b>M Shirt, Consultant</b>	
<b>Responsible Officer:</b>	<b>S Ivers, Chief Executive Officer</b>	
<b>File Reference:</b>	<b>Minute Book</b>	
<b>Voting Requirements:</b>	<b>Simple Majority</b>	

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**Report Purpose:**

To consider and receive the Monthly Financial Statements for the period 1 July 2019 to 30 November 2019.

**Background:**

The Monthly Financial Reports to 30 November 2019 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 Program
- Statement of Financial Activity by Nature & Type
- Explanation of Material Variances
- Net Current Funding Position

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

**Officer’s Comment:**

The financial position to the end of November 2019 is detailed in the attached report and summarised as follows relative to year to date budget expectations:

	YTD Actual	Variance to YTD Budget
Operating Revenue	6,768,582	0%
Operating Expenditure	<u>(4,755,493)</u>	3%
Net Operating	<u>2,013,088</u>	
Non-Operating Revenue	1,452,767	2%
Non- Operating Expenditure	<u>(1,151,502)</u>	-10%
Net Non- Operating	<u>301,265</u>	
Cash at Bank	2,766,429	
Cash at Bank Restricted	1,535,585	
Reserve Bank	<u>1,316,594</u>	
Total Cash Funds	<u>5,618,609</u>	

The attached reports 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

The Local Government (Financial Management) Regulations provides as follows:

*Section 34 Financial activity statement report*

- (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:**

Strategic Community Plan 2017 - 2027

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 – December 2019*

- CC02 – Financial Statements for the period ended 30 November 2019

**Officer Recommendation:**

**OFFICER RECOMMENDATION:**

**That Council receives the Monthly Financial Statements for the period 1 July 2019 to 30 November 2019 as provided in Attachment Booklet – December 2019.**

<b>OFFICE OF CEO</b>		<b>CEO01-12/19</b>
<b>Subject:</b>	<b>CEO01-12/19 Delegation CEO37 - Appoint Authorised Persons</b>	
<b>Author:</b>	<b>Y Robb, Process Improvement Coordinator</b>	
<b>Responsible Officer:</b>	<b>S Ivers, Chief Executive Officer</b>	
<b>File Reference:</b>	<b>GV.AU.2</b>	
<b>Voting Requirements:</b>	<b>Absolute Majority</b>	

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**Report Purpose:**

For Council to consider adopting the redeveloped Council delegation to the CEO relating to the appointment of authorised persons under the *Local Government Act 1995*, its subsidiary legislation and the *Graffiti Vandalism Act 2016*.

**Background:**

To delegate is to appoint another person to exercise a power or discharge a duty. A delegation does not strip the person making the delegation of the right to exercise the delegated power or discharge the delegated duty. Local Governments are required to keep a register of delegations and to review the delegations at least once every financial year, as per the *Local Government Act 1995* s5.18 and s5.46. Council has reviewed and adopted the Council to CEO Register of Delegations (the "Register") at the 28 May 2019 Ordinary Council Meeting.

At this meeting, it was reported to Council that officers would be gradually updating the Register over the coming months by reviewing individual delegations in-depth and implementing them using the WALGA template.

**Officer's Comment:**

The current delegation CEO15 Appointment of Authorised Persons has been reviewed in line with the WALGA template. CEO15 is a single delegation which encompasses all of the delegations relating to authorising persons under all related Acts for Local Government. The WALGA template separates these delegations into individual delegations that are specific and relevant to the Act to which it relates. As a result of the review, a new delegation CEO37 – Appoint Authorised Persons has been developed and delegation CEO15 will remain in place until such time all other delegations relating to the appointments of authorised persons are reviewed.

The new delegation CEO37 – Appoint Authorised Persons has been developed and presented for Council's consideration. This delegation relates to empowering the CEO to appoint authorised persons under the *Local Government Act 1995* and its subsidiary legislation including the Local Government Act Regulations and the *Local Government (Miscellaneous Provisions) Act 1960*, and local laws made in accordance with the *Local Government Act 1995*.

This delegation also enables the CEO to appoint an authorised person for the purpose of the *Graffiti Vandalism Act 2016* s.15, which prescribes the *Local Government Act 1995* as the enabling power.

The *Local Government Act 1995* and *Graffiti Vandalism Act 2016* provides the following:

**Local Government Act 1995 s.5.42**

*Delegation of some powers and duties to CEO*

- (1) A local government may delegate\* to the CEO the exercise of any of its powers or the discharge of any of its duties under —
- (a) this Act other than those referred to in section 5.43; or
  - (b) the *Planning and Development Act 2005* section 214(2), (3) or (5). \* Absolute majority required.
- (2) A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.

**Graffiti Vandalism Act 2016 s.15 and s.16**

**15. Application**

*For the purposes of the Local Government Act 1995 Part 9 Divisions 1 and 2, a function under that Part is a function that a person may be authorised to perform under this Part.*

**16. Delegation by local government**

*(1) The local government may delegate to its CEO the exercise of any of its powers or the discharge of any of its duties under another provision of this Part.*

In accordance with the *Local Government Act 1995* and the *Graffiti Vandalism Act 2016*, delegation CEO37 – Appoint Authorised Persons has been developed to provide further clarity around the appointment of authorised persons specific to the legislation.

**Consultation:**

This delegation was reviewed in consultation with the CEO and developed in line with WALGA's template.

**Statutory Environment:**

*Local Government Act 1995*

- s5.18
- s5.42
- s5.43
- s3.24
- s9.10

*Graffiti Vandalism Act 2016*

- s.15
- s.16

**Policy Implications:**

Delegation CEO37 links with the Management Policy MP02 Purchase Order Authorisation which authorises employees to raise purchase orders to a specified limit. In accordance with the relevant legislation, the authorised employee receives a signed Certificate of Authorisation from the CEO.

CEO to Officers delegation ON9 Payment Authorisation is no longer required as Management Policy MP02 and subsequent Certificates of Authorisation to individual employees replaces the requirement for this delegation.

**Financial/Resource Implications:**

Delegations allow for a more streamlined and timely service which is an effective use of Council's human resources. However, there will be increased resourcing requirements over the coming months to update the entire delegations register using the WALGA template.

**Strategic Implications:**

Strategic Community Plan 2017 - 2027

Strategy 4.2.1 Ensure compliance whilst embracing innovation and best practice principles.

**Attachments:**

*Attachment Booklet – December 2019*

- CEO01 – Attachment 1: Council to CEO Delegation CEO37 Appoint Authorised Persons.
- CEO01 – Attachment 2: Council to CEO Delegation CEO15 Appointment of Authorised Persons

**Officer Recommendation:**

**RECOMMENDED:**

**That Council, by Absolute Majority;**

- 1. Adopts Delegation CEO37 – Appoint Authorised Persons; and**
- 2. Approves the CEO to update the Register of Delegations – Council to CEO, accordingly.**

<b>REGULATORY SERVICES</b>		<b>RS01 – 12/19</b>
<b>Subject:</b>	<b>RS01-12/19 Disposal of Property – Lease for Site B, Dongara Airstrip</b>	
<b>Author:</b>	<b>B Jeans, Manager Regulatory Services</b>	
<b>Responsible Officer:</b>	<b>S Ivers, Chief Executive Officer</b>	
<b>File Reference:</b>	<b>CP.RE.1; TT.SP.1; A7143</b>	
<b>Voting Requirements:</b>	<b>Absolute Majority</b>	

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**Report Purpose:**

For Council to consider entering into a new ground lease for an existing leased site at the Dongara Airstrip.

**Background:**

In brief, the subject site is one of eight 1,600sqm portions of land adjacent to the Dongara Airstrip. This land is part of Reserve 36040 which is managed by the Shire on behalf of the Crown. Historically three of the eight sites have been leased by the Shire.

At the 22 October 2019 Ordinary Council Meeting (Attachment 1), Council resolved to initiate the disposal of property process by public notice for the proposed lease.

**Officer’s Comment:**

The Shire has carried out the legislative process for disposal of property in order to lease the Dongara Airstrip site. No public submissions were received in the notice period and it is therefore recommended that Council support the execution of the lease.

Following the signing of the lease by the Shire (Lessor) and Mandolin Pty Ltd (Lessee), the lease is to be forwarded to the Minister for Lands for final approval.

**Consultation:**

Public consultation was carried out in accordance with s3.58(3) of the Local Government Act 1995, as per Council’s resolution at the 22 October 2019 Ordinary Council Meeting.

The public notice was placed in the Dongara Denison Local Rag on 6 November 2019, however due to an administrative error, the submission close date stated 10 November 2019. S3.58(3)(iii) strictly requires a minimum 2 weeks’ submission period from the date of the first notice, therefore to comply with the Act, the public notice was re-advertised in the Dongara Denison Local Rag on 20 November 2019 with a submission close date of 5 December 2019.

No submissions were received.

**Statutory Environment:**

*Local Government Act 1995*

*3.58 Disposing of property*

*(1) In this section —*

**dispose** includes to sell, lease, or otherwise dispose of, whether absolutely or not;

**property** includes the whole or any part of the interest of a local government in property, but does not include money.

*(2) Except as stated in this section, a local government can only dispose of property to —*

*(a) the highest bidder at public auction; or*

*(b) the person who at public tender called by the local government makes what is, in the opinion of the local government, the most acceptable tender, whether or not it is the highest tender.*

*(3) A local government can dispose of property other than under subsection (2) if, before agreeing to dispose of the property —*

*(a) it gives local public notice of the proposed disposition —*

*(i) describing the property concerned; and*

*(ii) giving details of the proposed disposition; and*

*(iii) inviting submissions to be made to the local government before a date to be specified in the notice, being a date not less than 2 weeks after the notice is first given; and*

*(b) it considers any submissions made to it before the date specified in the notice and, if its decision is made by the council or a committee, the decision and the reasons for it are recorded in the minutes of the meeting at which the decision was made.*

*(4) The details of a proposed disposition that are required by subsection (3)(a)(ii) include —*

*(a) the names of all other parties concerned; and*

*(b) the consideration to be received by the local government for the disposition; and*

*(c) the market value of the disposition —*

*(i) as ascertained by a valuation carried out not more than 6 months before the proposed disposition; or*

*(ii) as declared by a resolution of the local government on the basis of a valuation carried out more than 6 months before the proposed disposition that the local government believes to be a true indication of the value at the time of the proposed disposition.*

*(5) This section does not apply to —*

*(a) a disposition of an interest in land under the Land Administration Act 1997 section 189 or 190; or*

*(b) a disposition of property in the course of carrying on a trading undertaking as defined in section 3.59; or*

*(c) anything that the local government provides to a particular person, for a fee or otherwise, in the performance of a function that it has under any written law; or*

*(d) any other disposition that is excluded by regulations from the application of this section.*

**Policy Implications:**

Nil

**Financial/Resource Implications:**

The new lease arrangements, in replacement of the previous Memorandum of Understanding arrangement, will result in appropriate rent being received for the leased sites at the Dongara Airstrip.

The 2018 market valuation identified and revised an appropriate benchmark for rent to be charged, in which the Shire has taken a fair and reasonable approach to apply commercial and non-commercial rates from in the new lease. Due to the increase in this annual rent as a result of this market valuation, the Shire has proposed to incrementally increase the rent.

**Strategic Implications:**

Strategic Community Plan 2017 - 2027

Strategy 2.2.3 Identify, provide and manage Shire assets (including community infrastructure, Shire controlled reserves and freehold land) in accordance with agreed service levels.



**Attachments:**

*Attachment Booklet – December 2019*

- RS01 – Attachment 1: Council Minutes Item RS01 – 10/19

*CONFIDENTIAL Attachment Booklet – December 2019*

- RS01 – Attachment 2: Draft Lease, Site B

**Officer Recommendation:**

**RECOMMENDED:**

**That Council, by Absolute Majority, delegates authority to the Chief Executive Officer to sign and seal, in conjunction with the Shire President, a new lease arrangement for a portion of Reserve 36040, referred to as Site B, to support the continued use of the Dongara Airstrip.**

<b>REGULATORY SERVICES</b>		<b>RS02 – 12/19</b>
<b>Subject:</b>	<b>RS02-12/19 Proposed Oversized Outbuilding – Lot 345 (#64) Melaleuca Road, Bonniefield</b>	
<b>Author:</b>	<b>B Jeans, Manager Regulatory Services</b>	
<b>Responsible Officer:</b>	<b>S Ivers, Chief Executive Officer</b>	
<b>File Reference:</b>	<b>P983; A9038</b>	
<b>Voting Requirements:</b>	<b>Simple Majority</b>	

**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 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 development application of an Outbuilding (Shed) that exceeds the aggregate floor area requirements set out in the Shire’s Local Planning Scheme.

**Background:**

The subject property was recently sold and the new owner has subsequently submitted an application for an additional outbuilding on the property. The applicant has advised the reasons for the oversized outbuilding are for “...storage of agricultural assets and equipment” from the owner’s other farming properties.

The 18ha Rural Smallholdings zoned property has been developed with an existing main residence, an ancillary dwelling and 2 outbuildings with an existing aggregate floor area of 355sqm. The applicant proposes to construct an additional 1,200sqm outbuilding (40m x 30m) bringing the total proposed aggregate outbuilding floor area to 1,555sqm. The proposed outbuilding has a wall height of 6.6m, a ridge height of 7.6m and is to be constructed with a zincalume roof and *Colorbond* walls.

The lodged application proposed the shed to be located to the south of the existing development on the lot (Attachment 2). This was referred to adjacent and nearby landowners for opportunity to comment on the proposal. No objections were received.

Following further discussions with the applicant regarding concerns with the floor area and exposure of the shed due to its placement on the property, the applicant revised the location of the shed (Attachment 1) but retained its floor area size, with comment on the plan of possibility to remove an existing 110sqm outbuilding. This revised application was referred to nearby and adjacent landowners for opportunity to comment. No objections were received.

The Shire advised the applicant that due to the significant exceedance of the outbuilding floor area proposed, the application would be presented to Council for determination.

**Officer’s Comment:**

The proposed outbuilding would result in the property having an aggregate outbuilding floor area of 1,555sqm. Clause 5.18 of the Shire’s Local Planning Scheme (“the Scheme”) prescribes the maximum aggregate floor area of 200sqm for the Rural Smallholdings zone. The table below provides an overview of the proposal in respect of the subject Rural Smallholdings zone and other zones for comparison:

	<b>Prescribed</b>	<b>Proposed</b>
<b>Zone</b>	<b>Rural Smallholdings</b>	-
<b>Lot size (minimum)</b>	15ha (Policy Area D)	18ha
<b>Maximum outbuilding floor area</b>	200sqm	1,555sqm
<b>Zone</b>	<b>Rural Residential</b>	-
<b>Lot size (minimum)</b>	1-4ha (typically)	-
<b>Maximum outbuilding floor area</b>	100sqm	-
<b>Zone</b>	<b>General Farming</b>	-
<b>Lot size</b>	40ha upwards (average)	-
<b>Maximum outbuilding floor area</b>	200sqm	-

The Scheme does make provision for variations of the Scheme to be considered (Clause 5.5) however in doing so, Council must be satisfied the development is appropriate by giving consideration to relevant planning matters and be satisfied that the outbuilding does not have adverse amenity impacts. The below points cover the overarching “Development Requirements for Outbuildings” in Clause 5.18 of the Scheme.

Clause 5.18 - Design, colour/appearance

The use of *Colorbond* material for the walls helps to minimise reflection and assists with the outbuilding blending with its surroundings with the use of a neutral colour scheme. The zincalume roof however is considered to be a highly reflective material and is likely to produce glare to the surrounds at particular times. In the Rural Smallholdings zone and with several residences in the line-of-sight of the outbuilding, a reflective finish is not supported. This is further exacerbated by the size of the outbuilding above the maximum floor area.

Clause 5.18 - Location/Siting

The property is the third property on Melaleuca Road from the Brand Highway intersection. The revised site of the outbuilding is to be situated just east of the existing developments on the property. This minimises public view from the Brand Highway, however is more visible from Melaleuca Road and properties to the north, east and south-east. This is due to the property being located higher than the surrounding land on a ridge and the outbuilding being a prominent structure due to its significant proposed size.

The applicant acknowledges the adverse visual amenity impact the outbuilding presents and proposes to respond to this issue with the inclusion of tree planting to screen the view. It is not perceived that tree planting will mitigate the visual amenity impact due to:

- the significance of the 1,200sqm structure, in its setting, to surrounding properties of the Rural Smallholdings zone being rural hobby farms and rural lifestyle living; and
- the proposed 7.6m ridge height above the finished floor level on a ridge of the property and its surrounds.

Furthermore, an ongoing compliance requirement on the Shire to ensure native tree screening is in place and maintained in perpetuity is not a practical outcome and further acknowledges the incompatibility of the proposal.

The outbuilding meets the minimum setback requirements set out in Clause 5.24.

Clause 5.18 - Bulk and Scale

The proposed outbuilding alone (1,200sqm) significantly exceeds the maximum outbuilding floor area (200sqm) prescribed in the zone. When added to the existing outbuildings on the property, this would result in an aggregate outbuilding floor area of 1,555sqm. The property fits the typical lot size for a Rural Smallholdings lot and is not used for a purpose that would justify the consideration of an outbuilding greatly

exceeding the prescribed maximum floor area for that zone. In doing so, it presents bulk and scale impacts which detracts from the visual amenity, all of which are development requirements of Clause 5.18.

The outbuilding is to be an ancillary structure (by definition in the Scheme) to the property's residence. The owner's reason for the oversized outbuilding to store agricultural and other personal equipment from other large farming properties is not considered a reasonable justification for exceeding the floor area requirements on the subject lot in the Rural Smallholdings zone. The outbuilding is to be ancillary to the residence and use of the lot. The proposed bulk and scale conflicts with this and the intent of the relevant Scheme provisions in place to control appropriate outbuilding size.

#### Zone objectives

When considering the suitability of a development application for a land use or works, part of the assessment is to determine if the proposal meets the objectives of the zone. Specific provisions within the Local Planning Scheme establish this suitability such as the outbuilding floor areas in Clause 5.18 for outbuildings or setbacks in Clause 5.24. When considering variations to these provisions, the assessment needs to ensure the objectives of the zone are being met.

The proposed outbuilding is not considered to meet the zone objectives as the proposed development is not considered to "preserve or enhance the landscape quality" due to the adverse impacts of bulk and scale.

#### Clause 67 (known as Clause 10.2) Matters

The following are matters considered to be relevant to the proposed development and are to be given 'due regard':

##### *(a) The aims and provisions of the Scheme*

Clause 1.6 of the Shire's Local Planning Scheme sets the aims of the Scheme. Clause 1.6(f) aim is "to safeguard and enhance the character and amenity of the built and natural environment of the Scheme area." The proposed 1,200sqm outbuilding is not considered to enhance or safeguard the character and amenity of the area. The significant variation above the outbuilding Scheme provisions for that zone is considered to have a detrimental impact on the character and amenity of the area and would set an undesirable precedent for the zone in the Shire.

*(m) the compatibility of the development with its setting including 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*

These planning matters are consistent with Clause 5.18 of the Scheme for the proposed outbuilding whereby exceedance of the outbuilding floor area is to be assessed with consideration of amenity components such as design, bulk, scale, orientation and appearance. As covered in the above section on Clause 5.18 of the Scheme, it is considered the proposed development is not compatible within its setting and the proposal would result in adverse amenity impacts. The applicant's proposal to screen the structure from view with vegetation is an indication that the proposed development is not suitable or compatible.

*(y) any submissions received on the application*

No objections were raised from the neighbour consultation process. Of the 12 neighbours consulted, one response in support of the proposal was received on each of the two rounds of consultation. What should be noted with any planning assessment is that there are many matters to consider including the specific provisions/clauses of the Scheme. Clause 67 helps provide a thorough list of planning matters that may be relevant, of which submissions (Clause 67(y)) is only one of them. The number of submissions objecting or supporting to a proposal should not be relied on as the quantifiable way to determine the suitability of such a proposal.

### Scheme Variations

Clause 5.5 of the Scheme clearly sets out the process and requirements to be met for a development application that seeks to vary the Scheme provisions. Clause 5.5.3 is very clear in stating that the local government may only exercise that right to vary the Scheme provision/s where the development is appropriate with having regard to the Clause 10.2 (Clause 67 of the Regulations) matters and only when the non-compliance will not have an adverse effect. Having regard for the relevant planning matters it is the Officer's view that the proposed development is not appropriate and would have an adverse effect, hence the recommendation to not support the proposal.

### Officer's Summary

- The structure of its size alone would likely result in adverse amenity impacts on the locality due to the significant bulk and scale. It is considered that a smaller outbuilding, which would still require approval for exceedance of the aggregate floor area on the property, would be more compatible with the site.
- Approval of the outbuilding would undermine the adopted maximum floor area requirements of the Scheme and set an undesirable precedent for outbuildings in all zones in the Shire. The aggregate floor area proposed is over 7.5 times the maximum prescribed in the Scheme, with the proposed outbuilding alone being 6 times.
- Approval of a development that significantly exceeds or conflicts with Scheme provisions and all related planning matters with no reasonable planning justification is not considered to be a good planning outcome. It raises the risk of a greater precedent being set for Council by approving development that does not meet the Shire's Local Planning Scheme requirements.

### **Consultation:**

The Shire carried out two rounds of consultation with adjoining and nearby landowners in accordance with Clause 9.4 of the Shire's Local Planning Scheme No 5. It was determined appropriate to carry out consultation due to a combination of:

- the floor area of the outbuilding significantly exceeding the maximum prescribed in the Shire's Local Planning Scheme for that zone;
- the likely visibility of the outbuilding from nearby properties and the public road; and
- the requirement of the Scheme to refer the proposal to likely affected landowners prior to determination.

Twelve (12) adjoining and nearby properties were referred to by letter for the opportunity to comment on the initial proposal. No objections were received.

The second round of consultation for the revised proposal (outbuilding relocation) was referred to the same 12 adjoining and nearby properties. No objections were received.

### **Statutory Environment:**

Planning and Development (Local Planning Schemes) Regulations 2015

Clause 67 (which is to be read in place/conjunction of Clause 10.2 of the Scheme) provides for matters which are to be considered by the local government. Such matters which are considered relevant include:

*(a) The aims and provisions of the Scheme*

*(m) the compatibility of the development with its setting including 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*

*(y) any submissions received on the application*

Shire of Irwin Local Planning Scheme No 5

The subject property is zoned 'Rural Smallholdings'. The objectives of the zone are:

- a) *To provide for the use of the land for minor rural pursuits, hobby farms, conservation lots and alternative residential lifestyle purposes where part-time income from cottage industries, home occupation and the use of the land for agriculture may be derived.*
- b) *To preserve and enhance landscape quality, environmental values and conservation attributes.*

Clause 5.5 of the Scheme sets requirements relating to the consideration of Scheme variations:

#### **5.5 VARIATIONS TO SITE AND DEVELOPMENT STANDARDS AND REQUIREMENTS**

*5.5.1 Except for development in respect of which the Residential Design Codes apply, if a development is the subject of an application for planning approval and does not comply with a standard or requirement prescribed under the Scheme, the local government may, despite the non-compliance, approve the application unconditionally or subject to such conditions as the local government thinks fit.*

*5.5.2 In considering an application for planning approval under this Clause, where, in the opinion of the local government, the variation is likely to affect any owners or occupiers in the general locality or adjoining the site which is the subject of consideration for the variation, the local government is to*

- a) *consult the affected parties by the following one or more of the provisions for advertising uses under Clause 9.4, and*
- b) *have regard to any expressed views prior to making its determination to grant the variation.*

*5.5.3 The power conferred by this Clause may only be exercised if the local government is satisfied that –*

- a) *approval of the proposed development would be appropriate having regard to the criteria set out in Clause 10.2; and*
- b) *the non-compliance will not have an adverse effect upon the occupiers or users of the development, the inhabitants of the locality or the likely future development of the locality.*

Clause 5.20 of the Scheme prescribes a maximum height of any building of 10 metres.

Clause 5.24 of the Scheme outlines development requirements for each zone in the district. Setbacks for the 'Rural Smallholdings' zone are:

Front – 15 metres  
Rear – 7.5 metres  
Side – 5 metres

The proposed development is defined as an 'Outbuilding' in the Scheme:

*Means a detached enclosed non-habitable structure, including garages, storage sheds, studios, games rooms and patios, but not carports, pergolas or structures that are connected to or form part of the main building (except within the Residential zone, where the Residential Design Codes' definition for Outbuilding prevails).*

Clause 5.18 of the Scheme sets out the requirements relating to 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 planning 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.
Special Residential	The aggregate maximum Plot Ratio Area (floor area) shall be 80m <sup>2</sup> .
Rural Residential	The aggregate maximum Plot Ratio Area (floor area) shall be 100m <sup>2</sup> .
Rural Smallholdings	The aggregate maximum Plot Ratio Area (floor area) shall be 200m <sup>2</sup> .
General Farming	The aggregate maximum Plot Ratio Area (floor area) shall be 200m <sup>2</sup> .

**Policy Implications:**

Nil

**Financial/Resource Implications:**

Nil

**Strategic Implications:**

Strategic Community Plan 2017 - 2027

Strategy 1.1.1 Continuously improve approval processes

Shire of Irwin Local Planning Strategy 2017

The property is located within Policy Area D which aims to retain the existing Rural Smallholdings zone area and to maintain minimum lot sizes of 15ha.

**Attachments:**

*Attachment Booklet – December 2019*

- RS02 – Attachment 1: Development Application Plans final
- RS02 – Attachment 2: Development Application Initial
- RS02 – Attachment 3: Locality Plan

**Officer Recommendation:**

<p><b>RECOMMENDED:</b></p> <p><b>That Council refuses the proposed outbuilding at Lot 345 (#64) Melaleuca Road, Bonniefield for the following reasons:</b></p> <ol style="list-style-type: none"> <li><b>1. The proposed outbuilding does not meet Clause 5.18 of the Scheme as it exceeds the maximum aggregate floor area of 200sqm prescribed in the Rural Smallholdings zone in the Shire’s Local Planning Scheme No 5;</b></li> <li><b>2. The exceedance of maximum plot ratio (floor area) results in bulk and scale impacts which adversely affects the amenity and does not meet the objective of the zone to ‘preserve and enhance landscape quality’;</b></li> <li><b>3. The exceedance of maximum plot ratio (floor area) results in bulk and scale impacts which adversely affects the amenity on the area and does not meet Clause 5.18 ‘Development Requirements for Outbuildings’;</b></li> <li><b>4. The proposed outbuilding is not considered appropriate, taking into consideration matters set out in Clause 10.2 (Clause 67 of the Regulations), and therefore does not meet Clause 5.5.3(a) of the Scheme; and</b></li> </ol>
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- 5. The proposed outbuilding does not meet Clause 5.5.3(b) of the Scheme as the non-compliance is considered to have an adverse effect on the likely future development of the locality and would set an undesirable precedent for outbuildings in the Shire.**



**9.2. Committee Reports**

Nil.

**10. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

Nil.

**11. QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN**

Nil.

**12. URGENT BUSINESS APPROVED BY PERSON PRESIDING OR BY DECISION**

Nil.

**13. MATTERS FOR WHICH THE MEETING IS CLOSED TO THE PUBLIC**

Nil.

**14. CLOSURE**