



12 May 2023

NOTICE OF MEETING

Dear Councillor,

The next Ordinary Meeting of Council will be held at 4pm on Wednesday, 17 May 2023 in the Council Chamber located at 33-37 Macpherson Street Carnamah.

The attached Agenda is presented for your consideration.

Robert Paull

Robert Paull

Chief Executive Officer



Unlocking the past, securing our future

We reflect on the spirit of the people who settled this country and developed the land; along with the service personnel and volunteers whose sacrifices have enabled us to enjoy the lifestyle we are accustomed.

**AGENDA
ORDINARY COUNCIL MEETING
17 MAY 2023**

DISCLAIMER

No responsibility is implied or accepted by Shire of Carnamah for any act, omission or statement or intimation occurring during Council or Committee meetings. Any person or legal entity who acts or fails to act in reliance upon any statement, act or omission made in a Council or Committee meeting does so at that person's or legal entity's own risk.

Shire of Carnamah advises that anyone who has any application lodged with Shire of Carnamah shall obtain and should only rely on written confirmation of the outcome of the application, and any conditions attaching to the decision made by Shire of Carnamah in respect of the application.

Disclosure of Interests at Meetings

The Act places specific obligations on **elected members of council, local government employees** and other persons involved in making decisions or giving advice on Council matters to act honestly and responsibly in carrying out their functions. Generally, those obligations include the lodgement of disclosure of interest returns, the lodgement of written declarations and the verbal disclosure of financial interests at council and council committee meetings.

- **Financial interest:** a financial interest is where it is reasonable to expect that a matter being considered will result in a financial gain, loss, benefit or detriment for the person declaring the interest.
- **Proximity interest:** a proximity interest in a matter is where the matter being considered involves redevelopment or other changes of use of land that adjoins or has a common boundary or is directly across a thoroughfare to any land belonging to the person making the declaration of interest.
- **Indirect financial interest:** an indirect interest is where a matter being considered by the local government relates to another person with which the person making the declaration has a financial relationship.
- **Impartiality interest:** An impartiality interest is where there is an actual or perceived relationship that could adversely affect the impartiality of the person making the decision, and includes family, friends or membership of an association (*Local Government (Administration) Regulations 1996 reg 34C*).

PROXIMITY
 Applicant's property shares common boundary or is directly opposite EM property.



Ministerial approval obtained?



YES	NO
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STAY Debate and vote	LEAVE No debate/vote
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FINANCIAL
 Matter will result in financial gain, loss, benefit or detriment to a EM or close associate.



Trivial, insignificant or in common with a significant number of ratepayers?	Ministerial approval obtained?
------------------------------------------------------------------------------	--------------------------------



NO	YES	NO
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LEAVE No debate/vote	STAY Debate and vote	LEAVE No debate/vote
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IMPARTIALITY
 Applicant is the EM's relative, employer, business partner, friend or adversary.



Disclosure is at the member's discretion



STAY
 Debate and Vote

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ORDINARY COUNCIL MEETING

Wednesday, 17 May 2023

1.0 DECLARATION OF OPENING

1.1 OPENING

Acknowledgement of Country

The President acknowledges the Traditional Owners of Country throughout Australia and their continuing connection to land, waters and community; and pays respect to Elders past, present and emerging.

2.0 RECORD OF ATTENDANCE

2.1 PRESENT

2.2 TABLE OF COUNCILLOR ATTENDANCE OVER THE LAST 12 MONTHS

2022/23	Cr Isbister	Cr Woollorton	Cr Counsel	Cr Bowman	Cr Kikeros	Cr Chisholm	Cr Risinger
03 - 22 OCM							
03 - 22 SCM							
04 - 22 OCM							
05 - 22 OCM							
06 - 22 OCM							
07 - 22 OCM							
08 - 22 OCM							
08 - 22 SCM							
09 - 22 OCM							
10-22 OCM							
11-22 OCM							
12-22 OCM							
02-23 OCM							
03-23 OCM							
04-23 OCM							

Legend:

Attended	
Leave of Absence	
Apology	

2.3 APOLOGIES

Nil

2.4 LEAVE OF ABSENCE (PREVIOUSLY APPROVED)

Nil

3.0 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

4.0 PUBLIC QUESTION TIME

Nil

5.0 APPLICATION FOR LEAVE OF ABSENCE

Nil

6.0 DISCLOSURE OF INTEREST

6.1 DECLARATION OF FINANCIAL INTEREST AND PROXIMITY INTERESTS

6.1.1 Chief Executive Officer, Robert Paull – Item 10.3.4

Chief Executive Officer, Robert Paull declared a financial interest in Item 10.3.4 Chief Executive Authorisations and Reporting due to the item addressing matters relating to his role as CEO.

6.2 DECLARATION OF INTEREST AFFECTING IMPARTIALITY

Nil

7.0 PETITIONS AND DEPUTATIONS

Nil

8.0 ANNOUNCEMENTS BY THE PRESIDING PERSON

Nil

9.0 CONFIRMATION OF MINUTES

9.1 UNCONFIRMED MINUTES - ORDINARY MEETING OF COUNCIL 19 APRIL 2023

OFFICER RECOMMENDATION

That the Minutes of the [Ordinary Meeting of Council](#) held on 19 April 2023 be accepted as a true and accurate record.

9.2 UNCONFIRMED MINUTES - STATE COUNCIL 3 MAY 2023

OFFICER RECOMMENDATION

That the Minutes of the [State Council meeting](#) held on 3 May 2023 be noted.

9.3 SHIRE OF CARNAMAH AUDIT COMMITTEE

Minutes to be provided to Council under separate cover after completion of the Committee.

10.0 REPORTS OF THE CEO

10.1 MANAGER REGULATORY SERVICES

10.2 WORKS ADMINISTRATION REPORTS

10.3 FINANCE REPORTS

10.3.1 Accounts for Payment

File Code	ADM0076
Author	Ian Walsh, Deputy Chief Executive Officer
Senior Author	Rob Paull, Chief Executive Officer
Disclosure of Interest	Nil
Attachments	1. Cheque and EFT Listing

SUMMARY

Council to confirm the payment of creditors for the period 14 April 2023 to 10 May 2023, in accordance with the *Local Government (Financial Management) Regulations 1996*, section 13(1).

BACKGROUND

Financial Regulations require a schedule of payments made through the Council bank accounts to be presented to Council for their inspection. The list includes details for each account paid incorporating the payee's name, amount of payment, date of payment and sufficient information to identify the transaction.

COMMENT

Invoices supporting all payments are available for inspection. All invoices and vouchers presented to Council have been certified as to the receipt of goods and the provision of services and as to prices, computations and costings, and that the amounts shown were due for payment.

CONSULTATION

Chief Executive Officer

Executive Management Team

STATUTORY IMPLICATIONS

Local Government Act 1995, Section 6.4 Financial Report

Local Government (Financial Management) Regulations 1996 -

- Section 12 Payments from Municipal Fund;
- Section 13 Lists of accounts; and
- Section 15 Rounding off figures.

STRATEGIC IMPLICATIONS

Shire of Carnamah Strategic Community Plan and Corporate Business Plan 2021-2031
(Reviewed December 2022)

Outcome 4 *Open, collaborative and empowered*

Priority 4.1 *Improvement in efficient and effective service delivery*

Strategy 4.1.2 *Continuous improvement in efficient and effective service delivery*

POLICY IMPLICATIONS

Council has a suite of Financial Policies to achieve Council's overarching financial objectives.

RISK IMPLICATIONS

Risk: Payments are not monitored against approved budget and delegation		
Likelihood	Consequence	Acceptance Criteria
Possible	Minor	Moderate
Action / Strategy		
The monthly list of payments provides an open and transparent record of payments made under the CEO's approved delegation		

FINANCIAL IMPLICATIONS

There are no known financial implications associated with this Item.

VOTING REQUIREMENT

Simple Majority

OFFICER RECOMMENDATION	
That with respect to Accounts for Payment, Council approves the payments listed as Attachment 1 for the period 14 April 2023 to 10 May 2023, and paid by the Chief Executive Officer under delegated authority of Council, or by the Deputy Chief Executive Officer (in the Chief Executive Officer's absence) as delegated by the Chief Executive Officer including:	
Municipal cheque:	28329 – 28330
Municipal EFT's:	16260 – 16355
Payroll direct debits:	# 93, 94
Municipal direct debit:	14265.1, 14265.2, 14276.1, 14277.1, 14261.1, 14270.1, 14298.1 & BANK FEE
Totalling \$ 680,841.17 be approved and passed for payment.	

10.3.2 Financial Reports to 31 March 2023

File Code	ADM0076
Author	Ian Walsh, Deputy Chief Executive Officer
Senior Author	Rob Paull, Chief Executive Officer
Disclosure of Interest	Nil
Attachments	1. Financial reports for March 2023

SUMMARY

Council is requested to receive the Financial Report for 31 March 2023 and other supplementary financial information.

BACKGROUND

The attached financial reports for the month of March 2023 (**Attachment 1**) have been prepared in accordance with the *Local Government (Financial Management) Regulations 1996*.

COMMENT

Included with this report is the following:

- Statement of Financial Activity for March 2023;
- Cash and Financial Assets Listing;
- Receivables;
- Other Current Assets;
- Payables;
- Disposal of Assets;
- Capital Acquisitions;
- Borrowings;
- Reserve Accounts;
- Other Current Liabilities; and
- Operating & Non Operating Grants.

CONSULTATION

Executive Management Team

STATUTORY ENVIRONMENT

Local Government Act 1995 (Act)

Local Government (Financial Management) Regulations 1996

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

(1A) *In this regulation —*

committed assets *means revenue unspent but set aside under the annual budget for a specific purpose.*

(1) *A local government is to prepare each month a statement of financial activity reporting on the revenue and expenditure, as set out in the annual budget under regulation 22(1)(d), for that month in the following detail —*

- annual budget estimates, taking into account any expenditure incurred for an additional purpose under section 6.8(1)(b) or (c); and*
- budget estimates to the end of the month to which the statement relates; and*
- actual amounts of expenditure, revenue and income to the end of the month to which the statement relates; and*

- (d) *material variances between the comparable amounts referred to in paragraphs (b) and (c); and*
 - (e) *the net current assets at the end of the month to which the statement relates.*
- (2) *Each statement of financial activity is to be accompanied by documents containing —*
- (a) *an explanation of the composition of the net current assets of the month to which the statement relates, less committed assets and restricted assets; and*
 - (b) *an explanation of each of the material variances referred to in subregulation (1)(d); and*
 - (c) *such other supporting information as is considered relevant by the local government.*
- (3) *The information in a statement of financial activity must be shown according to nature or type classification.*
- (4) *A statement of financial activity, and the accompanying documents referred to in subregulation (2), are to be —*
- (a) *presented at an ordinary meeting of the council within 2 months after the end of the month to which the statement relates; and*
 - (b) *recorded in the minutes of the meeting at which it is presented.*
- (5) *Each financial year, a local government is to adopt a percentage or value, calculated in accordance with the AAS, to be used in statements of financial activity for reporting material variances.*

STRATEGIC IMPLICATIONS

Shire of Carnamah Strategic Community Plan and Corporate Business Plan 2021-2031
(Reviewed December 2022)

Outcome 4. *Open, collaborative and empowered*
Strategy 4.1 *Improvement in efficient and effective service delivery*

POLICY IMPLICATIONS

Council has a suite of Financial Policies to achieve Council's overarching financial objectives.

RISK IMPLICATIONS

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

FINANCIAL IMPLICATIONS

There are no known Financial Implications associated with this Item.

VOTING REQUIREMENT

Simple Majority

OFFICER RECOMMENDATION

That with respect to Financial Reports to 31 March 2023, Council:

1. Receive the Monthly Financial Reports for March 2023 and other supplementary financial information as presented in Attachment 1.

10.3.3 Financial Reports to 30 April 2023

File Code	ADM0076
Author	Ian Walsh, Deputy Chief Executive Officer
Senior Author	Rob Paull, Chief Executive Officer
Disclosure of Interest	Nil
Attachments	1. Financial reports for April 2023

SUMMARY

Council is requested to receive the Financial Report for 31 April 2023 and other supplementary financial information.

BACKGROUND

The attached financial reports for the month of April 2023 (**Attachment 1**) have been prepared in accordance with the *Local Government (Financial Management) Regulations 1996*.

COMMENT

Included with this report is the following:

- Statement of Financial Activity for April 2023;
- Cash and Financial Assets Listing;
- Receivables;
- Other Current Assets;
- Payables;
- Disposal of Assets;
- Capital Acquisitions;
- Borrowings;
- Reserve Accounts;
- Other Current Liabilities; and
- Operating & Non Operating Grants.

CONSULTATION

Executive Management Team

STATUTORY ENVIRONMENT

Local Government Act 1995 (Act)

Local Government (Financial Management) Regulations 1996

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

(1A) *In this regulation —*

committed assets means revenue unspent but set aside under the annual budget for a specific purpose.

(1) *A local government is to prepare each month a statement of financial activity reporting on the revenue and expenditure, as set out in the annual budget under regulation 22(1)(d), for that month in the following detail —*

- annual budget estimates, taking into account any expenditure incurred for an additional purpose under section 6.8(1)(b) or (c); and*
- budget estimates to the end of the month to which the statement relates; and*
- actual amounts of expenditure, revenue and income to the end of the month to which the statement relates; and*

- (d) *material variances between the comparable amounts referred to in paragraphs (b) and (c); and*
 - (e) *the net current assets at the end of the month to which the statement relates.*
- (2) *Each statement of financial activity is to be accompanied by documents containing —*
- (a) *an explanation of the composition of the net current assets of the month to which the statement relates, less committed assets and restricted assets; and*
 - (b) *an explanation of each of the material variances referred to in subregulation (1)(d); and*
 - (c) *such other supporting information as is considered relevant by the local government.*
- (3) *The information in a statement of financial activity must be shown according to nature or type classification.*
- (4) *A statement of financial activity, and the accompanying documents referred to in subregulation (2), are to be —*
- (a) *presented at an ordinary meeting of the council within 2 months after the end of the month to which the statement relates; and*
 - (b) *recorded in the minutes of the meeting at which it is presented.*
- (5) *Each financial year, a local government is to adopt a percentage or value, calculated in accordance with the AAS, to be used in statements of financial activity for reporting material variances.*

STRATEGIC IMPLICATIONS

Shire of Carnamah Strategic Community Plan and Corporate Business Plan 2021-2031
(Reviewed December 2022)

Outcome 4. *Open, collaborative and empowered*
Strategy 4.1 *Improvement in efficient and effective service delivery*

POLICY IMPLICATIONS

Council has a suite of Financial Policies to achieve Council's overarching financial objectives.

RISK IMPLICATIONS

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

FINANCIAL IMPLICATIONS

There are no known Financial Implications associated with this Item.

VOTING REQUIREMENT

Simple Majority

OFFICER RECOMMENDATION

That with respect to Financial Reports to 30 April 2023, Council:

1. Receive the Monthly Financial Reports for April 2023 and other supplementary financial information as presented in Attachment 1.

10.3.4 Chief Executive Officer Authorisations and Reporting

File Code	ADM0076
Author	Ian Walsh, Deputy Chief Executive Officer
Senior Employee	Ian Walsh, Deputy Chief Executive Officer
Disclosure of Interest	Nil
Attachments	1.CEO's Timesheets 2.CEO's Credit Card Statement

SUMMARY

The purpose of this agenda item is to report to Council on the Chief Executive Officer (CEO) leave applications, use of corporate credit card and reimbursement of CEO expense applications.

COMMENT

Due to the position held by the CEO, there is no other individual person authorised under the *Local Government Act 1995* (the Act) to approve or authorise the CEO's leave applications, use of the corporate credit card and the reimbursement of CEO expense applications. These functions can only be approved by Council resolution.

Time Sheet and Leave Taken

This report covers period between 13 April and 10 May 2023 (**Attachment 1**). Four hours of Personal Leave was taken during this period.

Leave Sought

This report covers the period between 18 May 2023 and 21 June 2023. The CEO is not requesting to take leave during this period.

Reimbursement Applications

This report covers period between 13 April and 10 May 2023. The CEO did not seek or receive any reimbursements during this period.

Corporate Credit Card

This report covers 13 April and 10 May 2023 credit card statement (**Attachment 2**).

CONSULTATION

Chief Executive Officer

STATUTORY ENVIRONMENT

Section 2.7 of the Local Government Act 1995 states:

“Role of council

(1) The council —

(a) governs the local government's affairs; and

(b) is responsible for the performance of the local government's functions.

(2) Without limiting subsection (1), the council is to —

(a) oversee the allocation of the local government's finances and resources; and

(b) determine the local government's policies.”

STRATEGIC IMPLICATIONS

Shire of Carnamah Strategic Community Plan and Corporate Business Plan 2021-2031
(reviewed December 2022)

Outcome 4.2 Improvement in efficient and effective service delivery

Strategy 4.1.2 Continuous improvement in efficient and effective service delivery

POLICY IMPLICATIONS

CEO Leave Authorisations and Other Approvals policy.

RISK IMPLICATIONS

Risk: Legal and Reputational – Only Council can approve or authorise the CEO's leave applications, use of the corporate credit card and the reimbursement of CEO expense applications.		
Likelihood	Consequence	Acceptance Criteria
Possible	Low	Moderate
Action / Strategy		
The risk is mitigated by complying with the approved policy.		

FINANCIAL IMPLICATIONS

There are no known financial implications

OFFICER RECOMMENDATION

That with respect to Chief Executive Officer Authorisations and Reporting, Council:

1. Receives the information presented to this meeting of the time worked by the Chief Executive Officer between 13 April and 10 May 2023 and acknowledges that the time worked is in accordance with the Chief Executive Officer's Letter of Appointment.
2. Receive the information presented to this meeting that the Chief Executive Officer took 4 hours of Personal Leave since the last Ordinary Council meeting held on 19 April 2023.
3. Receive the information presented to this meeting of the credit card transactions made by the Chief Executive Officer using his corporate credit card 13 April and 10 May 2023 and acknowledges that payment has been incurred in accordance with the Shire's procurement policy.
4. Receive the information presented to this meeting of expenses or reimbursements applications made by the Chief Executive Officer between 13 April and 10 May 2023.

10.4 ADMINISTRATION REPORTS

10.4.1 Request from Iluka Resources Pty Ltd to cancel temporary Planning Approval for additional proposed workforce accommodation on lot 370 (no.3) Johnson Street, Eneabba

File Code	ADM0273
Author	Robert Paull - Chief Executive Officer
Senior Employee	Robert Paull - Chief Executive Officer
Disclosure of Interest	Nil
Attachments	1. Email from Iluka

SUMMARY

This report recommends that at the request of Iluka Resources Ltd ('Iluka'), Council cancel temporary Planning Approval issued on 17 August 2022 for additional proposed workforce accommodation on lot 370 (no.3) Johnson Street, Eneabba.

BACKGROUND

At the Ordinary Meeting of 17 August 2022, Council considered an application for temporary Planning Approval from Iluka for additional proposed workforce accommodation on lot 370 (no.3) Johnson Street, Eneabba. Council resolved as follows:

"That Council resolve, pursuant to clause 61 of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, to support the written request received from Iluka Resources Ltd to waive the requirement for development approval for the construction and use of additional proposed workforce accommodation on Lot 370 (No.3) Johnson Street, Eneabba, including all associated improvements, and allow the development to proceed on a temporary basis only in accordance with all information provided in Attachment 1 for a period of twelve (12) months". (OCM 20220804)

At the Ordinary Meeting of 14 December 2022, Council considered an Item which reviewed advice from Iluka in relation to planning exemptions under the Mineral Sands (Eneabba) Agreement Act 1975 (WA) (State Agreement). Iluka advised:

"Due to clause 22 of the Mineral Sands (Eneabba) Agreement Act 1975 (WA) (State Agreement), Iluka has obtained legal advice and remains of the view that there is no planning approval requirement for the proposed camp accommodation at Eneabba. We've briefly set out the reasons for this view below:

*The proposed camp accommodation on Lot 10 P018828 (CT 1943/634) is entirely within State Agreement Mining Lease 267SA (**Lease**). The State Agreement includes a Zoning clause (clause 22), on typical terms and which operates in a similar way to section 120 of the Mining Act 1978 (WA). It relevantly provides that the State will ensure that, in accordance with the approved project or proposals, the Lease will:*

"remain zoned for use or otherwise protected during the currency of this Agreement so that the operations of the Company hereunder may be undertaken and carried out thereon without any interference or interruption by the State by any State agency or instrumentality or by any local or other authority of the State on the ground that such operations are contrary to any zoning by-law regulation or order."

This clause operates to exclude the operation of any laws, regulations or orders which may interfere with or interrupt the use provided for under the State Agreement.

State Agreements, while ratified by an Act of Parliament, are interpreted in accordance with the rules applicable to interpretation of contracts. This means the intention of the parties in respect of the terms is relevant to consider. However, State Agreements are unique in that they can prevail over any other Act or law, in accordance with the interpretation of their terms.

The intention of clause 22 is that activities undertaken pursuant to the State Agreement are not subject to regulation by local government authorities pursuant to any applicable planning scheme.

A planning approval would be construed as an ‘interference or interruption’ of the operations allowed and protected by the State Agreement. Exclusion of the application of planning approval requirements is therefore clearly within the scope of clause 22.

There are many Government agreements with similar zoning clauses to clause 22 of the State Agreement. Iluka understands that the interpretation set out above is consistent with the view of the State on the application of the clause. It is also consistent with commentary made by the court.

Given the above legal advice, Iluka does not intend to proceed with any application for planning approval associated with the project. However, we do intend to continue to work cooperatively with the Shire and the community, as we have done so to date.

In the coming weeks and months Iluka will be contacting the shire for approval of a wastewater disposal system for the camp, as well as building approvals once the design has been completed.”

On this basis, Council resolved as follows:

“That Council with respect to Iluka Resources Exemption from Planning Approval in Eneabba, Council:

- 1. Note and accept Iluka Resources interpretation of s.22 of the Mineral Sands (Eneabba) Agreement Act 1975 (WA) (State Agreement); and*
- 2. Encourage Iluka Resources to address of s18 of the State Agreement seeking advice on how Iluka Resources intends to address the long-term accommodation for the operational workers of the refinery along with their intention to develop and maintain appropriate community, recreation, civic, social and commercial amenities at Eneabba; and*
- 3. Look forward to Iluka’s ongoing intent to continue to work cooperatively with the Shire and the community.”*

Iluka is yet to respond to the Council’s request for its position on Part 2 of the above resolution.

COMMENT

As a result of s.22 of the *State Agreement*, Iluka has requested that Council cancel Planning Approval issued on 17 August 2022 for additional proposed workforce accommodation on lot 370 (no.3) Johnson Street, Eneabba (**Attachment 1**).

It is acknowledged that under s.22 of the *State Agreement*, Iluka does not require the approval of Council for the any development

CONSULTATION

All Councillors (Via 'Friday Update of 29 April 2023).

Executive Management Team

STATUTORY IMPLICATIONS

Mineral Sands (Eneabba) Agreement Act 1975

Planning and Development Act 2005 (as amended)

Planning and Development (Local Planning Schemes) Regulations 2015

"S 77. Amending or cancelling development approval

- 1) *An owner of land in respect of which development approval has been granted by the local government may make an application to the local government requesting the local government to do any or all of the following —*
 - a) *to amend the approval so as to extend the period within which any development approved must be substantially commenced;*
 - b) *to amend or delete any condition to which the approval is subject;*
 - c) *to amend an aspect of the development approved which, if amended, would not substantially change the development approved;*
 - d) *to cancel the approval.*
- 2) *An application under subclause (1) —*
 - a) *is to be made in accordance with the requirements in Part 8 and dealt with under this Part as if it were an application for development approval; and*
 - b) *may be made during or after the period within which the development approved must be substantially commenced.*
- 3) *Despite subclause (2), the local government may waive or vary a requirement in Part 8 or this Part in respect of an application if the local government is satisfied that the application relates to a minor amendment to the development approval.*
- 4) *The local government may determine an application made under subclause (1) by —*
 - a) *approving the application without conditions; or*
 - b) *approving the application with conditions; or*
 - c) *refusing the application.*

Shire of Carnamah Local Planning Scheme No.2

STRATEGIC IMPLICATIONS

The proposal is consistent with the following element of the Shire of Carnamah Strategic Community Plan and Corporate Business Plan 2021-2031 (as amended in December 2022):

Outcome 2 Rich in economic opportunities and jobs.

Priority Support the retention, attraction and growth of businesses.

Strategy Work with business community to develop action plan to support their retention and growth.

POLICY IMPLICATIONS

There are no known policy implications associated with this Item.

RISK IMPLICATIONS

Risk: Compliance - No noticeable regulatory or statutory impact.		
Likelihood	Consequence	Acceptance Criteria
Rare	Insignificant (Rare/Low)	Low
Action / Strategy		
Cancel the development approval as <i>Mineral Sands (Eneabba) Agreement Act 1975</i> exempts Iluka from requiring planning approval.		

FINANCIAL IMPLICATIONS

There are no known financial implications for the Shire as the request to cancel a planning approval does not establish a fee.

VOTING REQUIREMENT

Simple Majority

OFFICER RECOMMENDATION

That with respect to request from Iluka Resources Pty Ltd to cancel temporary Planning Approval for additional proposed workforce accommodation on lot 370 (no.3) Johnson Street, Eneabba, Council:

1. Note the request from Iluka Resources Ltd and s. 18 of *Mineral Sands (Eneabba) Agreement Act 1975*;
2. In accordance with s. 77 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, cancel temporary Planning Approval for additional proposed workforce accommodation on lot 370 (no.3) Johnson Street, Eneabba as originally approved by Council on 17 August 2022; and
 - a) Request the Chief Executive Officer to advise Iluka Resources Ltd of 2. above.

10.4.2 PROPOSED LOCAL PLANNING POLICY – EXEMPTION TO REQUIREMENT FOR DEVELOPMENT APPROVAL FOR NON-HABITABLE FARM BUILDINGS & INCIDENTAL FARM STRUCTURES

File Code	ADM0372
Author	Joe Douglas - Town Planner
Senior Employee	Robert Paull - Chief Executive Officer
Disclosure of Interest	Nil
Attachments	1. Copy of Draft Local Planning Policy

SUMMARY

This report recommends that Council resolve to initiate the process required to formally adopt proposed '*Local Planning Policy No.7.12 – Exemption to Requirement for Development Approval for Non-Habitable Farm Buildings & Incidental Farm Structures*' in accordance with the procedural requirements of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

BACKGROUND

Under the terms of the *Planning and Development Act 2005, Planning and Development (Local Planning Schemes) Regulations 2015* and the Shire of Carnamah Local Planning Scheme No.2 Council's development approval is required to construct non-habitable farm buildings and incidental farm structures on all 'Rural' zoned land in the Shire's municipal district that is used for extensive agricultural purposes (i.e. broadacre cropping & grazing).

COMMENT

There is a strong case for preparing and adopting a local planning policy to provide an exemption to the need for development approval for these types of buildings and structures given the significant size of most rural landholdings in the Shire's municipal district and the relatively limited impact such development typically has on the rural environment.

An exemption to the need for development approval is also likely to prove highly beneficial as it will:

- a) assist local growers develop their properties more easily by reducing the regulatory burden and associated cost of having to seek and obtain the local government's development approval in each and every instance as is currently the case; and
- b) allow the local government's administration to focus its attention on other more important regulatory requirements and reduce the time and costs associated with processing development applications.

In light of the above and a previous directive by Council, a draft policy entitled '*Local Planning Policy No.7.12 – Exemption to Requirement for Development Approval for Non-Habitable Farm Buildings & Incidental Farm Structures*' has been prepared for Council's formal consideration (see Attachment 1). Council should note the proposed local planning policy:

- i) is generally consistent with all State Planning Policies prepared and adopted by the Western Australian Planning Commission including Policy 2.0 - 'Environment and Natural Resources', Policy 2.5 - 'Rural Planning' and Policy 3.7 - 'Planning in Bushfire Prone Areas';

- ii) is consistent with all relevant standards and requirements of Local Planning Scheme No.2;
- iii) is not part of Local Planning Scheme No.2 and does not bind Council in respect of any determination made pursuant to it;
- iv) may be amended or revoked at any time at the discretion of Council; and
- v) will not negate or override the need for a building permit approval under the *Building Act 2011* and associated regulations as may be required depending upon the type and class of any structure proposed to be constructed.

Should Council resolve to proceed with the proposed policy as recommended below it will be advertised for public comment for a minimum period of twenty one (21) days in accordance with the procedural requirements of the *Planning and Development (Local Planning Schemes) Regulations 2015* before being presented to Council again for final adoption.

CONSULTATION

Councillors (over several past Briefings)

Executive Management Team

Community consultation will be undertaken in accordance with the specific requirements of clause 4(4), Part 2 and clause 87, Part 12, Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015* for a minimum period of twenty one (21) days.

Any future possible amendments to the policy, or any decision by Council to revoke the policy, will also be advertised for public comment in accordance with the procedural requirements of the Regulations.

STATUTORY IMPLICATIONS

Planning and Development Act 2005 (as amended)

Planning and Development (Local Planning Schemes) Regulations 2015

Shire of Carnamah Local Planning Scheme No.2

STRATEGIC IMPLICATIONS

The proposed local planning policy is consistent with the following element of the Shire of Carnamah Strategic Community Plan and Corporate Business Plan 2021-2031 (revised 14 December 2023):

Outcome 2 Rich in economic opportunities and jobs.

Priority Support the retention, attraction and growth of businesses.

Strategy Work with business community to develop action plan to support their retention and growth.

Outcome 4 Open, collaborative and empowered.

Priority Improvement in efficient and effective service delivery.

Strategy Continuous improvement in efficient and effective service delivery.

POLICY IMPLICATIONS

The proposed local planning policy will, if finally adopted by Council in accordance with the procedural requirements of the *Planning and Development (Local Planning Schemes) Regulations 2015*, form part of the Shire's local planning framework and be applied when administering Local Planning Scheme No.2.

RISK IMPLICATIONS

Risk: Compliance - No noticeable regulatory or statutory impact.		
Likelihood	Consequence	Acceptance Criteria
Rare	Insignificant (Rare/Low)	Low
Action / Strategy		
i) Publish the proposed policy on the Shire's website following final adoption by Council to make all rural landowners aware of the ability to proceed with the development of non-habitable farm buildings and incidental farm structures on all 'Rural' zoned land used for extensive agricultural purposes subject to compliance with a number of acceptable development criteria;		
ii) Apply the policy consistently to ensure the development of non-habitable farm buildings and incidental farm structures on all 'Rural' zoned land used for extensive agricultural purposes proceeds in accordance with the acceptable development criteria prescribed in the policy, including a review and check of all building permit applications received prior to their final determination; and		
iii) Review the policy on a regular basis to ensure it remains relevant and lawful.		

FINANCIAL IMPLICATIONS

Aside from the administrative costs associated with preparing, adopting and advertising the proposed policy which are provided for in Council's annual budget for town planning related matters, there are no known immediate financial implications for the Shire.

VOTING REQUIREMENT

Simple Majority

OFFICER RECOMMENDATION

That with respect to Proposed Local Planning Policy – Exemption to requirement for development approval for non-habitable farm buildings & incidental farm structures, Council resolve to:

1. Initiate the process required to formally adopt proposed '*Local Planning Policy No.7.12 – Exemption to Requirement for Development Approval for Non-Habitable Farm Buildings & Incidental Farm Structures*' in accordance with the procedural requirements of the *Planning and Development (Local Planning Schemes) Regulations 2015*; and
2. Authorise the Chief Executive Officer to advertise the proposed policy in accordance with the specific requirements of clause 4(4), Part 2 and clause 87, Part 12, Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015* for the minimum required period of twenty one (21) days.

10.4.3 Retrospective Planning Application for intensive agriculture’ (plant nursery) at Lot 10053 Brand Mudge Road, Carnamah and future subdivision.

File Code	A1286
Author	Robert Paull, Chief Executive Officer
Senior Employee	Robert Paull, Chief Executive Officer
Disclosure of Interest	Nil
Attachments	1. Application

SUMMARY

Council is requested to consider retrospective approval for ‘intensive agriculture’ (plant nursery) at Lot 10053 Brand Mudge Road, Carnamah. Council is also requested to support a future subdivision application which generally reflects the creation of a lot based around an approved plan nursery.

BACKGROUND

The applicant is seeking retrospective approval for ‘intensive agriculture’ (plant nursery) at Lot 10053 Brand Mudge Road, Carnamah.



Aerial photo courtesy of PlanWA – showing Lot 10053



Aerial photo courtesy of PlanWA – showing buildings and nursery on Lot 10053

As noted in **Attachment 1**, the Applicant established the plant nursery some 26 years ago on the 1513ha broad acre farming property. The area of Lot 10053 being used for cut-flower production is approximately 25ha. Lot 10053 is zoned 'Rural' under the Shire of Carnamah Local Planning Scheme no. 2 (LPS2).

The *Local Planning Scheme Regulations 2015* defines a plant nursery or cut flower production as follows:

“agriculture — intensive means premises used for commercial production purposes, including outbuildings and earthworks, associated with any of the following —

- a) the production of grapes, vegetables, flowers, exotic or native plants, or fruit or nuts;*
- b) the establishment and operation of plant or fruit nurseries;*
- c) the development of land for irrigated fodder production or irrigated pasture (including turf farms);*
- d) aquaculture;”*

Under LPS2, *agriculture — intensive* is a discretionary use in the Rural zone that requires planning approval from Council. It is noted that the Shire has no record of such approval being sought or issued under LPS 2 or the previous Shire of Carnamah Town Planning Scheme No. 1 that was gazetted on 28 October 1994.

In this regard, to formalise the use, 'retrospective' planning approval can be sought from Council.

The Applicant is also seeking Council support a future subdivision application which generally reflects the creation of a lot based around an approved plant nursery. Any such subdivision would be considered by the Western Australian Planning Commission (WAPC).

COMMENT

Under LPS2, the objective and purpose of the Rural zone and the following clause:

“3.2.6 Rural Zone

- a) *To ensure the continuation of broad-hectare farming as the principal land use in the District and encouraging where appropriate the retention and expansion of agricultural activities.*
- b) *To provide for other primary industries where it can be shown to be of benefit to the district.*
- c) *To consider non-rural uses where they can be shown to be of benefit to the district and not detrimental to the natural resources or the environment.*
- d) *To allow for facilities for tourists and travellers, and for recreation uses.”*

The plant nursery use is considered to be a minor component of the site and is not considered to be out of keeping with the LPS2 and clause 3.2.6. Accordingly, no objection is offered to the issue of retrospective planning approval for the plant nursery/cut flower production.

In reaction to a potential subdivision of the plant nursery from Lot 10053, LPS2 does not contain any provisions that expressly preclude the further subdivision of any ‘Rural’ zoned land within the Shire, including Lot 100053, the following minimum boundary setback requirements for all built form improvements are applicable to any new lots created:

- Front Boundary - 20.0 metres
- Rear Boundary - 15.0 metres
- Side Boundaries - 5.0 metres

Based on the information provided, should the subdivision reflect that the existing built form improvements, it appears the boundary setback requirements of LPS2 would be satisfied should a subdivision be approved by the WAPC. Any subdivision application would need to be assessed with due regard for the specific standards and requirements of the Shire’s local planning framework as well as the WAPC’s Development Control Policy (DCP) 3.4 ‘Subdivision of Rural Land’.

Section 6.6 of the DCP 3.4 enables the creation of homestead lots and expressly states homestead lots may be created to enable an approved existing house on a rural lot to continue to be occupied subject to specified criteria as follows:

Section 6.6 Criteria	Response
a) the land is in the DC 3.4 Homestead lot policy area (Note: this include the Shire of Carnamah;	Includes the Shire of Carnamah
b) the homestead lot has an area between one and four hectares, or up to 20 hectares to respond to the landform and include features such as existing outbuildings, services or water sources;	Unlikely as the information provided refers to a 25ha lot
c) there is an adequate water supply for domestic, land management and fire management purposes;	Likely
d) the dwelling is connected to a reticulated electricity supply or an acceptable alternative is demonstrated;	Yes

Section 6.6 Criteria (con't)	Response
e) the homestead lot has access to a constructed public road;	Yes
f) the homestead lot contains an existing residence that can achieve an appropriate buffer from adjoining rural land uses;	Likely
g) a homestead lot has not been excised from the farm in the past;	No
h) the balance lot is suitable for the continuation of the rural land use, and generally consistent with prevailing lot sizes, where it can be shown that this is consistent with the current farming practices at the property; and	Yes
i) the dwelling on a homestead lot must be of a habitable standard and may be required to be certified as habitable by the local government	Yes

Whilst the onus will be on the applicant to demonstrate compliance with the criteria to the satisfaction of the WAPC (not the Shire), Section 6.6 of WAPC's DCP 3.4 does provide the potential to subdivide a homestead lot from Lot 10053. In addition, an approval for the Plant Nursery from Council will assist the landowners in demonstrating to the WAPC that a subdivision is acceptable.

It is also recommended that should an application be lodged generally based on the above, Council authorise the Chief Executive Officer to respond to the WAPC advising of Council's support, including any conditions that may be of relevance should additional information be provided by the applicant confirming all relevant policy requirements have been suitably addressed.

CONSULTATION

Executive Leadership Team

STATUTORY IMPLICATIONS

Planning and Development Act 2005 (as amended)
Planning and Development (Local Planning Schemes) Regulations 2015
Shire of Carnamah Local Planning Scheme No.2

STRATEGIC IMPLICATIONS

Shire of Carnamah Strategic Community Plan and Corporate Business Plan 2021-2031 (amended on 14 December 2023):

Outcome 1.2 Improve the standard and utilisation of community and recreation facilities

Strategy 4.2.3 Advocate for improved community outcomes in education, medical and aged care services, infrastructure, and seek external grants

POLICY IMPLICATIONS

There are no known policy implications associated with this Item.

RISK IMPLICATIONS

Risk: Compliance - No noticeable regulatory or statutory impact.		
Likelihood	Consequence	Acceptance Criteria
Rare	Insignificant (Rare/Low)	Low
Action / Strategy		
Considering imposing conditions on any development approval granted to ensure the development is in accordance with the plans submitted in support of the application.		

FINANCIAL IMPLICATIONS

There are no known financial implications associated with this Item. However, should the applicant/landowner be aggrieved by Council's final decision in this matter, they have the right seek a formal review of that decision by the State Administrative Tribunal. Should this occur for whatever reason the Shire would need to respond with the cost not determined at this preliminary stage.

VOTING REQUIREMENT

Simple Majority

OFFICER RECOMMENDATION

That with respect to Retrospective Planning Application for intensive agriculture' (plant nursery) at Lot 10053 Brand Mudge Road, Carnamah and future subdivision, Council:

1. Grant retrospective approval for an intensive agriculture' (plant nursery) at Lot 10053 Brand Mudge Road, Carnamah, under the Shire of Carnamah Local Planning Scheme No. 2, subject to the following:

Condition:

- 1) The plant nursery will not be modified or extended without the further consent of Council.

Advice Note:

- a) Failure to comply with any of the conditions of this development approval constitutes an offence under the provisions of the Planning and Development Act 2005 and the Shire of Carnamah Local Planning Scheme No.2 and may result in legal action being initiated by the local government.
- b) If the applicant / landowner is aggrieved by this determination there is a right of review by the State Administrative Tribunal in accordance with the Planning and Development Act 2005 Part 14. An application must be submitted within 28 days of the determination.

2. Should an application be lodged based on the above, the Chief Executive Officer is authorised to respond to the Western Australian Planning Commission advising of Council's support, including any conditions that may be of relevance should additional information be provided by the applicant confirming all relevant policy requirements have been suitably addressed.

11.0 CONFIDENTIAL REPORTS

Nil

12.0 ORDERING OF THE COMMON SEAL

12.1 DEED OF VARIATION AND EXTENSION LTU (CARNAMAH)

File Code	D310
Author	Rachael Moore, Executive Coordinator
Senior Employee	Robert Paull, Chief Executive Officer
Disclosure of Interest	Nil
Attachments	1. Deed of Variation

SUMMARY

Council is required to grant approval to apply the Common Seal, this is to ensure the common seal is used and documents are executed in accordance with the provisions of the Local Government Act 1995 (Act).

BACKGROUND

The Shire of Carnamah currently has a Licence to Use and Occupy Corridor Land (Carnamah) in place with Arc Infrastructure which expires on 30 June 2023.

COMMENT

The current licence with Arc Infrastructure permits the shire to use and occupy corridor land, by executing the use of the common seal and accepting the deed of variation this will permit the continued use of the land shown below.



CONSULTATION

Arc Infrastructure
Executive team

STATUTORY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Shire of Carnamah Strategic Community Plan and Corporate Business Plan 2021-2031

Outcome 1.2 Improve the standard and utilisation of community and recreation facilities

Strategy 4.2.3 Advocate for improved community outcomes in education, medical and aged care services, infrastructure, and seek external grants

POLICY IMPLICATIONS

Policy 2.3 Execution of Documents and use of common seal

RISK IMPLICATIONS

Risk: Compliance		
Likelihood	Consequence	Acceptance Criteria
Possible	Low	Moderate
Action / Strategy		
The risk is mitigated by presenting legal documents to Council to ensure correct execution of the Common Seal.		

FINANCIAL IMPLICATIONS

No known financial implications.

VOTING REQUIREMENT

Simple Majority

OFFICER RECOMMENDATION

That with respect to Deed of Variation and Extension LTU (Carnamah) Council:

1. Notes and endorses the signing of the Shire of Carnamah Common Seal; and
2. Authorises the Shire President and Chief Executive Officer to execute the Common Seal on the Deed of Variation associated with the Licence to Use and Occupy Corridor Land (Carnamah).

13.0 REPORTS OF COMMITTEES AND MEMBERS

Nil

14.0 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

15.0 NOTICE OF MOTIONS (FOR CONSIDERATION AT THE FOLLOWING MEETING, IF GIVEN DURING THE MEETING)

Nil

16.0 NEW BUSINESS OF AN URGENT NATURE ADMITTED BY COUNCIL

Nil

17.0 CLOSURE OF MEETING
