



AGENDA

and

Notice of Ordinary Council Meeting

to be held

Tuesday 24 October, 2023

in the

Council Chambers

11-13 Waldeck Street, Dongara

5.00pm – Agenda Briefing Session

5.15pm – Councillor Information Session

5.30pm – *The newly elected Councillors will be provided an opportunity to publicly sign a Declaration before assuming office as a Councillor for the Shire of Irwin in accordance with the provisions of the Local Government Act 1995.*

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	
28 February 2023	27 July 2023
28 March 2023	22 August 2023
26 April 2023	26 September 2023
23 May 2023	24 October 2023
27 June 2023	28 November 2023
	11 December 2023

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 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 within ten (10) working days after the Meeting.

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ORDINARY COUNCIL MEETING

to be held

24 October 2023

at 6.00pm

AGENDA

1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

In accordance with the provision of the Local Government Act 1995, the Chief Executive Officer will declare the meeting open and preside until the election of the Shire President.

Mrs R Parsons JP has been invited to attend to witness the declarations of office of the newly elected members.

2. RECORD OF ATTENDANCE / APOLOGIES / LEAVE OF ABSENCE

Members

Councillor I Scott
Councillor B Wyse
Councillor M Leonard
Councillor H M Palmer
Councillor A J Gillam
Councillor E Tunbridge

Staff

Mr S D Ivers	Chief Executive Officer
Mr M Connell	Manager Development
Mr P Bracegirdle	Manager Community Services
Miss P Machaka	Manager Finance
Mr M Jones	Acting Manager Operations
Mrs J Morgan	Executive Assistant

Guests

Mrs R Parsons JP

Apologies

Approved Leave of Absence

3. ELECTION OF SHIRE PRESIDENT

A nomination form for the office of Shire President has been provided to Councillors with this Agenda. Nominations are to be lodged in writing, indicating consent of the nominee, prior to, or at the meeting.

The election of Shire President will be conducted by the CEO in accordance with the following procedure:

- The CEO will advise receipt of written nominations for the office of Shire President.
- The CEO will invite any further nominations then declare the nomination period closed.

- If a Councillor is nominated by another Councillor, the CEO will not accept the nomination unless the nominee advises the CEO, orally or in writing, that he or she is willing to be nominated for the office.
- Councillors will vote on the matter by secret ballot as if they were electors voting at an election.
- Votes will be counted and the successful candidate announced by the CEO.
- In the event of an equality of votes, the count will be discontinued and the meeting will be adjourned for not more than 7 days. Nominations may be withdrawn. When the meeting resumes, Councillors will vote again on the matter by secret ballot.

4. ELECTION OF DEPUTY PRESIDENT

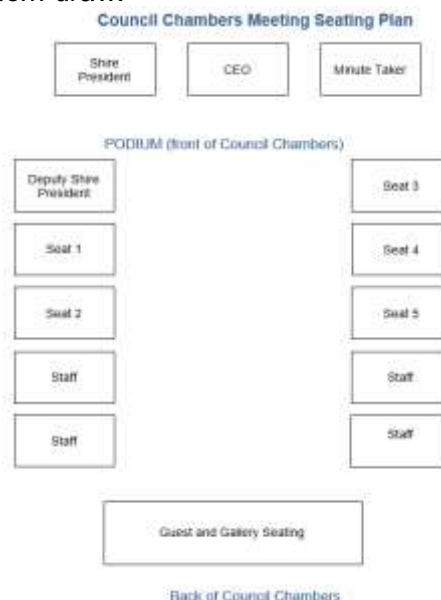
A form for the nomination of a Councillor for the office of Deputy Shire President for a two (2) year term has been provided to Councillors with this agenda. Nominations are to be lodged in writing, indicating consent of the nominee, prior to, or at the meeting.

The election of Deputy Shire President will be conducted by the Shire President in accordance with the following procedure:

- The Shire President will advise receipt of written nominations for the office of Deputy Shire President.
- The Shire President will invite any further nominations then declare the nomination period closed.
- If a Councillor is nominated by another Councillor, the Shire President will not accept the nomination unless the nominee advises the Shire President, orally or in writing, that he or she is willing to be nominated for the office.
- Councillors will vote on the matter by secret ballot as if they were electors voting at an election.
- Votes will be counted and the successful candidate will be announced by the Shire President.
- In the event of an equality of votes, the count will be discontinued and a special meeting of council will be held no more than 7 days later. Nominations may be withdrawn. When the special meeting is held, councillors will vote again on the matter by secret ballot.

5. COUNCILLOR SEATING ALLOCATION

Councillor seating allocation will be in accordance with Clause 8.1 of the Shire of Irwin Meeting Procedures Local Law 2016. The Chief Executive Officer is to allocate Councillor seating positions 1, 2, 3, 4 & 5 by random draw.



6. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Question 1: Bruce Baskerville, 'Cyprus Holme" Bonniefield 6525

Do you have an update on my query for the Historical Society on the renaming of Sikh Land and Queen Elizabeth Park, first mentioned October 2022?

Response: Further reviews are currently taking place and we hope to have a response finalised for the next Council meeting 28 November 2023. (Due to staff illness).

7. PUBLIC QUESTION TIME

8. APPLICATIONS FOR LEAVE OF ABSENCE

9. PETITIONS AND DEPUTATIONS

10. CONFIRMATION OF MINUTES

10.1. Minutes of the Ordinary Council Meeting held 26 September 2023

A copy of the previous Minutes of the Ordinary Council Meeting have been provided to all Councillors under separate cover

RECOMMENDED:
That the Minutes of the Ordinary Council Meeting, held 26 September 2023, as previously circulated, be adopted as a true and accurate recording of that meeting.

11. ANNOUNCEMENTS BY THE PERSON PRESIDING WITHOUT DISCUSSION

12. REPORTS

12.1. Officer Reports

CORPORATE AND COMMUNITY		CC01-10/23
Subject:	CC01-10/23 Accounts for Payment	
Author:	S Clarkson, Senior Finance Officer	
Responsible Officer:	P Machaka, Manager Finance	
File Reference:	2.00057	
Voting Requirements:	Simple Majority	

Council Role:

- Advocacy** When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.
- Executive** The substantial direction setting and oversight role of the Council e.g. 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:

For Council to receive the list of accounts paid under delegated authority during September 2023.

Background:

A list of accounts paid under delegated authority is attached showing all payments made during the month of September 2023

Officer's Comment:

Nil

Consultation:

Nil

Statutory Environment:

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

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

- (1) *If the local government has delegated to the CEO the exercise of its power to make payments from the municipal fund or the trust fund, a list of accounts paid by the CEO is to be prepared each month showing for each account paid since the last such list was prepared —*
- (a) *the payee's name;*
 - (b) *the amount of the payment;*
 - (c) *the date of the payment; and*
 - (d) *sufficient information to identify the transaction.*
- (3) *A list prepared under sub-regulation (1) or (2) is to be —*

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

Policy Implications:

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

Financial/Resource Implications:

Nil

Strategic Implications:

Our Brilliant Future – Strategic Community Plan 2021 – 2031

Strategy 4.2.1 Ensure compliance whilst embracing innovation and better practice principles

Strategy 4.3.2 Adopt and follow better practice processes

Attachments:

Attachment Booklet – October 2023

CC01-10/23 Attachment 1: Accounts for Payment – September 2023

Officer Recommendation:

OFFICER RECOMMENDATION:

That Council, by Simple Majority, receives the Accounts paid during September 2023 as contained in CC01-10/23 Attachment 1 of the Attachment Booklet – October 2023, represented by:

Payment Type/Numbers	Total Amount
EFT 30940 – 31094	\$1,074,382.31
Muni Cheques – 32165 – 32168	\$97,083.83
Direct Debit – Telstra	\$712.57
Direct Debit – WA Treasury Corporation	\$20,727.35
Direct Debit – Credit Card	\$14,569.99
Direct Debit – N-Able Pty Ltd	\$999.62
Direct Debit – Australian Phone Company	\$1,081.91
Direct Debit – Vestone Capital Pty Ltd	\$10,554.20
Direct Debit – Superannuation	\$54,624.67
Grand Total	\$1,274,736.45

CORPORATE AND COMMUNITY		CC02-10/23
Subject:	CC02-10/23 Monthly Financial Statements for the Period Ended 30 September 2023	
Author:	P Machaka, Manager Finance	
Responsible Officer:	S Ivers, Chief Executive Officer	
File Reference:	2.00057	
Voting Requirements:	Simple Majority	

Council Role:

- Advocacy** When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.
- Executive** The substantial direction setting and oversight role of the Council e.g. 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:

For Council to consider and receive the Monthly Financial Statements for the period 1 July 2023 to 30 September 2023

Background:

The Monthly Financial Statements to the 30 September 2023 are prepared in accordance with the requirements of the *Local Government Act 1995* and the *Local Government (Financial Management) Regulations 1996* and includes the following statutory reports:

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

The Statement also includes various other financial information not required by legislation, but for Council information.

Officer's Comment:

The financial position to the end of September 2023 is detailed in the attached report and summarised as follows relative to year to date budget expectations:

It is worth noting that during the month of September the Shire incurred unbudgeted expenditure of approximately \$45,000 for emergency repairs to the Airstrip. Unbudgeted emergency expenditure approved by the Shire President is provided for under s.6.8 of the *Local Government Act 1995* and *Local Government (Functions and General) Regulations 1996 11(2)(a)*.

The budget will be amended to account for this expenditure, as part of the 2023/24 Annual Budget Review process.

30/09/2023	YTD Budget	YTD Actual	Variance YTD to Budget
Operating Revenue	7,701,386	7,756,770	1%
Operating Expenditure	(3,181,615)	(2,142,946)	-33%
Net Operating	4,519,771	5,613,824	
Non-Operating Revenue	100,819	94,297	-6%
Non-Operating Expenditure	(1,284,838)	(623,198)	-51%
Net Non-Operating	(1,184,019)	(528,901)	
Cash at Bank		4,851,583	
Cash at Bank Restricted		703,735	
Reserve Bank		1,617,962	
Total Cash Funds		7,173,280	

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

Consultation:

Nil

Statutory Environment:

Local Government Act 1995

- Section 6.4 Financial Report

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

- Section 34 Financial activity statement report provides as follows:

- (1) A local government is to prepare each month a statement of financial activity reporting on the sources and applications of funds, as set out in the annual budget under regulation 22(1)(d), for that month in the following detail -
 - (a) annual budget estimates, taking into account any expenditure incurred for an additional purpose under section 6.8(1)(b) or (c);
 - (b) budget estimates to the end of the month to which the statement relates;
 - (c) actual amounts of expenditure, revenue and income to the end of the month to which the statement relates;
 - (d) material variances between the comparable amounts referred to in paragraphs (b) and (c); and
 - (e) the net current assets at the end of the month to which the statement relates.
- (2) Each statement of financial activity is to be accompanied by documents containing -
 - (a) an explanation of the composition of the net current assets of the month to which the statement relates, less committed assets and restricted assets;
 - (b) an explanation of each of the material variances referred to in sub-regulation (1)(d); and
 - (c) such other supporting information as is considered relevant by the local government.
- (3) The information in a statement of financial activity may be shown -
 - (a) according to nature and type classification;
 - (b) by program; or
 - (c) by business unit.
- (4) A statement of financial activity, and the accompanying documents referred to in sub-regulation (2), are to be -
 - (a) presented to the council -

- (i) *at the next ordinary meeting of the council following the end of the month to which the statement relates; or*
 - (ii) *if the statement is not prepared in time to present it to the meeting referred to in subparagraph (i), to the next ordinary meeting of the council after that meeting; and*
- (b) *recorded in the minutes of the meeting at which it is presented.*

Policy Implications:

Nil

Financial/Resource Implications:

Any issues in relation to expenditure and revenue allocations or variance trends are identified and addressed each month.

Strategic Implications:

Our Brilliant Future - Strategic Community Plan 2021 – 2031

Strategy 4.2.1 Ensure compliance whilst embracing innovation and better practice principles

Strategy 4.3.2 Adopt and follow better practice processes

Attachments:

Attachment Booklet – October 2023

CC02-10/23 Attachment 1: Financial Statements for the Period Ended 30 September 2023.

Officer Recommendation:

OFFICER RECOMMENDATION:
That Council receives the Monthly Financial Statement for the period 1 July 2022 to 31 August 2023 as provided in Attachment Booklet – October 2023.

OFFICE OF CEO		CEO03-10/23
Subject:	CEO01-10/23 Council Delegates to Committees and Groups	
Author:	J Morgan, Executive Assistant	
Responsible Officer:	S Ivers, Chief Executive Officer	
File Reference:	3.0230	
Voting Requirements:	Absolute Majority	

Council Role:

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

Report Purpose:

The purpose of this report is to seek Council approval for appointing Councillor delegates to Committees of Council and external committees, and Councillor representatives to external groups for a two (2) year term.

Background:

There is a requirement for Council to appoint delegates to each Council Committee and external committee due to the recent 2023 Local Government Ordinary Elections.

Each committee has a responsible officer who will facilitate any appropriate administrative tasks, including additional community representatives to be formerly appointed under section 5.10 of the *Local Government Act 1995* until the full delegations list is considered again.

Officer’s Comment:

Councillors have been provided an opportunity to consider these appointments and have been asked to forward any expressions of interest prior to the meeting.

The designated responsible officers have been named to clarify the current representation, however, Councillor appointments have been left blank for Council to consider at this meeting.

In regard to the Local Emergency Management Committee, it is preferable that one of the delegates is the Shire President.

Consultation:

All Councillors were invited to submit an expression of interest via email prior to the meeting.

Statutory Environment:

Local Government Act 1995

- Section 5.9
- Section 5.10

- *Section 5.11*

Policy Implications:

Nil

Financial/Resource Implications:

Nil

Strategic Implications:

Our Brilliant Future - Strategic Community Plan 2021 – 2031

Strategy 4.1.2 Utilise contemporary communication strategies and tools to enhance public participation

Strategy 4.1.3 Maintain effective working relationships with relevant stakeholders

Attachments:

Nil

Officer Recommendation:

RECOMMENDED:

That Council, by Absolute Majority, appoints the following Councillors as Committee delegates / Shire of Irwin representatives for a two (2) year term:

Committees of Council under the Local Government Act

Audit Committee

- *Voting Members*

Cr _____

Cr _____

Cr _____

Cr _____

Chair of the Audit Committee to be elected at the next Audit Committee meeting.

- *Non-voting Members*

Chief Executive Officer

Manager Finance

Community Assistance Scheme & Events Committee (CASE)

- *Voting Members*

Cr _____

Cr _____

Community Member

Community Member

- *Non-voting Members*

Manager Community Services

Community Development Officer

Committees of Council under other Acts

Local Emergency Management Committee (LEMC)

- *Voting Members*
Shire President
Cr _____ as proxy
Chief Executive Officer
Community Emergency Services Manager (CESM)

External Committees/Groups Requiring Shire of Irwin Councillor Members/Representation

Northern Country Zone of the WA Local Government Association (NCZ)

- *Voting Members*
Shire President
Deputy Shire President as proxy
- *Non-voting Members*
Chief Executive Officer

Development Assessment Panel

- *Voting Members*
Cr _____
Cr _____
Cr _____ as proxy
Cr _____ as proxy

Midwest Regional Road Group

- *Voting Members*
Cr _____
- *Non-voting Members*
Chief Executive Officer

OFFICE OF CEO	CEO02-10/23
Subject:	CEO02-10/23 Ordinary Council Meeting Dates 2024
Author:	J Morgan, Executive Assistant
Responsible Officer:	S Ivers, Chief Executive Officer
File Reference:	2.0073
Voting Requirements:	Simple Majority

Council Role:

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

Report Purpose:

For Council to consider and set Ordinary Council Meeting dates for 2024.

Background:

As per Regulation 12 of the *Local Government (Administration) Regulations 1996*, Council is required to set the meeting dates for the next 12 months and make them available to the local public.

In the past, Council has held Ordinary Council Meetings on the fourth Tuesday of each month except for January and December. In 2023, there was no Ordinary Council Meeting scheduled for January.

Officer’s Comment:

It is recommended to hold Ordinary Council Meetings for 2024 on the fourth Tuesday of each month, except in January and December.

As per last year’s schedule, it is recommended that there be no Ordinary Council Meeting in January 2024.

The December 2024 Ordinary Meeting is recommended to be held on the second Monday in December to allow staff sufficient time to take appropriate action in regard to any Council decisions and prepare the minutes before the Christmas New Year closure period. The reason for the December meeting being proposed for the Monday rather than the Tuesday is due to the Dongara District High School’s end of year presentation night generally being scheduled on the second Tuesday of December each year. This is a conflict as Councillors may have children that attend the school or they attend the presentations as a representative of Council.

The approval of accounts for payment and financial statements normally provided in January would be scheduled for consideration at the February 2024 meeting. With regards to the presentation of statements of financial activity to Council, Regulation 34 of the *Local Government (Financial Management) Regulations 1996*, provides the following:

- (4) A statement of financial activity, and the accompanying documents referred to in subregulation (2), are to be —
- (a) presented at an ordinary meeting of the council within 2 months after the end of the month to which the statement relates; and
 - (b) recorded in the minutes of the meeting at which it is presented.

To improve community engagement whilst maximising knowledge and information sharing, it is proposed to continue with the existing format for monthly meetings of Council – Agenda Briefing, Councillor Information Session (open to the public), Ordinary Council Meeting and Councillor Discussion Session (closed to the public).

Consultation:

Nil

Statutory Environment:

Local Government Act 1995

Local Government (Administration) Regulations 1996

- Regulation 12

Local Government (Financial Management) Regulations 1996

- Regulation 34

Policy Implications:

Nil

Financial/Resource Implications:

Nil

Strategic Implications:

Our Brilliant Future - Strategic Community Plan 2021 – 2031

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

Attachments:

Nil

Officer Recommendation:

RECOMMENDED:

That Council hold the 2024 Ordinary Council Meetings in accordance with the following schedule:

MONTH	ORDINARY COUNCIL MEETING DATE
February	27
March	26
April	23
May	28
June	25
July	23
August	27
September	24
October	22
November	26
December	09

With meetings to be held in the Council Chambers at 13 Waldeck Street, Dongara, commencing at 6.00pm.

DEVELOPMENT SERVICES		ID01-10/23
Subject:	ID01-10/23 Delegated Authority Report – Development, September 2023	
Author:	M Connell, Manager Development	
Responsible Officer:	S Ivers, Chief Executive Officer	
File Reference:	3.00125	
Voting Requirements:	Simple Majority	

Council Role:

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

Report Purpose:

For Council to receive the Delegated Authority Report – Development, September 2023.

Background:

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

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

Officer’s Comment:

This report presents the details of development functions made under delegated authority for the month of September 2023, with 12 building permits and 7 applications for development approval having been issued.

Consultation:

Nil

Statutory Environment:

- *Local Government Act 1995*
- *Local Government (Administration) Regulations 1996*

Policy Implications:

Nil.

Financial/Resource Implications:

Nil.

Strategic Implications:

Our Brilliant Future – Strategic Community Plan 2021 – 2031

Strategy 4.2.1 Ensure compliance whilst embracing innovation and better practice principles

Strategy 4.3.2 Adopt and follow better practice processes

Attachments:

Attachment Booklet – October 2023

ID01-10/23 Attachment 1: Delegated Authority Report – Development, September 2023

Officer Recommendation:

RECOMMENDED:

That Council by Simple Majority, receives the Delegated Authority Report – Development, September 2023 as contained in ID01-10/23 Attachment 1 of the Attachment Booklet – October 2023.

DEVELOPMENT SERVICES		ID02-10/23
Subject:	ID02-10/23 Proposed Recreational Hire Equipment – Lot 954 (Reserve 41088) Point Leander Drive, Port Denison	
Author:	M Connell, Manager Development	
Responsible Officer:	S Ivers, Chief Executive Officer	
File Reference:	P1297 – A2371	
Voting Requirements:	Simple Majority	

Council Role:

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

Report Purpose:

For Council to determine an application for development approval for 'Recreational Hire Equipment' on Lot 954 (Reserve 41088) Point Leander Drive, Port Denison.

This report recommends conditional approval of the application, however in an alternative location.

Background:

The Shire has received an application for development approval for 'Recreational Hire Equipment' on a portion of Lot 954 (Reserve 41088) Point Leander Drive, Port Denison.

The site is commonly referred to as the 'Denison Foreshore' (foreshore) and the application proposes to hire recreational beach equipment from one of 2 locations along the foreshore. The proposed sites are between the old second jetty pylons to the south and the Geraldton's Fisherman Co-operative car park to the north. Formalised public beach access is via the car park to the north which connects with Point Leander Drive.

A secondary (southern) site has also been agreed to by the applicant in response to the Department of Transport's comments which are discussed in the 'Consultation' section of this report. The southern site is from the formalised beach access car park area (north east of Herbert Street) to the boat ramp.

The site will be set up on the foreshore adjacent to the beach and the area required for the equipment is approximately 100m² (10m x 10m). The foreshore area itself contains nearby public ablutions, shelters, bbq's and playground and is considered the most optimum location to serve the tourist clientele.

The hire equipment will be stored at the applicant's residence at Lot 512 (No. 4) Rowland Street, Port Denison.

Proposal:

The application seeks approval to hire recreational beach equipment and the set up will include 1 vehicle and 1 trailer with a table, gazebo and 2 teardrop advertising flags. All equipment will be stored in the garage and carport at the applicant’s residence. The business will be seasonal with operating times generally in peak summer holiday and weekend periods, 7 days a week between 8am to 5pm.

The hire equipment will consist of:

- Kayaks
- Stand-up paddle boards
- Surf, skim and boogie boards
- Fishing rods and snorkelling gear
- Gazebo, umbrella and sun shades
- Chairs and bean bags
- Beach games
- Small barbeques
- Sale of incidental merchandise for ‘Ocean Addiction Charters’

The application for development approval is contained in **ID02-10/23 Attachment 1** and the following is an outline of the application.

Applicant / Owner	Daniel Ritchie & Kate Fisher / Shire of Irwin
Local Planning Scheme No. 5	Local Reserve
Use Class and Permissibility	Use not listed (Recreational Hire Equipment)
Structure Plan/Precinct Plan	Dongara – Port Denison District Structure Plan
Lot Size	3.6ha
Existing Land Use	Foreshore Recreation
State Heritage Register	No
Local Heritage	Yes – Place Number 088 (Category 3)
Bushfire Prone Area	No

Location Plan



Officer's Comment:

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

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

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

1.6 *The Aims of the Scheme*

- d) *to assist employment and economic growth by facilitating the timely provision of suitable land for retail, commercial, industrial entertainment and tourist developments as well as providing opportunities for home based employment;*
- e) *to facilitate a diverse and integrated network of open space catering for both active and passive recreation, consistent with the needs of the community;*
- g) *to protect and enhance the environmental values and natural inland and coastal resources of the Scheme area and to promote ecologically sustainable land use and development;*
- h) *to safeguard and enhance the character and amenity of the built and natural environment of the Scheme area.*

The application is proposing to hire beach equipment that would further enhance the local and tourist recreational experience of the foreshore area. There are no permanent structures proposed and the use is considered complimentary to the recreational use of the natural coastal foreshore area and consistent with the aims of the Scheme.

3.4 *Use and Development of Local Reserves*

3.4.1 *A person must not –*

- a) *use a Local Reserve; or*
- b) *commence or carry out development on a Local Reserve,*
without first having obtained planning approval under Part 9 of the Scheme.

3.4.2 *In determining an application for planning approval the local government is to have due regard to –*

- b) *the ultimate purpose intended for the Reserve.*

Reserve 41088 is classified as a 'Local Reserve' under LPS5 for the purpose of 'Recreation'. The hiring of beach recreational equipment is considered consistent with the reserve's ultimate intended purpose.

(fa) *any local planning strategy for this Scheme endorsed by the Commission*

The Shire of Irwin Local Planning Strategy sets out the long-term planning directions for the Shire and guides land use planning over the next 20 years. Tourism is seen as a significant opportunity for the Shire given its coastal location and the Strategy has specific actions to:

- Proactively plan for the retention and promotion of tourism in the planning framework.
- Promote the diversification of tourist activities on offer within the Shire.

The application is proposing to hire beach equipment that would further enhance the tourism experience of the foreshore area.

(h) *any structure plan or local development plan that relates to the development*

The Dongara – Port Denison District Structure Plan provides a strategic framework to sustainably grow the townsites of Dongara and Port Denison in a manner that serves the needs of the community now and in the future. The Plan identifies the Denison Foreshore as a 'recreational hotspot' and highlights that the town's heritage, coastal and riverine environment, and general scenic value provide an opportunity to capitalise on these natural assets and develop an attractive tourism product.

It is considered that the application would further enhance the tourism product offered in the foreshore area.

(j) in the case of land reserved under this Scheme, the objectives for the reserve and the additional and permitted uses identified in this Scheme for the reserve

Reserve 41088 is managed by the Shire for the purpose of 'Recreation'. The Shire also has the power to lease the land for any term not exceeding 21 years. The application is consistent with the recreational purpose of the reserve.

A formal lease arrangement is not considered appropriate for this application for the following reasons:

- A development approval allows for some minor flexibility in the areas to be used and still enable controls to be applied over the business;
- A formal lease implies exclusive use over the lease area which is not supported in this instance; and
- The business is realistically not an on-going activity and is more seasonal with operating times generally in peak summer holiday and weekend periods.

(l) the effect of the proposal on the cultural heritage significance of the area in which the development is located

The foreshore area is part of the wider 'Fishing Boat Harbour' at Port Denison which is listed on the Shire's Local Heritage Survey (place 088) as follows:

Management Category 3: Moderate Significance. Contributes to the heritage and/or historical development in the locality.

Management Recommendation: Conservation of the place is desirable. Any proposed change to the place should be in sympathy with the heritage values of the place.

The site has social significance given its use as a place of recreation and the application is consistent with and will augment the recreational use of the foreshore area.

(m) the compatibility of the development with its setting, including –

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

The Shire of Irwin Public Open Space Strategy provides a framework for the future distribution of public open space for the Dongara – Port Denison area and provides the most applicable framework to establish the desired future character of the area. The Strategy notes that the coastal foreshore reserve areas form an important part of the overall public parkland provision and have been developed with a high standard of recreation facilities. An objective of the Strategy is to:

'ensure the protection of the coastal and riverine environment in the Dongara /Port Denison area through the responsible and balanced management of the coastal and foreshore reserves in respect to conservation values and human use and enjoyment.'

The Denison Harbour, with its safe recreational boat launching facilities, is very popular with recreational fishing tourists. The foreshore area has been developed to a high public amenity standard and serves an important purpose beyond merely a coastal reserve and acts as a significant neighbourhood park servicing both the local resident population and the tourist population alike.

It is clearly evident that the foreshore area provides a significant recreational facility for tourists and local beach users, and it is within this setting that the application is seen as compatible.

The scale of the development is considered minimal with all equipment and vehicles being temporary and removed from the foreshore each day. All the equipment would be what you would normally

associate with recreational use of a beach foreshore area and there is already permitted vehicular access onto the beach.

(n) the amenity of the locality including the following –

- (i) environmental impacts of the development;
- (ii) the character of the locality
- (iii) social impacts of the development

Amenity is defined as *all of those factors which combine to form the character of an area and include the present and likely future amenity.*

The Port Denison Foreshore Masterplan sets out the design concepts for the foreshore area to improve access to and enjoyment of the foreshore by the community. It aims to also attract visitors to contribute to the local economy and provides the most applicable framework to establish the present and likely future amenity of the area.

The foreshore area currently has a high level of public amenity including:

- Reticulated turf areas and trees;
- Shade structures;
- Public barbecues;
- Public seating;
- Children’s playgrounds;
- Public conveniences; and
- Good pedestrian and vehicular access.

The sites proposed are located within the ‘Foreshore Park Precinct’ which has a key aim to *‘provide safe access to the beach for both beach-goers and water-based recreation activities such as fishing and water sports’*. Formalised beach access for vehicles and boat trailer parking on the beach is encouraged along with retaining areas of lawn for passive recreation and events.

The southern site is located within the ‘Obelisk Precinct’ which advocates for the provision of pedestrian access to the beach and formalised beach access for vehicles.

The application is considered consistent with the current and envisioned amenity of the foreshore area.

(s) the adequacy of –

- (i) the proposed means of access to and egress from the site
- (ii) arrangement for the loading, unloading, manoeuvring and parking of vehicles

Beach access to the foreshore is via the car park to the north and in the southern site, there is an existing formalised vehicle beach access.

It is proposed that the vehicle and trailer will park on the foreshore adjacent to the beach in a manner that will not restrict other vehicle access.

(x) the impact on the development on the community as a whole notwithstanding the impact of the development on particular individuals

The development is likely to have a negligible impact on the community as a whole other than to provide recreational hire equipment for both visitors and locals alike.

(y) any submissions received on the application

(za) the comments or submissions received from any authority consulted under clause 66

The submissions received are discussed in the ‘Consultation’ section of this report.

Conclusion:

Overall, it is assessed that the proposed development will enhance the amenity of the foreshore area for both tourists and the community in a manner that is consistent with the recreational function of the reserve. The application has appropriately responded to those relevant matters as prescribed in cl.

67(2) of the deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

It is considered that the application complies with the planning framework applicable to the site and the requirements of orderly and proper planning. Conditional approval is therefore recommended, however the approval be limited to a 3 year period after which time a review can be undertaken.

Consultation:

Public Consultation

The application was advertised in accordance with the cl. 64(1)(a) of the deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

The advertising involved the following:

- A copy of the application was made available for public inspection at the Shire office;
- The application was published on the Shire's website;
- A notice was published in the Dongara Denison Local Rag; and
- A written notice was sent to adjoining landowners in Rowland Street, Port Denison.

In response to the advertising 1 public submission was received which supported the business operating from the foreshore area but raised concerns with possible traffic impacts if the business was to hire equipment from home.

The application stated that:

“In addition to hiring out equipment from the foreshore, we would also like the option of hiring out from home. In this case, we could deliver the gear to the customers or they could pick it up from the house or a set location.”

Under LPS5 the definition of a home business specifically prohibits the hiring of goods of any nature as follows:

Home business: means a business, service or profession carried out in a dwelling or on land around a dwelling by an occupier of the dwelling which –
d) does not involve the retail sale, display or hire of goods of any nature.

Subsequent discussions with the applicant have confirmed that there will be no formal hiring of equipment from their residence but rather, on the odd occasion, some equipment may be returned to the residence.

Consultation with Government/Service Agencies

The application was referred to the Department of Transport and the Department of Planning, Lands and Heritage in accordance with the cl. 66 of the deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*:

In response comments were received from both agencies and a copy of the agency submissions is contained in **ID02-10/23 Attachment 2**. The key issues raised from the agencies are summarised below.

Department of Planning, Lands and Heritage (DPLH)

The application was advertised in accordance with the cl. 64(1)(a) of the deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

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In response comments were received from both agencies and a copy of the agency submissions is contained in **ID02-10/23 Attachment 2**. The key issues raised from the agencies are summarised below.

Department of Planning, Lands and Heritage (DPLH)

DPLH advised that the proposal is consistent with the reserve purpose and that any lease/licence application will need to be submitted to Minister for approval.

As discussed previously in this report a formal lease/licence arrangement is not considered appropriate for this application.

Department of Transport (DoT)

The DoT raised concerns with the original (northern) sites due to the potential conflict with large commercial vessels and kayaks, stand-up paddle boards and recommended an alternative location further south.

DoT also recommended conditions relating to safety management, restricted areas, insurances. As the DoT has authority over the water based aspects of the application it is not appropriate for the Shire to impose conditions that would duplicate other legislation. Instead it is proposed that the requirements from DoT be relayed to the applicant via an 'Advice Note'.

Statutory Environment:

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

Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law

Part 6 of the Shire's local law details the requirements for obtaining a permit for trading in a public place (which includes the hiring of goods or services from local government property).

This application for development approval contains all the relevant information needed for a permit and as such the development approval can constitute a permit under the local law.

Policy Implications:

Nil.

Financial/Resource Implications:

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

As the application is essentially utilising a local government reserve for a business it is not uncommon for an annual charge to be levied (similar to a lease fee). For comparison the City of Greater Geraldton charges an annual fee of \$500 for similar types of businesses and the Shire of Northampton \$447.

The Shire currently applies a \$600 fee for an 'Approved Trading in Public Places Annual Period'. As the business would realistically only operate at most for half the year it is recommended that an annual fee of \$300 be charged.

Strategic Implications:

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

Attachments:

Attachment Booklet – October 2023

ID02-10/23 Attachment 1: Application for Development Approval

ID02-10/23 Attachment 2: Government/Service Agency Submissions

Officer Recommendation:

RECOMMENDED:

That Council by Simple Majority:

1. **Approves the application for development approval for a 'Recreational Hire Equipment' on Lot 954 (Reserve 41088) Point Leander Drive, Port Denison subject to the following conditions:**
 - a. **Permitted area – the use is restricted to one (10m x 10m) location at any one time in the area as shown on the attached approved plans.**
 - b. **Permitted period – this approval is valid for a period of 3 years from the date of this determination.**
 - c. **Fees – prior to commencement of the use a \$300 non-refundable annual fee is to be paid each year to the Shire.**
 - d. **Permitted hours and days of operation – the use is permitted to operate Sunday to Saturday (inclusive) between the hours of 8am to 5pm.**
 - e. **Hire / sale of equipment – is restricted to the following:**
 - i. **7 x kayaks**
 - ii. **Lifejackets**
 - iii. **6 x stand up paddle boards**
 - iv. **2 x surfboards**
 - v. **3 x boogie boards**
 - vi. **3 x gazebo's**
 - vii. **4 x umbrellas**
 - viii. **4 x sun shades**
 - ix. **8 x camp chairs**
 - x. **4 x bucket and spades**
 - xi. **2 x beach cricket sets**
 - xii. **4 x beach bean bags**
 - xiii. **4 x snorkelling sets**
 - xiv. **1 x skim board**
 - xv. **2 x barbecues**
 - xvi. **Incidental merchandise for 'Ocean Addiction Charters' which can only be sold in conjunction with the hire business.**

- f. Permitted vehicles and structures – are restricted to 1 x 4WD and trailer, 1 x gazebo (3m x 3m) and 2 teardrop flags.**
- g. Nuisance – the permitted area is not to be used in any manner which may be or become a nuisance, disturbance or annoyance to the quiet and comfort of any other user of the Reserve, or occupier of any premises in the vicinity of the permitted area and on being required to do so by an officer of the Shire to abate immediately any such nuisance, disturbance or annoyance.**
- h. Insurance – the applicant must effect and keep current with a recognised and reputable insurer and noting the interest of the Shire for its respective rights and interests adequate public liability insurance for a sum not less than \$20,000,000, and prior to commencement of the use provide to the Shire a certificate of currency of the insurance.**
- i. Indemnity – the applicant indemnifies, and shall keep indemnified, the Shire from and against all actions, claims, costs, proceedings, suits and demands whatsoever which may at any time be incurred or suffered by the Shire or brought, maintained or made against the Shire in respect of:**
 - i. any loss whatsoever (including loss of use);**
 - ii. injury or damage of, or to, any kind of property or thing; and**
 - iii. the death of, or injury suffered by, any person,**

caused by, contributed to, or arising out of, or in connection with, whether directly or indirectly:

 - iv. the use or occupation of the permitted area by the applicant; and**
 - v. the applicant’s activities, operations or business on, or other use of any kind of, the permitted area.**
- j. Not to cause damage – the applicant is not to cause damage or permit damage to be caused to vegetation on the permitted areas while using the permitted area for the approved use.**
- k. Refuse and litter – the applicant is to ensure that the permitted area is at all times kept tidy and free from refuse and litter and to ensure all refuse and litter is disposed of in the applicant’s own receptacles.**
- l. Interference / conflict with other users – the applicant is not to interfere with the use of the permitted area by any person authorised by the Shire or by the public generally and not attempt to prohibit or restrict access of members of the public to the permitted areas. The applicant is to ensure that any proposed day of operation does not conflict with other events which may have been booked for the permitted area.**
- m. First aid – the applicant is to ensure that a person holding qualifications in first aid is in attendance at all times when the permitted area is being used and to keep and maintain a first aid kit upon the permitted area at all times when the permitted area is being used.**
- n. Removal of structures – the permitted hire / sale equipment, vehicles and structures are to be removed from the permitted area at the close of business each day and the permitted area is to be left in good order and condition and the applicant is to make good any damage done to the permitted area.**

- o. Exclusion of warranties – the Shire does not expressly or impliedly warrant or represent that:**
 - i. The permitted area is now or will remain suitable or adequate for all or any of the purposes of the applicant;**
 - ii. Any part of the Reserve other than the permitted area, including, without limitation, the facilities, access ways and improvements existing on the Reserve are available for use by the applicant;**
 - iii. The Shire will not enter into any agreement or arrangement with any other person relating in any way to the use of the Reserve or the permitted area;**
 - iv. The applicant will have the sole and exclusive right to use the Reserve, other than the permitted area for the approved use; and**
 - v. The Reserve, is now or will be used in the future for a particular purpose.**
- p. Reporting – the applicant shall report to the Shire any accidents, fire, rubbish dumping and environmental damage within the permitted area.**
- q. The hire equipment may be stored at the applicant’s residence at Lot 512 (No. 4) Rowland Street, Port Denison however no hiring of equipment is permitted from the residence.**
- 2. Advise the applicant that the above development approval constitutes a trader’s permit under the Shire of Irwin *Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law*.**
- 3. Advise the applicant that it is their responsibility to obtain any additional approvals which may be required from other Government/Service agencies under separate legislation. Please note the Department of Transport have identified a number of matters that you will need to address and/or comply with.**
- 4. Delegate to the Chief Executive Officer the annual approval of the development for a 3 year period from the date of this determination, subject to no breaches of any of the conditions of the development approval.**

DEVELOPMENT SERVICES		ID03-10/23
Subject:	ID03-10/23 Proposed Animal Establishment – Lot 200 (No. 22) Bonniefield Road East, Bonniefield	
Author:	M Connell, Manager Development	
Responsible Officer:	S Ivers, Chief Executive Officer	
File Reference:	P1226 – A8237	
Voting Requirements:	Simple Majority	

Council Role:

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

Report Purpose:

For Council to determine an amended application for development approval for an ‘Animal Establishment’ on Lot 200 (No. 22) Bonniefield Road East, Bonniefield.

This report recommends conditional approval of the application.

Background:

The Shire has received an amended application for development approval for an ‘Animal Establishment’ on Lot 200 (No. 22) Bonniefield Road East, Bonniefield.

The application was first presented to the Ordinary Council Meeting held on 22 August 2023 where Council in essence deferred the matter and formally resolved:

“That Council moves the motion that the meeting proceeds to the next business as per Clause 11.5 of the Shire of Irwin Meeting Procedures Local Law 2016.”

The application was then again presented to the Ordinary Council Meeting held on 26 September 2023 where Council in essence refused the application as the Officer recommendation to approve the application was lost 3/2.

The applicant has since amended the application to reduce the number of dogs from 10 to 5.

The site is approximately 2km north of the Dongara town centre and has access to Bonniefield Road East to the north, with the Midlands railway line abutting the site to the west. The site is triangular in shape and is generally flat with mature vegetation sporadically along the boundaries and lining the driveway. Surrounding the site the land is generally characterised by smaller rural residential lots to the west and larger rural living lots to the north and east, with rural/agricultural pursuits being undertaken.

The site contains an existing dwelling and outbuilding located in the northern portion of the site and the development is proposed to be located approximately 30m west from the dwelling. Development approvals have previously been granted for a home business (dog grooming, maximum of 2 dogs) and horse stables/shelters.

Proposal

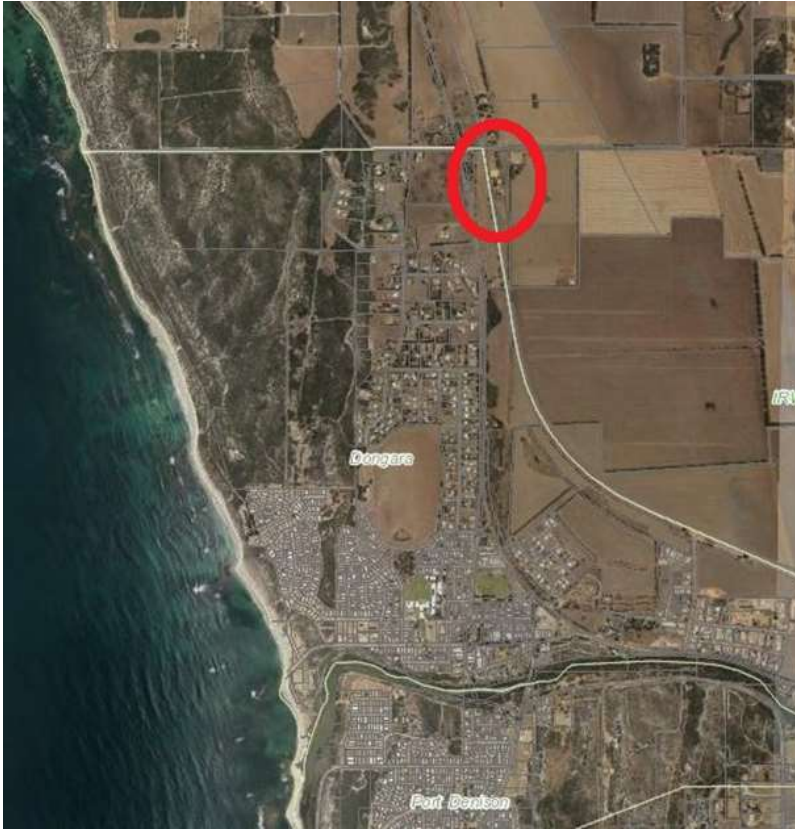
The application seeks approval to utilise a new shed (previously granted development approval but not yet built) for an animal establishment (dog kennel) with associated exercise yards. Key aspects of the application are as follows:

- Shed will be setback 10m from the western boundary and is 50m² in area and 3.25m high, constructed of monoclاد cladding, ‘paperbark’ (cream) in colour with red trim to match the dwelling.
- Within the shed there will be 5 separate kennels each 4m² in area (2m x 2m).
- Abutting the kennels will be an exercise yard for each kennel. The 3 ‘central’ kennels will have an area of 10m² (2m x 5m) with the 2 ‘end’ kennels having a larger 25m² yard (5m x 5m).
- The exercise yard will be enclosed with a 2.1m high acoustic barrier on all sides.
- Each dog will have its own kennel unless there are dogs from the same household in which case there will be a maximum of 2 dogs in a kennel.
- Large dogs will be kept in the 2 ‘end’ kennels.
- Dogs will be housed indoors at night between 7pm to 7am Monday to Saturday and 7pm to 9am on Sunday’s and public holidays.
- Dogs will be let out into the exercise yards after 7am Monday to Saturday and after 9am on Sunday’s and public holidays.
- Maximum of 5 dogs.

The application for development approval was previously provided as an attachment in the *Attachment Booklet – August 2023*. The applicant has provided a further revised Acoustic Assessment (Revision 3) for 5 dogs which is contained in ID03-10/23 Attachment 1. The following is an outline of the application.

Applicant / Owner	C. Craggs and K. George
Local Planning Scheme No. 5	‘Rural Small Holdings’ zoning
Use Class and Permissibility	Animal Establishment – ‘A’ use
Structure Plan/Precinct Plan	No
Lot Size	5.9046ha
Existing Land Use	Rural living
State Heritage Register	No
Local Heritage	No
Bushfire Prone Area	No

Location Plan



Officer's Comment:

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

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

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

1.6 The Aims of the Scheme

- d) to assist employment and economic growth by facilitating the timely provision of suitable land for retail, commercial, industrial entertainment and tourist developments as well as providing opportunities for home based employment;
- f) to safeguard and enhance the character and amenity of the built and natural environment of the Scheme area;

4.2 Objectives of the Zones

4.2.9 Rural Smallholdings Zone

- a) To provide for the use of 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.

The clear intent of the 'Rural Smallholdings' zone is to allow for minor rural pursuits and home businesses. Dog kennels are entirely suitable and indeed commonplace in other rural areas throughout the State. The size and scale of the development is in keeping with the rural character of the area and is consistent with the objectives of the zone.

4.3 Zoning Table

The application seeks approval for an 'Animal Establishment' use class which is defined as:

animal establishment means premises used for the breeding, boarding, training or caring of animals for commercial purposes but does not include animal husbandry – intensive or veterinary centre.

The Zoning Table of LPS5 lists 'Animal Establishment' as an 'A' use under the 'Rural Smallholdings' zone which means that the use is not permitted unless the local government exercises its discretion after advertising the application.

(f) any policy of the State

The EPA Guidance Statement – Separation Distances between Industrial and Sensitive Land Uses provides advice on generic separation distances between specific industry and sensitive land uses to avoid or minimise the potential for land use conflict. The distances are intended to be used as guidance only and it is not a mandatory requirement to meet these distances.

The guidance statement recommends that dog kennels in rural areas should be located a minimum of 500m from sensitive land uses due to potential noise and odour impacts. It should be noted that this 500m distance is based on an open style kennel. With acoustic engineering this generic 500m buffer distance can be reduced. The application is for enclosed kennels with acoustic measures.

Sensitive land uses comprise land uses that are residential or institutional in nature, where people live or regularly spend extended periods of time. These include dwellings, short-stay accommodation, schools, hospitals and child care centres and generally exclude commercial or industrial premises.

Within 500m there are a total of six residences. The closest two being 140m to the north-west and 160m to the north-east. The remaining four residences are in excess of 400m from the kennels.

A series of management actions are detailed in the application and include:

- Each dog will have its own kennel unless there are dogs from the same household in which case there will be a maximum of 2 small dogs in the 'middle' kennels and a maximum of 2 large dogs in the two 'end' kennels.
- Dogs will be housed indoors at night between 7pm to 7am Monday to Saturday and 7pm to 9am on Sunday's and public holidays.
- Dogs will be let out into the exercise yards after 7am Monday to Saturday and after 9am on Sunday's and public holidays.
- A maximum of 5 dogs is proposed.
- The exercise yard will be enclosed with a 2.1m high acoustic barrier on all sides.

The plan demonstrates that reasonable and practicable measures will be taken to prevent and minimise emissions from the premises.

(m) the compatibility of the development with its setting, including –

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

The development footprint (inclusive of the exercise yards) covers 98m² (well less than 1% of the total site area). The buildings are representative of a typical rural shed that is an expected form of rural development in the Shire.

(n) the amenity of the locality including the following -

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

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

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

1.6 *The Aims of the Scheme*

- d) *to assist employment and economic growth by facilitating the timely provision of suitable land for retail, commercial, industrial entertainment and tourist developments as well as providing opportunities for home based employment;*
- f) *to safeguard and enhance the character and amenity of the built and natural environment of the Scheme area;*

4.2 *Objectives of the Zones*

4.2.9 *Rural Smallholdings Zone*

- a) *To provide for the use of 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.*

The clear intent of the 'Rural Smallholdings' zone is to allow for minor rural pursuits and home businesses. Dog kennels are entirely suitable and indeed commonplace in other rural areas throughout the State. The size and scale of the development is in keeping with the rural character of the area and is consistent with the objectives of the zone.

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animal establishment means premises used for the breeding, boarding, training or caring of animals for commercial purposes but does not include animal husbandry – intensive or veterinary centre.

The Zoning Table of LPS5 lists 'Animal Establishment' as an 'A' use under the 'Rural Smallholdings' zone which means that the use is not permitted unless the local government exercises its discretion after advertising the application.

(f) any policy of the State

The *EPA Guidance Statement – Separation Distances between Industrial and Sensitive Land Uses* provides advice on generic separation distances between specific industry and sensitive land uses to avoid or minimise the potential for land use conflict. The distances are intended to be used as guidance only and it is not a mandatory requirement to meet these distances.

The guidance statement recommends that dog kennels in rural areas should be located a minimum of 500m from sensitive land uses due to potential noise and odour impacts. It should be noted that this 500m distance is based on an open style kennel. With acoustic engineering this generic 500m buffer distance can be reduced. The application is for enclosed kennels with acoustic measures.

Sensitive land uses comprise land uses that are residential or institutional in nature, where people live or regularly spend extended periods of time. These include dwellings, short-stay accommodation, schools, hospitals and child care centres and generally exclude commercial or industrial premises.

Within 500m there are a total of six residences. The closest two being 140m to the north-west and 160m to the north-east. The remaining four residences are in excess of 400m from the kennels.

A series of management actions are detailed in the application and include:

- Each dog will have its own kennel unless there are dogs from the same household in which case there will be a maximum of 2 small dogs in the 'middle' kennels and a maximum of 2 large dogs in the two 'end' kennels.
- Dogs will be housed indoors at night between 7pm to 7am Monday to Saturday and 7pm to 9am on Sunday's and public holidays.
- Dogs will be let out into the exercise yards after 7am Monday to Saturday and after 9am on Sunday's and public holidays.
- A maximum of 5 dogs is proposed.
- The exercise yard will be enclosed with a 2.1m high acoustic barrier on all sides.

The plan demonstrates that reasonable and practicable measures will be taken to prevent and minimise emissions from the premises.

(m) the compatibility of the development with its setting, including –

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

The development footprint (inclusive of the exercise yards) covers 98m² (well less than 1% of the total site area). The buildings are representative of a typical rural shed that is an expected form of rural development in the Shire.

(n) the amenity of the locality including the following –

- (i) environmental impacts of the development;
- (ii) the character of the locality
- (iii) social impacts of the development

Amenity is defined as *all of those factors which combine to form the character of an area and include the present and likely future amenity.*

An (updated) acoustic assessment has been provided with the application which demonstrates that the development will be in compliance with the *Environmental Protection (Noise) Regulations 1997*. A submission responded to the initial acoustic assessment suggesting that certain aspects of the report should be reviewed. This has now been undertaken and has resulted in some additional management measures.

The modifications to the exercise yards and the implementation of the management actions will ensure that any impact on the existing amenity of the neighbours would be acceptable. In addition the immediate surrounds of the kennel location are scattered with mature trees that are dense enough to provide additional visual and noise buffering.

Whilst it is acknowledged that uncontrolled barking dogs can have a significant impact on the amenity of nearby residents, it is usually the case that the cause is from dogs that are in an open, uncontrolled setting for periods when the owner is not present. This application proposes enclosed kennels with persons actively managing the facility on-site.

Given the technical material provided with the application and the compatibility of the development with its setting, the likelihood of the application resulting in a loss of amenity is considered negligible and can be managed through the imposition of conditions on the approval.

(y) any submissions received on the application

(za) the comments or submissions received from any authority consulted under clause 66

The submissions received are discussed in the 'Consultation' section of this report.

Conclusion

Overall, it is assessed that the proposed development achieves a rural appearance that suits the rural aesthetic of the locality that is consistent with the objectives of the Rural Small Holdings zone. The application has appropriately responded to those relevant matters as prescribed in cl. 67(2) of the deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

It is considered that the application complies with the planning framework applicable to the site and the requirements of orderly and proper planning. Conditional approval is therefore recommended.

Consultation:

Public Consultation

The application was advertised in accordance with the cl. 64(1)(a) of the deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

The advertising involved the following:

- A copy of the application was made available for public inspection at the Shire office;
- The application was published on the Shire's website; and
- A written notice was sent to adjoining landowners within approximately 750m of the site.

In response to the advertising a total of four public submissions were received of which three objected and one supported the application. No submissions were received from those properties with a residence located within 500m of the kennel site. A copy of the public submissions (along with any response provided by the applicant) was previously provided as a confidential attachment in the *Attachment Booklet – August 2023*.

The key relevant planning issues raised in the submissions are summarised below. All submissions have been given due regard and are discussed in further detail in the 'Officer's Comment' section of this report.

Amenity

- Location is inappropriate.
- Development not consistent with the objectives of the rural smallholdings zone.
- Development does not propose any additional landscaping.
- Dog kennel not compatible with brewery proposed to be located to the west.

Noise

- Noise modelling is not accurate.
- Inability of owners to stop dogs barking.
- Dogs barking may disturb other animals (sheep, horses).

Management

- Questioned the ability of the owners to implement and comply with on-going operational matters.

Some of the grounds for objection (loss of property value) have no validity in terms of planning considerations or as a basis for refusal of the application.

Consultation with Government/Service Agencies

The application was referred to the following agencies in accordance with the cl. 66 of the deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*:

- Department of Health
- Department of Primary Industries and Regional Development
- Department of Water and Environmental Regulation

- Department of Jobs, Tourism, Science and Innovation
- Environmental Protection Authority

In response comments were received from two of the agencies and a copy of the agency submissions was previously provided as an attachment in the *Attachment Booklet – August 2023*. The key issues raised from the agencies are summarised below.

Department of Primary Industries and Regional Development (DPIRD)

DPIRD does not object. The proponent should develop a management plan that details how escapee dogs trespassing will be addressed, in particular how to deal with dogs killing livestock. There needs to be engineering solutions put in place to ensure noise impacts are minimised. The proponent should prepare a management plan addressing odour.

Given the exercise yards are to be completely enclosed with an acoustic barrier 2.1m high the risk of dogs escaping (and then to kill livestock) is considered unlikely.

The (updated) acoustic assessment has detailed the required engineering solutions which demonstrates that the application will be in compliance with the *Environmental Protection (Noise) Regulations 1997*.

It is recommended that a condition be placed on the approval requiring the preparation of a detailed operational management plan to address (inter alia) odour.

Department of Health (DoH)

Waste should be adequately disposed of and the kennels should operate so they do not impact on the amenity of the surrounding sensitive receptors.

These issues have either been addressed in this report or appropriate conditions have been recommended.

Statutory Environment:

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

Dogs Local Law

Part 4 of the Shire's *Dogs Local Law* details the requirements for the licencing of approved kennel establishments. This application for development approval contains all the relevant information needed for a dog kennel licence application.

The local law states that the licence is to be in the form determined by the local government, and as such a development approval can constitute a licence approval under the local law.

Policy Implications:

Nil.

Financial/Resource Implications:

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

Strategic Implications:

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

Attachments:

Attachment Booklet – October 2023

ID03-10/23 Attachment 1: Acoustic Assessment, Revision 3

Attachments were also previously provided in the *Attachment Booklet – August 2023* and the *Attachment Booklet – September 2023*

Officer Recommendation:

RECOMMENDED:

That Council, by Simple Majority:

- 1. Approves the application for development approval for an ‘Animal Establishment’ on Lot 200 (No. 22) Bonniefield Road East, Bonniefield, subject to the following conditions:**
 - a. All development must be carried out in accordance with the approved plans listed below and subject to any modifications required as a result of any condition of this approval.**
 - **Site Plan (Drawing No. A302)**
 - **Floor Plan and Elevations (Drawing No. A307)**
 - **Kennel Layout Plan**
 - b. The applicant / owner from time to time is responsible to ensure that all installations, activities and processes associated with the development are carried out at all times and in all respects in accordance with the Acoustic Assessment dated 16 October 2023 prepared by ND Engineering as lodged with the Shire.**
 - c. Prior to an application for a building permit detailed construction drawings, and a certification from a suitably qualified acoustic consultant, are to be submitted to and approved by the Shire demonstrating that the kennel will be constructed in accordance with the Acoustic Assessment dated 16 October 2023 prepared by ND Engineering as lodged with the Shire.**
 - d. Prior to commencement of the use a management plan dealing with waste, wastewater and odour is to be submitted to and approved by the Shire. Once approved the development / use is to be carried out at all times and in all respects in accordance with the management plan.**
 - e. Prior to an application for a building permit a detailed design of stormwater collection and system of disposal from the developed areas is to be submitted to and approved by the Shire. The approved detailed design is to be implemented in full prior to the commencement of the use and maintained thereafter to the approval of the Shire, with all stormwater to be disposed of on-site to the approval of the Shire.**
 - f. The maximum number of kennelled dogs shall not exceed 5 at any one time.**
- 2. Advise the applicant that the above development approval constitutes a licence approval under the Shire of Irwin *Dogs Local Law*.**

12.2. Committee Reports

Nil

13. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

14. QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN

15. URGENT BUSINESS APPROVED BY PERSON PRESIDING OR BY DECISION

16. MATTERS FOR WHICH THE MEETING IS CLOSED TO THE PUBLIC

16.1. Officers Report – CC03-10/23

17. CLOSURE

Declaration of Interest

This form is provided to enable members and officers to disclose an interest in a matter in accordance with the requirements of the Local Government Act 1995 and Local Government (Rules of Conduct) Regulations 2007.

Note: Use one form per declaration of interest

To: Chief Executive Officer

I hereby declare my interest in the following matter/s included on the Agenda paper for the Council/Committee meeting to be held on: [Click here to enter the Council/Committee meeting date](#)

Agenda Item No.	Subject	Type of Interest Impartial/Financial
Click here to enter the Agenda Item number	Click here to enter the Agenda item subject.	<input type="checkbox"/> Financial pursuant to Section 5.60A of the Local Government Act 1995 <input type="checkbox"/> Proximity pursuant to Section 5.60B of the Local Government Act 1995 <input type="checkbox"/> Indirect Financial pursuant to Section 5.61 of the Local Government Act 1995 <input type="checkbox"/> Impartiality pursuant to Regulation 11 of the Local Government (Rules of Conduct) Regulations 2007.

Extent of Interest only has to be declared if the Councillor also requests to remain present at a meeting, preside, or participate in discussions of the decision making process. Employees must disclose extent of interest if the Council or Committee requires them to.

The extent of my interest is: Click or tap here to enter the extent of interest.

Click here to enter your name.		Click here to enter the date.
Name (Please Print)	Signature	Date

- NB:**
- This notice must be given to the Chief Executive Officer prior to the meeting or at the meeting immediately before the matter in which you have declared an interest is discussed.
 - The responsibility to declare an interest rests with individual Councillors/Employees. If in any doubt seek legal opinion or, to be absolutely sure, make a declaration.

Office Use Only:	Date/Initials
Particulars of declaration given to meeting	
Particulars recorded in the minutes	
Signed by Chief Executive Officer	

Leave of Absence Request

FRM Leave of absence request DRAFT

This form is provided to enable members and officers to apply for leave pursuant to the provisions of Section 2.25(4) of the Local Government Act 1995.

To: Chief Executive Officer

I hereby request at the Ordinary Council Meeting on **Enter full date of Council Meeting** that Council grant me a leave of absence for the following period:

From:	Enter first date of absence	To:	Enter last date of absence (inclusive)
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Click here to enter your name.		Click here to enter the date.
Name (Please Print)	Signature	Date

Guidance Notes to aid completion of Leave of Absence Request Form:

1. Once you have completed this form, please arrange for it to be delivered to the Chief Executive Officer (ideally before the commencement of the ordinary Council meeting at which the request is to be made)
2. If you are unable to attend the Council meeting at which the request for leave of absence is to be put forward, please complete this form and submit to the Chief Executive Officer as soon as is practicable, so that he can advise the Shire President to put forward the request on your behalf.
3. Any leave of absence approved by Council can only apply to subsequent meetings. Therefore, leave of absence cannot be granted for the ordinary Council meeting at which the approval is given.
4. Pursuant to the provisions of Section 2.25(4) of the Local Government Act 1995, an Elected Member who is absent throughout three (3) consecutive **ordinary** Council meetings, without first obtaining a leave of absence, is disqualified from continuing his or her membership of the Council.
5. Council cannot grant leave of absence in respect of more than six (6) consecutive ordinary meetings of the Council, without the approval of the Minister for Local Government.

Office Use Only:

Date/Initials

Particulars of declaration given to meeting	
Particulars recorded in the minutes	
Signed by Chief Executive Officer	