COUNCIL MEETING

AGENDA

For the Ordinary Meeting of Council to be held on

11 December 2024

Dear Council Member,

The next Ordinary Meeting of the Shire of Cranbrook will be held on Wednesday 11 December 2024 at the Frankland River Community Centre commencing at 3.00pm.

Linda Gray
Chief Executive Officer

PUBLIC QUESTION TIME – RULES AND PROCEDURES

The Shire of Cranbrook provides the public with the opportunity to raise questions (as per Section 5.24 of the Local Government Act 1995), or to make a brief statement on issues of concern at all Ordinary Meetings, Special Meetings and Standing Committee Meetings of Council.

The Local Government (Administration) Regulations 1996 requires that a minimum of 15 minutes is to be provided at the beginning of the meeting for question time (where members of the public wish to ask questions).

Question time is the first item on the agenda and the following procedures apply:

1. A member of the public who raises a question during question time is to state his or her name and address. Questions should be directed to the Shire President (or Chairman at Committee Meetings).

2. A question may be taken on notice by the Council or committee for later response.

3. When a question is taken on notice under sub-clause (2) a response is to be given to the member of the public in writing by the CEO, and a copy is to be included in the agenda of the next meeting of the Council or committee as the case requires.

4. Council encourages input from the public but will not debate any issue with those in attendance at meetings.

5. The President (or Chairman) has the right to determine any address, question or statement made by a member of the public to be out of order if it is considered to be:
   (i) a personal attack or adverse reflection on the integrity of Elected Members or Employees;
   (ii) inappropriate behaviour and use of public question time. **Such behaviour will not be permitted or tolerated**.

6. Prevention of Disturbance (refer to Standing Order Local Law clause 8.6)
   a) Any member of the public addressing the Council or a committee is to extend due courtesy and respect to the Council or committee and the processes under which they operate and must take direction from the person presiding whenever called upon to do so. (Penalty $1,000)
   b) No person observing a meeting is to create a disturbance at a meeting, by interrupting or interfering with the proceedings, whether by expressing approval or dissent, by conversing or by any other means. (Penalty $1,000)

7. Copies of "Public Question Time – Rules and Procedures" will be distributed at each Council/Committee Meetings where members of the public are in attendance.

Recording Of Proceedings

1. No person is to use any electronic, visual or vocal recording device or instrument to record the proceedings of the Council or a committee without the written permission of the Council.
2. Subclause (1) does not apply if the record is taken by or at the direction of the CEO, with the permission of the Council or committee.

DISCLAIMER

This agenda has yet to be dealt with by the Council. The recommendations shown at the foot of each item have yet to be considered by the Council and are not to be interpreted as being the position of the Council. The minutes of the meeting held to discuss this agenda should be read to ascertain the decision of the Council.

In certain circumstances members of the public are not entitled to inspect material, which in the opinion of the Chief Executive Officer is confidential, and relates to a meeting or a part of a meeting that is likely to be closed to members of the public. No responsibility whatsoever is implied or accepted by the Shire of Cranbrook for any act, omission, statement or intimation occurring during Council or Committee meetings.

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The Shire of Cranbrook advises that anyone who has any application lodged with the Shire of Cranbrook must obtain and should only rely on WRITTEN CONFIRMATION of the outcome of the application and any conditions attaching to the decision made by the Shire of Cranbrook in respect of the application.

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Recording of Meetings

- All Council Meetings are digitally recorded, for audio only, except for Confidential Agenda Items (in accordance with Section 5.23(2) of the *Local Government Act 1995*) during which time recording ceases.
- Following publication and distribution of the meeting minutes to Council Members the digital audio recording will be available on the Shire's website.

Defamation – cl 14K *Local Government (Administration) Regulations 1996*

(1) A local government is not liable to an action for defamation in relation to any of the following done by the local government as required or authorised under this Part —

(a) publicly broadcasting a meeting;
(b) making a recording of a meeting;
(c) making a recording of a meeting publicly available;
(d) retaining a recording of a meeting or a copy of a recording;
(e) providing a copy of a recording of a meeting to the Departmental CEO.

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AGENDA

1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

The Shire President, Cr Pollard as Presiding Member will declare the meeting open at pm. The Shire President will alert the meeting to the procedures for emergencies including evacuation, designated exits and muster points.

2. ATTENDANCE / APOLOGIES / APPROVED LEAVE OF ABSENCE

2.1 ATTENDANCE

President	Cr G (George) Pollard
Deputy President	Cr DM (Daisy) Egerton-Warburton
Councillors	Cr JA (Jennifer) Quick
	Cr RW (Robert) Johnson
	Cr LM (Lee) Casson
	Cr P (Peter) Denton
	Cr P (Perin) Mulcahy
Chief Executive Officer	Ms LA (Linda) Gray
Acting Manager of Finance	Miss C (Chelsea) Paterson
Executive Officer	Miss JL (Jo) Scott

Members of the Public

2.2 APOLOGIES

2.3 APPROVED LEAVE OF ABSENCE

3. APPLICATIONS FOR LEAVE OF ABSENCE

4. PUBLIC QUESTION TIME

4.1 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

4.2 PUBLIC QUESTIONS

5. ANNOUNCEMENTS BY THE PRESIDING MEMBER WITHOUT DISCUSSION

6. PETITIONS / DEPUTATIONS / PRESENTATIONS / SUBMISSIONS

7. DISCLOSURE OF INTEREST

8. MATTERS FOR WHICH MEETING MAY BE CLOSED

9. CONFIRMATION OF MINUTES OF PREVIOUS MEETING

9.1 ORDINARY MEETING – 20 November 2024

That the minutes from the Ordinary Meeting of Council held on 20 November 2024, be confirmed as a true and correct record.

10. REPORTS OF OFFICERS

10.1 CORPORATE AND COMMUNITY SERVICES

10.1.1	**LIST OF PAYMENTS**
RESPONSIBLE OFFICER:	Chelsea Paterson – Acting Manager of Finance
REPORT AUTHOR:	Alecia Taylor – Finance Officer
FILE REFERENCE:	FM2
APPLICANT:	N/A
DATE OF REPORT:	04/12/2024
ATTACHMENTS:	List of Payments – 1 November 2024 to 30 November 2024

Purpose
The purpose of this report is to advise the Council of payments made during the period 1 November 2024 to 30 November 2024.

Background
Nil

Officer's Comment
Nil

Statutory Environment
Local Government (Financial Management) Regulation 13 and 13A states:

13. List of accounts
(1) If the local government has delegated to the Chief Executive Officer the exercise of its power to make payments from the municipal fund or the trust fund, a list of accounts paid by the Chief Executive Officer is to be prepared each month showing for each account paid since the last such list was prepared:

(a) the payee's name;
(b) the amount of the payment;
(c) the date of the payment; and
(d) sufficient information to identify the transaction.

13A. Payments by employees via purchasing cards
(1) If a local government has authorised an employee to use a credit, debit or other purchasing card, a list of payments made using the card must be prepared each month showing the following for each payment made since the last such list was prepared — (a) the payee's name;

(b) the amount of the payment;
(c) the date of the payment;
(d) sufficient information to identify the payment.

(2) A list prepared under subregulation (1) must be —

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

Policy Applicable – Implications
Council Policy 4.8 – 'Purchasing', states that:
"The Chief Executive Officer is delegated authority to make payments from the Municipal Fund or the Trust Fund. Each payment from the Municipal Fund or the Trust Fund is to be noted on a list compiled for each month showing:

a) The payee's name
b) The amount of the payment
c) The date of the payment
d) Sufficient information to identify the transaction.

The list referred to above is to be presented to the Council at each ordinary meeting of the Council and is to be recorded in the minutes of the meeting at which it is presented.

It is considered appropriate to delegate this authority to the Chief Executive Officer as the payment of accounts is the final process after debts have been incurred through other processes and systems in place."

Financial Implications
There are no financial implications for this report.

Risk Implications
The risks associated with matters in this report are:

- Misconduct
- Errors, Omissions and Delays
- Failure of IT and or Communication Systems and Infrastructure
- Failure to fulfil Statutory, Regulatory or Compliance Requirements
- Inadequate Document Management Processes
- Inadequate Supplier/Contract Management

The **impacts** of the risk are: Financial, Non-Compliance and Reputational,
The **consequences** of these risks are considered to be: Major
The **likelihood** is: Rare
Hence the **risk rating** for this report is: Low

Risk mitigation includes the Council having strong financial policies and procedures in place and the requirement to report to the Council on a monthly basis.

Strategic Community Plan Reference
The 2021-2031 Shire of Cranbrook, Strategic Community Plan states that:

Key Pillar: Connect
Outcome 16 – High Performing Shire: An accountable and respected Shire, investing in its people and structures.
Deliverable 16.1: A Shire and supporting entities are well-governed with delineated roles and accountabilities.

Consultation
Consultation was not required for this report.

Voting Requirements
Simple Majority

OFFICER'S RECOMMENDATION
That the payment of accounts totalling $1,065,388.33 per the attachment be noted:

- **Electronic Funds Transfers EFT 15917 to EFT 16053 - $863,271.36 including fuel card purchases of $821.28;**
- **Internal Account Transfers (Payroll) - $155,854.48 and**
- **Direct Debit - $46,262.49 including credit card purchases of $7,861.02.**

10.1.2	MONTHLY FINANCIAL REPORT – NOVEMBER 2024
RESPONSIBLE OFFICER:	Chelsea Paterson – Acting Manager of Finance
REPORT AUTHOR:	Chelsea Paterson – Acting Manager of Finance
FILE REFERENCE:	FM12
APPLICANT:	N/A
DATE OF REPORT:	04 December 2024
ATTACHMENTS:	Financial Statements for November 2024

Purpose
The purpose of this report is to present the financial position of the Shire of Cranbrook as at 30 November 2024.

Background
The Local Government (Financial Management) Regulations 1996 require a statement of financial activity to be prepared each month and prescribe the contents of that report and accompanying documents. The report is to be presented at an ordinary meeting of the Council within two months after the end of the month to which the report relates.

Officer's Comment
In the *Local Government (Financial Management) Regulations 1996*, part 4, which outlines the monthly financial reporting requirements, has recently been amended with changes effective from 1 July 2023. The statement of financial activity in the monthly report is now required to be structured in the same way as the annual budget and is to be shown according to nature classification. The monthly report must also include a statement of financial position as at the last day of the previous month. These reports must be presented within 2 months after the end of the previous month and be recorded in the minutes of the meeting at which it is presented.

The template for the Monthly Financial Report has been updated to comply with industry standards and all statutory reporting requirements are contained within the report.

The attached November 2024 Monthly Financial Report represents Five (5) months of the financial year. The following items are worthy of noting on the November 2024 report:

- Closing surplus position of $3,796,385 (shown on page 2).
- Cash and cash equivalents of $8,436,594 of which $3,599,878 is held in cash backed reserve accounts (shown on page 10)
- Outstanding rates of $824,589 equates to 25.9% the 2024/2025 rates levied and arrears from previous years (shown on page 15); and
- Explanation of material variances is shown by nature on page 6.

Statutory Environment
The Local Government (Financial Management) Regulations 1996 define the requirements for monthly financial reporting (Regulations 34 and 35).

Policy Applicable – Implications
Council Policy 4.1 Defining Material Variances

Financial Implications
The attached report represents the financial position of the Council at the end of the previous month and the adoption of the recommendation below does not have a financial impact.

Risk Implications
The risks associated with matters in this report are:

- Misconduct
- Errors, Omissions and Delays
- Failure of IT and or Communication Systems and Infrastructure
- Failure to fulfil Statutory, Regulatory or Compliance Requirements
- Inadequate Document Management Processes
- Inadequate Supplier/Contract Management

The **impact** of the risk is Financial, Non-Compliance and Reputational
The **consequences** of these risks are considered to be Major
The **likelihood** is Rare
Hence the **risk rating** for this item is Medium

Risk mitigation includes the Council having strong financial policies and procedures in place and the requirement to report to the Council on a monthly basis.

Strategic Community Plan Reference
The 2021-2031 Shire of Cranbrook, Strategic Community Plan states that:

Key Pillar: Connect
Outcome 16 – High Performing Shire: An accountable and respected Shire, investing in its people and structures.
Deliverable 16.1: A Shire and supporting entities are well-governed with delineated roles and accountabilities.

Consultation
Consultation was not required for this report.

Voting Requirements
Simple Majority

OFFICER'S RECOMMENDATION
That the attached Monthly Financial Report (containing the Statement of Financial Activity) for the period ending 30 November 2024 be received.

10.1.3	**VARIATION TO BUDGETED RESERVE TRANSFERS**
RESPONSIBLE OFFICER:	Linda Gray – Chief Executive Officer
REPORT AUTHOR:	Jodi Masson – Senior Finance Officer
FILE REFERENCE:	FM6
APPLICANT:	N/A
DATE OF REPORT:	04 December 2024
ATTACHMENTS:	Nil

Purpose
The purpose of this report is to seek Council approval for the transfer of funds from the Building Asset Management Reserve to the Municipal Account, specifically for the continuation of restoration works to the Unicup Hall.

Background
Reserve accounts are established under section 6.11 of the *Local Government Act 1995* to set aside funds for a specific purpose to be used in a future period. These funds must be untilised in accordance with the prescribed purpose outlined in the annual budget.

Any variation or access to these funds throughout the year requires approval from Council.

The 2023-2024 Annual Budget included a provision, approved by Council, for the transfer of $42,735, from the Building Asset Management Reserve. This amount was set aside to fund restoration works to the Unicup Hall, which were covered by an insurance claim following an earthquake in 2018.

It was anticipated that these funds would be used during the 2023-2024 financial year. However, only $3,210 of the provision has been expended to date, with the remaining funds still available for use.

Further works are now scheduled, including tasks such as the restoration of skirting boards and timbers, replacement of the kitchen window, and extensive painting. The estimated cost for these works is approximately $25,000.

A request has been made to transfer these funds from the Building Asset Management Reserve to facilitate the continued works at Unicup Hall. Any unspent funds at the close of the 2024-2025 financial year will be returned to the reserves account.

Officer's Comment
The Building Asset Management Reserve currently holds an amount of $39,525 which was received from an insurance claim for restoration works to Unicup Hall. These funds were allocated in the budget for works, following an earthquake event.

The planned works for this year include skirting board and woodwork restoration, replacement of the kitchen window, and extensive painting.

The total expenditure to restore the hall has remained minimal, largely due to the generous contributions of the local community, whose volunteer efforts have played a significant role in the ongoing repairs.

In order to maintain a balanced budget, management will adjust the associated expense accounts as follows:

Account	Description	Transfer From	Transfer To
113399	Transfer from Reserves	($25,000)	
111207	Capital Expense – Unicup Hall		$25,000
111207	Capital Expense – Unicup Hall	($25,000)	
CP402	Expense – Unicup Hall Maintenance		$25,000
	Net Impact on Budget		$0

Statutory Environment
Section 6.11 of the *Local Government Act 1995*
Local Government (Financial Management) Regulations 1996, various sections.

Policy Applicable – Implications
Policy 4.4 Finance – Investments

Financial Implications
There is no net impact on the 2024-2025 Annual Budget.

Risk Implications
The risks associated with matters in this report are:

- Errors, Omissions and Delays
- Failure to fulfil Statutory, Regulatory or Compliance Requirements
- Inadequate Document Management Processes

The **impacts** of the risk are: Financial, Non-Compliance

The **consequences** of these risks are considered to be: Minor

The **likelihood** is: Unlikely
Hence the **risk rating** for this report is: Low

Risk mitigation includes regular review of budgeted reserve transfers and monitoring for compliance by management.

Strategic Community Plan Reference
The 2021-2031 Shire of Cranbrook, Strategic Community Plan states that:

Outcome 16 – High Performing Shire: An accountable and respected Shire, investing in its people and structures.
Deliverable 16.1: A Shire and supporting entities are well-governed with delineated roles and accountabilities.

Consultation
Consultation was not required for this report.

Voting Requirements
Absolute Majority

OFFICER'S RECOMMENDATION
That Council approve the following transfer of funds from the Building Asset Management Reserves for the purpose of ongoing repairs and maintenance to the Unicup Hall.

Account	Description	Transfer From	Transfer To
113399	Transfer from Reserves	($25,000)	
111207	Capital Expense – Unicup Hall		$25,000
111207	Capital Expense – Unicup Hall	($25,000)	
CP402	Expense – Unicup Hall Maintenance		$25,000
	Net Impact on Budget		$0

10.1.4	**APPLICATION FOR RATES EXEMPTION – NOONGAR BOODJA LAND SUB PTY LTD**
RESPONSIBLE OFFICER:	Chief Executive Officer – Linda Gray
REPORT AUTHOR:	Chief Executive Officer – Linda Gray
FILE REFERENCE:	A9763
APPLICANT:	Noongar Boodja Land Sub Pty Ltd
DATE OF REPORT:	6 December 2024
ATTACHMENTS:	1. Letter of request from Noongar Boodja Land Sub Pty Ltd 2. Arial Map Image of 19 Gillam Street

Purpose
For the Council to approve a request from Noongar Boodja Land Sub Pty Ltd to grant a rate exemption for 19 Gillam Street, Cranbrook, a freehold rural residential vacant block of land.

Background
A request has been received from Noongar Boodja Land Sub Pty Ltd (Noongar Boodja) seeking an exemption from paying rates. They are a registered charity with Australian Charities and Not-for-Profits Commission (ACNC) with the stated purpose of advancing social or public welfare. It is recognised by the Australian Government's Australian Charities and Not-for-profits Commission as being able to access tax concession e.g. GST, Income Tax and FBT from 30 March 2021.

The Noongar Boodja is a special purpose company owned by the Noongar Boodja Trust that holds the legal title and management orders for the Noongar Land Estate from the South West Native Title Settlement. Under the *Local Government Act 1995* Noongar Boodja is required to meet the standard costs, including rates and service charges, associated with owning freehold land. However, freehold land may be exempt from rates under S.6.26(2)(g) of the Act, where that land is used exclusively for charitable purposes.

They have requested Council consider granting a rate exemption based on the provisions of Section 6.26(2)(g) of the *Local Government Act 1995* which provides that the land is used exclusively for charitable purposes for the benefit of the Noongar people and have also requested a back pay of any rates previously paid on the land.

Officer's Comment
Section 6.26(2) of the *Local Government Act 1995* identifies several situations where land is not rateable. Most are clearly defined and straightforward to apply, however, the Act does not define "charitable purpose" leaving Section 6.26(2)(g) open to some interpretation.

In accordance with Council's *Policy 4.20 Finance – Rates Exemptions for Charitable Purposes*, the key considerations when assessing an application for exemption pursuant to Section 6.26 (2)(g) of the Act are:

- The use of the land, not the purpose of the applicant.
- The land must be used exclusively for a charitable purpose.
- The land use must be for public benefit, where the benefit is available to members of the public generally, or a particular section of the public.

It should also be noted that a rates exemption under Section 6.26 only applies to rates and not any other charges such as the ESL levy or rubbish collection charges.

While Noongar Boodja Land Sub Pty Ltd are a registered charity, it is the land use itself under the Act that determines eligibility. The land, 19 Gillam Street, Cranbrook is an uncleared vacant lot and is described by the applicant in their application as having no occupants, buildings or operational use. The Noongar Boodja Land Sub Pty Ltd, however, receives no income from the property as it is vacant land, and under the banner of the Noongar Boodjar Trust which is a registered charity, it holds and uses the property exclusively for the benefit of the Noongar People. It was allocated the land on 28 January 2022.

It should be remembered that the Noongar Boodjar Land Sub Pty Ltd has been set up under the Noongar Land Estate and the South West Native Title Settlement, which is the historic agreement between the Noongar people and the State Government to provide the Noongar people with a significant asset to be developed in line with Noongar cultural, social and economic aspirations for the benefit of generations and to negate native title for this area.
However, the transfer of ownership at this stage has not allowed enough time for the Noongar Boodjar Trust to develop its cultural plan and purpose of the land. It is early days.
In the meantime, local government rates are set by local government and the handover of land in response to the South West Native Title Settlement is managed by State Government.
There has been allocation of land by State Government to Indigenous organisations with no corresponding funding for the payment of local government rates.

Therefore, for local government to make a sound rationale decision, they are forced to interpret the meaning of "charitable" to assess the eligibility of the Noongar Boodja's request as there is no statutory definition of charity in any of the local government enactments that impose rates. It is necessary to turn to the Australian Parliament for a legislative interpretation which then falls under Common Law and back six hundred years to the Charitable Uses Act 1601 (the Preamble). However, not surprising, none of the classifications from that Act reconcile with this matter although the Preamble was not considered, even in its own time, to be exhaustive. The English courts ruled that for a purpose to be 'charitable' it had to be within the spirit and intendment of the Preamble and for the public benefit.

In 1891, Lord Macnaghten in Pemsel's Case stated that the legal meaning of "charity" could be classified into four separate divisions. He stated that a charity should be a trust for one of the following:

- The relief of poverty;
- The advancement of education;
- The advancement of religion; or
- Other purposes beneficial to the community.

These classifications have been consistently used in judicial considerations ever since.

In the matter of Shire of Derby-West Kimberley v Yungngora Association (2007) the request for the exemption of rates was received by the local government for Noonkanbah Station. This was refused because although Noonkanbah was home to a large community it was being run as a commercial cattle station. The local government refused the request, was taken to the State Administrative Tribunal and the request overturned. The local government then took the matter to the Western Australian Court of Appeal where the matter was overturned again due to an error in law in that "land is not used for charitable purposes where the land is used for the purpose of raising funds for charitable purposes". The Court held that the 'benefits to the community and its members are not sufficient for a finding that the Land is used exclusively for charitable purposes'. In our case, there is no commercial benefit to 19 Gillam Road, Cranbrook.

In another case in New South Wales, Toomelah Boggabilla Local Aboriginal Land Council v Minister for Aboriginal and Torres Strait Islander Affairs, the Court considered that the aim of fostering and developing Aboriginal and Torres Strait Islander identity and culture was within the ideals of a public charity.

In New South Wales, Queensland, the Northern Territory and Tasmania State Governments have made it clearer for local governments, that there is an exemption from local government rates where the land is held under some form of statutory land rights regime. This is important because the Noongar Boodja is part of a land rights regime through the South West Native Title Settlement, but the State Government of Western Australia has not provided clarity like NSW and Qld, so local governments who have been left to individually manage these requests. Whilst local governments need to be maintain their rate base in order to be able to meet its service levels, it also needs to be recognised that the success of the South West Native Settlement agreement and the extinguishment of native title over this area has been of benefit to the current landholders, and the establishment of the Noongar Boodja Trust and its objectives should be supported.

Whilst the previous State Administrative Tribunal's decision was complicated because of the operation of a commercial enterprise on Noonkanbah, the Shire of Cranbrook's interpretation and acceptance of the status of Noongar Boodja as being "charitable" is based on two reasons. Firstly, the organisation is registered as a charity, and secondly the advancement of Indigenous peoples is a charitable purpose. Therefore, the Shire of Cranbrook is able to approve an exemption of rates. It is harder to back date the approval though as the Local Government Act 1995 does not provide clarity at all on justifying reversal of revenue from previous financial years. The Shire works off this year's rates for this year's expenditure the recommendation is that it will refuse that request.

Statutory Environment
Local Government Act 1995 WA
Charitable Uses Act 1601
Income Tax Special Purposes Commissioners v Pemsel 1891 (Pemsel's Case)

Policy Applicable – Implications
Council Policy 4.20 Finance – Rates Exemptions for Charitable Purposes
The key considerations when assessing an application for exemption pursuant to Section 6.26 (2)(g) of the Act are:

- The use of the land, not the purpose of the applicant.
- The land must be used exclusively for a charitable purpose.
- The land use must be for public benefit, where the benefit is available to members of the public generally, or a particular section of the public.

Financial Implications
The total cost of the matters in this report are anticipated to be reduced rates income each year, currently $740. There is no rubbish collection charges on this property at present, but ESL levy applies.

Risk Implications
The risks associated with matters in this report are:

- Failure to fulfil Statutory, Regulatory or Compliance Requirements

The **impacts** of the risk are: Financial, Non-Compliance, Reputational
The **consequences** of these risks are considered to be: Minor
The **likelihood** is: Unlikely
Hence the **risk rating** for this report is: Low

Risk mitigation includes adhering to relevant legislation and Council policies.

Strategic Community Plan Reference
The 2021-2031 Shire of Cranbrook, Strategic Community Plan states that:

Key Pillar: Connect
Outcome 16 – High Performing Shire: An accountable and respected Shire, investing in its people and structures.
Deliverable 16.1: A Shire and supporting entities are well-governed with delineated roles and accountabilities.

Consultation
Information from the applicants has been received to determine recommendations based upon case law and general local government interpretation of the *Local Government Act 1995*.

Voting Requirements
Simple Majority

OFFICER'S RECOMMENDATION

1. **That Noongar Boodja Land Sub Pty Ltd be granted a rates exemption under Section 6.26(2)(g) of the Local Government Act 1995 in recognition of its status as a charitable organisation with its charitable purpose being the advancement of Indigenous peoples.**
2. **That Council does not support the back payment of rates to 28/02/2022 as there is no provision in the current Budget for such a purpose.**

10.2 GOVERNANCE AND EXECUTIVE SERVICES

10.2.1	**COUNCIL MEETINGS – SETTING 2025 ORDINARY MEETINGS OF COUNCIL DATES**
RESPONSIBLE OFFICER:	Linda Gray – Chief Executive Officer
REPORT AUTHOR:	Jo Scott – Executive Officer
FILE REFERENCE:	GO26
APPLICANT:	N/A
DATE OF REPORT:	2 December 2024
ATTACHMENTS:	Nil

Purpose
The purpose of this report is for the Council to set the Ordinary Meeting dates for 2025 as per Council Policy 1.1.

Background
Nil

Officer's Comment
Council Policy 1.1 – Meetings of Council states that all Ordinary Council Meetings will be held at 3:00pm on the third Wednesday of each month (excluding January).

The proposed dates for the Ordinary Council Meetings for 2024 are as follows:

19 February 2025	Cranbrook
19 March 2025	Cranbrook
16 April 2025	Frankland River
21 May 2025	Cranbrook
18 June 2025	Cranbrook
16 July 2025	Cranbrook
20 August 2025	Frankland River
17 September 2025	Cranbrook
15 October 2025	Cranbrook
19 November 2025	Frankland River
17 December 2025	Cranbrook

Statutory Environment
Local Government Act 1995 – Section 5.3 provides that a Council is to hold Ordinary Council Meetings and may hold Special Council Meetings.

Local Government Act 1995 – Section 5.5 requires the CEO to convene Ordinary Council Meetings by giving each Council member at least 72 hours' notice of a date, time and place of a meeting and an agenda for the meeting.

Local Government (Administration) Regulations 1996 – regulation 12 requires that Ordinary Council Meetings to be held in the next 12 months shall be advertised.

Further, a local government is to give local public notice of any change to the date, time or place of the meeting.

Policy Applicable – Implications
Council Policy 1.1 – Meetings of Council relates to this report.

Financial Implications
There will be advertising costs for this report.

Risk Implications
The risks associated with matters in this report are:

- Failure to fulfil Statutory, Regulatory or Compliance Requirements

The **impact** of the risk is Non-Compliance
The **consequences** of these risks are considered to be Insignificant
The **likelihood** is Rare
Hence the **risk rating** for this item is Low

Risk mitigation includes ensuring the date, venue and time of all Ordinary Council Meetings are advertised as per the *Local Government Act 1995* and *Local Government (Administration) Regulations 1996*.

Strategic Community Plan Reference
The 2021-2031 Shire of Cranbrook, Strategic Community Plan states that:

Outcome 16 – High Performing Shire: An accountable and respected Shire, investing in its people and structures.
Deliverable 16.1: A Shire and supporting entities are well-governed with delineated roles and accountabilities.

Consultation
Consultation was not required for this report.

Voting Requirements
Simple Majority

AUDIT COMMITTEE'S RECOMMENDATION
That Council:

1. **Approve the following Ordinary Council Meeting dates and venues for 2025:**

19 February 2025	**Cranbrook**
19 March 2025	**Cranbrook**
16 April 2025	**Frankland River**
21 May 2025	**Cranbrook**
18 June 2025	**Cranbrook**
16 July 2025	**Cranbrook**
20 August 2025	**Frankland River**
17 September 2025	**Cranbrook**
15 October 2025	**Cranbrook**
19 November 2025	**Frankland River**
17 December 2025	**Cranbrook**

2. **Request the Chief Executive Officer to advertise the approved dates per the *Local Government (Administration) Regulations 1996* – regulation 12.**

10.2.2	**PROPOSED OUTBUILDING AND RAINWATER TANK – LOT 28 (NO 38) FENWICK STREET, TENTERDEN**
RESPONSIBLE OFFICER:	Linda Gray – Chief Executive Officer
REPORT AUTHOR:	Liz Bushby – Consultant Planner (Town Planning Innovations)
FILE REFERENCE:	A1136
APPLICANT:	Peter Atkins
DATE OF REPORT:	4 December 2024
ATTACHMENTS:	Nil

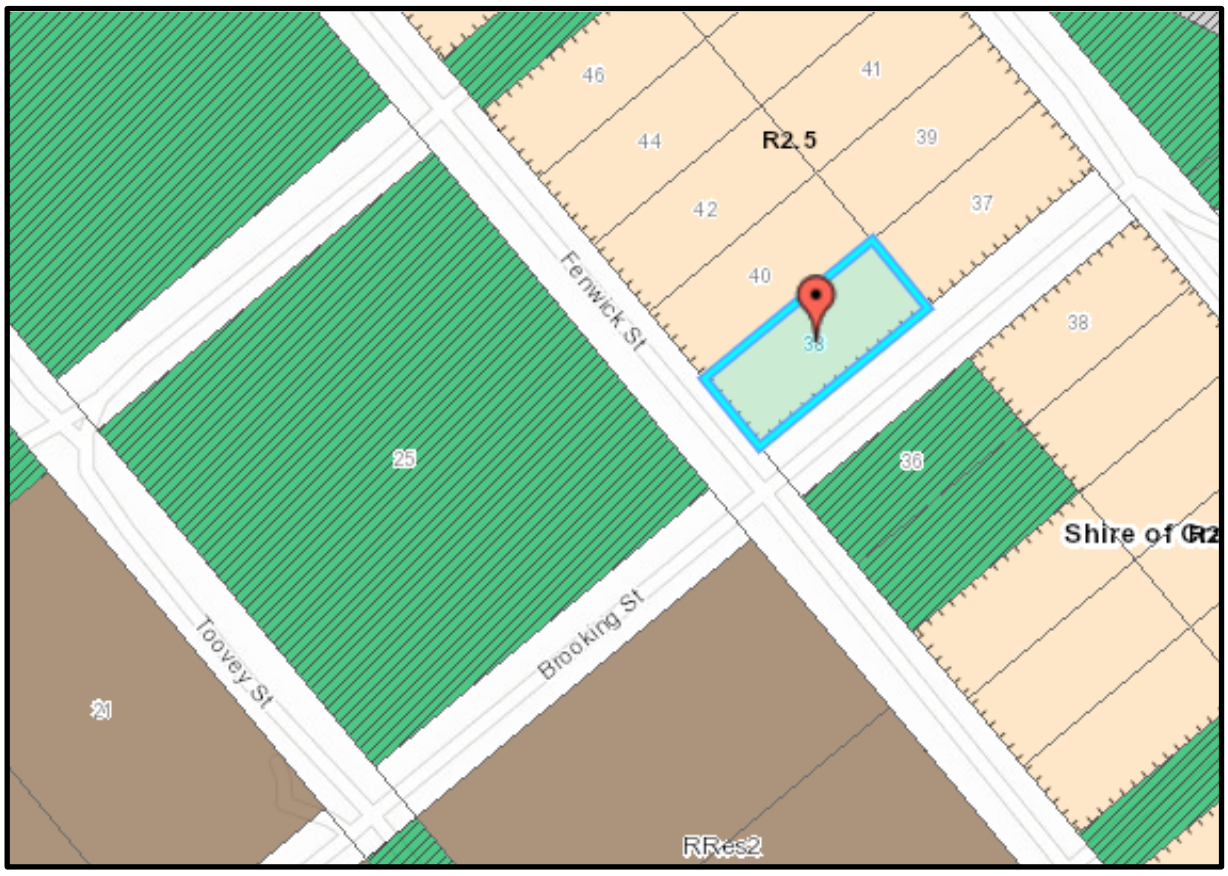
Purpose

The purpose of this report is for Council to consider a development application for an outbuilding and a water tank on Lot 28 (No 38) Fenwick Street, Tenterden.

Background

Lot 28 is zoned is zoned 'Residential' with an R2.5 density code under the Shire of Cranbrook Town Planning Scheme No 4 (the Scheme).

A zoning plan is included below for ease of reference. The lot has an approximate area of 4047m^2 and is vacant.



Officer's Comment

- ***Description of Proposal***

The owner proposes to place a sea container on the lot to be used as an outbuilding. It is proposed to be well setback from Fenwick and Brooking Street. It will be setback 12 metres from the rear lot boundary and 9 metres from the interest north-west lot boundary.

A 23,000 litre water tank is also proposed 3 metres from the north-west lot boundary.

A site plan is included below.

- ***Residential Design Codes***

Where land is zoned Residential, development is guided by the Residential Design Codes produced by the Western Australian Planning Commission.

The Residential Design Codes have 'deemed to comply' requirements for outbuildings. Where an application complies with the 'deemed to comply' requirements planning approval is not required.

Where there is a variation to the Residential Design Codes, it has to be assessed against more subjective Design Principles.

The proposed outbuilding seeks variations to the Residential Design Codes as detailed below:

Clause 5.4.3 C3 B 'deemed to comply' criteria / Outbuildings that:	Officer Comment (TPI)
(i) individually or collectively does not exceed 60sqm in area or 10 percent in aggregate of the site area, whichever is the lesser	Complies. A floor area of 29.6m^2 is proposed.
(ii) setback in accordance with Table 2a.	Complies.
(iii) does not exceed a wall height of 2.4 metres	Variation. A wall height of 2.9 metres is proposed.
(iv) does not exceed a ridge height of 4.2 metres	Complies.
(vi) not located within the primary or secondary street setback area; and	Complies.
vi) do not reduce the open space and outdoor living area requirements in table 1.	Complies.

The application proposes a variation to the 'Deemed to Comply' requirements therefore Council has to consider whether the outbuilding complies with the 'Design Principle' (5.4.3 P3) of the Codes which is:

> "*Outbuildings that do not detract from the streetscape or the visual amenity of residents of neighbouring properties*".

TPI is of the view that the proposed outbuilding will not detract from the streetscape as is proposed to the rear of the property, and the location means the outbuilding will not be highly prominent when viewed from Fenwick Street.

Although there is a variation to the wall height, the maximum roof height still complies. TPI is of the view that the outbuilding will not have any detrimental impact on neighbouring properties.

- ***State Planning Fact Sheet on Outbuildings***

Whilst not a policy or position statement, the Western Australian Commission has a Fact Sheet on Outbuildings.

It states that '*As a shipping container is a structure that is typically enclosed and not used for habitable purposes, it falls within the definition of an outbuilding.'*

It also states that '*If a local government has concerns about the appearance of this kind of outbuilding or shed, the solution is to introduce scheme provisions or a Local Planning Policy that deals with visual impacts including design, materials and finishes'.*

- ***State Planning Policy 3.7 : Planning for Bushfire Prone Areas***

Under the 'deemed provisions' of the *Planning and Development (Local Planning Schemes) Regulations 2015* Council is to have 'due regard' to any state planning policy. This essentially means Council has an obligation to give proper, genuine and realistic consideration to the requirements of 'State Planning Policy 3.7: Planning in Bushfire Prone Areas' (SPP 3.7).

The Shire has a <u>mandatory obligation</u> to consider SPP3.7 when making a decision on any application where the lot is within a designated bushfire prone area.

The Western Australian Planning Commission originally released SPP3.7 and associated Guidelines for Planning in Bushfire Prone Areas ('the Guidelines') in December 2015. These documents apply to all land identified as Bushfire Prone.

Mapping identifying Bushfire Prone Areas is available through the Department of Fire and Emergency Services website. Lot 28 is within the declared bushfire prone area shown in pink on the map overpage.

The Western Australian Planning Commission released a new version of State Planning Policy 3.7 in November 2024.

The bushfire guidelines exempt outbuildings from needing any Bushfire Attack Level assessment where they are more than 6 metres from any habitable building.

A Bushfire Attack Level assessment is therefore not considered necessary for the proposed development as part of the planning process, as it is not in proximity to any proposed habitable building.

Statutory Environment

Planning and Development Act 2005 – The current Residential Design Codes were made under Part 3A of the Act. The Codes have moved from a being a State Planning Policy to being a Planning Code.

New Residential Design Codes (Volume 1, 2024) became operative on the 10 April 2024.

Shire of Cranbrook Town Planning Scheme No 4 – Explained in the body of this report.

Planning and Development (Local Planning Schemes) Regulations 2015 - The *Planning and Development (Local Planning Schemes) Regulations 2015* were gazetted on 25 August 2015, and became effective on 19 October 2015.

The Regulations include 'Deemed Provisions' that automatically apply and override sections of the Shire of Cranbrook Town Planning Scheme No 4.

Clause 61 outlines development where approval is not required. It only exempts outbuildings from the need for planning approval where they are ancillary to a dwelling on the same lot, and where they comply with all requirements of the Residential Design Codes.

Clause 61 also only exempts water tanks from the need for planning approval where the volume is no more than 5000 litres.

Clause 67 outlines 'matters to be considered by Council' including and not limited to the aims and provisions of the Scheme, orderly and proper planning, any approved state policy, the compatibility of the development with its setting including to development on adjoining land, amenity, loading, access, traffic and any submissions received on a proposal.

Policy Applicable – Implications
There is no Council policy applicable to this report.

Financial Implications
The Shire pays consultancy fees to TPI for general planning advice.

Risk Implications
The risks associated with matters in this report are:

- Failure to fulfil Statutory, Regulatory or Compliance Requirements

The **impacts** of the risk are: Non-Compliance
The **consequences** of these risks are considered to be: Minor
The **likelihood** is: Unlikely
Hence the **risk rating** for this report is: Low

Risk mitigation includes seeking professional planning advice.

Strategic Community Plan Reference
The 2021-2031 Shire of Cranbrook, Strategic Community Plan states that:

Outcome 16 – High Performing Shire: An accountable and respected Shire, investing in its people and structures.
Deliverable 16.1: A Shire and supporting entities are well-governed with delineated roles and accountabilities.

Consultation
Consultation for this report included:
(a) Letters to nearby and surrounding landowners;
(b) Publication of a Notice and the proposed plans on the Shire website.

Advertising closed on 29 November 2024 and no submissions were received.

Voting Requirements
Simple Majority

OFFICER'S RECOMMENDATION
That Council:

A. Note that the application for an outbuilding and water tank on Lot 28 (No 38) Fenwick Street, Tenterden has been advertised for public comment. Advertising closed on 29 November 2024 and no submissions were received.

B. Approve the application seeking planning approval for an outbuilding (sea container) and water tank on Lot 28 (No 38) Fenwick Street, Tenterden subject to the following conditions and footnotes:

1. The plans lodged with this application shall form part of this planning approval. All development shall be in accordance with the approved plans unless otherwise approved separately in writing by the Chief Executive Officer.

2. All stormwater from roofed and paved areas shall be collected and disposed of on-site and any associated drains and soak wells shall be maintained in a clean and clear condition. All drainage to be fully contained within the property boundaries with no water discharge into road reserve unless otherwise approved in writing by the Chief Executive Officer.

3. The outbuilding is approved as a non-habitable structure only and shall not be used for habitable purposes at any time.

4. If the development the subject of this approval is not substantially commenced within a period of two years this approval shall lapse and be of no further effect.

Footnote:

a) Planning consent is not an approval to commence construction. A separate building permit must be obtained for all work.

10.3 WORKS

Nil

11. ELECTED MEMBERS MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

12. NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY A DECISION OF THE MEETING

13. MATTERS BEHIND CLOSED DOORS

Statutory Environment
Section 5.23 of the *Local Government Act 1995* allows the Council to close all or part of a Council Meeting to members of the public if the meeting or the part of the meeting deals with a range of issues, dealing with any of the following; (a) a matter affecting an employee or employees; (b) the personal affairs of any person; (c) a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting; (d) legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting; (e) a matter that if disclosed, would reveal — (i) a trade secret; (ii) information that has a commercial value to a person; or (iii) information about the business, professional, commercial or financial affairs of a person, where the trade secret or information is held by, or is about, a person other than the local government; (f) a matter that if disclosed, could be reasonably expected to — (i) impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law; (ii) endanger the security of the local government's property; or (iii) prejudice the maintenance or enforcement of a lawful measure for protecting public safety; (g) information which is the subject of a direction given under section 23(1a) of the *Parliamentary Commissioner Act 1971*; and (h) such other matters as may be prescribed.

As such it is recommended that the meeting be closed to the public in order deal with these items.

A decision to close a meeting or part of a meeting and the reason for the decision are to be recorded in the minutes of the meeting.

Voting Requirements
Simple Majority

OFFICER'S RECOMMENDATION:
That the meeting be closed to members of the public in accordance with section 5.23 (2) (f)(ii) endanger the security of the local government's property.

13.1	**POLICY UPDATE – 1.19 GOVERNANCE – CYBER SECURITY**
RESPONSIBLE OFFICER:	Linda Gray Chief Executive Officer
REPORT AUTHOR:	Linda Gray Chief Executive Officer
FILE REFERENCE:	GO17
APPLICANT:	N/A
DATE OF REPORT:	2 December 2024
ATTACHMENTS:	**Confidential Attachment -** Policy 1.19 Governance Cyber Security

AUDIT COMMITTEE'S RECOMMENDATION

That Council approve the amendments of Policy 1.19 Governance – Cyber Security to include further Risk Mitigation Measures.

14. CLOSURE OF MEETING

There being no further business to discuss, the Shire President, Cr Pollard will declare the meeting closed at pm.