



**MINUTES
OF THE
ORDINARY MEETING
OF COUNCIL
HELD ON
THURSDAY 16 May 2024**

**Council Chambers
Honour Avenue
Wyalkatchem**

**Commencement: 4:03pm
Closure: 7:11pm**

Preface

When the Chief Executive Officer approved these Minutes for distribution they are in essence “Unconfirmed” until the following Ordinary Meeting of Council, where the minutes will be confirmed subject to any amendments.

The “Confirmed” Minutes are then signed off by the Presiding Member.

Unconfirmed Minutes

These draft minutes were approved for distribution on 22 May 2024.



Sabine Taylor
Chief Executive Officer

Confirmed Minutes

These minutes were confirmed at the Ordinary Meeting of Council held 25 June 2024.
Amendments/ Notes have been added.

Signed: 

Cr Garner, Shire President and Presiding Member
Shire of Wyalkatchem

DISCLAIMER

No responsibility whatsoever is implied or accepted by the Shire of Wyalkatchem for any act, omission or statement or intimation occurring during this meeting. It is strongly advised that persons do not act on what is heard at this meeting and should only rely on written confirmation of Council’s decisions, which will be provided within ten days of this meeting.

DISCLOSURE OF INTEREST

Councillors and staff are reminded of the requirements of section 5.65 of the *Local Government Act 1995*, to disclose any interest or perceived interest in any matter to be discussed during a meeting, and also the requirement to disclose any item affecting impartiality.

Financial Interest:

Under section 5.60A of the *Local Government Act 1995*, a person is said to have a financial interest in a matter if it is reasonable to expect that the matter will, if dealt with by the Local Government in a particular way, result in a financial gain, loss, benefit or detriment for the person.

Proximity Interest:

Under section 5.60B of the *Local Government Act 1995*, a person is said to have a proximity interest in a matter if the matter concerns a proposed change to a planning scheme affecting land that adjoins the person's land; a proposed change to the zoning or use of land that adjoins the person's land; or a proposed development of land that adjoins the person's land.

Impartiality Interest:

To maintain transparency, it is important to disclose all interests, including impartiality interests which include interests arising from kinship, friendship and membership of associations. If it is possible that your vote on a matter may be perceived as impartial, you should disclose your interest.

Disclosing an Interest:

Disclosures must be made, in writing, to the Chief Executive Officer prior to the meeting at which the matter in which you have an interest is to be discussed.

If you disclose a Financial or Proximity Interest, you must leave the room while the matter is discussed and voted on. Only after a decision has been reached may you return to the meeting, at which time the Presiding Person will inform you of Council's decision on the matter.

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1. DECLARATION OF OPENING

Shire President, Cr Garner, declared the meeting open at 4:03pm.

2. PUBLIC QUESTION TIME

2.2. Response to Public Questions Previously Taken on Notice

Nil Received.

2.3. Declaration of Public Question Time opened

Public Question Time opened at 4:03pm.

There weren't any questions.

2.4. Declaration of Public Question Time closed

Public Question Time closed at 4:04 pm.

3. ATTENDANCE, APOLOGIES, LEAVE OF ABSENCE

3.2. Attendance

Members:

Cr. Owen Garner	Shire President
Cr. Christy Petchell	Deputy President
Cr. Mischa Stratford	
Cr Christopher Loton	
Cr. Tracy Dickson	
Cr. Justin Begley	
Cr. Rod Lawson Kerr	

Staff:

Sabine Taylor	Chief Executive Officer
Claire Trenorden	Manager of Corporate Services – <i>left the meeting at 4:50pm</i>
Terry Delane	Manager of Works – <i>left the meeting at 5:02pm</i>
Stephanie Elvidge	Governance Executive Officer

Visitors:

Stephen Gamble – *left the meeting at 6:20pm*
Ken Hammond – *left the meeting at 5:30pm*
(Mr Hammond's time amended as per OMC 25 June 2024 item 7.1.1)

3.3. Apologies

Nil

3.4. Approved Leave of Absence

Nil

3.5. Applications for Leave of Absence

Nil

4. OBITUARIES

It was advised that Ken Mews had recently passed.

5. PETITIONS, DEPUTATIONS, PRESENTATIONS

5.2. Petitions

Nil

5.3. Deputations

Nil

5.4. Presentations

Nil

6. DECLARATIONS OF INTEREST

6.2. Financial and Proximity Interest

Cr Mischa Stratford declared a Proximity Interest at late Item 13.1 RESTRICTED VEHICLE APPLICATION (wording adjusted as per OMC 26 June 2024, item 7.1.1).

The extent of her interest is that the family farming business has neighbouring land to the road in question. Approval will not impact on the business in any way.

6.3. Impartiality Interests

Manager of Works Terry Delane declared an Impartiality interest at late Item 13.1 RESTRICTED VEHICLE APPLICATION, also noted in the Agenda Item as presented (wording adjusted as per OMC 26 June 2024, item 7.1.1).

The extent of his interest is that the letter received regarding the matter which is against the application is from a work colleague (non-work related.)

7. CONFIRMATION AND RECEIPT OF MINUTES

7.1. Confirmation of Minutes

7.1.1. Ordinary Meeting of Council – 18 April 2024

Minutes of the Shire of Wyalkatchem Ordinary Meeting of Council held on Thursday 18 April 2024 (Attachment 7.1.1).

OFFICER'S RECOMMENDATION/ COUNCIL RESOLUTION

(62/2024) Moved: Cr Begley

Seconded: Cr Lawson Kerr

That the minutes of the Shire of Wyalkatchem Ordinary Meeting of Council of Thursday 18 April 2024 (Attachment 7.1.1) be confirmed as a true and correct Record, noting that there is a date error in The Item 10.4.3 which will be corrected.

CARRIED 7/0

7.2. Receipt of Minutes

7.2.1. Great Eastern Country Zone – 11 April 2024

Minutes of the Shire of the Great Eastern Country Zone Meeting held on Thursday 11 April 2024 (Attachment 7.2.1).

OFFICER'S RECOMMENDATION/ COUNCIL RESOLUTION

(63/2024) Moved: Cr Petchell

Seconded: Cr Dickson

That the minutes of the Great Eastern Country Zone Meeting held on Thursday 11 April (Attachment 7.2.1) be received.

CARRIED 7/0

8. ANNOUNCEMENTS BY THE PRESIDING PERSON WITHOUT DISCUSSION

Nil

9. MATTERS FOR WHICH THE MEETING MAY BE CLOSED

Confidential Briefing Note – Wyalkatchem Swimming Pool Project.

Councillor Questions on Notice.

10.REPORTS

10.1. CORPORATE AND COMMUNITY SERVICES

10.1.1. ACCOUNTS FOR PAYMENT – APRIL 2024

Applicant:	Shire of Wyalkatchem
Location:	Shire of Wyalkatchem
Date:	16 May 2024
Reporting Officer:	Parul Begum
Disclosure of Interest:	No interest to disclose
File Number:	12.10.02
Attachment Reference:	Attachment 10.1.1 – Accounts for Payment – April 2024

SUMMARY

To provide Council with a list of accounts paid by the Chief Executive Officer in accordance with his delegated authority and for Council to endorse the payments made for the prior month.

BACKGROUND

The *Local Government (Financial Management) Regulations 1996, s13(1)*, requires that if a local government has delegated to the CEO its power to make payments from the municipal fund or the trust fund, a list of accounts paid by the CEO is to be prepared each month showing all payments since the last such list was prepared.

Council has delegated to the CEO (delegation number 1.2.17) the power to make payments from the municipal fund or trust fund.

COMMENT

The payment listing for April 2024 is presented to Council for endorsement.

MARCH 2024

Bank Account	Payment Type	Last Number	First Number in the report
Municipal and Trust	EFT	EFT 3666	EFT 33608
DD	DD	DD 3219.1	DD 3178.1

STATUTORY ENVIRONMENT

Local Government (Financial Management) Regulations, S13.1

POLICY IMPLICATIONS

There are no direct policy implications in relation to this item.

FINANCIAL IMPLICATIONS

Expenditure in accordance with the 2023/2024 Annual Budget.

COMMUNITY and STRATEGIC OBJECTIVES

The matter before Council generally accords with the following Shire desired outcome as expressed in the revised Shire of Wyalkatchem Strategic Community Plan.

Goal No.	Strategies		Actions
Goal 10	Transparent, accountable and effective governance	10.1	<ul style="list-style-type: none"> Ensuring a well-informed Council makes good decisions for the community
		10.2	<ul style="list-style-type: none"> Ensuring sound financial management and plans for the Shire's long-term financial sustainability
		10.3	<ul style="list-style-type: none"> High quality corporate governance, accountability and compliance
		10.4	<ul style="list-style-type: none"> Maintaining Integrated Strategic and Operational plans

VOTING REQUIREMENT

Simple Majority

OFFICER'S RECOMMENDATION/ COUNCIL RESOLUTION

(64/2024) Moved: Cr Loton

Seconded: Cr Petchell

That Council endorse the total payments for the month of April 2024 being \$387,020.93 which comprised of:

- 1. Electronic Funds Transfer (EFT) payments in the Municipal Fund totalling \$335,265.85;***
- 2. Direct Debit (DD) payments in the Municipal Fund totalling \$51,755.08.***

CARRIED 7/0

10.1.2. ACCOUNTS FOR PAYMENT – CREDIT CARD – MARCH 2024

Applicant:	Shire of Wyalkatchem
Location:	Shire of Wyalkatchem
Date:	16 May 2024
Reporting Officer:	Parul Begum, Finance Officer
Disclosure of Interest:	No interest to disclose
File Number:	File Ref: 12.10.02
Attachment Reference:	Attachment 10.1.2 – Credit Card – March 2024

BACKGROUND

Council governance procedures require the endorsement of credit card payments at each OMC. The attached credit card payment report has been reviewed by the Manager of Corporate Services.

STATUTORY ENVIRONMENT

Local Government Act 1995, Part 6 – Financial Management s.6.4

Local Government (Financial Management) Regulations 1996, R34

POLICY IMPLICATIONS

Policy Number 2.1 – Purchasing Policy.

Policy Number 2.3 – Credit Card Policy.

FINANCIAL IMPLICATIONS

Nil. Reported expenditure is assessed by management as being consistent with the FY22/23 Annual Budget.

COMMUNITY & STRATEGIC OBJECTIVES

This matter is consistent with the following Strategic Community Plan goal.

Goal - Transparent, accountable and effective governance.

Goal No.	Strategies		Actions
Goal 10	Transparent, accountable, and effective governance	10.1	<ul style="list-style-type: none"> Ensuring a well-informed Council makes good decisions for the community
		10.2	<ul style="list-style-type: none"> Ensuring sound financial management and plans for the Shire's long-term financial sustainability
		10.3	<ul style="list-style-type: none"> High-quality corporate governance, accountability, and compliance
		10.4	<ul style="list-style-type: none"> Maintaining Integrated Strategic and Operational plans.

VOTING REQUIREMENT

Simple Majority

OFFICER'S RECOMMENDATION/ COUNCIL RESOLUTION

(65/2024) Moved: Cr Petchell

Seconded: Cr Begley

That Council endorses credit card payments for the period 29 February to 28 March 2024, totalling \$2,865.26 (refer to attachment 10.1.2).

CARRIED 7/0

10.1.3. MONTHLY FINANCIAL REPORT – APRIL 2024

Applicant:	Shire of Wyalkatchem
Location:	Shire of Wyalkatchem
Date:	16 May 2024
Reporting Officer:	Rhona Hawkins, LG Consultant
Disclosure of Interest:	No interest to disclose
File Number:	25.08
Attachment Reference:	Attachment 10.1.3 – Monthly Financial Report April 2024

BACKGROUND

The *Local Government (Financial Management) Regulations 34* requires a local government to prepare a monthly financial statement that reports on actual revenue and expenditure against the annual budget prepared under regulation 22(1) (d).

Council has adopted a material variance of 10% or \$10,000 whichever is the greater.

COMMENT

The attached report includes:

- Statement of Financial Activity by Program (p.3)
- Statement of Financial Activity by Nature and Type (p.4)

The statements provide details of the Shire's operations on an actual year to date basis.

These statements and Notes 1 (p.5) and 2 (p.6) are statutory requirements and must be presented to Council.

The remaining notes all relate to the Statements of Financial Activity.

STATUTORY ENVIRONMENT

Local Government Act 1995, Part 6 – Financial Management S6.4

Local Government (Financial Management) Regulations, R34

POLICY IMPLICATIONS

There are no direct policy implications in relation to this item.

FINANCIAL IMPLICATIONS

Total Cash Available as at 30 April 2024 is \$3,649,159;

- cash available is made up of unrestricted cash \$340,688 (9.34%) and
- restricted cash \$3,308,471 (90.66%).

Rates Debtors balance as at 30 April 2024 is \$72,481 and Rates Notices for 2023-24 were issued in July 2023. Rates collected as at end of April 2024 was \$1,440,802 – 95.2%.

April 2024: Operating Revenue – Operating revenue of \$2,493,511 is made up of Rates – 58.11%, Grants – 16.65%, Fees and Charges – 10.38%, Interest earnings – 4.62%, profit on asset disposals – 10.23% and other – 0%.

Operating Expenses – Operating expenses of \$4,966,199 is made of Employee Costs – 24.8%, Materials and Contracts – 29.33%, Depreciation – 39.06%, Insurance – 3.56%, Finance – 0.03% and Utility – 2.67% and Other Expenditure – 0.55%.

COMMUNITY AND STRATEGIC OBJECTIVES

The matter before Council generally accords with the following Shire desired outcome as expressed in the revised Shire of Wyalkatchem Strategic Community Plan.

Goal: Transparent, accountable and effective governance.

Goal No.	Strategies		Actions
Goal 10	Transparent, accountable and effective governance	10.1	<ul style="list-style-type: none"> Ensuring a well-informed Council makes good decisions for the community
		10.2	<ul style="list-style-type: none"> Ensuring sound financial management and plans for the Shire's long-term financial sustainability
		10.3	<ul style="list-style-type: none"> High quality corporate governance, accountability and compliance
		10.4	<ul style="list-style-type: none"> Maintaining Integrated Strategic and Operational plans.

VOTING REQUIREMENT

Simple Majority

OFFICER'S RECOMMENDATION/ COUNCIL RESOLUTION

(66/2024) Moved: Cr Petchell

Seconded: Cr Loton

That Council accepts the Statements of Financial Activity for the month ending 30 April 2024 (refer attachment 10.1.3).

CARRIED 7/0

10.2. WORKS AND SERVICES

10.2.1. MANAGER OF WORKS OFFICER'S REPORT APRIL 2024

Applicant:	Shire of Wyalkatchem
Location:	Shire of Wyalkatchem
Date:	16 May 2024
Reporting Officer:	Terry Delane, Manager of Works
Disclosure of Interest:	No interest to disclose
File Number:	13.05.01
Attachment Reference:	Attachment 10.2.1.1 – Roads Hierarchy Attachment 10.2.1.2 – Road Maintenance Program

BACKGROUND

To inform Council of the activities of the works and services team during the period April/ May 2024.

OVERVIEW

The month of April was dominated by the gazetted public holidays of Easter and Anzac Day. These were linked to RDO's which allowed for a more convenient use of the long weekends for our staff.

This did however affect the number of operating days available. There was a total of 16 working days available. Despite this the focus for April was to return to general town maintenance and the road maintenance grading program as detailed in this report.

COMMENT:

ROADS

Regional Road Group (RRG)

Zone meeting of RRG was held on Tuesday 23rd April.

Roads 2 Recovery (R2R)

The Shire has been advised that there will be no further funding under the R2R stream in the future.

Wheatbelt Secondary Freight Network (WSFN)

It is not confirmed in writing that the application for funding under the WSFN system has been approved. The consequence of this is that any monies spent on any Capital Road will come out of Council's own funds.

Strategically this is critical with both the Koorda Road section earmarked for reconstruction and the Cunderdin Road work proposed both becoming urgent due to continued decline in the pavement and seal and will drive repair and maintenance costs up if we are unable to complete under Capital Works (as per our site visit observations and discussions).

The proposed Capital Road program for 2024/2025 will now solely be focused on the Wyalkatchem North Road. This is to be discussed and confirmed via the FY 2024/ 2025 Budget process.

Job	Description of works	Total Budget \$	JTD Actual	Orders released/ costs expected	Total	Variance
RRG0130 Koorda Road	Repair edges and repair edge breaks, shoving and pot holing.	\$ 90,000	\$	\$	\$	
RRG0131 Cunderdin Road	Reconstruct outer lane & repair culvert	\$ 95,000	\$	\$	\$	

Black Spot Projects

- Work has not commenced on the business case.

Road Maintenance Program

- Maintenance grading programs has recommenced with the following roads graded;
 - Garn Rd, Cox Rd, Mizen Rd, Diver Rd, DePierres Rd and the Tammin-Wyalkatchem Rd.
- There has been some verge and gutter cleaning on Cox Rd, Diver Rd and DePierres Rd. This has brought the roads back to more functional width for vehicle passing and for traversing with farm machinery.
- Maintenance will continue as per the attachment 10.2.1.2 A - 2024 / 2025 Road Maintenance Schedule.



Gamble St drain

- Asphalt repair, footpath repair and handrails are scheduled for the week after next week, refer Council Resolution below.

(55/2024) Moved: Cr Stratford

Seconded: Cr Dickson

That Council approves the footpath replacement and the other recommended minor concrete works be coded against the Capital account for the footpath work at an estimated value of \$5,700.

CARRIED 7/0

PARKS & GARDENS - TOWN SERVICES

- Green stock for Ashelford Park is still expected to be ready for planting at the end of May.
- The concrete path at Ashelford Park has been sealed.
- Metal flowers from Tidy Towns 2003 have been re-painted by the building maintenance officer.

- Dowerin Work Camp have concreted in the new flag poles and assisted with some signage.
- The town / garden crew along with the Dowerin Work Camp did an exceptional job in preparing Pioneer Park for the ANZAC Day service, which was well attended by the community.
- Some remedial work was completed on the paving on the corner of Honour Ave and Railway Terrace.



- *Currently updating the financial system, figures will be finalized 30th June.*

Swimming Pool

Tenders are still under evaluation.

Recreation Reserve

- Oval maintenance regime has been assessed and will be put forward as a budget item.
- The Town dam remedial work has been completed, i.e. a new foot valved installed to the inlet pipe and a Variable Speed Drive installed to the main irrigation pump.
- *Currently updating the financial system, figures will be finalized 30th June*

Cemetery

- Friends of the Cemetery are purchasing a notice board with lockable glass doors.
- Rotary have a stock of 60 rosemary plants which the garden crew will plant in the next couple of weeks along the front fence.
- *Currently updating the financial system, figures will be finalized 30th June*

RUBBISH TIP

- Some minor road construction has been completed.
- Fencing works on hold pending budget approval.
- *Currently updating the financial system, figures will be finalized 30th June*

HUMAN RESOURCES

- Nil

OH&S

- Nil
-

10.2.2. LATE ITEM 13.1 - RESTRICTED ACCESS VEHICLE APPLICATION

Applicant:	Not Applicable
Location:	Shire of Wyalkatchem
Date:	16 May 2024
Reporting Officer:	Terry Delane – Manager of Works
Disclosure of Interest:	Impartiality – the matter is in relation to a colleague’s property
File Number:	13.05.01
Attachment Reference:	13.1.1 – Main Roads RAV application email 13.1.2 – Jonas – Letter of concern 13.1.3 – Access Route Assessment

BACKGROUND

The Shire from time to time receives applications for restricted access vehicles. (RAV APPLICATIONS) These can be for special weight increases, heights, widths, lengths or axle configurations. Generally, these applications are from local farming entities or local transport companies. In these cases, the Manager of Works assesses the applications and grants or denies the permit and if granted outlines any special conditions the entity must follow.

COMMENT

The Shire of Wyalkatchem has recently received an application from Tom Fullerton Trucking (TFF) to access the Cunderdin to Wyalkatchem Rd from the boundary SLK 0.00 to the Pulford Rd intersection SLK 6.13 and Pulford Rd from the Cunderdin Rd intersection SLK 0.00 to the Shire boundary SLK 1.59.

TFF has applied to increase the rating to allow a RAV 7 vehicle (36.5m long)

The estimated annual tonnage to be shifted is 10,000 tonnes.

The contractor carts mostly grain and lime for farmers.

They have listed;



“To reduce the amount of trucks to run on these roads, and to make the grain harvest season more efficient.” as their reason for RAV Access Application.

The following roads en route:

1. Ygnattering Rd : Tandem Drive 6.1 without conditions
2. Cunderdin – Wyalkatchem Rd to shire boundary: Tandem Drive 6.1 without conditions
3. Cunderdin – Wyalkatchem Rd boundary to : Tandem 4.1 without conditions
4. Seventeen Mile Gate Rd : Tandem 4.1 without conditions
5. Watercarrin Rd : Tandem 4.1 without conditions
6. Pulford Rd : Tandem 4.1 without conditions

We have one contractor who has been given concessional loading to a level 2 which means they can cart extra tonnage on each axle, but the same as a standard road train in length.

Fullerton Trucking are applying to operate a C Train configuration.

7A		>27.5 m ≤36.5 m	108.5 t	RAV Network 7
Or				
7B		>27.5 m ≤36.5 m	108.5 t	RAV Network 7

Their application to MRWA is for an estimated 10,000 tonnes, however the Pulford Rd application is to cater for harvest freight only, from 2 paddocks that border Pulford Rd. This freight is expected to be a week maximum and for one rig only carting to Cunderdin.

I have assessed the road and discussed with Fullerton Trucking with the following comments.

1. The Cunderdin Rd is rated is a level 4 rating and has not had other applications to increase it. The section of road is in currently in a reasonably poor condition, with work at this stage scheduled for the next couple of years.
2. The intersection with Pulford is very wide with very good sight lines both ways and both entering and exiting.
3. The juncture of the 2 roads shows evidence of bleeding and metal shedding.
4. The section of Pulford Road is reasonably narrow and heavily treed with Mallees and Salmon gums.
5. There is a culvert that carries the water from a creek that does overflow in heavy rains.
6. The is a short section of moral country just before Jonas's gate which appears prone to rutting when wet.

Tom Fullerton's comments were;

1. He needs to use Pulford Rd to access the 2 paddocks
2. He is only carting grain for a short period while those paddocks are stripped.
3. There are rating issues and road condition issues with Williams and Watercarrin Rd.
4. Those roads head the wrong direction as the grain goes to Cunderdin.
5. They would not pass other trucks at any of the slow / narrow points.
6. He is happy to accept conditions that outline these points.
7. The may not use the C train depending on yields etc, but need to know now,

STATUTORY ENVIRONMENT

There are no statutory environment implications in relation to this item.

POLICY IMPLICATIONS

There are no direct policy implications in relation to this item.

FINANCIAL IMPLICATIONS

There are no financial implications in relation to this item.

COMMUNITY & STRATEGIC OBJECTIVES

The list before Council is generally in accordance with the desired outcome as expressed in the Shire of Wyalkatchem Strategic Community Plan.

Goal: Our built environment responds to the accessibility and connectivity needs of all.

Outcome No.	Action No.	Actions
Our built environment responds to the accessibility and connectivity needs of all.	8.2	Developing and planning community infrastructure to improve use and social interaction.

VOTING REQUIREMENT

Simple Majority

OFFICER'S RECOMMENDATION/ COUNCIL RESOLUTION

(69/2024) Moved: Cr Stratford

Seconded: Cr Dickson

That Council approve Fullarton Trucking being granted the RAV 7 access and appropriate conditions and that Main Roads of WA be conveyed these conditions to form part of the Approval or Rejection Notice.

LOST 2/5

For – Cr Stratford and Cr Begley

Against – Councillors Petchell, Loton, Lawson Kerr, Dickson and Garner

Mr Delane left the meeting at 5:02pm.

10.3. COMMUNITY DEVELOPMENT

10.3.1. COMMUNITY DEVELOPMENT OFFICER’S REPORT APRIL 2024

Applicant:	Shire of Wyalkatchem
Location:	Shire of Wyalkatchem
Date:	16 May 2024
Reporting Officer:	Nikki Towell, Community Development Officer
Disclosure of Interest:	No interest to disclose
File Number:	38.44.04
Attachment Reference:	Nil

SUMMARY

To provide Council with an update of Community Development initiatives and events for April / May 2024.

COMMENT

Mystery Seniors Bus Trip

On Wednesday 17th April 2024, 16 community members went on the first Seniors’ Mystery Bus Trip. The group left the Shire offices at 9 am on the community bus and travelled to Meriden to attend a cultural experience by Njaki Njaki Tours.

The group experienced bush medicine, enjoyed scones infused with Lemon Myrtle, and listened to a digeridoo performance. After the activity, the group moved to the Wild Poppy Café and enjoyed an amazing lunch and refreshments.

The feedback forms received from the participants were overwhelmingly positive, and almost all rated the trip as “Excellent”. They also indicated they would like to go on another similar trip, and that they had enjoyed the day out and the company.

One area mentioned as needing improvement was the community bus needing upgrading - comfortable seats, easier access and capacity to store walkers on board. Better air-conditioning would also be desirable.



Budget requested \$1700.00
Total Cost \$1574.70

Ashelford Park Opening Ceremony

The opening ceremony for Ashelford Park in conjunction with the 21st Anniversary of Tidy Towns is progressing. The proposed date of event has been scheduled for Saturday 22nd June 2024 which has been confirmed.

Resolution from OMC on 21/03/2024

That Council;

“3. Approves the additional expenditure of approximately \$5,600 for the Plaque and Opening event which will incorporate the Tidy Town 21st anniversary from GL code 2040212 Public Relations (2,000) and GL code 2140285 Legal Expenses (2,400).”

Youth Table Tennis Tournament Fridays

The 19th of April 2024 was the first of the Table Tennis Torments being held at the Recreation Center.

Children aged between 10 – 16 were invited via fliers and the W.D.H.S. The invitations included permission slips.

Ten children attended the first session. The order of play was determined by picking names out of a hat and games continued until there was a winner. There are no prizes given out – just bragging rights. The children were all well-behaved and also helped to referee the games when their peers were playing.

Advertising for both volunteers and youth began on the 10th of April 2024, with posters distributed at the school, a post in the Shire Newsletter via the Wylie Weekly and the shop windows in town. A roster of adult helpers will be determined weekly. Currently only two volunteers have registered from the community to help.

This event is scheduled to run every Friday of term two, a total of ten weeks. After this time, the viability of the Youth Table Tennis will be measured by the number of youths attending and the volunteer support commitment to determine if a permanent type of youth group is needed in the town.



Budget vs actual will not be accurately determined until the end of the 10 weeks when the council will be presented with the information.



Rodeo Update

An advertising campaign for the Wyalkatchem Rodeo and Camping Event to be held on 24th August 2024 commenced mid-April 2024, led by Double Barrel Entertainment. The Shire Camping booking website is up and running via the HUMANITIX platform. Currently 323 tickets have been purchased.

This will be further improved by uploading of a map of the Town, Oval and Entrances/ Camping and Caravanning areas.

Expressions of interest have been received to hold the market stalls and an invitation has been sent this week to all participants from last year and advertising will commence in the near future in local magazines in the Wheatbelt.

The working group has been well attended and an action plan drawn up to keep the group on track.

Next steps:

- The Rodeo Purpose Statement – Wednesday 15th May
- Mapping – Friday 31st May
- Meet with Double Barrell and determine roles and responsibilities – in progress
- How to measure success – Next Meeting
- Risk Management Plan – Draft discussion next meeting
- Volunteer Reward Scheme – Discussion to continue next meeting
- Grants Research to commence this week.
- Sub Group to meet asap re Site Map

POLICY IMPLICATIONS

2.1. Purchasing Policy

2.3. Transaction Card Policy

9.2. Community Bus Hire

FINANCIAL IMPLICATIONS

There are budgeted financial implications with this item.

COMMUNITY & STRATEGIC OBJECTIVES

Objective No.	Outcome (Business Plan)	Goal No.	Actions (Community Strategic Plan)
ED1.1.2.5	Coordinate activities that recognise national events, our leaders, volunteers and new community members.	Goal 2	"An active, engaged and social community." - Facilitate encourage and support community events.

VOTING REQUIREMENT

Simple Majority

OFFICER'S RECOMMENDATION/ COUNCIL RESOLUTION

(70/2024) Moved: Cr Lawson Kerr

Seconded: Cr Dickson

That Council receives the Community Development Officer's report.

CARRIED 7/0

10.4. GOVERNANCE AND COMPLIANCE

10.4.1. CHIEF EXECUTIVE OFFICER'S REPORT – MAY 2024

Applicant:	Shire of Wyalkatchem
Location:	Shire of Wyalkatchem
Date:	16 May 2024
Reporting Officer:	Sabine Taylor, Chief Executive Officer
Disclosure of Interest:	No interest to disclose
File Number:	13.05.01
Attachment Reference:	10.4.1 – Correspondence as listed in CEO Report

SUMMARY

This report is prepared by the CEO to provide Council and the Wyalkatchem community with some insight into CEO activities and Council operations.

COMMENT

Organisationally the CEO focus has included progressing the Community Strategic Plan, continued review of the procurement process and the delivery of the Financial Year 2024 /2025 Shire of Wyalkatchem Budget. Challenges with our technology deficiencies continue and are being address by our Technology Service partner.

The key focus by the CEO for May – June 2024 will be the Community Strategic Plan, Budgeting, staff performance and position description reviews.

Since the last report, the CEO has attended the following substantial meetings and events to progress community and Council's interests:

12 Apr 2024	Procurement Overview – WALGA Presentation
17 Apr 2024	LGIS – Risk Management Advisory Group Meeting
18 Apr 2024	Dr Michael Cudjoe
19 Apr 2024	Community Forum – Wyalkatchem CRC
22 Apr 2024	Wyalkatchem District High School Council Meeting
23 Apr 2024	EPA – Considering Offsets at a Regional Scale

KEY CORRESPONDENCE RECEIVED

Attachment A Letter of Acknowledgment from Department Water and Environmental Regulation – Withdrawal of application to Clear Native Vegetation Clearing Permit 9961/1 under the EPA 1986

Attachment B Cover Letter for January 2024 Crime Statistics (received 15 April, 2024)

Attachment C Wyalkatchem Crime statistics

Attachment D Thank you from the Shire of Waroona

Attachment E Slide pack from EPA briefing – Offsets public advice WALGA

Attachment F Local Government 2024 Determination for CEO remuneration and Councillor Bands

Attachment G Message from Director General, Department of Communities about WA Student Assistant Payment

Attachment H Information from CHSP seminar on framework and national guide to client contribution – primarily for providers of health services

Attachment I WALGA – State Council Flying Agenda – Submission on the Inquiry into Local Government Sustainability

Attachment J WALGA – Local Government Sustainability Submission 2024

Attachment K Telstra – Email – Telstra Extends 3G Closure by 2 Month

Attachment L Gas Energy Australia Letter

Attachment M Pathway to Zero Emissions for LPG – Frontier Economics

Attachment N Discussion paper – Seeking view on a future national water agreement

Attachment O Correspondence from Director General – Department of Communities 2024_26242

Attachment P Slides from LGPro – CEO Psych Safety and Wellbeing

Attachment Q Correspondence from Chris Thomson (R.Wilson, MP) – re audit of Growing Regions Program

Attachment R Ngalang Nation – Notice to Principal is Notice to Agent

Attachment S Council Connect Support and Google Analytics Report – April 2024

Attachment T WBN Annual Report - Compressed

STATUTORY ENVIRONMENT

There are no direct statutory implications in relation to this item.

POLICY IMPLICATIONS

There are no direct policy implications in relation to this item.

FINANCIAL IMPLICATIONS

There are no direct financial implications in relation to this item.

COMMUNITY & STRATEGIC OBJECTIVES

The CEO's activity promotes the Strategic Community Plan objectives, particularly those outlined in Goal 10 which calls on transparent, accountable and effective governance.

Goal 10 Transparent, accountable and effective governance

Goal No.	Action No.	Actions
10 Transparent, accountable and effective governance	10.1	Ensuring a well-informed Council makes good decisions for the community
	10.4	Maintaining Integrated Strategic and Operational plans

Goal 12 Form strategic partnerships and advocate for the Community.

Goal No.	Action No.	Actions
12 Form strategic partnerships and advocate for the community	12.1	Developing strategic partnerships with regional, State & Federal governments
	12.2	Ensuring that the Shire of Wyalkatchem is well positioned to meet future needs



Sabine Taylor

Chief Executive Officer

VOTING REQUIREMENT

Simple Majority

OFFICER'S RECOMMENDATION/ COUNCIL RESOLUTION

(71/2024) Moved: Cr Dickson

Seconded: Cr Begley

That Council receives the Chief Executive Officer's report.

CARRIED 7/0

Mr Hammond left the meeting at 5:30pm.

10.5. PLANNING AND BUILDING

Nil

11.MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

11.1. CEACA – CR MISCHA STRATFORD (as written)

Applicant:	Not Applicable
Location:	Shire of Wyalkatchem
Date:	16 th May 2024
Reporting Officer:	N/A
Disclosure of Interest:	Nil
File Number:	13.05.02
Attachment Reference:	<i>Attachment as presented - CEO Report</i>

SUMMARY

The community of Wyalkatchem is in need of affordable housing for the ageing, disadvantaged, disabled and for its future workforce.

BACKGROUND

CEACA was formed in 2012 by eleven central and eastern wheatbelt shires that recognised a common issue of a lack of appropriate and affordable housing for the ageing population. The goal was to provide quality and affordable housing that would allow for residents to remain in their communities well into their retirement. Wyalkatchem was one of those 11 founding members and the alliance that was formed has remained a major part of our strategic plan over the past 12 years.

Other founding members were; Merredin, Kellerberrin, Bruce Rock, Koorda, Trayning, Nungarin, Mukinbudin, Mt Marshall, Yilgarn & Westonia.

To be successful in gaining the required funding the CEACA committee commissioned several Verso reports, including a report on Infrastructure and Service solutions for Aged People in CEACA shires. These reports were commissioned over a 4-year period and were collated to form a major part of the application processes for the required grant funding.

Ultimately CEACA were successful in gaining the required funding and the first units were tenanted in 2019.

Wyalkatchem's contribution to the construction of the first stage of units was \$108,000 for the 4 units that our community received (\$27,000 per unit). These units have been at 100% occupancy for the past 2 years with interest regularly being shown from community members wanting to join a waitlist. CEACA continue to manage the running and maintenance of these units with the help of Elders Real Estate.

COMMENT:

At the recent strategic planning forums held by the Shire of Wyalkatchem it was a regularly commented that there is a lack of housing for the ageing and for workers. The community expressed a genuine desire for the Shire to commit to easing the housing deficiency in the township.

CEACA currently has submissions in for both Federal and State funding to support the construction of 54 additional units to be built across 11 shires. Wyalkatchem has indicated to CEACA that we would be requesting an additional 4 units to be built in our community. Upon receiving these

indications from all member shires, CEACA requested that councils investigate and secure the appropriate land required.

At the previous CEO's review in 2023, it was highlighted as a required outcome that the CEO action housing plans for CEACA and Nursing Quarters. This was viewed by the council as one of the many priorities for the CEO to focus on in FY 23/24.

The previous CEO raised the issue of the availability of land for the next stage of units with the Council at several workshops in 2023. These discussions offered direction for the CEO to investigate the opportunity of acquiring the unutilised and vacant land behind the Police station. This land is currently owned by the Police Department and the proposal was that the land be vested the Shire of Wyalkatchem for the use of community housing.

Policy Implications

There are no policy implications in relation to this item.

Financial Implications

There are no financial implications for this item.

Community Objectives

This item aligns with the current Council Strategic Plan, in particular;

- Goal 3 "Advocating & supporting aged persons accommodation, facilities and services"
- Goal 5 "Town planning strategies support industry growth"
- Goal 8 "Implement an Aged Friendly plan"
- Goal 12 "Ensuring the Shire of Wyalkatchem is well positioned to meet future need"

VOTING REQUIREMENT

Simple Majority

OFFICER'S RECOMMENDATION/ COUNCIL RESOLUTION

(72/2024) Moved: Cr Stratford

Seconded: Cr Dickson

That Council-

- 1. Request that CEO identify if the Police Department is willing to transfer ownership of the land surrounding the Police Station in Wyalkatchem for future community housing in alliance with the CEACA and if so, the proposed terms for that transfer.**
- 2. Request the CEO to explore if Council is able to meet the proposed terms of transfer and if not, whether any alternate terms of transfer should be proposed and report back to Council on progress during its Ordinary Meeting of Council on Thursday 20th June 2024.**
- 3. If Council subsequently considered the terms of transfer are unachievable the CEO is to recommend the next most suitable site for investigation.**

VOTING REQUIREMENT

Simple Majority

OFFICER'S RECOMMENDATION/ COUNCIL RESOLUTION

(73/2024) Moved: Cr Petchell

Seconded: Cr Loton

That Council accept the CEO response report as per Standing Orders and suspend Standing Orders at 5:22pm for discussion.

CARRIED 7/0

A robust discussion on the matter was held between 5:22pm and 6:07pm.

VOTING REQUIREMENT

Simple Majority

OFFICER'S RECOMMENDATION/ COUNCIL RESOLUTION

(74/2024) Moved: Cr Petchell

Seconded: Cr Loton

That Council resume Standing orders at 6:07pm.

CARRIED 7/0

Following the WALGA Process of Motions, Council returned to the matter at hand.

- *Cr Stratford requested an administrative note stating that the original motion was not 'put' as per OMC 25 June 2024 item 7.1.2.*

PROPOSED AMENDMENT

VOTING REQUIREMENT

Simple Majority

OFFICER'S RECOMMENDATION/ COUNCIL RESOLUTION

(75/2024) Moved: Cr Begley

Seconded: Cr Petchell

That Council requests the CEO to write to CEACA to offer the Shire's support in identifying an alternative site/ sites for the potential development of the additional units if the application for the divestment of the Portion of Crown Reserve 16483 is unsuccessful.

The amended motion was successful in the vote and became the Carried Substantive Motion.

SUBSTANTIVE MOTION

VOTING REQUIREMENT

Simple Majority

OFFICER'S RECOMMENDATION/ COUNCIL RESOLUTION

(75/2024) Moved: Cr Begley

Seconded: Cr Petchell

That Council requests the CEO to write to CEACA to offer the Shire's support in identifying an alternative site/ sites for the potential development of the additional units if the application for the divestment of the Portion of Crown Reserve 16483 is unsuccessful.

CARRIED 6/1

Cr Stratford voted against.

The meeting adjourned at 6:25pm

The meeting resumed at 6:31pm

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

To be circulated and discussed separately – Confidential in nature.

13. URGENT BUSINESS APPROVED BY THE PERSON PRESIDING OR BY DECISION

See Item 10.2.2

14. MATTERS BEHIND CLOSED DOORS

14.1 CONFIDENTIAL BRIEFING NOTE – WYALKATCHEM SWIMMING POOL PROJECT

14.2 QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN

VOTING REQUIREMENT

Simple Majority

OFFICER'S RECOMMENDATION/ COUNCIL RESOLUTION

(76/2024) Moved: Cr Begley

Seconded: Cr Petchell

That Council moves behind closed doors in accordance with Section 5.23 (2)(b), (c) and (e)(iii) of the Local Government Act 1995 which states, that a Council may move its meeting behind closed doors;

b) to deal with matters that relate to the personal affairs of a 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;

e) (1) information that has a commercial value to a person; or

(11) to deal with a matter that if disclosed, would reveal Information about the business, professional, commercial or financial affairs of a person.

CARRIED 7/0

14.1. CONFIDENTIAL BRIEFING NOTE – WYALKATCHEM SWIMMING POOL PROJECT

Applicant:	Shire of Wyalkatchem
Location:	Shire of Wyalkatchem
Date:	16 May 2024
Reporting Officer:	Stephanie Elvidge, Governance Executive Officer
Disclosure of Interest:	No interest to disclose
File Number:	13.05.01
Attachment Reference:	Attachment 14.1 – Confidential Briefing Note Binder

VOTING REQUIREMENT

Simple Majority

OFFICER'S RECOMMENDATION/ COUNCIL RESOLUTION

(77/2024) Moved: Cr Petchell

Seconded: Cr Loton

That Council note the confidential briefing note – Wyalkatchem Swimming Pool Project.

CARRIED 7/0

COMMENT

The attachment 14.1 Binder provides an overview of the process to date for the Wyalkatchem Swimming Pool Plantroom Upgrade and Structural Works. (the “Project”).

The Shire of Wyalkatchem (“Shire”) seeks to upgrade the plantroom and other structural works on the existing Olympic pool located in the town. A procurement specialist consultant, Procurement Associates (“PA”), was engaged to help facilitate the Request for Tender (“RFT”) process.

The objective of this Project is to renew pool equipment to achieve a reliable 20 years of operating life.

The Shire and PA is providing this summary of the current situation and future actions available, being cognisant of the overall relations with the government grants for this Project and timing. It is strongly preferred by the Shire to have the Project scope (refer 1.1 below) complete before Spring 2024.

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

Confidential Discussion took place and an updated Register will be shared with Councillors.

VOTING REQUIREMENT

Simple Majority

OFFICER’S RECOMMENDATION/ COUNCIL RESOLUTION

(78/2024) Moved: Cr Petchell

Seconded: Cr Dickson

That Council move out from behind doors.

CARRIED 7/0

15. CLOSURE OF THE MEETING

There being no other business to attend to, Shire President Cr Garner closed the meeting at 7:11pm.

Motion with notice

Issue

The community of Wyalkatchem is in need of affordable housing for the ageing, disadvantaged, disabled and for its future workforce.

Background

CEACA was formed in 2012 by eleven central and eastern wheatbelt shires that recognised a common issue of a lack of appropriate and affordable housing for the ageing population. The goal was to provide quality and affordable housing that would allow for residents to remain in their communities well into their retirement. Wyalkatchem was one of those 11 founding members and the alliance that was formed has remained a major part of our strategic plan over the past 12 years.

Other founding members were; Merredin, Kellerberrin, Bruce Rock, Koorda, Trayning, Nungarin, Mukinbudin, Mt Marshall, Yilgarn & Westonia.

To be successful in gaining the required funding the CEACA committee commissioned several Verso reports, including a report on Infrastructure and Service solutions for Aged People in CEACA shires. These reports were commissioned over a 4-year period and were collated to form a major part of the application processes for the required grant funding.

Ultimately CEACA were successful in gaining the required funding and the first units were tenanted in 2019.

Wyalkatchem's contribution to the construction of the first stage of units was \$108,000 for the 4 units that our community received (\$27,000 per unit). These units have been at 100% occupancy for the past 2 years with interest regularly being shown from community members wanting to join a waitlist. CEACA continue to manage the running and maintenance of these units with the help of Elders Real Estate.

Detail

At the recent strategic planning forums held by the Shire of Wyalkatchem it was a regularly commented that there is a lack of housing for the ageing and for workers. The community expressed a genuine desire for the Shire to commit to easing the housing deficiency in the township.

CEACA currently has submissions in for both Federal and State funding to support the construction of 54 additional units to be built across 11 shires. Wyalkatchem has indicated to CEACA that we would be requesting an additional 4 units to be built in our community. Upon receiving these indications from all member shires, CEACA requested that councils investigate and secure the appropriate land required.

At the previous CEO's review in 2023, it was highlighted as a required outcome that the CEO action housing plans for CEACA and Nursing Quarters. This was viewed by the council as one of the many priorities for the CEO to focus on in FY 23/24.

The previous CEO raised the issue of the availability of land for the next stage of units with the Council at several workshops in 2023. These discussions offered direction for the CEO to investigate the opportunity of acquiring the unutilised and vacant land behind the Police station. This land is currently owned by the Police Department and the proposal was that the land be vested the Shire of Wyalkatchem for the use of community housing.

Policy Implications

There are no policy implications in relation to this item.

Financial Implications

There are no financial implications for this item.

Community Objectives

This item aligns with the current Council Strategic Plan, in particular;

Goal 3

“Advocating & supporting aged persons accommodation, facilities and services”

Goal 5

“Town planning strategies support industry growth”

Goal 8

“Implement an Aged Friendly plan”

Goal 12

“Ensuring the Shire of Wyalkatchem is well positioned to meet future needs”

Voting Requirements

Simple Majority

Motion

That Council-

1. Request that CEO identify if the Police Department is willing to transfer ownership of the land surrounding the Police Station in Wyalkatchem for future community housing in alliance with the CEACA and if so, the proposed terms for that transfer.
2. Request the CEO to explore if Council is able to meet the proposed terms of transfer and if not, whether any alternate terms of transfer should be proposed and report back to Council on progress during its Ordinary Meeting of Council on Thursday 20th June 2024.
3. If Council subsequently considered the terms of transfer are unachievable the CEO is to recommend the next most suitable site for investigation.

Wyalkatchem Senior Citizens Homes Trust (Inc.)

PO Box 145

Wyalkatchem WA 6485

14th of May 2024

Shire of Wyalkatchem

PO Box 224

Wyalkatchem WA 6485

Attention: Shire Councillors and CEO, Sabine Taylor

Re: Motion 11.2.1 – Ordinary Meeting held on the 16th of May 2024

Dear the Wyalkatchem Councillors and Sabine Taylor,

On behalf of the Wyalkatchem Senior Citizens Homes Trust, we would like to endorse the motion 11.2.1. which is being presented at the shire council meeting on the 16th of May 2024.

As you are most likely aware, we have 14 units within Wyalkatchem, all of which are currently full, with 7 applicants on our wait list. 5 applicants are aged 65 or above and 2 are under 65.

We are lucky enough to be able to help 14 tenants with affordable housing, but we are regularly approached for vacancies and would like to see more opportunities for housing available for those who require it.

Thank you for your time.

Yours faithfully,

Erin Holdsworth

Wyalkatchem Senior Citizens Homes Trust (inc)

Po Box 145 Wyalkatchem WA 6485

Mobile: 0456002253

E-mail: wyalkatchemscht.gmail.com

CEACA QUESTIONS

DATE	COUNCILLOR	QUESTION	COMMENT	FINANCIALS					
10/05/2024	Cr Petchell	Just wondering if you could provide prior: -The Shire of Wyalkatchem's CEACA 'agreement/contract'	Jo Trachy was only able to provide the Original agreement for the original units and the Constitution.	DATE	Subscriptions	Other	AMOUNT	AMOUNT	GRAND TOTAL
10/05/2024	Cr Petchell	How much it costs the Shire of Wyalkatchem to be 'members' of CEACA?	Currently \$15,000/ annum						
10/05/2024	Cr Petchell	When this is up for revision?	Due to the change in the constitution, we are now committed either way to FY 24.25 and FY 25.26						
10/05/2024	Cr Petchell	In the 'Background' section of the Motion: It states that Wyalkatchem paid \$108,000 for the four units; however, in the CEACA Business Plan March 2024 it outlines that the 'Shire of Wyalkatchem's incurred costs' were: oSite Works: \$300,715.00 oConstruction: \$742,760.00 oTotal: \$1,043,475.00	\$108,000 was set aside in the budget, however Claire is unable to locate the payment details. We believe this is CEACA's total cost of the build of the 4 units in Wyalkatchem.			4 ceaca Units - Shire contribution		\$ 108,000.00	
10/05/2024	Cr Petchell	How much we have paid to CEACA since the committee/organisation was originally founded, I think 2012?	See Financials	14/03/2014		Aged Care contribution for the development of CEACA		\$ 5,000.00	
				7/02/2015		Aged Care contribution for the development of CEACA		\$ 5,000.00	
				15/03/2016	CEACA General Subscription 2015/16		\$ 4,000.00		
				15/03/2016		CEACA Project & Consultancy Fund 2015/16		\$ 5,000.00	
				1/07/2016	CEACA Annual Subscription 2016/17		\$ 4,000.00		
				1/07/2016		CEACA Project & Consultancy Fund 2016/17		\$ 4,000.00	
				19/09/2017	CEACA Annual Subscription 2017/18		\$ 10,000.00		
				19/09/2017		CEACA Project & Consultancy Fund 2017/18		\$ 4,000.00	
				31/07/2018	CEACA Annual Subscription 2018/19		\$ 20,000.00		
				31/08/2018		Shire of Merriden additional contribution towards 2 units		\$ 4,689.32	
				14/02/2019		CEACA contribution towards legal costs		\$ 10,000.00	
				FY 2019/20	CEACA Annual Subscription		\$ 20,000.00		
				FY 2020/21	CEACA Annual Subscription		\$ 20,000.00		
				FY 2021/22	CEACA Annual Subscription		\$ 20,000.00		
				FY 2022/23	CEACA Annual Subscription		\$ 15,000.00		
				FY 2023/24	CEACA Annual Subscription		\$ 15,000.00		
					TOTAL		\$ 128,000.00	\$ 145,689.32	\$ 273,689.32

CEACA COUNCIL RESOLUTIONS SINCE 2017

- (1) DEVELOPMENT AND BUILDING CONTROLS - DEVELOPMENT AND BUILDING APPLICATIONS - INDEPENDENT LIVING UNITS - CEACA - LOT 298 WILSON STREET WYALKATCHEM 3453 8.3.1 OMC 18/05/2017
- (2) FINANCIAL MANAGEMENT – BUDGETING – ALLOCATIONS - CENTRAL EAST AGED CARE ALLIANCE INC. (CEACA) – LOCAL GOVERNMENT BUDGET ALLOCATION 47/2018 8.2.3 OMC 19/04/2018
- (3) CEACA – BUILDING APPLICATION FEES 122/2018 9.1.3 OMC 20/09/2018
- (4) ACCEPT ITEM 13.3 CEACA LEGAL EXPENSE CONTRIBUTION 166/2018 13.3 OMC 15/11/2018
- (5) CEACA LEGAL EXPENSE CONTRIBUTION 167/2018 13.3 OMC 15/11/2018
- (6) CEACA 2019/2020 BUDGET ALLOCATION
That Council
 - (1) Include an allocation of \$20,000 for the 2019/2020 CEACA membership subscription in the 2019/2020 annual budget considerations.
 - (2) Notes that Council has no matters to be raised on the proposed Central East Aged Care Alliance 2019/2020 annual budget as provided for in attachment 10.2.3 .77/2019 SIMPLE CR METCALFE CR BUTT 4/0
- (7) CEACA 2019/2020 RATES That Council advise Central East Aged Care Alliance
 - (1) That in accordance with the Local Government Act 1995 rates applicable to the land owned by CEACA will be subject to rates, unless a rate exemption is granted.
 - (2) That in accordance with the Local Government Act 1995 Council is unable to waive or grant a discount on rates raised on rateable land.
 - (3) That Council may consider a financial contribution to the value of the 2019/2020 rates raised to provide financial assistance to CEACA housing management expenditure.
.78/2019 SIMPLE CR GAMBLE CR BUTT 4/0
- (8) CENTRAL EASTERN AGED CARE ALLIANCE (CEACA)
That Council;
 1. Commits to the CEACA's progression of the VERSO report to review iv. Community Care Packages; v. Transport; vi. Residential Aged Care
 2. Include an allocation of \$20,000 for the 2020/2021 CEACA membership subscription in the 2020/2021 annual budget considerations.
176/2019 SIMPLE CR GARNER CR NIGHTINGALE 6/0

Wyalkatchem Senior Citizens Homes Trust (Inc.)

ABN: 51 033 590 996

PO Box 145

Wyalkatchem WA 6485

6th February, 2017

Mr Ian McCabe
CEO
Shire of Wyalkatchem
Honour Ave,
Wyalkatchem WA 6485

Dear Ian


At the recent meeting of the WSCHT, the committee discussed the involvement of CEACA in building 4 new Senior Citizens' units on land owned by the Trust at Lot 298, Wilson St in Wyalkatchem.

The committee passed the following resolution:

- As a first preference, to offer CEACA a 'Lease and Promise' agreement of 5 years, providing that 4 new units are built, set up with tenants and running satisfactorily.
- In the event that this proposal is unacceptable to CEACA, the committee are prepared to grant freehold title, to the Shire of Wyalkatchem, that part of the land needed to build 4 new units.

It is hoped that this resolution meets with the approval of all parties concerned.

Yours sincerely,

Donald N. Eaton 
Chairman
Wyalkatchem Senior Citizens Homes Trust (Inc.)




0 STAGE 1 BUILDING
 1 STAGE 2 BUILDING
 2 STAGE 3 BUILDING
 3 COMMON GARDENS
 4 PRIVATE GARDENS
SHIRE OF WYALKATCHEM
INDEPENDENT LIVING UNITS
 1525 WILSON STREET, WYALKATCHEM, WA
 LOT 298 SK03 08th OCTOBER 2015

MASTER PLAN
 SCALE 1:200 @ A1, 1:400 @ A3
 N



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8.3.1 ECONOMIC DEVELOPMENT – PROJECTS - INDEPENDENT LIVING UNITS - CEACA

FILE REFERENCE:	8.11
AUTHOR'S NAME AND POSITION:	Ian McCabe Chief Executive Officer
AUTHOR'S SIGNATURE:	
DATE REPORT WRITTEN:	10 March 2017
DISCLOSURE OF INTEREST:	The author has no financial interest in this matter.
STRATEGIC COMMUNITY PLAN REFERENCE:	1.1.3 Promote a collaborative and visionary approach to creating an aged friendly community; 4.1.2 Advocate effectively on significant issues affecting the community; 4.4 Working together in productive and supportive partnerships; 5.4.2 Ensure efficient use of resources.

SUMMARY:

That Council resolve the following:

- 1. That Council endorse the advice of Access Housing and the agreement of the Wyalkatchem Senior Citizens' Homes Trust and the Shire of Wyalkatchem, to provide freehold title by strata to an amount of land at lot 298 Wilson Street Wyalkatchem, for the construction of four independent living units and a suitable access road by the Central East Aged Care Alliance (CEACA);**
- 2. That CEACA pay fees and charges associated with this construction; that the units be owned and operated by CEACA; and that Council anticipate an allocation approximating \$120,000 in 2017/18 as a contribution to this project;**
- 3. That this resolution be conveyed in writing to CEACA for receipt at a**

general meeting; and,

4. That Council authorise the CEO or delegate to take any required action to complete the intent of this resolution.

Appendix:

1. Letter 6 February 2017, Wyalkatchem Senior Citizens Homes Trust;
2. Drawing prepared for Access Housing indicating in red an area for strata title, this being the site for construction of four independent living units.

Comment:

The Shire of Wyalkatchem is a member of the Central East Aged Care Alliance (CEACA). This Incorporated body has its origins in local government with 11 local governments across the Wheatbelt collaborating to seek funding to address a common problem: housing and services for an ageing population.

CEACA business planning has identified a short term need for four independent living units in Wyalkatchem and has been negotiating with Council and the Wyalkatchem Senior Citizens' Homes Trust Inc. (WSCHTI) to secure suitable land. A number of tenure models have been proposed and assessed and thanks go to the Wheatbelt Development Commission and Access Housing for their advice and to the Trust for their serious consideration of this proposal.

The WSCHTI committee met in February and gave conditional support for this proposal. This and other advice was discussed by all parties at a meeting in Wyalkatchem 8 March 2017 and in-principle agreement has been reached to do the following:

- Subject to CEACA's professional advice, Constitution and any statutory procedure, that an area of lot 289 Wilson Street be sectioned by strata title for the purpose of constructing four independent living units (ILU's) to be owned and operated by CEACA;
- The nominated lot is to the rear of the site (marked as a red rectangle on Appendix);
- CEACA will pay associated fees and charges and construct an access road as part of the build.

A written agreement with the Trust to make clear any necessary arrangements will be formed. The Shire of Wyalkatchem, as the CEACA member, will make a financial contribution in 2017/18 as per the business plan which will approximate \$120,000. The Shire will work with CEACA to facilitate any other requirements so this project integrates with existing builds and facilitates any future development at this site. Where required, subject to Council resolution, the Shire will make appropriate budget allocations for this to occur.

Consultation:

Mr Graham Lovelock, Chair, CEACA

Helen Westcott, Executive Officer, CECA

Grant Arthur, Wheatbelt Development Commission

Ralton Benn, Consultant to CEACA, Access Housing

Jeff Thierfelder, planner and designer, Consultant to Access Housing

Paul Broadhurst, engineer, Consultant to Access Housing

Wyalkatchem Senior Citizens Homes Trust Inc.

Cr Quentin Davies (councillor Davies is the community representative to CEACA)

Statutory Environment:

Local Government Act 1995

Associations Incorporation Act 2015

Policy Implications:

There is no direct Council policy relevant to this item.

Financial Implications

In continuing the regional commitment to CEACA, there will be ongoing membership subscriptions. In 2016/17, these amounted to \$8,000 and this is expected to be indexed by CPI in 2017/18. Consequential to this project, there will need to make a 2017/18 budget allocation for land and building contributions of approximately \$30,000 per unit (a total of \$120,000). It should be noted that this represents a saving to Council of approximately \$900,000 were Council to develop the units alone.

As there are implications for future budgets, it is recommended that the voting requirement for this resolution be 'Absolute Majority.'

Strategic Plan/Risk Implications

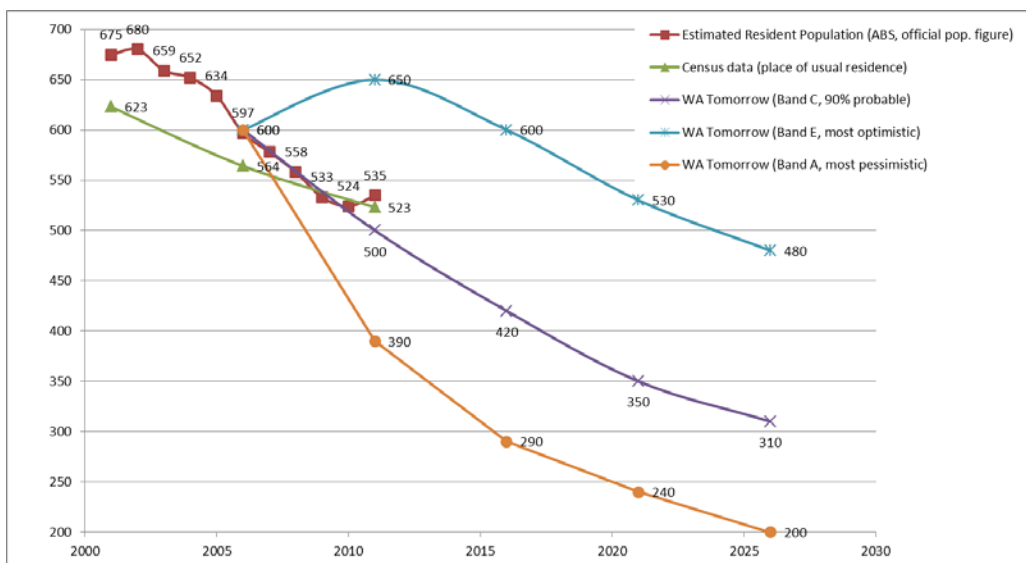
This is a project of strategic significance to Wyalkatchem. The partnership with CEACA addresses a demographic issue for this community: how do we retain an aging population while stimulating economic activity?

The red and green lines on the following graph are official census data, demonstrating the decline in population since 2000. The other lines are scenarios from the WA Department of Planning, based on optimistic or pessimistic views of population statistics. The most likely outcome based on both is the purple line which indicates that Wyalkatchem could have just 350 people by 2020.

Currently, the population of approximately 520 persons comprises approximately 30% aged 65 years or greater and close to 50% aged 50 years or more. Aged persons have particular needs and greater service demands and this requires appropriate housing.

The existing housing stock in Wyalkatchem is predominantly unsuitable, whether by structure, quality, amount or proximity to services. The Council of the Shire with the Wyalkatchem Senior Citizens Homes Trust has begun addressing this need for housing of an adequate standard for the aged – both for the purpose of meeting demand and providing local economic stimulus.

The additional construction by CEACA will expedite this strategy and support Councils' vision for local housing, services to the aged and economic stimulus. This vision and this project is supported by the Wyalkatchem Senior Citizens Homes Trust and is commended to Council for approval.



Voting Requirement: Absolute Majority

Council Decision Number

Moved:

Seconded:

Officer Recommendation:

That Council resolve the following:

- 1. That Council endorse the advice of Access Housing and the agreement of the Wyalkatchem Senior Citizens' Homes Trust and the Shire of Wyalkatchem, to provide freehold title by strata to an amount of land at lot 298 Wilson Street Wyalkatchem, for the construction of four independent living units and a suitable access road by the Central East Aged Care Alliance (CEACA);**
- 2. That CEACA pay fees and charges associated with this construction; that the units be owned and operated by CEACA; and that Council anticipate an allocation approximating \$120,000 in 2017/18 as a contribution to this project;**
- 3. That this resolution be conveyed in writing to CEACA for receipt at a general meeting; and,**
- 4. That Council authorise the CEO or delegate to take any required action to complete the intent of this resolution.**

Vote:

Voting Requirement: Absolute Majority

Council Decision Number: 3429

Moved: Cr Garner

Seconded: Cr Butt

That Council resolve the following:

- 1. That Council endorse the advice of Access Housing and the agreement of the Wyalkatchem Senior Citizens' Homes Trust and the Shire of Wyalkatchem, to provide freehold title by strata to an amount of land at lot 298 Wilson Street Wyalkatchem, for the construction of four independent living units and a suitable access road by the Central East Aged Care Alliance (CEACA);**
- 2. That CEACA pay fees and charges associated with this construction; that the units be owned and operated by CEACA; and that Council anticipate an allocation approximating \$120,000 in 2017/18 as a contribution to this project;**
- 3. That this resolution be conveyed in writing to CEACA for receipt at a general meeting; and,**
- 4. That Council authorise the CEO or delegate to take any required action to complete the intent of this resolution.**

Vote:7/0

DEVELOPMENT AND TRANSFER AGREEMENT

(CEACA SENIOR HOUSING PROJECT)

Part Lot 298 on Deposited Plan 180377

WYALKATCHEM SENIOR CITIZENS HOMES TRUST INC
("WSCHT")

AND

CENTRAL EAST AGED CARE ALLIANCE INC
("CEACA")

AND

SHIRE OF MERREDIN
("Shire")

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THIS DEED is made the 2nd day of August

~~2017~~
2018

BETWEEN:

WYALKATCHEM SENIOR CITIZENS HOMES TRUST INC (A0730007A) being an incorporated association under the *Associations Incorporation Act 2015* (WA), of Western Australia ("WSCHT");

and

CENTRAL EAST AGED CARE ALLIANCE INC (A1019189C) being an incorporated association under the *Associations Incorporation Act 2015* (WA), of PO Box 6456, East Perth, Western Australia ("CEACA");

and

SHIRE OF MERREDIN (in its capacity as agent for CEACA) of King Street, Merredin, Western Australia ("Shire").

RECITALS:

- A. CEACA is a partnership of eleven local governments incorporated as an association in 2015. The purpose of CEACA is to capture economic benefit in the member's Local Government Districts by providing older people with the necessary services and infrastructure to remain living in their communities of interest.
- B. A key area of activity for CEACA is the provision of appropriate housing options and public infrastructure that meets the needs of seniors.
- C. The CEACA Senior Housing Project is a staged program under which CEACA aims to construct up to 187 independent living units.
- D. The Shire, on behalf of CEACA, has entered into the Financial Assistance Agreement with the Department of Regional Development to obtain Royalties for Regions funding to fund the CEACA Senior Housing Project.
- E. The Shire is responsible for the administration of the Royalties for Regions funds for the CEACA Senior Housing Project as required by the Department of Regional Development and detailed in the Financial Assistance Agreement.
- F. Access Housing has been appointed as program manager for the CEACA Senior Housing Project.

- G. The Shire, acting as the agent of CEACA, will construct four Independent Living Units on part of the Land as part of the CEACA Senior Housing Project.
- B. The WSCHT owns the Land, and has agreed to the survey strata of the Land and the construction of the Independent Living Units on the Site as part of the CEACA Senior Housing Project by the Shire.
- C. CEACA will retain ownership of the Independent Living Units.
- D. The WSCHT has agreed to transfer ownership of the Site to CEACA on the terms of this Agreement.
- E. The Development is to be constructed in accordance with the terms of this Agreement.

THE PARTIES COVENANT AND AGREE:

1. **Definitions and Interpretation**

In this Agreement, unless such an interpretation is excluded by or contrary to the context:

1.1 **Definitions**

In this Agreement:

"Access Housing" means Access Housing Australia Ltd (ACN 128 888 157) of Level 1, 39 Adelaide Street, Fremantle, Western Australia;

"Aboriginal Heritage Claim" means a claim made under the *Aboriginal Heritage Act 1972*;

"Agreement" means this agreement as amended, supplemented and varied from time to time by agreement between the Parties;

"Anticipated Date of Practical Completion" means 18 months from the Commencement Date;

"Australian Standards" means all standards prepared, approved and published by Standards Australia International Limited;

"Authorisation" means any approval, consent, permit, licence, registration, exemption, waiver or other authorisation of any kind required from any Authority or otherwise under Law;

“Authority” includes any governmental or other public body or authority of any kind, including the Shire acting in accordance with its powers and duties under the *Local Government Act 1995* and including any successor or substitute body or authority;

“Builder” means the builder engaged by the Shire to carry out the Works as appointed under a request for tender issued for the design and construction services for the CEACA Seniors Housing Project, including any replacement builder;

“Builder’s Employees” includes all directors, employees, agents and consultants of the Builder;

“Building Contract” means a contract between the Shire and the Builder for the construction of the Works in accordance with the Scope and Specification;

“CEACA’s Representative” means the person appointed by CEACA as CEACA’s representative at any time;

“Commencement Date” means the date of this Agreement;

“Confidential Information” means any information relating to this Agreement or the Works which is confidential or which is specified by a party to this Agreement as confidential in nature, but does not include information:

- (a) which is already in the public domain (otherwise than as a result of a breach of this clause);
- (b) which a party is required by law or by an Authority to disclose; or
- (c) information which is disclosed to a party’s employees, consultants, advisers, agents or financiers for a purpose connected with the proper implementation of this Agreement;

“Contaminated” has the meaning set out in the *Contaminated Sites Act 2003 (WA)* and **“Contamination”** has a corresponding meaning;

“Date of Practical Completion” means the date certified by both CEACA’s Representative and WSCHT’s representative as being the date on which Practical Completion has occurred;

“Development” means construction of the four CEACA Independent Living Units on the Site together with all work required for the Subdivision and issue of separate titles for the Site;

“Development Approvals” means all approvals which must be obtained from each Authority to enable the Subdivision of the Land and for the Builder to construct the Independent Living Units lawfully;

“Environment” has the meaning given to that term at common law and in any legislation in force in the State of Western Australia and includes the physical factors of the surroundings of persons including the land, water, atmosphere, climate, sound, odours, taste, the biological factors of animals and plants and the social factor of aesthetics;

“Expert” means an expert appointed pursuant to clause 24 to determine a dispute arising under clause 20.2(b)(ii);

“Environmental Claim” means a claim made under any Law relating to environmental matters, including, but not limited to the *Environmental Protection Act 1986* (WA) and the *Contaminated Sites Act 2003* WA after the Commencement Date;

“Environmental Condition” means the physical state and condition of the Environment in, on, about or under the Site;

“Environmental Law” means a Law regulating or otherwise relating to the Environment, including but not limited to any Law relating to land use, planning, pollution of air or water, soil or groundwater, chemicals, waste, the use, transport storage and handling of dangerous goods, the health or safety of any person, or to any other aspects of protection of the Environment, health or property;

“Financial Assistance Agreement” means the Financial Assistance Agreements (Royalties for Regions Project) between the State of Western Australia and the Shire of Merredin (acting on behalf of the Central East Aged Care Alliance Inc) to fund the CEACA Senior Housing Project, a copy of which is Annexure 2 to this Agreement.

“Independent Living Units” means the four independent living units constructed on the Site by the Shire, acting as the agent of CEACA.

“Land” means the land described as Lot 298 on Deposited Plan 180377 the whole of the land in Certificate of Title Volume 1410 Folio 263 and commonly known as 52 Flint Street, Wyalkatchem;

“Law” includes any Federal, State or local government legislation including regulations, by-laws or other subordinate legislation, judicial, administrative or regulatory decrees, official directives, judgments or orders;

“Party” or **“Parties”** mean a party or parties to this Agreement

“Planning Scheme” means the Shire of Wyalkatchem Local Planning Scheme No. 4 as amended, supplemented and varied by the Shire of Wyalkatchem from time to time;

“Practical Completion” means the stage when everything required under this Agreement and the Building Contract in relation to the Works has been properly and satisfactorily carried out and completed (except for minor defects and omissions which may be rectified during any applicable defect liability period) and the Works are fit for use;

“Requirements” means all:

- (a) relevant Laws; and
 - (b) orders and directions of every Authority and their respective officers; and
 - (c) payment of all fees and charges properly payable to every Authority;
- to be complied with relating to the Development;

“Scope and Specification” means the scope and the specification for the Works as agreed by the Parties which is Annexure 3 to this Agreement and such additional documents subsequently specifically initialled by the Parties for the purpose of identification as part of the Scope and Specification and includes the plans, drawings, submissions and specifications incorporated in any planning or building application;

“Seniors Housing” means the residential accommodation for persons over the age of 65 and tenants with physical or neurological disabilities or such persons partners or carers;

"Shire's Obligations" means the covenants and agreements contained or implied in this Agreement to be observed and performed by the Shire;

"Site" means that part of the Land having an area of approximately 1,613square metres as shown on Site Plan;

"Site Plan" means the site plan in Annexure 1 showing the Site and the proposed strata lots in the Subdivision;

"Subcontractor" means any person, firm, company or corporation to whom the performance of any part of this Agreement is delegated by the Builder or the Shire and includes the directors, employees, agents and consultants of the subcontractor;

"Subcontractor's Employees" includes all directors, employees, agents and consultants of a Subcontractor;

"Subdivision" means the strata subdivision of the Land into separate strata lots substantially in accordance with the Site Plan to enable issue of separate titles for the Site and transfer of the Site to CEACA;

"Subdivided Lot" means each proposed strata lot identified on the Site Plan;

"Works" includes the works described in the Scope and Specification and all activities required to be undertaken or procured by the Shire for the proper construction of the Independent Living Units;

"WSCHT's Obligations" means the covenants and agreements contained or implied in this Agreement to be observed and performed by the WSCHT;

"WSCHT's Representative" means the person appointed by the WSCHT as WSCHT's representative at any time.

1.2 Interpretation

In this Agreement:

- (a) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them occurring at any time before or after the Commencement Date;

- (b) reference to a person includes that person's executors, administrators, successors and assigns;
- (c) a covenant, agreement, representation or warranty in favour of two (2) or more persons is for the benefit of them jointly and severally;
- (d) an agreement, representation or warranty given or made by two (2) or more persons shall bind them jointly and severally;
- (e) a reference to a gender includes all genders and a reference to the singular includes the plural and vice versa;
- (f) a reference to any other deed, agreement, instrument or contract includes a reference to that other deed, agreement, instrument or contract as amended, supplemented, novated or varied from time to time;
- (g) all monetary amounts shall be in Australian dollars (AUS\$) unless otherwise stipulated;
- (h) except for the purpose of identification, headings and subheadings and underlining have been inserted into this Agreement for the purpose of guidance only and shall not be part of this Agreement;
- (i) a reference to a "month" is to a calendar month and a reference to a "week" is to a calendar week;
- (j) the Recitals shall be incorporated into this Agreement;
- (k) a reference to a clause is a reference to a clause of this Agreement, unless otherwise specified; and
- (l) "including" and similar expressions are not works of limitation.

2. **Conditions Precedent**

2.1 **Finance Assistance Agreement**

This Agreement is conditional on the funding to be provided pursuant to the Finance Assistance Agreement actually being received by the Shire, and being sufficient for, and available to, the Shire to fully meet the Shire's expenditure obligations for the Development under this Agreement.

2.2 Development Approval

This Agreement is conditional on the Shire at its cost and expense obtaining development approval and all Authorisations which are required in connection with the Subdivision of the Land, and construction on the Land of the Works and all infrastructure comprised in the Development on terms and conditions which are satisfactory to the Shire.

2.3 Benefit of Conditions

- (a) The condition in clause 2.1 is for the sole benefit of the Shire, and may only be waived by the Shire in its sole and absolute discretion.
- (b) The condition in clause 2.2 is for the benefit of the WSCHT, CEACA and the Shire and may only be waived by the agreement of each of them in writing.
- (c) The Parties each covenant to use their reasonable endeavours to satisfy all of the conditions in clauses 2.1 and 2.2 as soon as is practicable after the Commencement Date.
- (d) If any of the conditions referred to in special conditions 2.1 and 2.2 above are not satisfied, or waived within twelve months after the Commencement Date, then after that twelve month period any Party by notice in writing to all other Parties may terminate this Agreement at any time prior to that condition being satisfied. When a termination notice has been served on all Parties, the Parties rights and obligations to complete the Development and transfer of the Site pursuant to this Agreement shall be at an end, but any claim or right of a party against another for breach of the Agreement prior to termination will not be affected.

3. Agreement to Develop Land and Transfer Site

3.1 Development

The Parties agree that the Development will be undertaken by the Shire and the Land subdivided on the terms of this Agreement.

3.2 Transfer

Upon completion of the Development the WSCHT agrees to transfer to CEACA the Subdivided Lots comprising the Site on the terms of this Agreement.

3.3 Reports

The Shire must prepare and give to the WSCHT and CEACA general periodic reports relating to the Development or any other matter connected with this Agreement as reasonably requested by the WSCHT or CEACA.

3.4 Shire as agent of CEACA

The Parties acknowledge and agree that:

- (a) the Shire enters into this agreement as the agent of CEACA for the construction of the Independent Living Units on the Site as part of the CEACA Senior Housing Project; and
- (b) at all times CEACA is the legal owner of the Independent Living Units whether partly completed or completed together with any goods, materials plant and equipment purchased as part of the Works or to be incorporated into the Works.

4. Development Scope and Specification

4.1 Approval of Development Scope and Specification

The Parties have agreed the Scope and Specification prior to the Commencement Date.

4.2 Variations by the Shire

Subject to clauses 4.3 and 4.4, the Shire must not make any variations to the Scope and Specification prior to entering into the Building Contract without obtaining CEACA's and the WSCHT's written consent.

4.3 Unavoidable Change to the Scope and Specification

If:

- (a) through unavailability or significant delays in availability of materials or if through any other cause beyond the reasonable control of the Shire, it is impractical to incorporate in the

Development any item referred to in the Scope and Specification;
or

- (b) it becomes necessary or expedient for the Shire to undertake or incorporate an amendment in respect of anything shown or described in the Scope and Specification (whether in order to comply with Requirements or otherwise),

the Shire may substitute an alternative item or undertake or incorporate such amendment without first obtaining the written consent of CEACA and the WSCHT.

4.4 CEACA's and WSCHT's Consent to amendment or substitution

CEACA and the WSCHT will not withhold consent to the Shire's amendment or substitution of any item referred to in the Scope and Specification, provided that such substitution or amendment:

- (a) is consistent with the design, quality, character, aesthetics and general finishes of the Development as stated in the Scope and Specification; and
- (b) conforms and complies with the Planning Scheme.

5. Building Contract

5.1 Engagement of Builder

The Shire shall:

- (a) promptly and diligently do everything necessary to procure the services of the Builder under the Building Contract and all Subcontractors, consultants and advisers as is necessary to complete the Works;
- (b) The Shire must not enter into the Building Contract with the Builder without first obtaining approval of CEACA, which approval will not be unreasonably withheld.
- (c) The Shire will not terminate the Building Contract or agree to any assignment of it or any termination of it by the Builder without the written consent of CEACA which consent will not be unreasonably withheld.

5.2 Variations under the Building Contract

At any time after the date of entering into a Building Contract the Shire may in its sole discretion request or consent to variations under the Building Contract as may be required from time to time to facilitate the completion of the Works.

6. Care of the Site and Works

6.1 The Shire's Site Obligations

Prior to the commencement of the Works, the Shire must:

- (a) define the Land (including the Site) by licensed survey;
- (b) enclose the Site with a fence of a reasonable standard where the WSCHT considers it appropriate to do so.
- (c) remove all existing structures, vegetation and other material from the Site necessary to provide a clear building pad for the Independent Living Units;
- (d) provide temporary services for construction including power and water;
- (e) provide to the Site (at locations determined by the Shire) permanent water, power and sewerage connections.

6.2 Shire's Responsibilities

The Shire must ensure that the Builder is responsible for the proper:

- (a) protection of the Site;
- (b) guarding, lighting and security of the Site;
- (c) provision and maintenance of temporary roadways, footways, guards and warning signs on the Site;
- (d) erection of notices and signs;
- (e) prevention of any unnecessary nuisance, and disturbance on the Site;
- (f) prevention of unnecessary noise (including music and/or radio noise that can be heard outside the Site);

- (g) prevention of Contamination or other environmental damage and pollution on the Site;
- (h) minimising any interference with any activities normally carried out in the vicinity of the Site; and
- (i) protection of persons, vehicles and property at the Site.

6.3 Partially Completed Work

The Shire must ensure that the Builder:

- (a) does not leave any Works or partly completed Works in an unsafe condition or in a condition which might cause damage to other work, plant, machinery or equipment;
- (b) continues any partly completed Works until that part of the Works is at a safe stage; and

6.4 Utilities

- (a) The Shire must ensure that the Builder takes care to protect from damage any utility lines, underground pipes, conduits or cables on or in the vicinity of the Site.
- (b) If such damage occurs, the Shire must report the damage to the WSCHT's Representative immediately and thereafter take all necessary steps to rectify the damage at the WSCHT's Representative's direction, unless the WSCHT's Representative directs a third party to rectify the damage (which the WSCHT's Representative may do in the WSCHT's Representative's discretion but subject to the obtaining of any necessary consent of an insurer if required to protect any insurance claim).
- (c) The Shire must ensure it (or the Builder) obtains and maintains all Authorisations required by any Law with respect to any utilities.

6.5 Rubbish, Water and Excavated Materials

The Shire must ensure that the Builder keeps the Site safe, clean and tidy while carrying out the Works and that it properly disposes of all rubbish, water, excavated materials and other waste.

6.6 Responsibility for Site

The Shire must ensure that the Builder is responsible for the care and maintenance of the Site and for the care of all property on, at and near the Site and the property of any Authority supplying utilities.

6.7 Confinement of Works

In relation to the carrying out of the Works, the Shire must ensure that the Builder and all the Builder's Employees and all Subcontractor's Employees confine their activities and movements to the Site and specific areas designated for the Works.

6.8 Inspection of Works

The Shire must, subject to any obligations to obtain the consent of the Builder under the Building Contract:

- (a) if the Shire is in possession of the Site allow the WSCHT and any other persons authorised in writing by the WSCHT reasonable access to inspect any Works or materials on the Site or to be supplied in relation to this Agreement or the Works; and
- (b) if the Site is in the possession of the Builder pursuant to the Building Contract, take all reasonable actions to obtain the consent of the Builder for WSCHT and any other persons authorised in writing by the WSCHT to have reasonable access to inspect any Works or materials on the Site or to be supplied in relation to this Agreement or the Works;
- (c) do everything reasonably necessary to facilitate any inspection under this clause.
- (d)

6.9 Holding of Licences by Personnel

The Shire must ensure the Builder and all the Builder's Employees and Subcontractor's Employees hold the necessary licenses, permits, endorsements or other certificates required by Law or regulation to operate the vehicles, plant or equipment used in connection with the Works, and that any directions given by any Authority concerning such operations are clearly and promptly conveyed and carried out.

6.10 Prevention of Nuisance to other parties

The Shire must ensure that the Builder carries out the Works in such a way as to prevent any nuisance or unreasonable disturbance being caused to owners, tenants, or occupiers of properties adjacent to the Site and to the public generally.

6.11 Fire Risk

The Shire must ensure that the Builder co-operates with the WSCHT's Representative and all fire-fighting agencies in the prevention and suppression of fires and must comply with reasonable fire protection standards (if any).

7. Protection of Persons and Property on the Site

7.1 General Obligations

The Shire must ensure that, in relation to the Builder's or a Subcontractor's use of the Site the Builder and each Subcontractor:

- (a) provides all things and take all measures necessary to protect persons, animals and property;
- (b) avoids unnecessary interference with the passage of persons, animals and vehicles; and
- (c) prevents nuisance and unreasonable noise and disturbance as required by applicable Law.

7.2 Specific Obligations

The obligations under clause 7.1 include, but are not limited to:

- (a) the provision of barricades, guards, fencing, temporary roads, footpaths, warning signs, lighting, watching, traffic flagging and safety;
- (b) all measures necessary to control or limit noise and dust; and
- (c) the removal of obstructions and the protection of services.

7.3 Damage to Utilities

If the Builder or a Subcontractor damages property, including, but not limited to:

- (a) utilities and services; or
- (b) property on or adjacent to the Site,

the Shire must promptly ensure the damage is made good and pay any compensation which is payable by Law as a result.

8. **Construction of the Development**

8.1 **Works**

The Shire must procure the carrying out of the Development:

- (a) in a proper workmanlike manner;
- (b) at the Shire's cost and expense;
- (c) in accordance with:
 - (i) the Scope and Specification;
 - (ii) the Building Contract;
 - (iii) the Regulatory Requirements;
 - (iv) the Planning Scheme; and
 - (v) all Laws;
- (d) in a commercial, prudent and efficient manner;
- (e) in accordance with reasonable and suitable methods and practices; and
- (f) in compliance with this Agreement.

8.2 **Standards of Materials**

The Shire must procure the use of materials that are consistent with the Scope and Specification.

8.3 **Provision by Shire of Tools and Plant**

The Shire must procure the provision of all materials, plant, machinery, tools, labour and all other things necessary for the construction of the Works of a quality, and where applicable installed in a manner, best suited for the construction of the Works.

8.4 Location of Works

The Shire must procure the construction of the Works on the Site.

8.5 Site Meetings

The Shire must arrange for its project manager Access Housing and the Builder (or a Builder's Employee) to attend meetings with CEACA and the WSCHT (or CEACA's Representative or the WSCHT's Representative) or both not less frequently than every six (6) weeks at a time which is mutually convenient and appropriate in order to discuss the progress of the Works.

9. Access, Risks and Ownership

9.1 Access

The WSCHT grants to the Shire and its officers, employees, agents and contractors and the Builder a licence to access the Site for the purpose of carrying out the Works and performing all of the Shire's obligations under the Agreement.

9.2 Site and Construction Risks

The Shire acknowledges and agrees that all risks associated with the Shire's licence to access and use the Site and the carrying out of the Works, including:

- (a) ease of access to the Site including any Requirements of any Authority in relation to the activities of the Shire, and its officers, employees, agents and contractors and Builder, on the Site;
- (b) all utility services to the Site;
- (c) site conditions;
- (d) construction means, methods and techniques used to undertake the Works;
- (e) time or cost overruns suffered as a result of any unanticipated conditions with regard to access to the Site; and
- (f) industrial action and work stoppages by the Builder or any Builder's Employees or any Subcontractors Employees,

are risks borne solely by the Shire, and the Shire and CEACA will not make any claim against the WSCHT in relation to any of those risks.

9.3 Authorisations Risk

The Shire will bear all risks associated with obtaining any Authorisations required under this Agreement, including delays and cost increases, and the Shire and CEACA will not make any claim against WSCHT in relation to any of those risks.

9.4 WSCHT to Assist

Subject to all of the Shire's applications for Authorisation complying with the Planning Scheme and any other requirement under Law, the WSCHT as the land owner will assist the Shire to obtain all necessary Authorisations required by the Shire.

9.5 Insurance Premium Risk

The Shire will bear the cost of all insurance cover which it is required to arrange under this Agreement, including any cost increases, and will not make any claim against the WSCHT in relation to any of those costs.

9.6 Risk Generally

Subject to this Agreement, risk in relation to the Works generally rests with and remains with the Shire.

9.7 Exclusions from Risk

Notwithstanding any other clause in this Agreement, the Shire is not liable for risk in relation to the Works arising from:

- (a) any loss and damage contributed to by the negligent act or omission of the WSCHT or its agents, employees or consultants;
- (b) any risk for which the Shire is specifically excluded elsewhere in this Agreement.

10. **Insurance Obligations**

10.1 Construction Risks Insurance

The Shire must ensure that the Builder effects and maintains construction risks insurance with an insurance company approved by the Shire, in the

name of the Builder and indemnifying WSCHT, CEACA and the Shire for the full insurable value of the replacement or reinstatement cost of the Works for the period up to and including the applicable defects liability period, against loss, damage or destruction including:

- (a) temporary works,
- (b) any plant and equipment used for the Works; and
- (c) and any other property for which the Builder is responsible;

and such policy of insurance shall be on terms and conditions that are satisfactory to the Shire.

10.2 Public liability insurance

The Shire must effect and maintain and ensure the Builder also effects and maintains public liability insurance for an amount of up to \$20,000,000 in respect of any single event or accident and unlimited in the aggregate including in relation to:

- (a) the liability of the Builder, WSCHT, CEACA and the Shire for death, personal injuries and the loss, damage or destruction of any property arising out of or in consequence of the procurement of and construction of the Works;
- (b) any liability of the Builder, WSCHT, CEACA and the Shire arising out of any act or omission of the of the Builder, WSCHT, CEACA, the Shire, any Subcontractor or any Builder's employees or Subcontractor's employees; and
- (c) all claims, risks and events covered under the indemnities provided by the Shire to the WSCHT under this Agreement.

10.3 Insurance of employees

The Shire must ensure that the Builder and any Subcontractors effect and maintain employers' indemnity insurance including workers' compensation insurance in respect of the employees of the Builder and in the case of any Subcontractor, the Subcontractor's employees, employed on the Site and such cover must:

- (a) be in respect of liability for death of or injury to persons employed by the Builder, including liability by statute and at common law;
- (b) be maintained while any work under this Agreement remains to be done;
- (c) must include a principal's indemnity extension and common law coverage on a limit of liability of at least \$50,000,000 (or other agreed amount) in respect of workers compensation insurance.

10.4 Commencement of Insurance

The policies of insurance referred to in clauses 10.1, 10.2 and 10.3 must be taken out and made effective as soon as is practicable after the Commencement Date.

10.5 Insurance must include all Employees

All insurance referred to in this clause 10 which is required to cover any of WSCHT, the Shire, CEACA, the Builder and all Subcontractors must cover their respective employees, agents and consultants.

10.6 Conditions of Insurance

The following requirements apply to the insurance required under this clause 10:

- (a) the insurances must be taken out with an insurer approved by the Shire;
- (b) the Shire must not, without the prior written consent of CEACA and the WSCHT, agree or consent to any reduction in limits or cover in any insurance policy;

10.7 General's Obligations Relating to Insurance

In relation to any insurance which the Shire or the Builder or a Subcontractor is required to take out:

- (a) the Parties must not intentionally do or permit anything which prejudices that insurance;
- (b) the Parties must promptly rectify anything which might prejudice that insurance and reinstate it or require it be reinstated if it lapses;

- (c) the Shire must not agree to the cancellation of that insurance or do anything to allow it to lapse;
- (d) the Shire must notify the other Parties immediately if :
 - (i) an event occurs which gives rise or is reasonably likely to give rise to a claim under the insurance by the Shire, the Builder or a Subcontractor or any third party in connection with the Works or this agreement; or
 - (ii) any policy is cancelled or there is a threat to cancel a policy; or
 - (iii) any premium under any insurance policy is not paid when due; or
 - (iv) there is a material change to the terms of any policy; or
 - (v) any event occurs which results in or could result in a policy of insurance being invalidated or otherwise becoming unenforceable;
- (e) the Shire must if requested by a Party at any time, promptly provide a copy of any policy taken out or require to be taken out by the Builder or a Subcontractor under this agreement.

10.8 No Admissions and Settlement

Each Party must not make any admission of liability or settle any claim relating to any insurance required to be taken out and maintained under this agreement except by agreement between the Shire, CEACA and the WSCHT recorded in writing and signed by each of them.

11. Limit of liability

11.1 Contributory Liability

Where a Party is liable to compensate or indemnify another Party pursuant to this Agreement or any other reason, that liability is reduced to the extent that any liability arises out of, is contributed to by, or is a consequence of, a default under this Agreement by another Party (which default must be relevant to the liability) or is caused or (to the extent of the contribution) contributed to by the negligent act or omission of another Party or an

officer, employee or agent of that other Party or any person acting at its or their direction or with its or their consent, express or implied.

11.2 Indirect or Consequential Loss

Notwithstanding any other provision of this Agreement:

- (a) the Shire and CEACA have no liability to the WSCHT, nor will the WSCHT be entitled to make any claim, in respect of any indirect or consequential loss incurred or sustained by WSCGT as a result of any act or omission of the Shire or CEACA (whether negligent or otherwise) or as a result of a breach of this Agreement by the Shire or CEACA (except to the extent that the Shire or CEACA recovers under a policy of insurance under this Agreement for indirect or consequential loss, and the Shire and CEACA will use their best endeavours to recover any amounts under a policy of insurance); and
- (b) WSCHT has no liability to the Shire or CEACA, nor will the Shire or CEACA be entitled to make any claim, in respect of any indirect or consequential loss incurred or sustained by the Shire or CEACA as a result of any act or omission of the WSCHT (whether negligent or otherwise) or as a result of a breach of this Agreement by the WSCHT (except to the extent that the WSCHT recovers under a policy of insurance under this Agreement for indirect or consequential loss, and the WSCHT will use its best endeavours to recover any amounts under a policy of insurance).

11.3 Liability Cap

Notwithstanding anything else contained in this Agreement, each Party's liability to the other Party under or arising from this Agreement or for any act or omission (including negligence) or under any Law shall not exceed:

- (a) in the case of a risk, claim or liability which is covered by a policy of insurance, the amount recoverable and actually recovered pursuant to the relevant policy of insurance;
- (b) in the case of the Shire or CEACA with respect to the obligations to complete the Development, the amount recoverable and

actually received by the Shire or CEACA pursuant to the Financial Assistance Agreement for the Development.

11.4 When limits do not apply

The limitation of liability in this clause for a Party does not apply in respect of any fraud, deliberate default, gross negligence or wilful misconduct or any act or omission done or not done with a reckless disregard for the consequences, by that Party or any of that Party's officers, employees, agents or consultants.

12. **Environmental Obligations**

12.1 Obligation

Without limitation, the Shire must:

- (a) ensure the Works are carried out in a manner that prevents pollution or damage to the Environment; and
- (b) ensure that no pollutant or waste material of any kind is discharged or otherwise allowed to contaminate the Environment during the carrying out of the Works; and
- (c) immediately clean up or arrange to clean up any pollutant or waste material which is discharged or does contaminate the Environment or have the potential to do so; and
- (d) remove or arrange to remove all waste and debris resulting from or arising out of or in connection with the carrying out of the Works; and
- (e) maintain proper procedures or ensure proper procedures are maintained to monitor compliance and comply with all Environmental Laws affecting the carrying out of the Works (including, without limitation, reporting any known or suspected Contamination at, on, under or near the Site); and
- (f) otherwise ensure the Works are carried out in accordance with all applicable Environmental Laws.

12.2 Removal

- (a) The cleaning up or removal of anything referred to in the preceding clause includes removing or eliminating the cause of Contamination and any contaminated material or substance.
- (b) The Shire's responsibility for ensuring the cleaning up and removing of Contamination arises as soon as any Contamination is discovered.
- (c) The responsibility does not cease on termination of this agreement but continues in relation to any Contamination caused during the term of this Agreement but discovered after the termination of this agreement.

13. Shire's General Compliance Obligations

13.1 Licences and Permits

The Shire must at its cost and expense, obtain and keep current all Authorisations necessary at any time for the Shire to lawfully procure the carrying out of the Works as required by this agreement and to comply with its obligations under this Agreement.

13.2 Copy of Authorisations

If reasonably by the WSCHT from time to time, the Shire must provide a copy of all Authorisations held by the Shire or issued by an Authority or other person in relation to the carrying out of Works.

13.3 Compliance with Laws

The Shire must comply with all Laws at any time relating to the carrying out of Works or to anything else to be done under or in connection with this Agreement.

13.4 Australian Standards

The Shire must ensure that all work carried out in relation to the carrying out of Works and all materials used in the Works comply with any relevant Australian Standards (including any codes of practice or other codes developed under the standards) whether applying at the Commencement Date or after that date.

14. Delays in the Works

14.1 Causes of Delay

Despite any other provision, if the completion of the construction of the Works is delayed by events beyond the control of the Shire or the Builder, including:

- (a) inclement weather of a nature or duration which is beyond that which is statistically normal at Wyalkatchem, Western Australia for the time of year when the delay is alleged to occur;
- (b) loss or damage by fire, fusion, explosion, earthquake, lightning, flood, storm, tempest, water damage, smoke damage, vehicles, impact, riot, civil disturbance, malicious damage, war or other like cause;
- (c) strike, lockout or other industrial dispute;
- (d) prohibition or embargo imposed by any Act, ordinance, proclamation, or order;
- (e) delay by any other Authority in giving any necessary approval or consent or in carrying out any necessary inspection;
- (f) variation or addition to the Works made at the request of CEACA or the WSCHT;
- (g) delay on the part of the WSCHT in relation to any matters or things required to be done by the WSCHT;
- (h) temporary or permanent unavailability or delay in delivery of any materials required for the proper construction of the Works,
- (i) an Aboriginal Heritage Claim made in respect of or relation to the Site; or
- (j) an Environmental Claim made in respect of or in relation to the Site;

then if the relevant event is not caused or contributed to by the Shire or the Builder or any of the Builder's Employees or a Subcontractor's Employees, the Shire may by giving notice in writing to the WSCHT within 5 Business Days after the occurrence of the relevant event extend the Anticipated Date

for Practical Completion by a number of days which is the same as the number of days for which the relevant event of delay continues.

14.2 Commencement and Completion of the Works

The Shire must use its best endeavours to ensure that:

- (a) all necessary Authorisations are obtained for the Works and the Works are commenced as soon as practicable after the Commencement Date;
- (b) the Builder continues to carry out and progress the Works in accordance with the Building Contract; and
- (c) the Works are completed to the stage of Practical Completion on or before the Anticipated Date of Practical Completion, as extended under clause 14.1.

14.3 Latent Site Issues

If as a result of any Contamination, Environmental Claim or Aboriginal Heritage Claim ("**Disruption Event**"), the construction of the Works cannot be commenced by the Builder or the construction of the Works must cease and such period of delay or interruption persists for a continuous period of thirty (30) days then:

- (a) the Parties will meet and negotiate in good faith with a view to deciding how the Disruption Event is to be resolved so as to allow construction to proceed as soon as is reasonably practicable;
- (b) neither Party is liable to the other in respect to any loss arising from such Disruption Event; and
- (c) if the Disruption Event cannot be resolved satisfactorily and as a result the construction of the Works cannot be:
 - (i) commenced within twelve (12) months from the Commencement Date; or
 - (ii) re-commenced within twelve (12) months from the date in which the Works ceased,

either party may terminate this agreement and each party shall have no liability to the other provided that the Shire must re-instate

the Site so far as reasonably practicable to its condition prior to the Commencement Date.

15. **Practical Completion and Final Completion**

15.1 **Shire's Notice of Completion**

The Shire must notify the WSCHT and CEACA when the Shire considers all Works have been properly completed and all omissions and defects in the Works have been corrected (except for minor defects and omissions) and the Works have in all other respects reached the stage of Practical Completion.

15.2 **Completion**

- (a) Within 14 days of receipt of the notice from the Shire under clause 15.1, the WSCHT Representative and CEACA Representative must inspect the Works and conduct any tests or examinations which the WSCHT or CEACA requires to determine whether the Shire has achieved Practical Completion and then notify the Shire of any parts of the Works which still require completion or which the WSCHT Representative or CEACA Representative considers are still defective and which require remedial work in order for the Shire to achieve Practical Completion.
- (b) Upon receipt of a notice from the WSCHT Representative or CEACA Representative under clause 15.2(a), the Shire must either:
 - (i) procure the Builder to re-perform or rectify any part of the Works which is incomplete or defective; or
 - (ii) if the directions in the notice or notices amount to remedial Works exceeding \$10,000.00, the Shire may refer the matter for expert determination in accordance with clause 23 and such determination will be final and binding on the Parties.
- (c) When the Shire or an Expert, in the case of clause 15.2(b)(ii), considers the incomplete or defective Works have been completed or rectified (as the case may be) the Shire must give the WSCHT

representative and CEACA representative a further notice certifying that the incompleteness or defects have been corrected and submit to WSCHT's Representative and CEACA's Representative a replacement Notice in accordance with clause 15.1.

- (d) The procedure specified in clauses 15.1 and 15.2 is to be followed until the WSCHT representative and CEACA Representative reasonably determine the Shire has achieved Practical Completion.

15.3 Certificate of Practical Completion

When WSCHT's Representative and CEACA's Representative are satisfied that Practical Completion under this agreement is reached they will issue the Certificate of Practical Completion.

16. Access to Construction Documents

16.1 Availability of Documents

During the construction of the Works under this Agreement the Shire must arrange for a legible set of the drawings and written information relevant to any part of the design and construction of the Works to be kept by the Builder at the place of construction of the Works and be available for inspection and reference by the CEACA and WSCHT (or CEACA's Representative or the WSCHT's Representative) or any other person nominated in writing by CEACA or the WSCHT.

16.2 Shire must make available

As soon as reasonably possible after completion of the Works the Shire must make available to CEACA and the WSCHT all construction and as-built drawings, plans, specifications and any other similar documentation relevant to the design, construction and operation of the Works as reasonably required by CEACA and the WSCHT, including in relation to materials procured by the Shire from the Builder or a Subcontractor or other third party for the purpose of designing or constructing the Works.

17. **Compliance with the Financial Assistance Agreement**

The Parties covenant to comply with all of the terms of the Financial Assistance Agreement to the extent that they relate in any way to the Development and provision of funding for the Development, and each Party must do all things necessary to facilitate compliance with the Financial Assistance Agreement by the Shire and CEACA.

18. **Subdivision of Land**

18.1 **Application**

The Shire must:

- (a) obtain all Authorisations of all Authorities which may be required to carry out the Subdivision;
- (b) arrange for a plan of subdivision to be lodged at Landgate and endorsed "Certified Correct";
- (c) arrange for the issue of separate certificates of title for each Subdivision Lot.

18.2 **WSCHT Covenants**

WSCHT covenants to:

- (a) assist and cooperate with the Shire in making enquiries into all aspects of the Subdivision of the Land, including, without limitation, with respect to:
 - (i) the existence and location of all public utilities and services including sewer, water and power connections and or supplies to the Land;
 - (ii) all local government held information concerning the Land;
 - (iii) any geotechnical survey of the Land; and
 - (iv) enquiries with the Planning Commission with respect to the ability to subdivide and develop the Property and any likely conditions that may be imposed on a subdivision approval of the Land.

- (b) promptly allow and provide the Shire and CEACA with all necessary consents, authorities and approvals (both written and oral) to facilitate the Shire and CEACA to make enquiries with respect to the land (including with any Authority) and to prepare and lodge with all relevant Authorities all applications and other documents necessary to commence, implement and complete the Subdivision including all Development Approvals.
- (c) do all things (including executing all documents) necessary or desirable to give full effect to the WSCHT Obligations.

18.3 Use of Transferred Site by CEACA

CEACA must only use the Site for the provision of Seniors Housing or tenants with physical or neurological disabilities and must not sell any of the Subdivided Lots created pursuant to the Development that are transferred to CEACA for a use not consistent with those above, without the consent of WSCHT.

19. Transfer of Site

19.1 Terms of Transfer

- (a) WSCHT must transfer the ownership of the new Subdivided Lots comprising the Site to CEACA upon completion of the Subdivision.
- (b) The titles to the Subdivided Lots comprising the Site when transferred will be free of all encumbrances.
- (c) WSCHT will do all things (including executing all documents) necessary or desirable to give full effect to the transfer, including executing the sale of land documents in Annexure 4 to this Agreement and a transfer of land document in registrable form to effect the transfer of the Subdivided Lots comprising the Site to CEACA.

19.2 Good faith negotiations for further Subdivided Lots

The Parties agree that if CEACA (or the Shire acting as CEACA's agent) wish to negotiate the construction of additional housing on the Land and transfer of other Subdivided Lots at a later date then the Parties will negotiate in good faith and acting reasonably enter into negotiations with

the intention of reaching mutually agreeable terms for such construction or transfer to occur.

20. **Warranties**

20.1 **Shire's Warranties**

The Shire warrants that:

- (a) it is a body corporate pursuant to the provisions of the *Local Government Act 1995*;
- (b) it has the legal capacity to enter into and perform its obligations under this Agreement; and
- (c) all conditions and things required by law to be fulfilled or done (including the obtaining of any necessary Authorisations) in order to enable the Shire to lawfully enter into, exercise its rights and perform its obligations under this Agreement have been fulfilled or are capable of being fulfilled; and
- (d) it has or is able to obtain all Authorisations necessary to enter into this Agreement, perform its obligations under the Agreement and allow it to be enforced.

20.2 **WSCHT Warranties**

The WSCHT warrants that:

- (a) it is a body corporate being a duly incorporated association pursuant to the provisions of the *Associations Incorporation Act 2015*;
- (b) it has the legal capacity to enter into and perform its obligations under this Agreement; and
- (c) all conditions and things required by law to be fulfilled or done (including the obtaining of any necessary Authorisations) in order to enable the WSCHT to lawfully enter into, exercise its rights and perform its obligations under this Agreement have been fulfilled or are capable of being fulfilled; and

- (d) it has or is able to obtain all Authorisations necessary to enter into this Agreement, perform its obligations under the Agreement and allow it to be enforced.


20.3 CEACA's Warranties

The CEACA warrants that:

- (a) it is a body corporate being a duly incorporated association pursuant to the provisions of the *Associations Incorporation Act 2015*;
- (b) it has the legal capacity to enter into and perform its obligations under this Agreement; and
- (c) all conditions and things required by law to be fulfilled or done (including the obtaining of any necessary Authorisations) in order to enable the Shire to lawfully enter into, exercise its rights and perform its obligations under this Agreement have been fulfilled or are capable of being fulfilled; and
- (d) it has or is able to obtain all Authorisations necessary to enter into this Agreement, perform its obligations under the Agreement and allow it to be enforced.

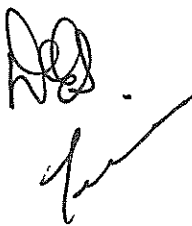
~~21. Power of Attorney~~

~~21.1 Appointment~~

 ~~In order for CEACA and the Shire to effectively perform the Shire's Obligations, WSCHT irrevocably appoints the Shire and CEACA's Representative, severally to be the attorney of the WSCHT (Attorney) for the duration of the Development.~~

~~21.2 Extent of power~~

~~Each Attorney may:-~~

-  ~~(a) in the name of the WSCHT and at its expense in all things, do anything which the WSCHT agreed to do under the provisions of this Agreement or which, in the Attorney's opinion, is necessary or expedient to give effect to any right, power or remedy conferred on the Shire or CEACA by this Agreement, by law or otherwise~~

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~~(including without limitation executing deeds, transfers of land, any Landgate document and instituting, conducting and defending legal proceedings);~~

~~(b) delegate its powers (including this power of delegation) to any person for any period, and revoke such delegation; and~~

~~(c) exercise or concur in exercising its powers even if the Attorney has a conflict of duty in exercising its powers or has a direct or personal interest in the means or result of that exercise of powers.~~

~~21.3 Ratification~~

~~The WSCHT hereby ratifies anything done by an Attorney appointed pursuant to clause 21.1 or any delegate in accordance with clause 21.2(b).~~

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~~21.4 Notice~~

~~In the event that the powers conferred by clause 21.2 are to be exercised the Shire and CEASA shall use all reasonable endeavours to notify the WSCHT of any exercise by an Attorney of its rights under this clause before such rights are exercised, and, shall, as soon as practicable after such exercise, use all reasonable endeavours to notify the WSCHT of the action taken by the Attorney in exercising such rights.~~

22. Dispute Resolution

22.1 Disputes

Where there is a dispute or difference ("Dispute") between the Parties arising in connection with this Agreement (including its construction and the rights conferred and obligations imposed by it) that is not a dispute arising under clause 15, any of the Parties involved in the dispute may give notice at any time to the other Parties to the dispute setting out the matters that are the subject of the Dispute ("Dispute Notice").

22.2 Good Faith Meeting

The Parties agree that:

- (a) Within 7 Business Days of receipt of a Dispute Notice, a representative of each respective Party must meet together to resolve the Dispute in good faith and acting reasonably.

- (b) The Parties are committed to use their reasonable endeavours to resolve any Dispute under this clause without first resorting to termination of the agreement evidenced by this Agreement or by litigation.
- (c) If the Parties fail to resolve a Dispute under this clause, the Parties will submit the Dispute to mediation with a LEADR accredited mediator ("Mediator").

22.3 Mediation

The mediation must be conducted on the following terms:

- (a) the Mediator will assist the Parties to explore the options for and, if possible, achieve expeditious resolution of the Dispute by agreement;
- (b) the Mediator will not make decisions for a party or impose a solution on the Parties;
- (c) the Mediator will not obtain from any independent person advice or an opinion as to any aspect of the Dispute unless:
 - (i) the Mediator is requested in writing by both Parties to do so;
 - (ii) both Parties have agreed upon the identity of the independent person to give such advice or opinion; and
 - (iii) both Parties have agreed on who will be responsible to pay for the costs or fees in relation to the advice provided by the independent person;
- (d) both Parties will co-operate in good faith with the Mediator and each other during the Mediation;
- (e) each party will use its reasonable endeavours to comply with reasonable requests made by the Mediator to promote the efficient and expeditious resolution of the Dispute;
- (f) the mediation, including all preliminary steps, shall be conducted in such manner as the Mediator considers appropriate having regard to the nature and circumstances of the Dispute, the agreed goal of

an efficient and expeditious resolution to the Dispute and, to the extent that the Mediator may deem appropriate, to the view of each party as to the conduct of the mediation;

- (g) the proceedings, discussions and all documents created during the course of the mediation and all things said or disclosed during the course of the mediation shall be privileged and shall be for the purposes of any future matters or actions between the Parties be without prejudice save to the extent that the Parties shall reach an enforceable agreement;
- (h) if, after consultation with the Parties, the Mediator forms the view that the Mediator will be unable to assist the Parties to achieve resolution of a Dispute, the Mediator may immediately terminate its engagement as mediator by giving written notice to the Parties of that termination, upon which, the Mediator's role shall cease;
- (i) the mediation shall be terminated immediately upon the earlier of:
 - (i) execution of a settlement agreement in respect of the Dispute; and
 - (ii) 10 Business Days after the appointment of the Mediator; and
- (j) the costs of the mediation shall, unless otherwise agreed by the Parties, be paid equally by the WSCHT and the Shire.

22.4 Not to Limit Right to Enforce

- (a) Nothing in this clause will prevent any Party from exercising any right pursuant to this Agreement or their right to commence legal proceedings in any court of appropriate jurisdiction, as a consequence of any default arising under this Agreement.
- (b) This clause does not prevent a Party from obtaining any injunctive, declaratory or other interlocutory relief from a court which may be urgently required.
- (c) Despite the submission of a dispute to mediation or the reference of a dispute to arbitration, the Parties must continue to perform their obligations under this Agreement.

23. **Expert Determination**

23.1 **Applicability of Provisions**

The following provisions of this clause 23 apply to the determination of a dispute arising under clause 15.2(b)(ii) ("Expert Dispute").

23.2 **Role of Expert**

The Parties acknowledge and agree that the Expert acts as an independent expert and not an arbitrator.

The Expert must:

- (a) take into consideration all documents, reports, statements, information and other written and oral material that the WSCHT, CEACA, the Shire and Builder submit to the Expert including, without limitation, documents, information and material relating to the facts the subject of the Expert Dispute and to arguments and submissions upon the matters the subject of the Expert Dispute;
- (b) not be expected or required to obtain or refer to any other documents, information or material but may do so if he or she so desires and if so, the WSCHT, CEACA, the Shire and the Builder must comply with any of the Expert's requests;
- (c) make a decision in such form as he or she considers appropriate stating the determination of the Expert Dispute and giving written reasons; and
- (d) act with expedition with a view to making a decision within the time period specified in clause 23.8.

23.3 **Notices**

- (a) As soon as a Party believes that a Expert Dispute arises, it must give notice to the other Party;
- (b) The Parties must endeavour to agree on the appointment of a person as Expert and such person must be:
 - (i) a suitably qualified arbitrator of at least five (5) years experience in dealing with construction or building disputes; and

- (ii) be a member of the Institute of Arbitrators (Western Australia Division)
- (c) If the parties are unable to agree on a Expert or replacement within five (5) Business Days after either party gives the other a notice that a dispute exists, either party may require the President of the Institute of Arbitrators (Western Australia Division) to select a Expert or replacement who is willing to act and who has the qualifications specified in clause 23.3(b)
- (d) Within 48 hours of the appointment of the Expert, each Party must submit a brief written summary of the Expert Dispute to the Expert.

23.4 Submissions

- (a) The party requiring the Expert Dispute to be determined by the Expert must arrange for the Expert to undertake, as a condition of appointment, to determine the dispute no later than five (5) Business Days after the summaries are required to be submitted, whether or not they have in fact been submitted.
- (b) Both parties must promptly provide the Expert with all information and assistance the Expert reasonably requires in order to make a decision.
- (c) The parties are bound by the decision of the Expert whether or not the summaries have been submitted.

23.5 Assistance

If the Expert needs assistance, the Expert may select and appoint an assistant at the Expert's sole discretion.

23.6 Obligations to Continue

While the Expert is considering or determining the Expert Dispute, each party must continue to carry out its obligations under this Agreement.

23.7 Costs

- (a) The Expert's remuneration shall be agreed between the WSCHT, the Shire and the Expert before the Expert is appointed.

- (b) Liability for the costs of the Expert are in the Expert's discretion and the parties must pay those costs in accordance with the Expert's directions.

23.8 Expert's Decision

The Expert's determination of the dispute:

- (a) must be in writing;
- (b) will be final and binding except in the case of manifest error or unless a party within 21 days of the determination commences proceedings in court disputing the determination, in which event the court will have the power to review the determination of the Expert; and
- (c) is to be given effect by the parties unless and until it is reversed, overturned or otherwise changed in the court proceedings referred to in clause 23.8(b).

24. Subcontracting

24.1 Approval to subcontract

The Shire may permit the Builder to subcontract the performance of the whole or any part of its obligations under the Building Contract to any subcontractor nominated by the Builder.

24.2 Subcontracting does not Relieve Shire

Notwithstanding the terms of any subcontract:

- (a) any subcontracting of any part of the Works will not relieve the Shire from any of its liabilities or obligations under this Agreement; and
- (b) the Shire will be liable to the WSCHT for the acts and omissions of the Builder and any Subcontractor and any Builder's Employees or Subcontractor's Employees as if they were the acts or omissions of the Shire.

25. **Project Manager**

25.1 **Appointment**

The Shire and CEACA:

- (a) has appointed Access Housing to be their project manager to undertake the supervision and management of the Development on behalf of the Shire and CEACA pursuant to this Agreement on such terms as shall be agreed between Access Housing, CEACA and the Shire; and
- (b) shall ensure there is at all times a person appointed to act as project manager until Termination or Practical Completion.

25.2 **Project Manager's Authority**

The Parties acknowledge that:

- (a) Access Housing will have such authority as the Shire and CEACA may delegate by agreement to Access Housing to exercise any of the Shire's or CEACA's powers or duties under this Agreement;
- (b) the WSCHT may communicate directly with Access Housing in relation to any matters WSCHT has been notified is within Access Housing's authority; and
- (c) a communication given by the WSCHT to Access Housing with regard to any matter within Access Housing's authority to act relating to this Agreement is taken to be given to the Shire.

26. **Termination on Default**

26.1 **When Termination May Occur**

This Agreement may be terminated at the option of a party by notice to the other party:

- (a) if the other party has committed a material breach under this Agreement and the material breach is incapable of being remedied; or
- (b) if the other party has committed a material breach under this Agreement in respect of which damages is not an adequate remedy and that material breach is capable of being remedied but

the material breach continues unremedied for a period of 45 days after written notice of the breach has been given to the defaulting party by the other party.

26.2 Termination on Default does not Limit other Rights

Termination of this Agreement under clause 26 does not limit or affect the rights or remedies of the Parties whether arising as a result of default or otherwise prior to termination.

26.3 Survival

Termination of this Agreement does not release any Party from any of its obligations under this Agreement that by their nature survive termination of this Agreement, including all warranties and obligations of indemnity or confidentiality. All such obligations which are capable of having future operation continue in force despite this Agreement being otherwise fully performed.

27. Caveats

27.1 Charge on the Land

The WSCHT hereby charges the Land in favour of the Shire and CEACA for the purpose of securing the due and punctual performance by the WSCHT of the WSCHT's Obligations and authorises the Shire and CEACA to lodge an absolute caveat against the certificate of title to the Land to protect the rights and interests of the Shire and CEACA under this Agreement.

27.2 Removal of Caveat

- (a) The WSCHT shall not take any action to remove such caveat.
- (b) The Shire and CEACA warrants that the Caveat lodged against the Land shall be withdrawn upon the transfer of the Subdivided Lots comprising the Site to CEACA.

28. **Confidentiality**

28.1 **Confidentiality Obligation**

Each party must keep all Confidential Information confidential, and must not without the prior written consent of the other party:

- (a) make available, communicate or disclose the Confidential Information or any part of it to any person, firm or company other than those of its employees requiring the Confidential Information for the purpose of this Agreement or for the purpose of complying with applicable laws; or
- (b) use or allow its employees to use any of the Confidential Information for any purpose other than in relation to the performance of its obligations under the Agreement.

28.2 **Other Persons Bound**

Each party must ensure that any person to whom Confidential Information is made available, communicated or disclosed is at all times subject to and maintains the obligations of confidentiality contained in this clause 27.

29. **Consent**

Unless otherwise stated, if a party's consent or approval is required:

- (a) it must consider the request promptly and be reasonable in giving or refusing its consent or approval;
- (b) it may require the other party to comply with any reasonable conditions before giving its consent or approval; and
- (c) the consent or approval is not effective unless in writing.

30. **Assignment**

A party may not assign, transfer any interest in or otherwise deal with this Agreement except with the consent of the other party.

31. **Continuing Obligations - No Merger**

Each obligation and warranty in this Agreement which is capable of having future operation continues in force although this Agreement has otherwise been fully performed and despite the commencement of the Lease.

32. **No Partnership**

This Agreement does not create or evidence a partnership or joint venture.

33. **Further Assurance**

Each party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Agreement.

34. **Severability**

If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

35. **Entire Understanding**

This Agreement:

- (a) constitutes the entire agreement between the Parties and contains all the representations, warranties, covenants and agreements of the Parties in relation to the subject matter of this Agreement; and
- (b) supersedes all prior agreements, understandings and negotiations in respect to all matters dealt with in this Agreement.

36. **Variation**

This Agreement may not be varied except in writing signed by all of the Parties.

37. **Costs and Expenses**

- (a) Each party must pay its own costs and expenses connected with the negotiation, preparation and execution of this Agreement.
- (b) The Shire must pay all transfer duty (if any) payable in connection with this Agreement and all other documents and matters referred to in this Agreement when due.

38. **Giving of Notices**

38.1 **Service of Notices**

All notices to be given under this Option Deed shall be in writing and will be regarded as given properly if:

- (a) served personally on the Party to whom the notice is given; or

- (b) mailed to the Party to whom the notice is given by prepaid post; or
- (c) emailed to the email address of the Party to whom the notice is given.

38.2 Address for Service

Each Party's address for service of a notice is the address and email address specified in this Agreement or such other address or email address as is advised by written notice by that Party to the other Parties.

38.3 Hand-Delivered Notice

A notice delivered personally is received on the day of delivery.

38.4 Notice by Pre-Paid Post

A notice is received if posted:

- (a) within Australia to an Australian address, five Business Days after posting;
or
- (a) in any other case, ten Business Days after posting.

38.5 Notice Given by Email

If a notice is emailed, a delivery confirmation report received by the sender, which records the time that the email was delivered to the recipient's last notified email address is prima facie evidence of its receipt by the recipient, unless the sender receives a delivery failure notification, indicating that the electronic mail has not been delivered to the recipient.

38.6 After hours Notices

If a notice is sent pursuant to sub-clauses 38.4 or 38.5:

- (a) after 5.00 pm on a Business Day; or
- (b) on a day which is not a Business Day,

it is taken as having been sent at 9.00 am on the next Business Day.

39. Governing Law and Jurisdiction

This Agreement is governed by, and is to be interpreted in accordance with, the laws of Western Australia and where applicable the laws of the Commonwealth of Australia, and the Parties agree to submit to the exclusive jurisdiction of the courts of Western Australia.

40. **GST**

44.1 In this clause:

"GST" means:

- (a) the same as in the GST Law;
- (b) any other value added tax, goods and services tax, or any tax applying to this Agreement in a similar way; and
- (c) any additional tax, penalty tax, fine, interest or other charge under a law of such a tax.

"GST Law" means the same as 'GST Law' in *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

44.2 Words defined in the GST Law have the same meaning in this clause, unless the context makes it clear that a different meaning is intended.

44.3 Unless expressly included, the consideration for any supply under or in connection with this Agreement does not include GST.

44.4 To the extent that any supply made under or in connection with this Agreement is a taxable supply, the consideration for that supply is to be increased by an amount determined by the supplier, not exceeding the amount of that consideration multiplied by the GST rate.

ANNEXURE 1

Site Plan

ANNEXURE 2

Financial Assistance Agreement

ANNEXURE 3

Scope and Specifications

ANNEXURE 4

Sale Agreement

EXECUTED BY THE PARTIES AS A DEED

THE COMMON SEAL of)
THE SHIRE OF MERREDIN)
was affixed pursuant to a resolution of)
the Council in the presence of:)
)

.....
Shire President

.....
Chief Executive Officer

EXECUTED by)
CENTRAL EAST AGED CARE)
ALLIANCE INC)
by authority of its Board)


.....
Chairperson

.....
Executive Officer

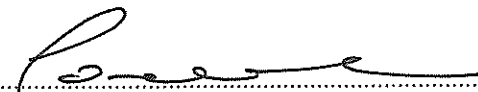
.....
Name of Chairperson
(BLOCK LETTERS)

.....
Name of Executive Officer (BLOCK LETTERS)

EXECUTED by)
WYALKATCHEM SENIOR CITIZENS)
HOMES TRUST INC (A0730007A) by)
authority of its Board)


.....
Chairperson

DALE EDWARD TYLER
.....
Name of Chairperson
(BLOCK LETTERS)


.....
Executive Officer

Joan Marie McNEIL
.....
Name of Executive Officer (BLOCK LETTERS)