



Shire of
Serpentine
Jarrahdale

Special Council Meeting Confirmed Minutes

7pm

Wednesday, 15 June 2022

Purpose: Consideration of the following reports:

- Differential General Rates and Minimum Payments
- Award Request for Tender / Quote – RFT11/2021 – Serpentine Jarrahdale Community Recreation Centre Management Services
- Consideration of correspondence received from the State Solicitor's Office dated 8 June 2022 regarding the Invalidity Complaint into the 2021 Local Government Election in the North Ward

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In Person

Shire of Serpentine Jarrahdale

6 Paterson Street, Mundijong WA 6123

Open Monday to Friday 8.30am-5pm (closed public holidays)



www.sjshire.wa.gov.au



Councillor Attendance Register

In accordance with the 11 April 2022 Ordinary Council Meeting, Council Resolution OCM067/04/22, clause 1 – “That Council requests the Chief Executive Officer maintain a Councillor Attendance Register recording Councillor Attendances at Ordinary Council Meetings, Special Council Meetings, Q & A briefings for Ordinary Council Meetings, Q & A briefings for Special Council Meetings, Councillor Workshops held for Project Briefings, Councillor Workshops held for Budget Preparations and Policy Concept Forums”.

Council October 2021 –

Date	Type	Cr Rich	Cr Atwell	Cr Byas	Cr Coales	Cr Dagostino	Cr Duggin	Cr Singh	Cr Strange	Cr Strautins
13/06/22	Q & A (OCM)	A	✓	✓	✓	✓	✓	A	✓	✓
08/06/22	WORKSHOP (CBP)	✓	✓	✓	✓	✓	✓	✓	✓	✓
30/05/22	WORKSHOP (Budget)	✓	✓	✓	A	✓	✓	✓	✓	✓
23/05/22	PCF	✓	✓	✓	✓	✓	✓	✓	✓	✓
16/05/22	OCM	✓	✓	✓	✓	✓	✓	✓	✓	✓
11/05/22	Q & A cont. (OCM)	✓	✓	✓	A	A	✓	A	✓	A
09/05/22	Q & A (OCM)	✓	✓	✓	✓	✓	✓	✓	✓	✓
02/05/22	PCF	✓	✓	✓	✓	✓	✓	✓	✓	✓
27/04/22	WORKSHOP (Rates / LTFP / Fees and Charges)	✓	✓	✓	✓	✓	✓	✓	✓	✓
27/04/22	WORKSHOP (PMO / Draft Facilities Plan)	✓	A	✓	✓	A	✓	✓	✓	A
20/04/22	SCM	✓	✓	✓	✓	✓	✓	✓	✓	✓
19/04/22	Q & A (SCM)	✓	✓	✓	✓	✓	✓	✓	✓	✓
11/04/22	OCM	✓	✓	✓	✓	✓	✓	✓	✓	✓
28/03/22	PCF	✓	✓	✓	✓	✓	✓	✓	✓	✓
21/03/22	OCM	✓	✓	✓	✓	✓	✓	✓	✓	✓
28/02/22	PCF	✓	✓	✓	✓	A	✓	✓	✓	✓
21/02/22	OCM	✓	✓	A	✓	✓	✓	✓	✓	✓



07/02/22	PCF	✓	✓	✓	A	A	✓	✓	A	✓
13/12/21	OCM	✓	✓	✓	✓	✓	✓	✓	✓	✓
06/12/21	SCM	✓	✓	A	✓	✓	✓	✓	✓	A
29/11/21	PCF	✓	✓	A	✓	✓	✓	✓	✓	✓
22/11/21	PCF	✓	✓	✓	✓	A	✓	✓	✓	✓
15/11/21	OCM	✓	✓	✓	✓	A	✓	✓	✓	✓
10/11/21	SCM	✓	✓	✓	✓	✓	✓	✓	✓	✓
01/11/21	PCF	✓	✓	✓	✓	A	✓	✓	✓	✓
01/11/21	SCM	✓	✓	✓	✓	A	✓	✓	✓	✓
25/10/21	SCM	✓	✓	✓	✓	✓	✓	✓	✓	✓
25/10/21	PCF	✓	✓	✓	✓	✓	✓	✓	✓	✓
18/10/21	SCM	✓	✓	✓	✓	✓	✓	✓	✓	✓

A – Apology

LoA – Leave of Absence

NA – Non Attendance

EPNG – Electronic Participation Not Granted



Table of Contents

1. Attendances and apologies (including leave of absence):	5
1.1 - Request for Attendance by Electronic Means in Public Health Emergency (SJ3764)	5
1.2 - Attendances and apologies.....	8
2. Public question time:.....	9
2.1 Public questions.....	9
3. Public statement time:.....	10
4. Petitions and deputations:	10
5. Declaration of Councillors and Officers interest:	11
6. Receipt of reports:	12
6.1 Reports.....	12
6.1.1 – Differential General Rates and Minimum Payments (SJ3909).....	12
6.1.2 - Award Request for Tender / Quote – RFT11/2021 – Serpentine Jarrahdale Community Recreation Centre Management Services (SJ3749).....	21
6.1.3 – Consideration of correspondence received from the State Solicitor’s Office dated 8 June 2022 regarding the Invalidity Complaint into the 2021 Local Government Election in the North Ward (SJ2762).....	33
7. Motions of which notice has been given:.....	39
8. Urgent business:.....	39
9. Closure:	39

The purpose of this Special Council Meeting is to discuss and, where possible, make resolutions about items appearing on the agenda. Whilst Council has the power to resolve such items and may in fact, appear to have done so at the meeting, no person should rely on or act on the basis of such decision or on any advice or information provided by a Member or Officer, or on the content of any discussion occurring, during the course of the meeting. Persons should be aware of the provisions of the *Local Government Act 1995* (section 5.25(1)(e)) and Council’s *Standing Orders Local Law 2002 (as Amended)* – Part 14, Implementing Decisions. No person should rely on the Resolutions made by Council until formal advice of the Council Resolution is received by that person.

The Shire of Serpentine Jarrahdale expressly disclaims liability for any loss or damage suffered by any person as a result of relying on or acting on the basis of any Resolution of Council, or any advice or information provided by a Member or Officer, or the content of any discussion occurring, during the course of the Council meeting.



Minutes of the Special Council Meeting of the Shire of Serpentine Jarrahdale held in the Council Chambers, Civic Centre, 6 Paterson Street, Mundijong, on Wednesday, 15 June 2022.

The Shire President, Councillor Rich declared the meeting open at 7pm and welcomed Councillors, Staff and members of the gallery and acknowledged that the meeting was being on the traditional land of the Noongar People and paid her respects to the Traditional Owners, Elders Past, Present and Emerging.

Minutes

1. Attendances and apologies (including leave of absence):

1.1 - Request for Attendance by Electronic Means in Public Health Emergency (SJ3764)	
Councillor	Councillor Singh
Disclosure of Officers Interest:	No Officer involved in the preparation of this report has an interest to declare in accordance with the provisions of the <i>Local Government Act 1995</i> .

Background

On Sunday, 12 June 2022, Councillor Singh emailed the Chief Executive Officer advising that he had tested positive for COVID-19 on Thursday, 9 June 2022 and would be required to isolate for one week and requesting that he attend the 15 June 2022 Special Council Meeting via electronic means.

On Monday, 13 June 2022, Councillor Singh emailed the Chief Executive Officer with supplementary information to enable consideration under 14C of the *Local Government (Administration) Regulations 1996*.

Statutory Framework

Section 5.21 of the *Local Government Act 1995* states that each council member who is present at a meeting of the Council is entitled to one vote. Except for the specific exceptions below, in accordance with the *Local Government (Administration) Regulations 1996*, a Council Member must be physically present to participate.

The exceptions are:

- Approval under Regulation 14A to participate via telephone when the person is in a suitable place within Western Australia that is 150km or further from the meeting location (Absolute Majority);
- Approval under Regulation 14B to participate via telephone if a councillor is prevented from being physically present at a meeting of the council because of fire, flood, lightning, movement of land, storm, or any other natural disaster;
- Approval under Regulation 14C to participate via electronic means if:
 - (a) a public health emergency or a state of emergency exists in the whole or a part of the area of the district of a local government; and



(b) because of the public health emergency or state of emergency, the member is unable, or considers it inappropriate, to be present in person at a meeting; and

(c) the member is authorised to attend the meeting by electronic means by —

- (i) the mayor; or
- (ii) the president; or
- (iii) the council.

- A meeting declared under Regulation 14D to be an electronic meeting because:
 - a public health emergency, state of emergency or direction issued under either the *Public Health Act 2016* or *Emergency Management Act 2005* exists in the whole or a part of the area of the district of a local government; and
 - because of the public health emergency or state of emergency, the mayor, president or council considers it appropriate for the meeting to be held by electronic means.

In accordance with section 5.20 of the *Local Government Act 1995*, the authorisation from Council must occur through a resolution of Council.

Officer Comment

Councillor Singh is requesting an approval under Regulation 14C to participate via electronic means. An approval under Regulation 14C requires two conditions that both must be met:

1. a public health emergency or a state of emergency exists in the whole or a part of the area of the district of a local government; and
2. because of the public health emergency or state of emergency, the member is unable, or considers it inappropriate, to be present in person at a meeting.

In February 2022, Council adopted Council Policy 3.3.7 – Electronic Meetings which provides a framework for determining approval under Regulation 14C. The policy states:

“An application to participate electronically under r14C should be made to the Chief Executive Officer at least 72 hours prior to the meeting. The person applying for electronic participation should provide in their application sufficient information to enable the decision-maker to determine if the requirements of r14C(a) and r14C(b) are met and must provide reasons why the Councillor will be prevented from attending the meeting in person.

The Chief Executive Officer will present the application in the first instance to the President for consideration.

As required, the application can be presented to Council for consideration as part of the attendances portion of the meeting. Council may authorise participation via a simple majority decision. The minutes of the meeting shall record whether electronic participation was granted or refused by the President or Council.”

In respect to the first element required by legislation, a State of Emergency is present having been most recently extended to 17 June 2022 by the Minister for Emergency Services and a Public Health Emergency is present having been most recently extended for a period of 14 days on 9 June 2022 by the Minister for Health.



In respect to the second element required by legislation, approval can be granted if because of the public health emergency or state of emergency, the member is unable, or considers it appropriate, to be present in person at a meeting.

The use of the term 'because' in the regulation means that a correlation or cause and effect needs to exist between the public health emergency and the inability to attend the meeting in person. In other words, to be approved to attend electronically, a Councillor must not be able to, or considers it inappropriate, to be present in person because of a State of Emergency or Public Health Emergency.

In the 13 June 2022 email, Councillor Singh advised that he tested positive for COVID-19 on Thursday, 9 June 2022 and will clear isolation on Thursday, 16 June 2022. Councillor Singh also provided a photo of a Rapid Antigen Test showing a positive result.

It is a requirement under the *COVID Transition (Testing and Isolation) Directions (NO15)* under the *Emergency Management Act 2005*, for a person to isolate for a period of 7 days after receiving a positive test result for COVID-19 after taking a Rapid Antigen Test.

To grant authorisation, Council must be satisfied that because of the public health emergency or state of emergency, the member is unable, or considers it inappropriate, to be present in person at the meeting.

In the event that Council authorises Councillor Singh to attend via electronic means, Officers will connect Councillor Singh via Microsoft teams. The connection to and from the Chambers is audio only. In the event that Council does not authorise Councillor Singh to attend via electronic means, Officers will take a moment to advise Councillor Singh via telephone while the meeting continues.

Options

Option 1

That Council:

1. In accordance with Regulation 14C of the *Local Government (Administration) Regulations 1996*, AUTHORISES Councillor Singh to participate at the meeting via electronic means because a public health emergency or a state of emergency exists in the whole or a part of the area of the district of a local government; and because of the public health emergency or state of emergency, the member is unable, or considers it inappropriate, to be present in person at a meeting.
2. In accordance with clause 18.1 of the Shire's Standing Orders, RESOLVES to suspend the following clauses of the Standing Orders to facilitate the participation in the meeting via electronic means:
 - a. Clause 8.2 – Members to Occupy Own Seats
 - b. Clause 9.1 – Members wishing to Speak

Option 2

That Council in accordance with Regulation 14C of the *Local Government (Administration) Regulations 1996* DOES NOT AUTHORISE Councillor Singh to participate at the meeting via electronic means as the required threshold criteria for participation under the Act has not been met.



Voting Requirements: Simple Majority

Officer Recommendation

That Council makes a determination in accordance with Regulation 14C of the *Local Government (Administration) Regulations 1996* as set out in the options above.

SCM009/06/22

COUNCIL RESOLUTION

Moved Cr Dagostino, seconded Cr Strange

That Council in accordance with Regulation 14C of the Local Government (Administration) Regulations 1996 DOES NOT AUTHORISE Councillor Singh to participate at the meeting via electronic means as the required threshold criteria for participation under the Act has not been met, as the application was not received 72 hours prior to the meeting.

CARRIED UNANIMOUSLY 8/0

1.2 - Attendances and apologies

Attendees:

Councillors: M Rich.....Presiding Member
D Atwell
M Byas
R Coales
M Dagostino
T Duggin
L Strange
D Strautins

Officers: Mr P Martin.....Chief Executive Officer
Ms R Steinki.....Acting Director Community and Organisational
Development
Mr A TrosicDirector Development Services
Mr F SullivanDirector Corporate Services
Mr R NajafzadehDirector Infrastructure Services
Dr K ParkerManager Governance and Strategy
Ms M Gibson.....Governance Officer – Council and Committees
(Minute Taker)

Apologies: Ms H Sarcich.....Deputy CEO / Director Community and
Organisational

Electronic participation not granted as per Agenda Item 1.1: Councillor G Singh

Observers: Members of the Public – 9
Staff members – 1



2. Public question time:

2.1 Public questions

Public question time commenced at 7:10pm.

Mrs Lee Bond, Box 44 Armadale WA 6122

Question 1

At the SCM 10/11/2021, Council resolved to make an Invalidity Complaint into the 2021 Local Government Elections for the North Ward of Serpentine Jarrahdale Shire and more than \$60,000 has been paid to Council's legal representation.

Why make this complaint when an individual had already made the Invalidity Complaint prior to this Council making the complaint?

Response (Chief Executive Officer)

The rationale for making an Invalidity Complaint was set out in the Officer's Report tabled at the 10 November 2021 Special Council Meeting. At the time of preparing the Officer's report, it was not known if any Invalidity Complaints would be submitted. On the morning of 10 November 2021, Officers became aware of the existence of an Invalidity Complaint that had been lodged with the Court on 2 November 2021 and advised Councillors via email of the existence of that Invalidity Complaint prior to the meeting.

Council resolved to make an Invalidity Complaint based on the information available to the Shire.

Question 2

With regard to SCM 15/6/2022 in particular, is there a responsibility when Councillors vote on Agenda items the item must be accurate and truthful, is there any penalty for Councillors who vote on an item that is false or misleading or is it simply Councillor beware?

Response (Chief Executive Officer)

Under the Local Government Act 1995, it is the responsibility of the administration to ensure that advice and information is available to the Council so that informed decisions can be made. If you have specific concerns regarding the quality or accuracy of the advice being provided to Council, I would encourage you to make contact with myself, the Shire President or alternatively raise the matter with integrity agencies that oversee the performance of local governments.

Question 3

Given the damning report into incompetent spending of a recent roadworks and not the only damning evidence of financial mismanagement within this Shire, why is this Council now seeking to bolster their incompetent behaviour by punishing ratepayers in this Shire who already get nothing for their rates, explain in detail where the democracy and decency lies here?

Response (Chief Executive Officer)

The rationale and response to the independent Abernethy Road Inquiry is described in the Officer's Report related to the Inquiry presented at the May 2022 Audit, Risk



and Governance Committee Meeting. At the meeting, the Audit, Risk and Governance Committee resolved to list for consideration in the 2022-23 budget the resource requirements to deliver on the recommendations, as detailed in the Officer's report and request an update on the response at the February 2023 Committee meeting. This recommendation will be considered by Council at the June 2022 Ordinary Council Meeting.

The second part of your question is a matter Council will consider tonight.

Presiding Member, Councillor Rich asked if there were any further public questions from the floor at 7:15pm. No further questions were asked.

Public question time concluded at 7:15pm.

3. Public statement time:

Public statement time commenced at 7:15pm.

Mrs Lee Bond, Box 44 Armadale WA 6122

A miracle happened in our street last week, potholes were complained about one day and fixed the very next day. I commented to someone after discovering I had missed a small pothole further up the road that I thought the operator of the pot mobile should have checked the entire road and there would be no need to come back again. Another miracle and even tiny blemishes have been dealt with. Is this expediency all of a sudden because this Council wants to justify its Robin Hood grab of rate money. You spend nothing on the rural, semi-rural and what you now call rural residential properties in this Shire. We are the least of a burden on the Shire, the only reason you had to fix our road was because you didn't listen to a resident who complained for years about the damage from trucks running an illegal business on a private road running off our road. This is incompetent behaviour a waste of ratepayers money and is demonstrated throughout the Shire. The ratepayers are not your personal piggy bank and you cannot continue to use ratepayer and taxpayer money to cover your inept spending.

Why all the secrecy regarding the Invalidity Complaint lodged by a ratepayer of the Shire. Provide the transcripts to the ratepayers after all you seem to think it is okay to spend big on a lawyer. The ratepayer is entitled to know exactly what has transpired at these court hearings, not just what you think we should be told. How many Councillors have seen the transcripts and yet you blindly vote on what you are told, not what you should know.

There is no better reason than now for a forensic audit to prove your rate grab is sinister.

Public statement time concluded at 7:17pm.

4. Petitions and deputations:

Nil.



5. Declaration of Councillors and Officers interest:

Manager Community Activation, Ms Rebecca Steinki, declared an Impartiality Interest in item 6.1.2 – Award Request for Tender / Quote – RFT11/2021 – Serpentine Jarrahdale Community Recreation Centre Management Services, as Ms Steinki is a member of the facility through the provisions of the Shire’s Wellbeing Program and other recreational pursuits.

Councillor Tricia Duggin declared a Financial Interest in item 6.1.2 – Award Request for Tender / Quote – RFT11/2021 – Serpentine Jarrahdale Community Recreation Centre Management Services, as Councillor Duggin is a member of the SJCRC Gym. A change in management potentially changes Councillor Duggin’s membership costs. The extent of Councillor Duggin’s interest is \$36 per fortnight. Councillor Duggin will leave the Chambers while this item is discussed.

Councillor Gary Singh declared a Financial Interest in item 6.1.3 – Consideration of correspondence received from the State Solicitor’s Office dated 8 June 2022 regarding the Invalidity Complaint into the 2021 Local Government Election in the North Ward, as Councillor Singh was a successful candidate in the 2021 SJ North Ward Local Government Election. The extent of Councillor Singh’s interest is legal costs estimated at \$40,000 and \$3,000 election campaign costs. Councillor Singh will leave the Chambers while this item is discussed.

Councillor Robert Coales declared a Financial Interest in item 6.1.3 – Consideration of correspondence received from the State Solicitor’s Office dated 8 June 2022 regarding the Invalidity Complaint into the 2021 Local Government Election in the North Ward, as Councillor Coales is a party to the Court case. The extent of Councillor Coales’ interest is Financial.



6. Receipt of reports:

6.1 Reports

6.1.1 – Differential General Rates and Minimum Payments (SJ3909)	
Responsible Officer:	Manager Finance
Senior Officer:	Director Corporate Services
Disclosure of Officers Interest:	No Officer involved in the preparation of this report has an interest to declare in accordance with the provisions of the <i>Local Government Act 1995</i> .

Authority / Discretion

Executive	The substantial direction setting and oversight role of the Council such as adopting plans and reports, accepting tenders, directing operations and setting and amending budgets.
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Report Purpose

The purpose of the report is for Council to consider a proposal for the setting of the rate in the dollar for the differential rating categories, to be applied to the proposed Budget for the 2022/2023 Financial Year and advertised in accordance with Section 6.36 of the *Local Government Act 1995* for 21 days.

Relevant Previous Decisions of Council

There is no previous Council decision relating to this matter.

Background

The Shire's Strategic Community Plan articulates the vision for the Shire, with the Corporate Business Plan describing how that vision will be achieved over the next four years. The annual Budget describes how services and infrastructure will be funded for the next year, with the Long-Term Financial Plan setting out the financial plan for the next ten years.

The adoption of the Annual Budget is expected to be considered at a Special Council Meeting on 25 July 2022.

Rate revenue is a substantial source of revenue for the Shire of Serpentine Jarrahdale, accounting for approximately two thirds of operating revenue in the 2021/2022 Budget. The *Local Government Act 1995* (the Act) empowers local governments to impose general rates and minimum payments on rateable land. Local governments can impose either uniform general rates or differential general rates.

Uniform general rates sets a single general rate in the dollar for each valuation category of either Gross Rental Value (GRV) and Unimproved Value (UV) being a uniform general rate in the valuation dollar and applied to all properties within a valuation category.



As an alternative to adopting a uniform general rate, a local government may apply different rates in the dollar within each valuation category known as a differential general rate which may be applied using the following characteristics, or combination thereof:

- The purpose for which the land is zoned;
- The predominant use (as determined by the Local Government);
- If the land is vacant or not; and
- Any characteristics prescribed (currently only relevant to amalgamations).

The Shire of Serpentine Jarrahdale has traditionally adopted differential general rates.

The overall objective of a rating model is to provide for the net funding requirements of the Shire's services, activities, financing costs and the current and future capital requirements of the Shire as outlined in the Strategic Community Plan, Corporate Business Plan, Long Term Financial Plan (LTFP) and the Annual Budget, ensuring to fund these requirements in an equitable way, in accordance with the Shire's rating strategy.

Community / Stakeholder Consultation

The Shire, in accordance with Section 6.36 of the *Local Government Act 1995*, is required to give notice of certain rates and invite submissions for a period of 21 days or such longer period as specified in the notice.

The Shire is required to prepare a document describing the objects of, and reasons for, each proposed rate and minimum payment and to publish the document on the Shire's official website – refer **attachment 5**.

The Shire is required to consider any submissions received before imposing the proposed rate or minimum payment with or without modification.

Workshops were held on 27 April 2022, 30 May 2022 and 8 June 2022 with Council to discuss the proposed Rates, Long-Term Financial Plan, Fees and Charges, Capital and Non-Recurrent expenditure and operating budgets.

Officers are proposing that a more fulsome community engagement process be undertaken as part of advertising the proposed differential rates.

This will involve providing details of the Draft Capital and Nonrecurrent budget as supporting information during the advertising process.

Additionally, this will also be supported by the Shire President and Chief Executive Officer meeting with residents and ratepayers.

Statutory Environment

Part 6, Division 6 of the Act and Part 5 of the *Local Government (Financial Management) Regulations 1996* provides the head of power for the levying of local government rates. The legislation is quite prescriptive in its application, with the following aspects of particular note:

- Except as provide for in Section 6.26, all land within a district is rateable land (s6.26).



- In order to make up the “budget deficiency” a local government is to impose a general rate which may be imposed uniformly or differentially. A local government may also impose a specified area rate, a minimum rate and a service charge (s6.32).
- A local government may impose a differential general rate according to land zoning, land use, whether the land is vacant or not, or a combination of each characteristic (s6.33).
- No differential general rate in each category (UV or GRV) is to be more than twice the lowest differential general rate, unless approved by the Minister (s6.33(3)).
- The local government can impose differential minimum rates however, it is not to be applied to more than 50% of the properties within a district or within each category (s6.35).

Comment

Economic Environment

According to the Australian Bureau of Statistics (ABS) the Perth Consumer Price Index for March is currently 7.6%. A rise of 3.3% since December 2021, the largest rise of all capital cities in Australia.

The Shire has not been immune to these cost increases, noting cost escalations on recent tenders significantly above pre-tender estimates.

Western Australia’s unemployment rate for March is 3.4%, down from 4.1% in February - the lowest of all the States and well below the national unemployment rate at 4%.

Financial Sustainability

The most recent Audit Report from the Office of the Auditor General states that:

In my Opinion, the following material matter indicates a significant adverse trend in the financial position of the Shire:

- a. The Operating Surplus Ratio as reported in Note 32 of the financial report is below the Department of Local Government, Sport and Cultural Industries basic standard for the current and past two years*

To sufficiently address this issue, the Shire’s operating revenue needs to rise by at least \$3.4 million, or conversely operating costs need to fall by a similar margin to ameliorate this issue.

Council has been systematically attempting to reduce annual cash expenditure in an attempt to address this issue despite servicing 8.8% more properties over the past 3 years within the Shire of Serpentine Jarrahdale.

The Shire’s financial sustainability is currently a strategic risk on the Shire’s strategic risk register. A key control to keep this at an appropriate level of risk in accordance with Council’s risk appetite include following Council’s adopted Rating Strategy as contained in **attachment 1**. Varying from implementing this key control is likely to raise the current risk level related to financial sustainability.



Council Policy 3.2.1 – Changing Methods of Valuation of Land

Council Policy 3.2.1 – Changing Methods of Valuation of Land (**attachment 2**) prescribes a methodology for determining whether a property should be rated using Unimproved Value or Gross Rental Value.

An extract from the policy states below:

“The following situations apply when application must be made to the Minister for change of methodology to gross rental value:

- 1. Where a subdivision has occurred, if the subdivided lots are two hectares (4.94 acres, or 20,000 square metres) or less, then the method of valuation will change from unimproved value to gross rental value, and the request will be sent to the Minister from date of subdivision approval.”*

This approach has proven to be substandard in this matter and has led to substantial inequity in the application of rates within the district.

The *Local Government Act 1995* clearly states under section 6.28, the Minister will determine the method of valuation of land and will consider whether the land is being used predominately for rural or non-rural purposes.

Officers recommend that the current policy be rescinded and going forward the Department of Local Governments Operational Guideline 2 – Changing Methods of Valuation of Land will be followed (**attachment 3**).

Western Australian Treasury Corporation Report

Council commissioned the Western Australian Treasury Corporation (WATC) to conduct a Financial Sustainability Review of the Shire in April 2020 as contained in **attachment 4**.

The finding contained in this review indicates that based on the then existing rate structures, the Shire’s long-term financial forecast currently indicates an inability to sustainably fund capital initiatives and renewal programs. The consequence of inaction would result in a cash flow shortfall over the next 10 years of circa \$40 million expressed in 2020 dollars with no allowance for inflation.

Rating Strategy

In 2020 Council identified significant inequity in the application of rates within the district, an initial attempt to correct this inequity via a large scale “Change of Valuation Methodology” project was met with the then Minister for Local Government requested it be discontinued due to the Covid-19 pandemic.

In 2021 Council adopted its first ever Rating Strategy which called for the reinstatement of a Residential and Commercial Unimproved Valuation Differential Rating Category which was subsequently implemented for the 2021/22 Budget, this resulted in the rates for over 8,000 residents declining for that financial year.

Whilst this strategy has led to significant improvement in rating equity across the district, it has been identified that a new inequity within the newly reinstated differential rating categories has developed.

Approximately 800 properties of 2,453 properties within these rating categories would experience a rate reduction totaling approximately \$300,000 if they were to be rated using the Gross Rental Value Methodology.



Officers recommended that a further strategy be added to the Rating Strategy document that requires Officers to conduct a “Rural Valuation Review” of properties within the Rural Residential UV and Commercial UV categories to identify properties that would benefit from a change of valuation methodology that are determined by Officers to be likely not to have another near to medium term review event forecast.

An example of properties expected to experience a near to medium term review event are likely to be in close proximity to the development fronts occurring in Byford, Cardup and Mundijong and will be required to have their valuation method reviewed upon subdivision occurring.

Differential Rates

In order to make up the budget deficiency as workshopped with Council, Officers recommend a:

- 4.9% increase in the minimum rates and the rate in the dollar for all UV General, UV Intensive Farming and all GRV categories.
- 15% increase in the minimum rates and the rate in the dollar for all UV Rural Residential and UV Commercial.

The proposed rates will yield \$27,378,419 in net rate revenue, which is a 6.8% increase on current year to date base rate calculations.

2022/2023 Budget Proposal

The following are the proposed Differential General Rates and Minimum Payments for the Shire of Serpentine Jarrahdale for the 2022/2023 financial year, to be effective from 1 July 2022.

Rate Category	Rate in Dollar (Expressed as cents in \$)	Minimum Payment
GRV Residential	0.108383	\$1,338
GRV Vacant	0.198570	\$1,019
GRV Commercial / Industrial	0.123533	\$1,504
UV General	0.004120	\$1,450
UV – Rural Residential	0.004755	\$2,013
UV - Commercial / Industrial	0.006895	\$2,013
UV Intensive Farmland	0.008240	\$2,900

The objects and reasons for each of the rating categories is articulated in **attachment 5**.



Options and Implications

Option 1

That Council:

1. ENDORSES a total rate yield for 2022/2023 budget purposes, which will derive a proposed \$27,378,419 in net rate revenue.
2. ENDORSES for the purpose of advertising the following proposed Differential Categories, Rates and Minimum Payments for the Shire of Serpentine Jarrahdale for the 2022/23 rating year.

Rate Category	Rate in Dollar (Expressed as cents in \$)	Minimum Payment
GRV Residential	0.108383	\$1,338
GRV Vacant	0.198570	\$1,019
GRV Commercial / Industrial	0.123533	\$1,504
UV General	0.004120	\$1,450
UV – Rural Residential	0.004755	\$2,013
UV – Commercial / Industrial	0.006895	\$2,013
UV Intensive Farmland	0.008240	\$2,900

3. AUTHORISES the Chief Executive Officer to advertise for public comment, the Differential General Rates and the Minimum Payments Statement of Objects and Reasons in **attachment 5**, as per the requirements of section 6.36 of the *Local Government Act 1995*.
4. ADOPTS the Rating Strategy as per **attachment 1**.
5. RESCINDS Council Policy 3.2.1 – Changing Methods of Valuation of Land as per **attachment 2**.
6. NOTES the WATC report as per **attachment 4**.

Option 2

That Council requests adjusted calculations:

- X% increase in the minimum rates and the rate in the dollar for all UV General, UV Intensive Farming and all GRV categories.
- Y% increase in the minimum rates and the rate in the dollar for all UV Rural Residential and UV Commercial.

for consideration.

Option 1 is recommended.



Conclusion

The proposed rate in the dollar for the differential general rates have been developed to provide the Shire sufficient funding to maintain levels of service, to mitigate against current financial risk and to meet the Shire’s strategic objectives.

This will allow the Shire to mitigate against both the current CPI increase as highlighted above and the current operating surplus ratio as highlighted by the Auditor General and Asset Renewal funding shortfall as identified by the WATC.

Attachments (available under separate cover)

- **6.1.1 - attachment 1** – Rating Strategy (E22/7299)
- **6.1.1 - attachment 2** – Council Policy 3.2.1 – Changing Methods of Valuation of Land (E17/11773)
- **6.1.1 - attachment 3** – Department of Local Governments Operational Guideline 2 – Changing Methods of Valuation of Land (E22/7301)
- **6.1.1 - attachment 4** – Western Australian Treasury Corporation Financial Sustainability Review - April 2020 (IN21/14499)
- **6.1.1 - attachment 5** – Differential General Rates and the Minimum Payments Statement of Objects and Reasons (E22/7303)

Alignment with our Strategic Community Plan

The proposal aligns with the following specific objectives outlined in the Strategic Community Plan:

Outcome 4.1	A resilient, efficient and effective organisation
Strategy 4.1.1	Provide efficient, effective, innovative, professional management of Shire operations to deliver the best outcome for the community within allocated resources

Financial Implications

The proposed rate model is expected to yield \$27,378,419 in rate revenue for 2022/2023 which will contribute to the net funding requirements of the Shire’s services, activities, financing costs and asset renewal programme.

The 2022/2023 budget has been developed using the following principles discussed and agreed with Elected Members at budget workshops:

- Focus on long-term financial sustainability of the Shire;
- Capacity building to manage the Shire’s growth; and
- Funding the Shire’s financial requirements in an equitable way.



Risk Implications

Risk has been assessed on the Officer Options and Implications:

Officer Option	Risk Description	Controls	Principal Consequence Category	Risk Assessment			Risk Mitigation Strategies (to further lower the risk rating if required)
				Likelihood	Consequence	Risk Rating	
1	If Council resolve Option 1 there could be dissatisfaction from community members resulting in reputation damage to the Shire.	Advertising of rates and community comment. Rate Strategy adopted in 22/23. Community Perception Survey.	Reputation	Possible	Minor	MODERATE	Nil
2	That Council endorses no increase in the rate in the dollar for 2022/2023 - there is a risk to financial sustainability and organisational performance	Nil	Financial Organisational Performance	Likely	Major	HIGH	Nil
3	Council requests further calculations for consideration. Risk to adoption deadline of 31 Aug 2022	Nil	Organisational Performance	Possible	Moderate	MODERATE	Nil



Voting Requirements: Simple Majority

SCM010/06/22

COUNCIL RESOLUTION / Officer Recommendation

Moved Cr Strange, seconded Cr Atwell

That Council:

- 1. ENDORSES a total rate yield for 2022/2023 budget purposes, which will derive a proposed \$27,378,419 in net rate revenue.**
- 2. ENDORSES for the purpose of advertising the following proposed Differential Categories, Rates and Minimum Payments for the Shire of Serpentine Jarrahdale for the 2022/23 rating year.**

Rate Category	Rate in Dollar (Expressed as cents in \$)	Minimum Payment
GRV Residential	0.108383	\$1,338
GRV Vacant	0.198570	\$1,019
GRV Commercial / Industrial	0.123533	\$1,504
UV General	0.004120	\$1,450
UV – Rural Residential	0.004755	\$2,013
UV – Commercial / Industrial	0.006895	\$2,013
UV Intensive Farmland	0.008240	\$2,900

- 3. AUTHORISES the Chief Executive Officer to advertise for public comment, the Differential General Rates and the Minimum Payments Statement of Objects and Reasons in attachment 5, as per the requirements of section 6.36 of the *Local Government Act 1995*.**
- 4. ADOPTS the Rating Strategy as per attachment 1.**
- 5. RESCINDS Council Policy 3.2.1 – Changing Methods of Valuation of Land as per attachment 2.**
- 6. NOTES the WATC report as per attachment 4.**

CARRIED 5/3

Councillor Coales, in accordance with Section 5.21(4)(b), Local Government Act 1995 requested the votes be recorded.

Councillors Rich, Atwell, Duggin, Strange and Strautins voted FOR the motion.

Councillors Byas, Coales and Dagostino voted AGAINST the motion.



Councillor Duggin declared a Financial Interest in item 6.1.2 and left the Chambers at 7:41pm prior to this item being discussed.

6.1.2 - Award Request for Tender / Quote – RFT11/2021 – Serpentine Jarrahdale Community Recreation Centre Management Services (SJ3749)	
Responsible Officer:	Manager Community Activation
Senior Officer:	Deputy CEO / Director Community and Organisational Development
Disclosure of Officer's Interest:	Manager Community Activation, declared an Impartiality Interest in item 6.1.2 as the Officer is a member of the facility through the provisions of the Shire's Wellbeing Program and other recreational pursuits.

Authority / Discretion

Executive	The substantial direction setting and oversight role of the Council such as adopting plans and reports, accepting tenders, directing operations and setting and amending budgets.
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Report Purpose

The purpose of this report is to advise Council of submissions received in relation to Tender RFT 11/2021 – Serpentine Jarrahdale Community Recreation Centre Management Services, and for Council to award the Contract to the most appropriate, value for money tenderer as proposed by the evaluation process, including the weighted Evaluation Criteria and evaluation panel recommendation.

Relevant Previous Decisions of Council

*Ordinary Council Meeting – 16 May 2022 - OCM116/05/22 - COUNCIL RESOLUTION
That the matter be DEFERRED to provide Officers an opportunity to respond to questions from Councillors regarding this matter.*

*Ordinary Council Meeting – 13 December 2021 – OCM362/12/21 - COUNCIL RESOLUTION / Officer Recommendation
That Council ENDORSES the weighted criteria for the Tender of Management and Operation at the SJ Community Recreation Centre as follows:*

Weighted Assessment Criteria		Weighting
Qualitative Criteria 1:	<i>Sustainable Procurement</i>	8%
	<i>Sustainable Practices (Environmental and Economic Development)</i>	4%
	<i>Disability Access & Inclusion</i>	4%
Qualitative Criteria 2:	<i>OH&S demonstrated working documents</i>	5%



Qualitative Criteria 3:	<i>Demonstrated experience of tenderer and personnel performing the services</i>	25%
	<i>Customer Satisfaction Measures</i>	3%
	<i>Recreational/Sports Centre performance under management over the past 5 years</i>	5%
	<i>Success Stories and Contracts Performing Better Than Budget</i>	5%
	<i>Centre Management Systems Accounting and Reporting Systems</i>	5%
	<i>Head Office Support</i>	3%
	<i>Qualifications and Experience of Key Personnel Based In Perth</i>	4%
Qualitative Criteria 4:	<i>Methodology, resources and capacity for operational and maintenance services</i>	42%
	<i>Resource Transition</i>	3%
	<i>Operating Budget Forecasts</i>	7%
	<i>Fees and Charges Summaries</i>	1%
	<i>Your Proposed Staff Structure</i>	3%
	<i>Your Proposed FTE Allocation and Costs</i>	4%
	<i>Asset Management</i>	6%
	<i>Cleaning Regime</i>	3%
	<i>Program and Service Delivery Development</i>	10%
	<i>Proposed Capital Contributions / Improvements</i>	5%
Price	Management Fee	20%

Ordinary Council Meeting – 20 September 2021 – OCM263/09/21 - COUNCIL RESOLUTION / Officer Recommendation

That Council:

1. NOTES the Serpentine Jarrahdale Community Recreation Centre Review as contained in attachment 1;
2. NOTES the Building Condition Audit & Life Cycle Costing report for the Serpentine Jarrahdale Community Recreation Centre as contained in attachment 2;
3. ENDORSES the Vision for the Serpentine Community Recreation Centre as contained in this report;
4. REQUESTS the Chief Executive Officer negotiate a new Contract arrangement with the YMCA WA as a sole supplier from 1 January 2022 until 30 June 2022, applying the same conditions of current contract and in accordance with the provisions of the Shire's Purchasing Policy;



5. *REQUESTS the Chief Executive Officer purchase outright the current gym equipment, upon the expiry of the lease in October 2021;*
6. *REQUESTS the Chief Executive Officer commence a tender process in December 2021 for the external Management and Operation of the Serpentine Jarrahdale Community Recreation Centre, with key terms to address the following:*
 - a. *5 Year term with a 3 year option;*
 - b. *All maintenance to be undertaken by the Shire;*
 - c. *Respondent to outline approach for management of all internal/loose equipment (including servicing) within the submission and for the term of the contract;*
 - d. *Signage on the Serpentine Jarrahdale Community Recreation Centre to be at Respondents cost, co-branded and approved by Shire;*
 - e. *Tender documents to address recommendations within the Review that will improve future contract arrangements and community outcomes.*
 - f. *Maintaining key operational arrangements, including Local Emergency Management requirements.*

7. *APPROVES pursuant to s6.8 of the Local Government Act 1995, a budget amendment to the 2021/22 budget, as per the below table:*

<i>Account Number</i>	<i>Type</i>	<i>Description</i>	<i>Debit</i>	<i>Credit</i>
<i>6200-NEW-6600-0000</i>	<i>Capital Expenditure (new project)</i>	<i>SJ Community Recreation Centre Capital Works</i>	<i>60,000</i>	
<i>6200- NEW - 5002-0000</i>	<i>Reserve Transfer</i>	<i>Buildings Asset Management Reserve.</i>		<i>60,000</i>

Reason: To address outcomes of the Building Condition Audit & Life Cycle Costing report at the Serpentine Jarrahdale Community Recreation Centre, to be funded from the Buildings Asset Management Reserve.

8. *ENDORSES the prioritisation of works on the Serpentine Jarrahdale Community Recreation Centre following completion of the State Funding Agreement works as follows, to address outcomes of the Building Condition Audit & Life Cycle Costing report (excluding Climbing Wall items):*
 - a. *Defects.*
 - b. *Urgent repairs identified and Optional Capital Works (2021 and 2022).*
 - c. *Asset Renewals (2021 and 2022).*
9. *REQUESTS the Chief Executive Officer list the remaining capital works as contained in attachment 2 totalling \$386,060, for consideration through the 2022/2023 budget setting process.*



Background

At the September 2021 Ordinary Council Meeting, Council considered a range of matters relevant to the Serpentine Jarrahdale Community Recreation Centre (SJCRC) and requested the Chief Executive Officer commence a tender process in December 2021 for the external management and operation of the Centre, with the key terms to address the following:

- a. 5 Year term with a 3 year option;
- b. All maintenance to be undertaken by the Shire;
- c. Respondent to outline approach for management of all internal/loose equipment (including servicing) within the submission and for the term of the contract;
- d. Signage on the Serpentine Jarrahdale Community Recreation Centre to be at Respondents cost, co-branded and approved by Shire;
- e. Tender documents to address recommendations within the Review that will improve future contract arrangements and community outcomes.
- f. Maintaining key operational arrangements, including Local Emergency Management requirements.

The Request for Tender RFT 11/2021 - Serpentine Jarrahdale Community Recreation Centre Management Services was advertised on Saturday 18 December and Saturday 1 January 2022 and closed at 2.00pm on Thursday 3 February 2022.

A mandatory site briefing was conducted with prospective tenderers on 10 January 2022. An optional walk through opportunity was offered (in addition to the mandatory briefing) on 24 January 2022.

The Shire invited suitably qualified and experienced facility management specialists to tender for a five (5) year contract with an optional three (3) year extension, encouraging proposals that would assist the Shire to achieve its vision for the SJCRC:

“...to provide a diverse range of affordable, high quality, inclusive, community focussed programs and opportunities across all demographics within our community. Primarily, these opportunities should respond to recreational health and wellbeing requirements to enrich the social; emotional; and psychological wellbeing of our community. They should be consistent with identified needs and aspirations of the community and are to respond and adapt to evolving trends.”

This report outlines details of the submissions received and recommends appointment based on the evaluation process undertaken. The matter was deferred by Council at the May Ordinary Council Meeting, in order to provide an opportunity to respond to questions from Councillors. Written responses to questions were provided together with a topic at a Policy Concept Forum.

Community / Stakeholder Consultation

The Vision of the Centre, endorsed by Council at the September OCM was based on a range of consultative undertakings by the Shire over the last few years. This Vision formed the basis of the Tender requirements.



Policy Concept Forum

Meeting Date	23 May 2022
Councillors in Attendance	Cr Rich, Cr Atwell, Cr Byas, Cr Coales, Cr Dagostino, Cr Duggin, Cr Singh, Cr Strange, Cr Strautins

Submissions

The Request for Tender RFT 11/2021 - Serpentine Jarrahdale Community Recreation Centre Management was advertised on Saturday, 18 December and Saturday, 1 January 2022 and closed at 2.00pm on Thursday 3 February 2022.

The Tender was advertised in the following papers:

- West Australian Newspaper
- Examiner (Serpentine Jarrahdale & Armadale)
- Pinjarra/Murray Times (Inc. Mandurah Coastal Times)
- Sound Telegraph (Rockingham & Kwinana)

Two (2) submissions were received, and the submissions are summarised in **CONFIDENTIAL attachment 1**.

All tender submissions comply with the request for tender guidelines and compliance criteria.

Tender submissions were received from the following companies:

#	Company Name
1	Belgravia Leisure Pty Ltd
2	YMCA WA

Evaluation Panel

An evaluation panel was convened and consisted of the following personnel:

- Deputy CEO / Director Community and Organisational Development
- Manager Community Activation
- Coordinator Facility Maintenance

All members of the evaluation panel have made a conflict of interest declaration in writing confirming that they have no relationships with any of the tenderers. Each member of the panel assessed the submissions separately.



Evaluation Criteria

The following evaluation criteria and weightings were used by the tender evaluation panel to assess tender submissions:

Weighted Assessment Criteria		Weighting
Criterion 1:	<i>Sustainable Procurement</i>	8%
	Sustainable Practices (Environmental and Economic Development)	4%
	Disability Access & Inclusion	4%
Criterion 2:	<i>Workplace Health and Safety Measures</i>	5%
Criterion 3:	<i>Demonstrated experience of the tenderer</i>	25%
	Customer Satisfaction Measures	3%
	Recreational/Sports Centre performance undermanagement over the past 5 years	5%
	Success Stories and Contracts Performing Better Than Budget	5%
	Centre Management Systems Accounting and Reporting Systems	5%
	Head Office Support	3%
	Qualifications and Experience of Key Personnel Based in Perth	4%
Criterion 4:	<i>Methodology, resources and capacity for operational and maintenance services</i>	42%
	Resource Transition	3%
	Operating Budget Forecasts	7%
	Fees and Charges Summaries	1%
	Your Proposed Staff Structure	3%
	Your Proposed FTE Allocation and Costs	4%
	Asset Management	6%
	Cleaning Regime	3%
	Program and Service Delivery Development	10%
	Proposed Capital Contributions / Improvements	5%
Criterion 5:	<i>Management Fee</i>	20%
Total		100%



Comment

The evaluation criteria endorsed by Council at the December 2021 Ordinary Council Meeting was used due to the unique and complex nature of the services being procured. The criteria aligns with detail required from Respondents to ensure measurable Contract outcomes.

The evaluation criteria reflected the various aspects of management and operational requirements of the facility. The weighting was designed to encourage a broad range of respondents committed to delivering the Vision of the Centre. Similarly, the weightings aimed to afford an evaluation process which aligned to this objective and encouraging a community focussed approach to operations.

All tender submissions were assessed against the evaluation criteria, utilising the scoring system as outlined in the Shire's Council Policy - *Procurement of Goods or Services through Public Tendering*. The qualitative and quantitative results of this assessment and associated prices are documented in **CONFIDENTIAL attachment 1**.

Following the assessment of all submissions against the selection criteria, the tender submitted by YMCA WA was assessed as providing the most comprehensive response for the services required and outlined in the RFT documents, as well as demonstrating value for money as defined below (see Statutory Environment). Overall, YMCA WA demonstrated greatest ability to meet the requirements of the contract for the price indicated.

The tender evaluation panel therefore recommends the tender submission made by YMCA WA be accepted.

Statutory Environment

The Shire is committed to delivering best practice in the purchasing of goods, services and works that align with the principles of transparency, probity and good governance and complies with the *Local Government Act 1995 (the "Act")* and Part 4 of the *Local Government (Functions and General) Regulations 1996, (the "Regulations")*.

Section 3.57 (1) of the *Local Government Act 1995* requires a local government to invite tenders before it enters into a contract of a prescribed kind under which another person is to supply the goods or services.

Tenders are to be publicly invited according to the requirements of this Division before a local government enters into a contract for another person to supply goods or services if the consideration under the contract is, or is expected to be, more, or worth more, than \$250 000 unless subregulation (2) states otherwise.

As the value of the 5 year contract exceeds \$250,000, the Shire has publicly invited responses to RFT11/2021 to arrive at a recommendation demonstrating best value for money.

In accordance with Council Policy - *Procurement of Goods or Services through Public Tendering*, Value for Money is defined as the following:

One of the overarching principles governing purchasing that allows the best possible outcome to be achieved for the Shire of Serpentine Jarrahdale.

It is important to note that compliance with the specification is more important than obtaining the lowest price, particularly taking into account user requirements, quality standards, sustainability, life cycle costing and service benchmarks.



An assessment of the best value for money outcome for any tenders shall consider:

- *all relevant whole-of-life costs and benefits including transaction costs associated with acquisition, delivery, distribution, as well as other costs such as but not limited to holding costs, consumables, deployment, maintenance and disposal;*
- *the technical merits of the goods or services being offered in terms of compliance with specifications, contractual terms and conditions and any relevant methods of assuring quality;*
- *financial viability and capacity to supply without risk of default (competency of the prospective suppliers in terms of managerial and technical capabilities and compliance history); and*
- *a strong element of competition in the allocation of orders or the awarding of contracts. This is achieved by obtaining a sufficient number of competitive tenders wherever practicable.*

Where a higher priced conforming tender is recommended, there shall be clear and demonstrable benefits over and above the lowest total priced, conforming tender.

The Evaluation Panel rated each of the evaluation criteria on a scale of 0 to 5, as per the scoring system outlined in the Shire's procurement policy:

If a tender submission scores below a 3 for any of the qualitative criteria it will be rejected as a risk to the Shire and will play no further part in the assessment.

Options and Implications

The following options have been identified:

Option 1

That Council:

1. AWARDS Tender RFT 11/2021 - Serpentine Jarrahdale Community Recreation Centre Management to YMCA WA to the value of \$620,000, excluding GST, as contained within **CONFIDENTIAL attachment 1**; for a period of five (5) years with an optional extension of 3 years subject to satisfactory performance and entirely at the Council's discretion;
2. AUTHORISES the Chief Executive Officer to sign a contract on behalf of the Shire of Serpentine Jarrahdale for Tender RFT 11/2021 - Serpentine Jarrahdale Community Recreation Centre Management; and
3. REQUESTS the Chief Executive Officer provide an annual report to Council on the SJ Community Recreation Centre, including:
 - End of year financial position;
 - Performance of key business areas and any matters of concern;
 - Performance of Contractor against KPI's;
 - Capital works completed and works recommended to be undertaken.



Option 2

That Council:

1. DOES NOT AWARD the contract and requests the Chief Executive Officer provides a report as soon as practicable outlining the implications.
2. NOTES that closure of the Serpentine Jarrahdale Recreation Centre may be required from 1 July 2022, whilst Management Arrangements from this date are finalised.

Option 1 is recommended.

Conclusion

YMCA WA has been assessed as being able to meet the requirements of the contract. The respondent met all of the requirements for Sustainable Procurement; Workplace Health and Safety Measures; Demonstrated Experience; and Methodology, Resources and Capacity for Operational and Maintenance Services for the Management Fee outlined.

Therefore, it is recommended that Council support Option 1 and the contract be awarded to YMCA WA.

Attachments (available under separate cover)

- **6.1.2 – CONFIDENTIAL attachment 1** – RFT 11/2021 - Serpentine Jarrahdale Community Recreation Centre Management – Confidential - Evaluation Item (E22/3428)
- **6.1.2 – CONFIDENTIAL attachment 2** – RFT 11/2021 - Serpentine Jarrahdale Community Recreation Centre Management – Confidential - Probity Report (E22/3700)
- **6.1.2 – CONFIDENTIAL attachment 3** – RFT 11/2021 - Serpentine Jarrahdale Community Recreation Centre Management – Confidential - Probity Certificate (E22/5439)

Alignment with our Strategic Community Plan

Outcome 1.1	A healthy, active, connected and inclusive community
Strategy 1.1.1	Provide well planned and maintained public open space and community infrastructure
Strategy 1.1.2	Provide a healthy community environment
Outcome 1.3	A safe place to live
Strategy 1.3.1	Comply with relevant local and state laws, in the interests of the community
Strategy 1.3.2	Support local emergency services
Outcome 4.1	A resilient, efficient and effective organisation
Strategy 4.1.1	Provide efficient, effective, innovative, professional management of Shire operations to deliver the best outcome for the community within allocated resources
Strategy 4.1.2	Maximise the Shire's brand and reputation in the community
Outcome 4.2	A strategically focused Council
Strategy 4.2.2	Ensure appropriate long term strategic and operational planning is undertaken and considered when making decisions
Strategy 4.2.3	Provide clear strategic direction to the administration



Financial Implications

As the Contract is intended to commence on 1 July 2022, there are no financial implications in the current financial year relevant to this report.

Costs relevant to the Contract from 1 July 2022 will be incorporated into the 2022/2023 – 2026/2027 budget setting processes.

Financial Implications can reasonably be foreseen for Option 2, however these would need to be presented in a subsequent report. For example: it is anticipated that the venue may be closed from 1 July 2022 until Management Arrangements and contractual conditions are resolved. As a result, income from the Centre would be nil until operations resumed.

Outcomes of this item will need to be discussed with relevant stakeholders, in order to determine final cost and management implications of Option 2.

Risk Implications

Risk has been assessed on the Officer Options and Implications:

Officer Option	Risk Description	Controls	Principal Consequence Category	Risk Assessment			Risk Mitigation Strategies (to further lower the risk rating if required)
				Likelihood	Consequence	Risk Rating	
1	Recommended Contractor unable to provide services to an acceptable standard	Procurement and tender evaluation completed as per the Shire procurement policy. Contract Management requirements imbedded into RFT and response documentation.	Social / Community Outcomes	Unlikely	Moderate	MODERATE	Key Performance Indicators to be negotiated for performance management purposes.
2	Delays in appointing a Contractor will have implications for current incumbents, and Contractual implications for Shire. No capacity for the Shire to	Council to note that the Serpentine Jarrahdale Community Recreation Centre is likely to close on 1 July 2022 until management arrangements are resolved. Services	Organisational Performance	Almost Certain	Major	HIGH	Nil



	assume operations at the Centre until a Management body is appointed. Centre likely to close.	delivered to the community from the Recreation Centre (including gym and out of school care services) would cease during this time.					
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Voting Requirements: Simple Majority

Officer Recommendation

That Council:

1. AWARDS Tender RFT 11/2021 - Serpentine Jarrahdale Community Recreation Centre Management to YMCA WA to the value of \$620,000, excluding GST, as contained within **CONFIDENTIAL attachment 1**; for a period of five (5) years with an optional extension of 3 years subject to satisfactory performance and entirely at the Council's discretion;
2. AUTHORISES the Chief Executive Officer to sign a contract on behalf of the Shire of Serpentine Jarrahdale for Tender RFT 11/2021 - Serpentine Jarrahdale Community Recreation Centre Management; and
3. REQUESTS the Chief Executive Officer provide an annual report to Council on the SJ Community Recreation Centre, including:
 - End of year financial position;
 - Performance of key business areas and any matters of concern;
 - Performance of Contractor against KPI's;
 - Capital works completed and works recommended to be undertaken.



SCM011/06/22

COUNCIL RESOLUTION

Moved Cr Dagostino, seconded Cr Coales

That Council:

- 1. AWARDS Tender RFT 11/2021 - Serpentine Jarrahdale Community Recreation Centre Management to YMCA WA to the value of \$620,000, excluding GST, as contained within CONFIDENTIAL attachment 1; for a period of five (5) years with an optional extension of 3 years subject to satisfactory performance and entirely at the Council's discretion;**
- 2. REQUESTS the Chief Executive Officer to present the contract to Council for Tender RFT 11/2021 - Serpentine Jarrahdale Community Recreation Centre Management for APPROVAL prior to execution; and**
- 3. REQUESTS the Chief Executive Officer provide an annual report to Council on the SJ Community Recreation Centre, including:**
 - End of year financial position;**
 - Performance of key business areas and any matters of concern;**
 - Performance of Contractor against KPI's;**
 - Capital works completed and works recommended to be undertaken.**

CARRIED UNANIMOUSLY 7/0

Reason for difference to Officer Recommendation

To allow Council to approve the final negotiated contract.

Councillor Duggin returned to the Chambers at 7:52pm.

Presiding Member, Councillor Rich advised Councillor Duggin of the Council Resolution for item 6.1.2.



Councillor Coales declared a Financial Interest in item 6.1.3 and left the Chambers at 7:54pm prior to this item being discussed.

6.1.3 – Consideration of correspondence received from the State Solicitor’s Office dated 8 June 2022 regarding the Invalidity Complaint into the 2021 Local Government Election in the North Ward (SJ2762)	
Responsible Officer:	Manager Governance and Strategy
Senior Officer:	Chief Executive Officer
Disclosure of Officer’s Interest:	No Officer involved in the preparation of this report has an interest to declare in accordance with the provisions of the <i>Local Government Act 1995</i> .

Authority / Discretion

Executive	The substantial direction setting and oversight role of the Council such as adopting plans and reports, accepting tenders, directing operations and setting and amending budgets.
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Report Purpose

The purpose of this report is to enable Council to consider a response to the State Solicitors Office correspondence dated 8 June 2022 regarding the Invalidity Complaint into the 2021 Local Government Election in the North Ward.

Relevant Previous Decisions of Council

<p><i>Special Council Meeting – 10 November 2021 – SCM079/11/21 - COUNCIL RESOLUTION / Officer Recommendation</i></p> <p><i>That Council:</i></p> <ol style="list-style-type: none"><i>1. NOTES the legal advice obtained by the Shire of Serpentine Jarrahdale related to the 2021 Ordinary Local Government Election contained in CONFIDENTIAL attachments 3 and 4 and the response from the Western Australian Electoral Commission contained in attachment 2.</i><i>2. RESOLVES that in accordance with section 4.80 of the Act that an invalidity complaint is made pertaining to the 2021 ordinary local government election in the Shire of Serpentine Jarrahdale North Ward.</i><i>3. REQUESTS the Chief Executive Officer use the Council Report for item 6.1.1 as supporting material for the complaint, plus any other factual information, together with a Form 53C.</i>
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Background

At a Special Council Meeting on 10 November 2021, Council resolved to make an Invalidity Complaint into the 2021 local government election conducted in the North Ward. A second Invalidity Complaint into the same election was made by Mr Shaye Mack. At the first sitting of the Court of Disputed Returns held on Tuesday, 7 December 2021 at the Armadale



Magistrates Court, the Magistrate ordered that the two complaints would be heard together and evidence in one taken as evidence in the other.

A further directions hearing was held on 25 January 2022. At this hearing it was determined that the parties to the matter would be the Western Australian Electoral Commission represented by the State Solicitor's Office; Mr Mack; the Shire of Serpentine Jarrahdale and the two Councillors elected in the North Ward at the 2021 election.

The hearings on the matter were heard on 3 and 5 May 2022 and 2 June 2022.

At the 2 June 2022 hearing the Magistrate indicated that he would make a ruling on the matter on 1 July 2022.

On 8 June 2022, the Shire's legal representatives received correspondence from the State Solicitor's Office (**CONFIDENTIAL attachment 1**) proposing orders related to costs resulting from the matter in advance of the Magistrate's decision. The Shire's solicitor is seeking a position on this correspondence and instruction. This paper has been prepared to enable Council to consider this correspondence and a response.

Community / Stakeholder Consultation

Nil.

Statutory Environment

Regulation 87 of the *Local Government (Election) Regulations 1997* (the Election Regulations) states that:

(1) The Court can make any order as to costs that the magistrate thinks just but an order cannot be made for the payment of costs by a candidate other than the person who made the invalidity complaint unless it is proved to the Court that the candidate, or the candidate's agent, has contravened Part 4 of the Act.

(2) An order for costs can be enforced as an order of a court of summary jurisdiction.

Part 4 of the *Local Government Act 1995* relates to the conduct of elections and includes 12 divisions, including, but not limited to, Division 11 which relates to Electoral Offences.

Comment

Generally speaking, Courts make costs orders in an adversarial situation. In Court proceedings where there are two parties in an adversarial relationship, then commonly the loser is ordered to pay the winner's costs. The matter of an invalidity complaint is not a traditional adversarial situation. Nevertheless, under Regulation 87 of the Election Regulations the Magistrate may make an order related to costs.

The State Solicitor's Office position related to costs in the matter and rationale for this position is clearly articulated in their correspondence at **CONFIDENTIAL attachment 1**.

Overall, Officer's contend that it would be premature for Council to determine a position regarding an order as to costs in the matter. This is because Regulation 87 of the Election Regulations provides conditions on the awarding of costs that are contingent on the possible findings of the Court. This cannot be known until the Magistrate makes a ruling.



It is also a possibility that if the Magistrate rejects the complaints and rules that the election was valid that costs could be awarded against the Shire as it was the Shire that brought the invalidity complaint.

Neither can be known until a ruling is made.

As an alternative to pre-empting the Magistrate's decision, Officers recommend that Council take the position that the Magistrate invite submissions as to costs from parties after making the decision in the matter. This would enable parties to make a determination as to whether the conditions under Regulation 87 have been met.

If Council was to resolve in the affirmative, this position would be taken by the Shire's solicitor in correspondence to the State Solicitor's Office and to the Court at the 1 July 2022 hearing.

This approach has been discussed with the Shire's solicitors who agree that it is an appropriate course of action at this time as that at the present time there is considerable uncertainty as to the prospects of success of an application for costs by the Shire against any of the other parties to the matter. This will become much clearer with the decision by the Magistrate.

A report to Council could be presented as soon as practicable following the Magistrate's decision to enable Council to give consideration to the possible orders in light of the Magistrate's decision and the reasons.

Alternatively, Council could resolve a position that the Shire's costs be met by another party subject to the conditions of Regulation 87 being met or that costs be met by the Western Australian Electoral Commission. Council pursuing either of these options at this time may result in a counter submission from parties requesting that their costs are met by the Shire who brought the action to the Court. This is not recommended at this time as the decision has not been made and reasons for the decision have not been published.

The Shire's legal expenses in this matter at the time of preparing this report have been \$60,305. The expenses of the other parties are not known.

Options and Implications

Option 1

That Council RESOLVES a position that the question of the awarding costs in the Invalidation Complaint into the 2021 Local Government Election in the North Ward be determined following submissions by the parties to the Magistrate after a ruling on the Invalidation Complaint is made.

Option 2

That Council RESOLVES a position that costs be paid by a candidate if it is determined under Regulation 87 of the *Local Government (Election) Regulations 1997* that a candidate, or the candidate's agent, has contravened Part 4 of the Act.

Option 3

That Council RESOLVES a position that costs be paid by the Western Australian Electoral Commission.

Option 1 is recommended.



Conclusion

It is the viewpoint of Officers that it is premature for Council to resolve a position on the question of costs prior to a decision being made by the Magistrate. This position is supported by the Shire's solicitors.

Attachments (available under separate cover)

6.1.3 – CONFIDENTIAL - attachment 1 – Correspondence from the State Solicitor's Office regarding the awarding of costs in the invalidity complaint matter (IN22/11300)

Alignment with our Strategic Community Plan

Outcome 4.2	A strategically focused Council
Strategy 4.2.3	Provide clear strategic direction to the administration

Financial Implications

There are no immediate financial implications associated with this report. The Shire's legal expenses in this matter at the time of preparing this report have been \$60,305. Officers are not aware of the magnitude of the costs of other parties at this time.

Risk Implications

Risk has been assessed on the Officer Options and Implications:

Officer Option	Risk Description	Controls	Principal Consequence Category	Risk Assessment			Risk Mitigation Strategies (to further lower the risk rating if required)
				Likelihood	Consequence	Risk Rating	
1	That the Magistrate makes an order to costs at the 1 July 2022 hearing without submissions being made on the matter.		Financial	Rare	Moderate	LOW	
2	This approach may be looked upon unfavourably and may result in a counter claim for costs.		Financial	Unlikely	Moderate	LOW	
3	This approach may be looked upon unfavourably and may result in a counter claim for costs.		Financial	Possible	Moderate	MODERAT	



SCM012/06/22

COUNCIL RESOLUTION

Moved Cr Strange, seconded Cr Byas

That the meeting be closed to members of the public to provide the opportunity for Councillors to discuss confidential legal advice in regard to item 6.1.3, pursuant to section 5.23(2)(d) of the *Local Government Act 1995*.

CARRIED UNANIMOUSLY 7/0

At 7:55pm, the meeting went behind closed doors.

The Chief Executive Officer tabled and provided a copy of confidential legal advice obtained on this matter to each Councillor in attendance.

The Shire President provided time for Councillors to read the confidential legal advice.

Prior to the reopening of the meeting to the public, Councillors returned the copies of the confidential legal advice to the Chief Executive Officer.

SCM013/06/22

COUNCIL RESOLUTION

Moved Cr Byas, seconded Cr Duggin

That the meeting be reopened to members of the public.

CARRIED UNANIMOUSLY 7/0

At 8:13pm, the doors were reopened, and the public returned to the Gallery.

Voting Requirements: Simple Majority

Officer Recommendation

That Council RESOLVES a position that the question of the awarding costs in the Invalidation Complaint into the 2021 Local Government Election in the North Ward be determined following submissions by the parties to the Magistrate after a ruling on the Invalidation Complaint is made.



SCM014/06/22

COUNCIL RESOLUTION

Moved Cr Duggin, seconded Cr Dagostino

That Council:

- 1. RESOLVES a position that the question of the awarding costs in the Invalidation Complaint into the 2021 Local Government Election in the North Ward be determined following submissions by the parties to the Magistrate after a ruling on the Invalidation Complaint is made.**
- 2. REQUESTS the Chief Executive Officer make a request to the Court for any available transcripts.**
- 3. REQUESTS the Chief Executive Officer provide information to Council regarding explanations for Court adjournments when a report is presented to Council on consideration of costs.**

CARRIED UNANIMOUSLY 7/0

Reason for difference to Officer Recommendation

To provide Councillors with further information when making decision on costs.

Councillor Coales returned to the Chambers at 8:22pm.

Presiding Member, Councillor Rich advised Councillor Coales of the Council Resolution for item 6.1.3.



7. Motions of which notice has been given:

Nil.

8. Urgent business:

Nil.

9. Closure:

There being no further business, the Presiding Member declared the meeting closed at
8:24pm.

I certify that these minutes were confirmed at the Ordinary Council Meeting held on the 20 June 2022

..... Presiding Member – Councillor Rich

27/06/2022 Date