

## MINUTES

### ORDINARY COUNCIL MEETING

**10 JUNE 2014**

COMMENCING AT 7:30 PM

COUNCIL CHAMBERS  
THE TOWN OF NARROGIN  
89 EARL STREET  
NARROGIN, WA 6312

Meaning of and CAUTION concerning Council's "In Principle" support:


When Council uses this expression it means that: (a) Council is generally in favour of the proposal BUT is not yet willing to give its consent; and (b) Importantly, Council reserves the right to (and may well) either decide against the proposal or to formally support it but with restrictive conditions or modifications.

Therefore, whilst you can take some comfort from Council's "support" you are clearly at risk if you act upon it before Council makes its actual (and binding) decision and communicates that to you in writing.

Disclaimer:

"Warning - Verbal Information & Advice: Given the inherent unreliability and uncertainty that surrounds verbal communication, the Town strongly recommends that, if a matter is of importance to you, then you should NOT act upon or otherwise rely upon any VERBAL information or advice you receive from the Town unless it is first confirmed in writing."

These minutes were confirmed at the Ordinary Council meeting held on 24 June 2014

Signed .....  ..... Date 24/6/14 .....  
(Presiding Member at the meeting at which minutes were confirmed)

## ORDINARY COUNCIL MEETING AGENDA

10 June 2014

### 1. OFFICIAL OPENING/ANNOUNCEMENT OF VISITORS

Mayor Ballard opened the meeting at 7:30pm.

### 2. RECORD OF ATTENDANCE/APOLOGIES/APPROVED LEAVE OF ABSENCE

Mayor Ballard  
Deputy Mayor Cr Paternoster  
Cr Russell  
Cr McKenzie  
Cr Ward  
Cr Bartron  
Cr Schutz  
Mr Cook                      Chief Executive Officer  
Mr Bastow                    Director of Corporate and Community Services  
Mr Robinson                Director of Technical and Environmental Services  
Ms French                    Executive Assistant

### 3. DECLARATION OF INTEREST BY ELECTED MEMBERS AND COUNCIL EMPLOYEES IN MATTERS INCLUDED IN THE MEETING AGENDA

10.2.301 Cr Ward declared a proximity interest.

### 4. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

NIL

### 5. PUBLIC QUESTION TIME

NIL

### 6. APPLICATIONS FOR LEAVE OF ABSENCE

**Council Resolution 0614.70**

**Moved: Cr Bartron**

**Seconded: Cr Ward**

That Mayor Ballard and Cr Schutz be approved the requested leave of absence from the Council meeting to be held on the 8<sup>th</sup> July 2014.

**Carried 7/0**

**7. CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

**Council Resolution 0614.71**

**Moved: Cr Ward**

**Seconded: Cr Schutz**

That Council:

Accept the minutes of the Ordinary Council Meeting held on 27 May 2014 and be confirmed as an accurate record of Proceedings.

**CARRIED 7/0**

**8. ANNOUNCEMENTS BY THE PERSON PRESIDING WITHOUT DISCUSSION**

Nil

**9. PETITIONS/DEPUTATIONS/PRESENTATIONS/SUBMISSIONS**

Nil

## **10. MATTERS WHICH REQUIRE DECISIONS**

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## **10.1 DEVELOPMENT AND TECHNICAL SERVICES**

Nil

## **10.2 CORPORATE AND COMMUNITY SERVICE**

### **10.2.298 NAMING RIGHTS FOR NARROGIN REGIONAL LEISURE CENTRE CAR PARK**

**File Reference:**

**Disclosure of Interest:**

**Nil**

**Applicant:**

**Chief Executive Officer**

**Previous Item Nos:**

**22<sup>nd</sup> April 2014**

**Date:**

**22<sup>nd</sup> May 2014**

**Author:**

**Mr Aaron Cook - Chief Executive Officer**

**Attachments:** Nil

**Summary:**

It is presented to Council to consider accepting the expression of interest presented by Narrogin Betta Home Living.

**Background:**

At the Ordinary Council meeting held on the 22<sup>nd</sup> April Council approved seeking expressions of interest for the naming rights of the Narrogin Regional Leisure Centre Car Park. From that meeting an advertisement was placed in the Narrogin Observer and concluded on the 21<sup>st</sup> May 2014.

Only one application was received.

**Comment:**

The proposal from Narrogin Betta Home Living is seen as being fair and equitable and is the same as what was paid for by the previous advertiser being \$1,500 per year for a period of 5 years.

As such, it is requested that Council approve the CEO to enter into a written agreement for the advertising/naming rights of the Narrogin Regional Leisure Centre Car Park (only).

**Consultation:** - Nil

**Statutory Environment:** - Nil

**Policy Implications:** - Nil

**Financial Implications:**

The financial implications are that Council are to receive the value of \$1500 per year for the next 5 years. As this income has been received through the Leisure Centre and the Leisure Centre Reserve balance is nil, it is proposed that this income be placed within the Reserve for future use.

**Strategic Implications:**

The placement of these funds within the reserve are the commencement of the building of this reserve for future use and need at the Leisure Centre. The naming rights provides a opportunity for a local business to potentially grow and develop their business through the exposure generated through the signage at the carpark.

**Voting Requirements:** Simple Majority

**Council Resolution 0614.72**

**Moved: Cr McKenzie**

**Seconded: Cr Schutz**

That Council:

- 1) Approve the Chief Executive Officer to prepare a written agreement, to be signed by both the Town of Narrogin and Narrogin Betta Home Living (32 - 36 Fortune St Narrogin), for the Car Park (only) Naming/Advertising Rights at the Narrogin Regional Leisure Centre for \$1,500 per annum for the next 5 years.
- 2) That Council place the \$1,500 per annum for the next 5 years within the Narrogin regional Leisure Centre Reserve for future use at the Leisure Centre.

**CARRIED 7/0**

## 10.2.299 OFFICE ACCOMMODATION LEASE TOWN HALL

**File Reference:**

**Disclosure of Interest:** Nil  
**Applicant:** Directions  
**Previous Item Nos:** Nil  
**Date:** 4<sup>th</sup> June 2014  
**Author:** Mr Aaron Cook - Chief Executive Officer

**Attachments:**

Letter from Mr Ian Eardley - Group General Manager - Directions Workforce Solutions Inc.

**Summary:**

It is presented to Council to endorse the preparation and signing of a lease for the single office at the Town Hall to facilitate Directions to have a continued presence within Narrogin.

**Background:**

Currently two of the three offices at the Town Hall are rented/leased to the Eisteddfod Committee and Avon Youth. The third office, the old Road Wise office is a single room next to the office of Avon Youth.

**Comment:**

It is presented to Council to consider leasing this unutilised space to Directions who currently have no office space in Narrogin but have been conducting a service here for several years.

As is stated in the attachment the office would be utilised for two days per week initially with the hope that the service would grow to four days per week in the near future.

The proposed office is currently underutilised and not making Council any social or economic benefit. This proposal will return Council a small rental, however, may assist some Narrogin residents and students to enter the workforce.

It is proposed that a two year lease be prepared on similar terms as the Avon Youth lease returning to Council \$3,640 rent per annum for the first year that includes a provision for Power, with the rent increasing to \$4,160 for the second year.

Please note that this office is slightly larger than the Avon Youth Office and has running water. As such the author has increased the proposed rent by \$10 per week over the Avon Youth Rent. The Toilets are located at the rear of the Town Hall and advice will be made that Parking is at the rear of the Hall not in the Federal or Fortune St, other than short visits.

**Consultation:** - Nil

**Statutory Environment:**

Local Government Act 1995 - Disposing of Property S3.58; however is excluded under section 30 to the Local Government (Functions and General) Regulations 1996.

**Policy Implications:** - Nil

**Financial Implications:**

Although minor income earned by Council the greater positive effect is through social benefits.

**Strategic Implications:**

The office space is currently underutilised and would allow Council to earn a small income. However, the greatest strategic implication is the potential increased social benefit of the service being provided from a set location in Narrogin and the future potential increases in service provision.

**Voting Requirements:** Simple Majority

<b>Council Resolution 0614.73</b>
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**Moved Cr Bartron**

**Seconded: Cr McKenzie**

That Council:

Approve the request to lease the third office space at the Town Hall complex for a two year period for \$3,640 for the first year and \$4,160 for the second year and endorse the Chief Executive Officer to prepare and execute the lease documentation.

**CARRIED 7/0**



## **10.2.300 CONTRACT AGREEMENT FOR THE MANAGEMENT OF THE NARROGIN REGIONAL LEISURE CENTRE**

**File Reference:**

**Disclosure of Interest:**

**Nil**

**Applicant:**

**Chief Executive Officer**

**Previous Item Nos:**

**10.2.285**

**Date:**

**4<sup>th</sup> June 2014**

**Author:**

**Mr Aaron Cook - Chief Executive Officer**

**Attachments:**

The updated agreement will be sent through to Councillors as soon as is received if after the agenda deadline for finalisation.

**Summary:**

It is presented to Council to endorse and accept the Contract/Agreement that has been jointly prepared by the Author and the YMCA and ratified by the Towns Lawyers McLeods.

**Background:**

Council have progressed through the Tender process for a third party Contract Administration of the Narrogin Regional Leisure Centre. The YMCA have been endorsed by Council as being the preferred Tenderer.

**Comment:**

It is proposed that Council endorse the attached agreement for the Contract Management of the Towns Regional Leisure Centre to the YMCA.

As stated this will conclude the Tender process and allow the YMCA to begin preparations for the management of the Centre. Any minor alterations will be agreed to from a letter of agreement between both parties as is stated in the formal agreement.

The Town will be required to make budget allocations with this upcoming budget for the month of administration that is required and the payments to the YMCA as per the Tender Document.

The author will also commence the advice to the current staff advising them of the transition of employment and transfer of their accrued leave and entitlements. The author will work through these actions with the YMCA representative to ensure that all staff are comfortable with the process.

**Consultation:**

- YMCA management.
- Leisure Centre staff
- McLeods

**Statutory Environment:**

*Local Government Act 1995 Section 3.58 Tenders for providing goods and services.*

(Please note that this has only been listed as this is the finalisation of the Tender process.)

**Policy Implications:** - Nil

**Financial Implications:**

Please refer to the previous agenda item 10.2.285.

**Strategic Implications:**

Please refer to the previous agenda item 10.2.285.

**Voting Requirements:** Simple Majority

<b>Council Resolution 0614.74</b>
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**Moved: Cr Paternoster**

**Seconded: Cr Schutz**

That Council:

Endorse the Chief Executive Officer to ratify and enact the Contract Agreement for the Contracted Administration Service facilitating the Narrogin Regional Leisure Centre and the conditions contained within.

**CARRIED 7/0**

# Contract for the Management of Narrogin Regional Leisure Centre

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Town of Narrogin

The Young Mens' Christian Association of Perth Inc



**McLEODS**

Barristers & Solicitors

Stirling Law Chambers | 220-222 Stirling Highway

CLAREMONT WA 6010

Tel: (08) 9383 3133 | Fax: (08) 9383 4935

Email: [mcleods@mcleods.com.au](mailto:mcleods@mcleods.com.au)

Ref: TF:NARR

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# Details

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## Parties

### Town of Narrogin

of 89 Earl Street Narrogin, Western Australia

(Town)

### The Young Mens' Christian Association of Perth

(Registration Number 136 275 959)

trading as YMCA of Perth

of 201 Star Street, Welshpool, Perth, Western Australia

(YMCA)

## Background

- A The Town has care, control and management of the Leisure Centre.
- B Following a tender process, the Town has agreed to appoint the YMCA to manage the Leisure Centre for the Contract Term on the terms and conditions of this Contract

## Agreed terms

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### 1. Definitions

Unless otherwise required by the context or subject matter the following words have these meanings in this Contract:

**Budgeted Deficit** means the amount specified in the approved Operating Budgets as the deficit between the budgeted expenses to be incurred by the YMCA and the budgeted income to be earned by the YMCA for the budget period on an accruals basis;

**Budgeted Surplus** means the amount specified in the approved Operating Budgets as the surplus between the budgeted income to be earned by the YMCA and the budgeted expenses to be incurred by the YMCA for the budget period on an accruals basis;

**Business Day** means a day other than a Saturday, Sunday or public holiday in Perth, Western Australia;

**Commencement Date** means 1 August 2014;

**Condition Audits** means the further audits of all the assets at the Leisure Centre as referred to in **clause 9.19**;

**Contract** means this document as varied, amended, supplemented, novated or replaced from time to time;

**Contract Term** means the term of this Contract as outlined in **clause 5.1**;

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**Existing Staff** means employees employed by the Town in respect of the management and operation of the Leisure Centre as at the Commencement Date;

**Initial Audit** means the condition audit of all the assets at the Leisure Centre referred to in **clause 9.19**;

**Initial Contract Term** means the period specified in **Item 1** of the Schedule;

**Initial Extension** means the period specified in **Item 2** of the Schedule;

**KPI** means Key Performance Indicators, as amended from time to time in accordance with this Contract;

**Management Fee** means the annual fee payable by the Town to the YMCA in consideration of the due performance by YMCA of its obligations pursuant to this Contract. The Management Fee for the Initial Contract Term is specified in **Item 2** of the Schedule;

**Operating Budgets** mean the approved operating budgets for the Services;

**Public Holiday** means a public holiday, within the meaning of the Public and Bank Holidays Act 1972, applying in Perth, Western Australia;

**Leisure Centre** means the Narrogin Regional Leisure Centre and for the avoidance of doubt includes all fixtures, fittings, plant, gardens and equipment provided by the Town for use at the centre. The extent of the Leisure Centre is generally outlined in red on the sketch annexed hereto as **Annexure 1**;

**Re-employed Staff** means Existing Staff who have accepted the YMCA's offer of employment, pursuant to **clause 3.2**;

**Request for Tender** means the request for tender for the management of the Leisure Centre, provision of the Youth Services, and the provision of the Seniors Recreation Services entitled '*Management of the Town of Narrogin Leisure Centre - RFT TENDER 1 – 13/14*';

**Schedule** means the schedule to this Contract;

**Town's Fixtures and Fittings** means all fixtures, fittings and equipment installed in or provided to the Leisure Centre by the Town at the Commencement Date or at any time during the Contract Term. An initial list of the Town's Fixtures and Fittings installed at the date of this Contract are listed in the Request for Tender;

**Surplus** means in relation to a financial year (or part thereof, if applicable) when the income derived by the YMCA from the Services exceeds the expenses incurred by the YMCA for the Services for the same given period on an accruals basis, but excluding depreciation;

**Tender** means YMCA's completed offers, response to the Selection Criteria and attachments in respect of the Request for Tender in respect of the Leisure Centre.

**Tender Documents** means the Request for Tender and the Tender, in so much as they relate to the management of the Leisure Centre.

**Termination** means expiry by effluxion of time or sooner determination of the Contract Term or any period of holding over;

**Written Law** includes all acts and statutes (State or Federal) for the time being enacted and all regulations, schemes, ordinances, local laws, by-laws, requisitions, orders or statutory instruments made under any Act from time to time by any statutory, public or other competent authority; and

## 2. Appointment

The Town appoints the YMCA, and the YMCA accepts the appointment, to manage the Leisure Centre for the Contract Term under the terms and conditions provided by this Contract and the Tender Documents.

## 3. YMCA's Obligations

### 3.1 Generally

The YMCA agrees to:

- (a) provide the Services to the Town in accordance with this Contract;
- (b) perform its obligations under this Contract in a competent and professional manner and ensure that all staff employed or subcontracted by the YMCA to carry out the YMCA's obligations are of a standard sufficient to satisfy the above obligation; and
- (c) comply with all reasonable instructions and directions issued by the Town in relation to the provision of the Services having regard to the terms of this Contract.

### 3.2 Transfer of Existing Staff

- (1) The Town and the YMCA covenant and agree that all Existing Staff must be offered employment with YMCA at the Leisure Centre under the same terms and conditions provided by the Town, including without limitation employment on the same Western Australian award.
- (2) The Town will be responsible for all entitlements accumulated by Existing Staff until the Commencement Date and the YMCA will be responsible for all entitlements accrued by Re-employed Staff during the Contract Term.
- (3) In relation to Re-employed Staff, the parties covenant and agree as follows:
  - (a) the Town must provide YMCA with full records of employment, including accrued long service leave and annual leave;
  - (b) the YMCA must honour all accrued annual leave and in consideration of such the Town will pay to the YMCA all accrued annual leave as at the Commencement Date;
  - (c) the YMCA must honour all accrued long service leave and in consideration of such the Town will pay to the YMCA the Town's share of the long service leave accrued from the date of employment with the Town until the Commencement Date at the time each Re-employed Staff member takes its long service leave entitlement;
  - (d) subject to paragraph (e) below sick leave will not be accrued and transferred; and
  - (e) notwithstanding paragraph (d) above, in the event a Re-Employed Staff member:
    - (i) reasonably requires more than ten days sick leave during the first year of the Contract Term; and
    - (ii) that staff member had sick leave accrued at the Commencement Date

the Town will pay to the YMCA accrued sick leave for additional days of sick leave (over and above the ten day period).

### **3.3 Initial Adjustments and Payments**

- (1) The Town covenants and agrees to pay the YMCA a cash payment of all membership fees that have been collected by the Town for active pre-existing members that will accrue during the Contract Term.
- (2) The YMCA covenants and agrees to pay to the Town a cash payment, determined by the parties acting reasonably, for the value of all existing stock as at the Commencement Date and following such payment ownership of such stock will be transferred to the YMCA.
- (3) The YMCA agrees to honour all existing contracts in respect of the Leisure Centre, including without limitation all existing gym memberships.

## **4. YMCA to comply with Tender**

YMCA shall at all times comply with the Tender submitted by it and with any acceptance by the Town of that Tender.

## **5. Contract Term**

### **5.1 Initial Contract Term**

The Contract Term is the Initial Contract Term and any period for which the operation of the Contract is extended under **clause 5.2**, if any.

### **5.2 Extension of Contract**

- (1) The Town may in its sole discretion extend this Contract for the Initial Extension provided the Town gives the YMCA written notice of its intention to put into effect the Initial Extension at least three months prior to the expiry of the Initial Contract Term.
- (2) In the event the Town exercises its right to enforce the Initial Extension, the terms and conditions of this Contract will apply to the Initial Extension except for **clause 5.2**.

## **6. Contract Payments**

### **6.1 Management Fee**

Subject to compliance with **clause 6.5**, the Town covenants and agrees to pay to YMCA the Management Fee in monthly instalments over the Contract Term.

### **6.2 Payments by the Town for Budgeted Deficits**

- (1) The Town must make the payment or payments specified in the approved Operating Budgets as the Budgeted Deficit for the Services by one annual advance payment in August of each year, provided that the Town is not required to make any payment to the Contractor in respect of any of the Services which are not performed or are not performed in accordance with this Contract.
- (2) If requested by the Town or its representative, the Contractor must certify in a manner required by the Town or its representative, which may include a statutory declaration that it has:
  - (a) paid all wages and allowances owing to any of its employees;

- (b) paid all amounts due to any party to which it has sub-contracted any of its rights and obligations under this Contract; and
- (c) made any payments that it is required to make in respect of the YMCA's plant and equipment.

### **6.3 Payments by the Contractor to the Town for Budgeted Surpluses**

The Contractor must make the payment or payments specified in the approved Operating Budgets as the Budgeted Surplus for the Services, at the end of financial year.

### **6.4 Sharing of Operational Surplus**

- (1) If the YMCA generates a Surplus as at 30 June during any year of the Contract Term, the Surplus will be split equally between the Town and YMCA.
- (2) The YMCA must submit a profit/loss statement for the Services by 31 July in each year for examination by the Town or its representative.
- (3) When determining the Surplus, the following costs incurred by the YMCA must not be included in the operational costs for the purpose of this calculation:
  - (a) losses incurred by failing to insure its assets or cash collected;
  - (b) costs to make and remove alterations and additions made at the Leisure Centre without the Town or its representative's prior written approval;
  - (c) costs to rectify services and the damage caused when the relevant service authority approval was not obtained;
  - (d) costs and losses incurred in the misappropriation or theft of income;
  - (e) costs of repairing damage caused by non-conformance with manufacturers and suppliers, warranties and direction; and
  - (f) losses incurred due to operational interruption caused as a result of Contractor error or failure to comply with contract requirements including the requirement to service and maintain plant.
- (4) Within 60 days of both parties agreeing on the value of the Surplus, YMCA must pay any amount owing to the Town.

### **6.5 Tax Invoices**

- (1) Where monthly payments are due to be paid to the YMCA, the YMCA must provide a tax invoice to the Town by the 13th day of the month for Services provided during the previous calendar month.
- (2) The Town agrees to pay any validly provided tax invoice, within 30 days of receipt.

## **6.6 Full Payment for Services**

The YMCA acknowledges and agrees that payment of the amounts specified in this clause will constitute full payment for the provision of the Services.

## **7. Operating Budgets**

### **7.1 Obligation to comply with approved Operating Budgets**

- (1) The YMCA must use its best endeavours to implement and comply with the approved Operating Budgets for the Services.
- (2) The YMCA must not vary or alter expenditure in the Operating Budgets, unless otherwise approved by the Town in writing.
- (3) The YMCA must communicate with the Town in writing in respect of any major budget variations.
- (4) The parties acknowledge that it is anticipated that any variance between the Operating Budgets and the actual results will be minimal. A variance analysis is required to be provided in respect of any variations within a timely manner.

### **7.2 Review of Budgets**

- (1) The approved Operating Budgets for the first year of the Contract Term will be the Operating Budgets provided by the YMCA as part of the Tender, with any changes to such budgets agreed by the Town and the YMCA in writing.
- (2) The Operating Budgets will be reviewed annually in March in each year of the Contract Term.
- (3) By 28 February in each year of the Contract Term except for the last year, the YMCA must submit to the Town the proposed Operating Budget for the next financial year for the Services for the Town's approval. The proposed Operating Budgets must be fully itemised and be in a form generally acceptable to the Town.
- (4) The Town (and where applicable its Council) will review the proposed operating budgets, and advise the YMCA in writing if the proposed Operating Budgets are approved.
- (5) The Town covenants and agrees to act reasonably, and not to unreasonably fail to approve or withhold approval to the proposed Operating Budgets.
- (6) If the Town does not approve the proposed operating budgets it will, within 14 days of advising the YMCA of its decision not to approve the proposed operating budgets (or part thereof), provide to the YMCA written reasons for the decision not to approve the proposed operating budgets, and will provide the YMCA with a reasonable opportunity to submit a further proposed operating budget.

## **8. Variations to Services & Budgets**

### **8.1 Variation to Services**

- (1) During the Contract Term, the Town or its representative may by written notice to the YMCA direct the YMCA to:
    - (a) alter the extent of the Services;
    - (b) alter the character, quality or mode of performance of the Services; or
-

- (c) carry out any work of a character similar to the Services.
- (2) The direction of a variation by the Town or its representative under paragraph (1) above will not in any way vitiate or invalidate the Contract.
- (3) The value, if any, of any variation must be added to or subtracted from the Management Fee. The value of each variation must be determined by the Town or its representative by applying:
  - (a) any relevant rates or prices contained in this Contract or the Tender Documents which are expressly stated to be provided for the purposes, or partly for the purposes, of this clause;
  - (b) reasonable rates or prices, if there are no rates or prices contained in this Contract or the Tender Documents which are expressly stated to be provided for the purposes, or partly for the purposes, of this clause; or
  - (c) if the variation involves a decrease in the Services or the omission of part of the Services, the Town or its representative must make a reasonable allowance for the YMCA's profit and overheads in the Operating Budgets.

## **8.2 Variation for reasons beyond the YMCA's reasonable control**

- (1) Subject to paragraph (2) below, the Town and the YMCA agree that the approved Operating Budgets may be varied by the Town in an amount or amounts determined by the Town, acting reasonably and in consultation with the YMCA, for a reason or reasons beyond the reasonable control of the YMCA, including but not limited to:
  - (a) acts of God, including fire, bushfire, lightning, storm, tidal wave, cyclone, hurricane, earthquake, landslide, mudslide, washouts and flood;
  - (b) epidemics, public health scares or outbreaks of disease;
  - (c) war, revolution or other state of armed hostility of a like nature;
  - (d) insurrection, civil disturbances or riot (except where arising within the custodial areas);
  - (e) collisions or accidents which constitute a major catastrophe, an example being an aircraft crash or nuclear contamination;
  - (f) unavailability or lack of reasonable availability in the State of labour;
  - (g) a strike, lockout, or other industrial disturbance or restraint of labour which also involved employees; and
  - (h) an action or event which occurs which could not at the time of preparing the Operating Budgets for the year, have been reasonably been expected to occur and which has or could materially alter the capacity of the YMCA to operate within the parameters of the approved Operating Budgets.
- (2) Prior to varying the approved Operating Budgets in accordance with paragraph (1), the YMCA must provide to the Town reasonable evidence within a reasonable period of time, as to the need for the amendment to the approved Operating Budgets and the steps taken by the YMCA to minimise the impact upon the approved Operating Budgets.

## 9. Management of Leisure Centre

### 9.1 Generally

The YMCA agrees to supervise and manage the Leisure Centre:

- (a) in accordance with this Contract; and
- (b) within the agreed Budget parameters.

### 9.2 Management and Supervision of Staff

The YMCA agrees to:

- (a) be fully responsible for the appointment, supervision, training and remuneration of staff necessary to adequately provide the Services;
- (b) employ staff who have appropriate educational qualifications and experience to effectively carry out the functions as assigned to them;
- (c) ensure that all tasks are undertaken by suitably trained or qualified employees; and
- (d) maintain approved records of staff and make such records available to the Town upon request. Staff records must include details of staff rosters, together with all necessary qualifications, training, and other details relevant to the performance of the Services.

### 9.3 Fees and Other Outgoings

- (1) The YMCA must pay all fees, charges and costs incurred in its performance of the Services, the management and operation of the Leisure Centre, except as expressly stated otherwise in this Contract.
- (2) The obligation in paragraph (1) above includes but is not limited to the fees and costs outlined in part 4.4.10 of the Request for Tender.

### 9.4 Permitted Use

The YMCA must not use, or permit to be used, the Leisure Centre:

- (a) for any illegal, immoral, objectionable, noxious, noisy or offensive purpose nor for any nuisance or inconvenience to the Town or any other person; or
- (b) for any purpose other than the provision of Services as agreed under the Contract without the prior written approval of the Town or its representative.

### 9.5 Fees and Charges for the Leisure Centre

- (1) Fees and charges for the Leisure Centre must be approved by the Town, as part of the approval of the Operating Budget process.
- (2) Fees and charges for the Leisure Centre will be reviewed by the Town on an annual basis, and in that regard:
  - (a) the YMCA must provide to the Town or its representative for each facility at the Leisure Centre a schedule of proposed prices for the following financial year by 31 January each year; and

- (b) all price changes must be approved by the Town as part of the annual budget process.

## 9.6 Programmes & Promotion

The YMCA agrees to:

- (a) implement and operate all programmes referred to in the Tender Documents or otherwise approved by the Town in writing, unless otherwise agreed by the Town;
- (b) establish, market and promote special events and programmes to be held at the Leisure Centre; and
- (c) implement, pending the results feasibility studies, access to the gym on a 24 hour basis.

## 9.7 Access and Supervision

The YMCA agrees:

- (a) to provide supervised access to the Leisure Centre by the general public for at least the minimum hours specified in **Item 4** of the Schedule, unless otherwise agreed by the Town in writing; and
- (b) to ensure that supervision of patrons and clients complies with industry guidelines, standards and best practice.

## 9.8 Establishment of Bank Accounts and Collection of Income

The YMCA agrees:

- (a) to establish and maintain a separate bank account for the Services (**Bank Account**);
- (b) any transaction on the Bank Account and cheques drawn by the YMCA will only occur on the approval of the Centre Manager and in a manner to be agreed between the YMCA and the Town and must be in accordance with the Operating Budgets and the terms and conditions of this Contract;
- (c) to collect all income from the Leisure Centre in accordance with the fees and charges approved by the Town;
- (d) that any income collected in advance for the Services must be reconciled and audited by an approved entity and the audited income forwarded to the Town prior to the expiry or earlier termination of the this Contract;
- (e) that it shall be strictly responsible for the security and banking of all income received; and
- (f) that it shall be responsible for all bank fees, charges and taxes and other requirements associated with the maintenance of any such accounts and all costs associated with the security, insurance and transportation of all monies.

## 9.9 Recording of Income and Expenditure

The YMCA agrees:

- (a) all orders and authorities for expenditure at the Leisure Centre will be approved by the Centre Manager within the operating policies and procedures of the YMCA;



- (b) to accurately and transparently record all income and expenditure associated with the operation of the Leisure Centre and this Contract;
- (c) an appropriately qualified person must maintain and prepare all financial records associated with this Contract;
- (d) to ensure that all financial reports for the Services are prepared in accordance with accepted accounting standards, reconciled and reflect a true statement of the financial performance of this Contract;
- (e) that all records associated with the Services are to be made available to the Town upon written request;
- (f) to be responsible for all costs associated with the maintenance of financial reports including the annual audit; and
- (g) that the Town may conduct an independent financial audit on the Services. The cost of such audit will be borne by the Town; unless unacceptable errors in the financial recording and reporting not of a minor nature are proven to exist in which case the YMCA will be responsible for audit costs.

## 9.10 Financial Reports

The YMCA agrees to:

- (a) maintain an appropriate system of accounting based on double entry bookkeeping principles made up of a minimum of a cash book, a ledger, an asset register and journals on an accrual basis of accounting in conformity with Australian Accounting Standards and generally accepted good financial management principles and practices;
- (b) prepare and provide to the Town in an agreed format monthly financial reports and statements for the Leisure Centre;
- (c) prepare in a manner and form agreed between the YMCA and the Town, financial statements and annual returns for the Leisure Centre for each financial year (or part thereof) of the Contract Term;
- (d) ensure that the financial statements and annual returns are audited by a suitably qualified auditor. The identity of the auditor is to be agreed between the Town and the YMCA; and
- (e) provide audited financial statements and annual returns (**Audited Accounts**) for the Services and provide copies of the Audited Accounts to the Town, no later than 31 October in each year of the Contract Term.

## 9.11 Monthly Meetings & Reports

- (1) Unless otherwise agreed by the parties in writing, the Town and the YMCA must meet on a monthly basis, at a mutually convenient time, to review and discuss the operation of the Leisure Centre.
- (2) Prior to the 21st of each month of the Contract Term, the YMCA must provide to the Town separate written reports concerning the operation of the Leisure Centre during the previous month. The monthly reports must be in a form reasonably required by the Town and include:
  - (a) income and expenditure statements for the Services for the relevant period;

- (b) a statement of variations between the Operating Budgets and the actual results achieved for the year to date with explanations of variances;
- (c) a statement of the capital expenditure items and maintenance items in respect to the Leisure Centre for the relevant period. All repairs and maintenance items that have been carried out during the period must be outlined and any repairs or maintenance that are recommended by the YMCA for the relevant period;
- (d) a statement of marketing expenses, programmes and initiatives for the Services for the relevant period and year to date;
- (e) a report on incidences in the Leisure Centre for the relevant period for which claims are or may be made against the Town or the YMCA, and other relevant details concerning insurances;
- (f) advice on prevailing market conditions and the settling of fees and charges for the relevant period;
- (g) customer feedback received for the relevant period;
- (h) reporting in relation to the outcomes and KPI's established as part of the Contract and refined through annual business planning;
- (i) any negligent damage caused to the Leisure Centre or the assets of the Leisure Centre must be reported, including any damage caused by the YMCA or its agents, employees and subcontractors for the relevant period; and
- (j) any information on the Leisure Centre and this Contract reasonably required, and requested in writing, by the Town.

### **9.12 Annual Reports and Forward Plans**

- (1) The YMCA must provide a comprehensive annual report, by 31 October of each year of the Contract Term, concerning the operation of the Leisure Centre during that financial year (or part thereof). The annual reports must be in a form reasonably required by the Town and include:
  - (a) audited income and expenditure statements for the Services for the relevant period;
  - (b) a statement of variations between the Operating Budgets and the actual results achieved for the year to date with explanations of variances;
  - (c) a statement of the capital expenditure items and maintenance items in respect to the Leisure Centre for the relevant period. All repairs and maintenance items that have been carried out during the period must be outlined and any repairs or maintenance that are recommended by the Leisure Centre for the relevant period;
  - (d) a statement of marketing expenses, programmes and initiatives for the Leisure Centre for the relevant period and year to date;
  - (e) a report on business plan outcomes and KPI's;
  - (f) a report on incidents in the Leisure Centre for the relevant period for which claims are or may be made against the Town or the YMCA, and other relevant details concerning insurances;
  - (g) advice on prevailing market conditions and the settling of fees and charges for the relevant period;

- (h) customer feedback received and actions to resolve for the Leisure Centre for the relevant period; and
  - (i) any information on the Leisure Centre, and this Contract reasonably required, and requested in writing, by the Town.
- (2) The YMCA must provide a separate comprehensive forward plan report, by 31 January of each year of the Contract Term, concerning the operation of the Leisure Centre during the following financial year (or part thereof). The forward plan report must be in a form reasonably required by the Town and include:
- (a) an annual comprehensive business plan for the Leisure Centre, including proposed reportable outcomes and refined KPIs;
  - (b) an annual marketing strategy for the Leisure Centre, in a form acceptable to the Town and including without limitation:
    - (i) an outline of promotions for the relevant facilities of the Leisure Centre, including an organisational policy regarding discounting;
    - (ii) a branding strategy; and
    - (iii) how the promotions will be resourced;
  - (c) any information on the Leisure Centre and this Contract reasonably required, and requested in writing, by the Town.

### 9.13 Insurance Obligations

- (1) The YMCA must effect and maintain with reputable insurers:
- (a) public liability insurance, in the name of the YMCA and noting the Town's interest in the Leisure Centre, for a sum not less than twenty million dollars (\$20,000,000) in respect of any one claim;
  - (b) a policy of employers' indemnity insurance, including workers' compensation insurance in respect of all employees (including part-time and casual employees) of the YMCA employed in or in connection with the Services;
  - (c) a policy of personal accident insurance, in respect of all volunteers of the YMCA employed in, or in connection with the Services;
  - (d) professional indemnity insurance to cover the performance of its obligations under this Contract, to the amount of not less than ten million dollars (\$10,000,000);
  - (e) fidelity guarantee insurance for a sum not less than twenty five thousand dollars (\$25,000);
  - (f) comprehensive motor vehicle insurance policy with a cover equivalent to the value of the vehicles to be used in the performance of the YMCA's obligations under this Contract; and
  - (g) comprehensive plant & equipment insurance policy with a cover equivalent to the value of the YMCA's plant & equipment to be used in the performance of the YMCA's obligations under this Contract.
- (2) In the event that the YMCA wishes to undertake a programme or event which is not covered by its insurance, prior to undertaking such programme or event the YMCA must obtain adequate

special event insurance for the event or programme or arrange for such programme or event to be covered by its insurance. For information purposes only, as list of programmes covered by YMCA's insurance, as at the date of this Contract, is annexed hereto as **Annexure 3**.

- (3) In respect of the insurances required by paragraph (1) of this clause, the YMCA must:
- (a) at the time of submitting annual invoice for a Budget Deficit in July/August each year (of if there is no Budget Deficit on 31 August 2014), supply to the Town details of the insurances and give to the Town copies of the certificates of currency in relation to those insurances;
  - (b) promptly pay all premiums and produce to the Town each policy or certificate of currency and each receipt for premiums or certificate of currency issued by the insurers; and
  - (c) notify the Town immediately:
    - (i) when an event occurs which gives rise or might give rise to a claim under or which could prejudice a policy of insurance; or
    - (ii) when a policy of insurance is cancelled.
- (4) The Town will effect and maintain building and contents insurance covering all of the Leisure Centres' buildings and contents thereof, for their full insurable value, against all usual risks including, without limiting the generality of the foregoing, loss or damage by fire, fusion, explosion, smoke, lightning, flood, storm, tempest, rain, water, water damage, leakage, earthquake, riot, civil commotion, malicious damage, impact by vehicles, aircraft, and articles dropped therefrom and similar such risks.

#### **9.14 Indemnity**

The YMCA will indemnify and keep indemnified the Town from and against all claims, actions, demands, loss, damages, costs and expenses incurred by the Town in respect of anything done or omitted to be done in good faith in the exercise of the powers conferred on the YMCA by this document or in the carrying out of the duties and functions of the YMCA under this Contract.

#### **9.15 Cleaning**

The YMCA must:

- (a) maintain the Leisure Centre in a hygienic, clean and litter free state at all times;
- (b) operate under a schedule of cleaning that ensures regular checks each day of all amenities and includes periods of cleaning activity that will have minimal disruption to the provision of service to patrons; and
- (c) keep the immediate surrounding area clear of all litter and rubbish and at least once per day pick up all litter and rubbish in the area.

#### **9.16 Maintenance & Servicing**

- (1) The YMCA must ensure that the Leisure Centre and all fixtures, fittings, plant and equipment within the Leisure Centre are serviced and maintained, at its cost, in accordance with the recommended manufacturer's, supplier's and installer's instructions, until the expiry or termination of this Contract.
- (2) The YMCA must maintain the Leisure Centre in accordance with the Town's reasonable requirements.

- (3) Notwithstanding any other provision of this Contract, failure of plant or equipment due to non-compliance by the YMCA with instructions and warranty specifications given to the YMCA by the Town in accordance with sub-clause 9.20(2) may result in the YMCA bearing the full costs of repairs.

### **9.17 YMCA's Repair Obligations**

- (1) Subject to sub-clause (2), the YMCA must promptly and to the satisfaction of the Town repair any damage; or replace any damaged item in respect of (but not limited to):
- (a) the Leisure Centre fittings, fixtures, plant and equipment;
  - (b) amenities and all attachments;
  - (c) buildings; and
  - (d) grounds maintenance including lawns, garden beds and reticulation repairs.
- (2) The YMCA will not be required to effect any repairs or replacement where:
- (a) the type of damage or defect giving rise to the need for the repair or replacement is covered by any warranty, whether express or implied;
  - (b) the repairs or replacement are of a capital or structural nature; or
  - (c) the cost will exceed \$5,000.
- (3) The YMCA must promptly and to the satisfaction of the Town repair all vandalism to Leisure Centre and invoice the Town along with a summary report for all vandalism costs on a monthly basis.
- (4) Where the cost of repairs or replacement exceeds \$5,000 in respect of subclauses (1) and (2) above the YMCA must, without delay, provide the Town with two written quotations verifying the cost.
- (5) The Town reserves the right to seek an alternative quotation where it believes the value of the repairs or replacement in respect of subclause (3) above can be undertaken for less than \$5,000.
- (6) Where the Town exercise its rights under subclause (4) and the quotation received by the Town confirms the repairs or replacement can be undertaken for less than \$5,000 the YMCA must accept the quotation and proceed to have the item or items immediately repaired or replaced.
- (7) The YMCA must remove to the satisfaction of the Town, all graffiti from Leisure Centre and invoice the Town along with a summary report for all graffiti costs on a monthly basis. All trace of the graffiti must be removed within 48 hours and the surface reinstated to its previous condition.
- (8) All graffiti and vandalism acts must be reported to the Police and the Town within 24 hours of the YMCA becoming aware of the graffiti or vandalism.
- (9) All maintenance must be recorded and reported to the Town at the monthly meetings.

### **9.18 Make Good Damage**

Notwithstanding any other provisions of this Contract, the YMCA must make good any loss or damage to any property of the Town caused by the negligence or default of the YMCA or any of its agents, employees and subcontractor of the YMCA.

### 9.19 Condition Audit of the Leisure Centre

- (1) The YMCA and the Town or its representative within four months of the Commencement Date will undertake a condition audit of all the assets at the Leisure Centre, including the Leisure Centre itself.
- (2) The YMCA and the Town or its representative will undertake further condition audits of all the assets at the Leisure Centre, including the Leisure Centre themselves, at 12 monthly intervals and again not later than 3 months before the end of each Contract Term.
- (3) The purpose of the Initial Audit and Condition Audits is to evaluate and compare the condition of the Leisure Centre during the Contract and at the end of each Contract Term with the condition at the Commencement Date.
- (4) Subject to sub-clause (6), any deterioration of the condition of the Leisure Centre or its assets identified by the Condition Audits, fair wear and tear excepted, must be rectified at the YMCA's expense within 30 days of receipt of the Condition Audit.
- (5) Subject to sub-clause (6), unless otherwise directed by the Town or its representative, the YMCA must replace within seven (7) days at its cost all missing assets identified by the Condition Audits.
- (6) Where any deterioration of the condition of the Leisure Centre or its assets or any missing assets are identified by the Condition Audits and the matter is subject to a claim on any insurance policy then the YMCA is not obliged to rectify the condition or replace the assets until a reasonable time after either the claim has been allowed and paid by the insurer or declined by the insurer as the case may be PROVIDED that if any deterioration of the condition of the Leisure Centre or its assets or any missing assets is adversely impacting upon the YMCA's ability to comply with its obligations under this Contract in the Town's reasonable opinion, the Town may issue the YMCA a notice requiring the YMCA to rectify such deterioration of the condition of the Leisure Centre or its assets within a reasonable period time as specified in the notice.
- (7) One month prior to the end of each Contract Term, the YMCA and the Town or its representative will undertake a final audit to ensure compliance with any previous Condition Audit.
- (8) If the YMCA fails in any of its obligations under this subclause, the YMCA must:
  - (a) permit the Town or its representative, its agents, contractors or workmen to enter upon the Leisure Centre to carry out any necessary remedial works; and
  - (b) pay on demand all costs incurred by the Town in the performance of remedial work as a liquidated debt.

### 9.20 Town's Fixtures and Fittings

- (1) For the purpose of this Contract, the YMCA will have the right to use the Town's Fixtures and Fittings.
  - (2) On the Commencement Date the Town must give to the YMCA all written instructions and warranty specifications for the Town's Fixtures and Fittings.
  - (3) The Town's Fixtures and Fittings will remain the property of the Town at all times and must be maintained, repaired or replaced (as the case requires) in accordance with this Contract.
  - (4) For the avoidance of doubt, the Town's Fixtures and Fittings are included within the definition of "Leisure Centre".
  - (5) The YMCA must maintain at all times an accurate register of all of the Town's Fixtures and Fittings, and must permit the Town to inspect the register upon reasonable notice.
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### **9.21 Alterations & Additions the Leisure Centre**

- (1) Except in the case of emergency, the YMCA must not, without the prior written consent of the Town or its representative, alter or interfere with the Leisure Centre or its surrounds, including gas, electricity, water supply, sewerage, drainage, telephone and communication services.
- (2) The YMCA must not make or permit to be made, any alterations or additions to the Leisure Centre or the Town's Fixtures and Fittings without the prior written consent of the Town or its representative.
- (3) Any alterations or additions which have been approved in writing by the Town or its representative must be carried out in accordance with plans and specifications and by workmen, builders and trades persons approved by the Town or its representative.
- (4) At any time, if so required by the Town, the YMCA must remove any alterations and additions made, which were not prior approved in writing by the Town. The YMCA must make good any damage occasioned to the Leisure Centre or surrounds by such removal and reinstate the Leisure Centre and its surrounds to its former condition.

### **9.22 Security of Leisure Centre**

- (1) The YMCA must ensure the Leisure Centre, including all fixtures and fittings, are appropriately secured at all times.
- (2) The YMCA must adhere to all security protocols for the Leisure Centre and manage all out of hours security situations.

### **9.23 Report Defects**

- (1) The YMCA must immediately report to the Town in writing:
  - (a) any structural report or defect, or any major maintenance in respect of the Leisure Centre;
  - (b) any non-compliance or breach of any Written Law; and
  - (c) all notices, orders and summonses received by the YMCA and which affect the Leisure Centre.

### **9.24 Permit Town to Inspect and Repair**

- (1) Subject to sub-clause (2), the YMCA agrees to permit the Town and its agents with or without workmen and others, and with or without plant and equipment at all reasonable times to enter upon the Leisure Centre and all parts thereof to view the condition thereof and to take inventories of the Town's fixtures therein and to effect such repairs, maintenance and amendments as shall be required by the Town.
- (2) In exercising its rights in sub-clause (1), the Town must, and must ensure that its agents, cause as little interference to the YMCA's use of the Leisure Centre as possible.

### **9.25 Compliance with Laws**

The YMCA agrees to comply with and ensure that its employees, subcontractors and agents comply with and observe the provisions of all Acts, statutes, local laws and regulations which relate to the Leisure Centre and/or the operation of the Leisure Centre by the YMCA.

## 9.26 Occupation Safety & Health Obligations

- (1) So far as is practicable, the YMCA agrees to provide and maintain a working environment for its employees and members of the public that is safe and without risk to health.
- (2) The YMCA must comply with, and ensure that its agents, employees and subcontractors comply with any Acts, regulations, local laws, codes of practice and Australian Standards which are in any way applicable to the performance of the Services and Occupation Safety & Health.

## 9.27 Customer Service

- (1) The YMCA must:
  - (a) provide an efficient, responsive and friendly customer service at all times;
  - (b) ensure its staff are well presented, trained and educated in the policies and practices associated with providing the required Services;
  - (c) provide a recognised customer feedback mechanism so that patrons are encouraged to provide comments and feedback to the YMCA on the services offered;
  - (d) respond to customer feedback with relevant comments and responses; and
  - (e) provide the Town with a summary of feedback in a monthly report.
- (2) The YMCA must implement a complaints handling process in accordance with best practice. The process must include a register of all complaints and associated actions.
- (3) The YMCA must provide to the Town upon request copies of all complaints and the YMCA's responses.
- (4) Any complaint that could have safety implications or other implications that could gain external media or have political ramification must be notified to the Town in writing immediately.
- (5) The YMCA must respond to any written complaint within 5 days of receipt.

## 9.28 Benchmarking & KPI's

- (1) The YMCA must comply with, implement and report on approved KPI's and benchmarks, in respect of the operation of the Leisure Centre.
- (2) The approved KPI's for the first year of the Contract Term will be KPI's agreed by the Town and the YMCA in writing.
- (3) The agreed KPI's will be reviewed annually in March in each year of the Contract Term.
- (4) On 28 February in each year of the Contract Term, the YMCA must submit to the Town the proposed KPI's for the next financial year for the Town's approval.
- (5) The Town (and where applicable its Council) will review the proposed KPI's, and advise the YMCA in writing if the proposed KPI's are approved.
- (6) The Town covenants and agrees to act reasonably, and not to unreasonably fail to approve or withhold approval to the proposed KPI's.
- (7) If the Town does not approve the proposed KPI's it will, within 14 days of advising the YMCA of its decision not to approve the proposed KPI's (or part thereof), provide to the YMCA written



reasons for the decision not to approve the proposed KPI's, and will provide the YMCA with a reasonable opportunity to submit further proposed KPI's.

- (8) The KPI's and associated benchmarks, and the YMCA's performance in compliance with the approved KPI's, will need to be fully justified and reported on at monthly and quarterly meetings.
- (9) The Town and the YMCA may agree as part of the agreed KPI's to a risk/reward system.

### **9.29 Signs and Sponsorship**

The YMCA must not enter into any signage or sponsorship arrangements or display any signs or advertisements at the Leisure Centre, without the written consent of the Town.

### **9.30 Privacy**

- (1) The YMCA will ensure, at all times, that the privacy of all its staff, subcontractors, records and financial management is maintained, and that the privacy of all users of the Leisure Centre is maintained.
- (2) Any confidential or privileged information is to be concealed from unauthorised persons at all times, unless the YMCA has written consent otherwise.

### **9.31 Maintain Town's Reputation**

- (1) The YMCA and its agents, employees and subcontractors must not say or do anything which brings the Town into disrepute or damages the reputation of the Town.
- (2) The YMCA and its agents, employees and subcontractors must not make any public statements:
  - (a) which may be detrimental to the Leisure Centre or the interests of the Town; or
  - (b) about any aspect of this Contract.
- (3) The parties acknowledge that this subclause will not prevent the YMCA from making any statements of a promotional or marketing nature in respect of the Leisure Centre.

### **9.32 Records Retention and Disposal**

- (1) All records relating to the Town, including but not limited to all membership and client details and accounting records, shall be retained for a minimum period of seven (7) years, after which they shall be referred to the Town's Senior Records Officer for the application of the appropriate retention and disposal schedules as defined in the General Disposal Authority for Local Government Records as administered by the State Records Office of Western Australia.
- (2) The YMCA will refer the records to the Town's Senior Records Officer after seven (7) years or such longer period as may be required for the YMCA to comply with regulatory, legislative, revenue or reporting requirements.
- (3) Nothing in sub-clause (1) requires the YMCA to provide to the Town any details or documents where to do so would involve the YMCA in a breach of the *Privacy Act 1988* (Cth).

### **9.33 Comply with directions from the Town**

The YMCA must comply, as soon as practicable, with any written direction given by the Town concerning the supply of the Services.

### 9.34 YMCA's Representative

The YMCA must:

- (a) appoint a competent person to be responsible for the day to day performance of the Services and the supervision of all persons employed or engaged in carrying out the Services (**YMCA's Representative**);
- (b) provide to the Town as soon as practicable after the Commencement Date the name, address and telephone number of the YMCA Representative;
- (c) notify the Town immediately should a new YMCA Representative be appointed; and
- (d) ensure that the YMCA Representative is available and able to be contacted by the Town during the hours during which the Leisure Centre is open.

### 9.35 Regulation of Entry and Power of Removal

The Town authorises the YMCA to:

- (a) remove from the Leisure Centre any person who in the opinion of the YMCA has acted in a manner that will or may endanger the safety or wellbeing of themselves or other users of any of the Leisure Centre or the YMCA's staff or contractors or who otherwise conducts himself or herself in a manner that causes offence or annoyance or amounts to a breach of any rules imposed by the YMCA for the use of the Leisure Centre; and
- (b) refuse entry to any of the Leisure Centre to any person who has been removed from the Leisure Centre for any of the reasons referred to in sub-clause (a) or in the opinion of the YMCA is likely to act in a manner that will give rise to the right to remove the person in accordance with sub-clause (a).

## 10. Town's Warranties and Indemnity

### 10.1 Warranties

The Town warrants to the YMCA that:

- (a) the Town is the legal and beneficial owner of the Town's Fixtures and Fittings and is entitled to give possession of them to the YMCA pursuant to this Contract;
- (b) the Town's Fixtures and Fittings are in good repair and condition, free of defects and fit for the purpose of the YMCA providing the Services; and
- (c) the Leisure Centre is, and will be, safe and suitable for their intended use, including complying with all Written Laws.

### 10.2 Indemnity

The Town must indemnify and keep indemnified the YMCA from and against all claims, actions, demands, loss, damages, costs and expenses incurred by the YMCA by reason of the Town's breach of a warranty or the warranties in **sub-clause 10.1**.

## 11. Town's Obligations

### 11.1 Major Maintenance and Structural Repair

- (1) The Town will attempt to rectify any major maintenance or structural defect or problem within a reasonable amount of time, having consulted with its Council if applicable.
- (2) Following notice of such major maintenance or structural defect of problem by the YMCA, the Town and the YMCA will liaise to determine the priority and urgency of such defect or problem and the steps required to remedy such defect or problem.

### 11.2 Capital Works and Renovations

- (1) The Town may allocate funds within the Budgets for capital works to be carried out at the Leisure Centre.
- (2) The extent and timing of the proposed capital works will be outlined to the YMCA in writing.
- (3) With the exception of capital works outlined in this Contract or in the Operating Budgets, in the event the YMCA considers that capital works undertaken by the Town have caused a loss or diminution of income or revenue earned, the YMCA may request an alteration of the Operating Budgets for that period, and the Town will review such request in good faith.
- (4) Except in the case of urgent works the Town shall give a minimum of two months' notice of such works.

### 11.3 Indemnity

The Town will indemnify (and keep indemnified), the YMCA from and against all claims, actions, demands, loss, damages, costs and expenses incurred by the YMCA in respect to anything done or omitted to be done in good faith in the exercise of the powers conferred on the Town by this document or in the carrying out of the duties and functions of the Town under this Contract.

### 11.4 YMCA Exempt from Rates and Taxes

The Town acknowledges that the YMCA is a benevolent institution and is exempt from local government rates and taxes.

## 12. Subcontracting and assignment

### 12.1 Prior written consent required for Subcontracting

- (1) Except as referred to in the Tender, the YMCA must not subcontract the whole or any portion of its rights and obligations under this Contract, except with the prior written consent of the Town which may be given subject to such conditions as the Town considers appropriate.
- (2) With any application for the consent of the Town to any subcontracting, the YMCA must provide any information required by the Town, including, but not limited to, evidence that a proposed subcontractor will be capable of performing any obligations of the YMCA under this Contract that it may be required to perform.
- (3) Unless otherwise agreed in writing by the Town, no subcontracting of any rights or obligations of the YMCA under this Contract will relieve the YMCA from any liability under this Contract or at law in respect of the performance or purported performance of this Contract and the YMCA will

be responsible for the acts and omissions of any subcontractor, as if they were the acts or omissions of the YMCA.

## **12.2 Prior written consent required for assignment**

The YMCA must not assign the whole or any portion of this Contract, except with the prior written consent of the Town which may be given subject to such conditions as the Town considers appropriate.

## **13. Damage or destruction**

If at any time during the Contract Term, the Leisure Centre or any part of the Leisure Centre are totally or partially destroyed so as to require major rebuilding, or the Leisure Centre are declared unfit or unsafe by a competent authority, then either party may within may three (3) months of the destruction or the damage or declaration, terminate the provision of the Services with immediate effect by giving Notice to the other party.

## **14. Obligations upon Termination of Services**

### **14.1 General Obligations**

- (1) The YMCA must submit audited financial statements for the Services within three months of the termination or expiration of this Contract.
- (2) Prior to the expiration of the Contract Term or earlier termination of the Services, YMCA must restore the Leisure Centre and all fixtures, fittings and plant belonging to the Town to a condition consistent with the observance and performance by the YMCA of its covenants under this Contract.
- (3) Prior to the expiration of the Contract Term or earlier termination of the Services, the YMCA must:
  - (a) peacefully surrender and yield up to the Town the Leisure Centre;
  - (b) hand over all plant, equipment and records including financial, membership, and any programmes information held by the YMCA in respect of the Leisure Centre and/or the Seniors Recreation Services to the Town; and
  - (c) surrender to the Town all keys and security access devices held by the YMCA in respect of the Leisure Centre.
- (4) Any action on the part of the YMCA before the end of this Contract which has the effect of delaying, obstructing, damaging, misleading or harassing the operation of any such successor shall constitute a breach of this Contract.

### **14.2 Transfer of Staff if Town manages the Leisure Centre**

- (1) In the event the Town will, itself, manage the Leisure Centre following Termination of this Contract the Town agrees to:
  - (a) offer all Re-employed Staff , who have continuously been employed by YMCA over the Contract Term, employment at the Leisure Centre under the same terms and conditions provided by the Town, including without limitation employment on the same Western Australian award; and

- (b) consider offering all other existing staff at the Leisure Centre employment at the Leisure Centre.
- (2) The YMCA will be responsible for all entitlements accrued by staff employed pursuant to **clause 14.2** during the Contract Term, and the Town will be responsible for all entitlements accruing after Termination.
- (3) In relation to any staff employed by the Town pursuant to **clause 14.2**, the parties covenant and agree as follows:
- (a) the YMCA must provide the Town with full records of employment, including accrued long service leave and annual leave;
  - (b) the Town must honour all accrued annual leave and in consideration of such the YMCA will pay to the Town all accrued annual leave as at the end of the Contract Term;
  - (c) the Town must honour all accrued long service leave and in consideration of such the YMCA will pay to the Town, the YMCA's share of the long service leave accrued during the Contract Term at the time each staff member takes his or her long service leave entitlement; and
  - (d) subject to paragraph (e) below sick leave will not be accrued and transferred; and
  - (e) notwithstanding paragraph (d) above, in the event a staff member employed pursuant to **clause 14.2**:
    - (i) reasonably requires more than ten days sick leave during the first year after the expiration of the Contract Term; and
    - (ii) that staff member had sick leave accrued at the end of the Contract Termthe YMCA will pay to the Town accrued sick leave for additional days of sick leave (over and above the ten day period).

### 14.3 Transfer of Staff if Town appoints New Contractor

- (1) In the event the Town following a tender process appoints a third party to manage the Leisure Centre (**New Contractor**) following Termination of this Contract, the Town agrees to ensure that the New Contractor is contractually required to:
- (a) offer all Re-employed Staff , who have continuously been employed by YMCA over the Contract Term, employment at the Leisure Centre under the same terms and conditions provided by the Town, including without limitation employment on the same Western Australian award; and
  - (b) consider offering all other existing staff at the Leisure Centre employment at the Leisure Centre.
- (2) The YMCA will be responsible for all entitlements accrued by staff employed pursuant to **clause 14.3** during the Contract Term, and the New Contractor will be responsible for all entitlements accruing after Termination.
- (3) In relation to any staff employed by the New Contractor pursuant to **clause 14.3**, the parties covenant and agree as follows:
- (a) the YMCA must provide to the Town (on behalf of the New Contractor) with full records of employment, including accrued long service leave and annual leave;

- (b) the New Contractor will be required by the Town to honour all accrued annual leave and in consideration of such the YMCA must pay to the Town (on behalf of the New Contractor) all accrued annual leave as at the end of the Contract Term;
- (c) the New Contractor will be required by the Town to must honour all accrued long service leave and in consideration of such the YMCA will pay to the Town (on behalf of the New Contractor), the YMCA's share of the long service leave accrued during the Contract Term at the time each staff member takes his or her long service leave entitlement;
- (d) subject to paragraph (e) below sick leave will not be accrued and transferred; and
- (e) notwithstanding paragraph (d) above, in the event a staff employed pursuant to **clause 14.3**:
  - (i) reasonably requires more than ten days sick leave during the first year after the expiration of the Contract Term; and
  - (ii) that staff member had sick leave accrued at the end of the Contract Term

the YMCA will pay to the Town (on behalf of the New Contractor) accrued sick leave for additional days of sick leave (over and above the ten day period).

## 15. Default & Termination

### 15.1 Default Notice

- (1) If the YMCA breaches any of its obligations under this Contract for any reason or refuses or neglects to carry out or give effect to any order, instruction, direction or determination which the Town is empowered to give or make under this Contract and which is given or made in writing to the YMCA the Town may, without limiting any other power of the Town under this Contract or otherwise, give notice to the YMCA requiring it to remedy the default within 28 days after service of the notice.
- (2) If the YMCA fails to remedy the default in accordance with the notice issued by the Town pursuant to **clause 15.1(1)** the Town, without prejudice to any other rights that it may have under this Contract or at common law against the YMCA, may in its sole discretion:
  - (a) arrange for the default to be remedied and any costs or charges incurred by the Town in remedying the default as determined by the Town, must be paid on demand by the YMCA to the Town or may be deducted from any moneys due or becoming due to the YMCA under this Contract at the option of the Town; and/or
  - (b) suspend payment under this Contract; or
  - (c) terminate this Contract, in which case the provisions of **clause 15.2** will be applicable.
- (3) The suspension of payments by the Town under this subclause:
  - (a) will not in any way affect the continuing obligations of the YMCA under this Contract; and
  - (b) may be continued until the default has been rectified or the order, instruction, direction or determination is carried out or given effect to.

## 15.2 Termination of Contract by the Town

- (1) If this Contract is terminated by the Town under **clause 15.1** or otherwise repudiated by the YMCA the Town may:
  - (2) itself or by engaging or employing any other person complete the performance of the Services, or such part of the performance of the Services as the Town considers it desirable to complete which, so far as is practicable, must be carried out in accordance with this Contract, provided that the Town is not required to use the least expensive means of completing the performance of the Services; and
  - (3) take possession of and permit other persons to use such YMCA's equipment and information as it considers necessary for the completion of the performance of the Services, or such part of the performance of the Services as the Town considers it desirable to complete.
- (4) If this Contract is terminated by the Town under this clause or otherwise repudiated by the YMCA, the Town is liable to make payments to the YMCA only in respect of:
  - (a) any part of the Services which have been properly performed and not paid for at the date of termination; and
  - (b) the use by the Town of the YMCA's plant and equipment for the purpose of completing the performance of the Services or part of the Services (but without payment for fair wear and tear).
- (5) If this Contract is terminated by the Town under this clause or otherwise or repudiated by the YMCA, the YMCA must pay to the Town the amount of the loss and expenses incurred by the Town due to, or in connection with (including, without limitation, indirect losses, consequential losses and all legal costs on a full indemnity basis), the termination or repudiation.

## 15.3 Town's Determination

- (1) The amounts payable by the YMCA and the Town under **clause 15.2(5)** will be determined by the Town's Chief Executive Officer, acting reasonably.
- (2) The Town's Chief Executive Officer will give notice of his or her determination under this clause to the YMCA. Subject to this clause, any amounts payable must be paid within 14 days of the receipt of notice of the Town's Chief Executive Officer's determination.
- (3) The Town may retain any moneys payable to the YMCA, until any amount payable by the YMCA to the Town has been determined by the Town's Chief Executive Officer pursuant to this clause and paid by the YMCA.

## 15.4 Insolvency

The Town may terminate this Contract immediately and **clauses 15.2** and **15.3** will operate, to the extent that they are applicable, as if the termination had been made by the Town under **clause 15.1**, if the YMCA, takes or institutes, or has taken or instituted against it, any action or proceeding having as its object the cancellation of the incorporation of the incorporated association.

## 15.5 Termination of the Contract by YMCA

- (1) If the Town has failed to pay to the YMCA any amount due under this Contract other than an amount being the subject of a dispute or difference under this Contract or any legal proceedings commenced in respect of this Contract, within 28 days of any period for payment stated in this

Contract, the YMCA may give notice in writing to the Town stating that notice of termination under this Contract may be served if payment is not made within a further 14 days.

- (2) If the Town fails to make payment within 14 days of the receipt of a notice pursuant to paragraph (1) above the YMCA may, by written notice to the Town, either suspend the performance of the Services or terminate this Contract.
- (3) Any suspension of the Services by the YMCA under paragraph (2) will not prevent the YMCA from terminating this Contract during the period that the performance of the Services is suspended.
- (4) Termination of this Contract by the YMCA under this clause is without prejudice to the accrued rights or remedies of either party or the other liabilities of the parties under this Contract which may have accrued prior to termination, and the Town must, after taking into account amounts previously paid under this Contract, make payments to the YMCA in respect of:
  - (a) any portion of the Services which have been properly performed and not paid for at the date of the termination; and
  - (b) the cost of materials or goods properly ordered for the performance of the Services by the YMCA for which the YMCA has paid, or for which the YMCA is legally bound to pay, provided that such goods and materials must, on the making of the payment by the Town, become the property of the Town and be transferred to the Town's ownership and possession by the YMCA.
  - (c) The amount of any payments to be made by the Town under this clause will be determined by the Town's Chief Executive Officer, acting reasonably.

## 16. Disputes

### 16.1 Referral of Dispute: Phase 1

Except as otherwise provided any dispute arising out of this Contract is to be referred in the first instance in writing to the Town's representative as nominated in writing by the Town from time to time (**Town's Representative**) who shall convene a meeting within 10 days of receipt of such notice or such other period of time as is agreed to by the Town's Representative and the YMCA's Representative for the purpose of resolving the dispute (**Original Meeting**).

### 16.2 Referral of Dispute: Phase 2

In the event the dispute is not resolved in accordance with **clause 16.1** then the dispute shall be referred in writing to the Town's Chief Executive Officer who shall convene a meeting within 10 days of the Original Meeting or such other date as is agreed to by the parties between the Town's Chief Executive Officer and the YMCA's Chief Executive Officer for the purpose of resolving the dispute.

### 16.3 Appointment of Arbitrator: Phase 3

In the event the dispute is not resolved in accordance with **clause 16.2** then the dispute shall be determined by a single arbitrator under the provisions of the *Commercial Arbitration Act* 1985 (as amended from time to time) and the YMCA and the Town may each be represented by a legal practitioner.

### 16.4 Payment of Amounts Payable to Date of Award

The Town must pay the Management Fee without deduction to the date of the award of the Arbitrator or the date of an Contract between the Parties whichever event is the



earlier, and if any money paid by the Town or the YMCA is not required to be paid within the terms of the award of the Arbitrator or by Contract between the parties then such monies must be refunded.

## 17. Powers of the Town and its representatives

The Town or its duly appointed representative may exercise any powers conferred, and perform any duties imposed or functions conferred, on the Town or its representative.

## 18. GST

### 18.1 Definitions

In this Clause:

- (a) "GST", "Input Tax Credit", and "Taxable Supply" have the meaning they bear in *A New Tax System (Goods and Services Tax) Act 1999* ("the GST Act").
- (b) "GST Rate" means a percentage equal to the rate of GST imposed on a taxable supply by the GST Act.

### 18.2 Liability

- (1) The parties acknowledge that GST is payable in respect of each taxable supply made under this Contract, including without limitation GST on the Management Fee.
- (2) All amounts payable under any provision of this Contract (other than a reimbursement of any GST inclusive payment or outgoing made by this reimbursed party and in respect of which the reimbursed party is entitled to an input tax credit) are expressed in amounts that do not include the GST payable.
- (3) In respect of each taxable supply made under this Contract the provider of the supply must pay any GST required to be paid for that taxable supply.

## 19. Relationship

- (1) This Contract constitutes a relationship of principal (on the part of the Town) and independent contractor (on the part of the YMCA) and no agency employment, partnership or joint venture is hereby constituted.
- (2) The YMCA must not hold itself or its employees or agents out to be employees or agents of the Town.
- (3) The YMCA is responsible for its own staff and carries out the Services at its own risk.

## 20. Notice

- (1) Any communication under or in connection with this Contract:
  - (a) must be in writing;
  - (b) must be addressed in the manner specified in **Item 5** of the Schedule;
  - (c) must be signed by the party making the communication or on its behalf by the solicitor for, or by any attorney, director, secretary, or authorised agent or officer of, any party;

- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with paragraph (b) of this clause; and
- (e) will be deemed to be given or made:
  - (i) if by personal delivery, when delivered;
  - (ii) if by leaving the Notice at an address specified in paragraph (b) of this clause, when left at that address unless the time of leaving the Notice is not on a Business Day or after 5 pm on a Business Day, in which case it will be deemed to be given or made on the next following Business Day;
  - (iii) if by post, on the second Business Day following the date of posting of the Notice to an address specified in paragraph (b) of this clause; and
  - (iv) if by facsimile, when despatched by facsimile to a number specified in paragraph (b) of this clause unless the time of dispatch is not on a Business Day or after 5 pm on a Business Day, in which case it will be deemed to be given or made on the next following Business Day.

(2) A notice sent by facsimile transmission shall be deemed to have been received by the addressee on the date of its transmission.

## 21. Variation

- (1) A variation to this Contract must be in writing and signed by the parties.
- (2) The parties agree that any variation agreed to pursuant to paragraph (1) above, will be intended to be for the remainder of the Contract Term unless otherwise agreed.

## 22. Further Assurances

Each party must execute and deliver all such documents, instruments and writings and must do and must procure to be done all such acts and things as may be necessary or desirable to implement and give full effect to the provisions and purpose of this Contract.

## 23. Severance

If any part of this Contract is, or becomes, void or unenforceable that part is or will be, severed from this Contract to the intent that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.

## 24. Waiver

The parties mutually covenant and agree that:

- (a) no right under this Contract is waived or deemed to be waived except by notice in writing signed by the party waiving the right;
- (b) a waiver by one party under paragraph (a) of this clause does not prejudice its rights in respect of any subsequent breach of this Contract by the other party; and
- (c) a party does not waive its rights under this Contract because it grants an extension or forbearance to the other party.

## 25. Applicable Law

This document shall be governed by and construed and interpreted according to the law in force in the State of Western Australia from time to time and the parties hereby submit to the exclusive jurisdiction of the courts of that State, including the appellate courts thereof.

## 26. Interpretation

In this Contract, unless the context otherwise requires:

- (a) headings, underlines and numbering do not affect the interpretation or construction of this Contract;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate;
- (e) references to parts, clauses, parties, annexures, exhibits and schedules are references to parts and clauses of, and parties, annexures, exhibits and schedules to, this Contract;
- (f) a reference to any statute, regulation, proclamation, ordinance or local law includes all statutes, regulations, proclamations, ordinances or local law varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and local laws issued under that statute;
- (g) no rule of construction shall apply to the disadvantage of a party on the basis that that party was responsible for the preparation of this Contract or any part of it; and
- (h) a reference to any thing (including any real property) or any amount is a reference to the whole and each part of it;
- (i) reference to the parties includes their personal representatives, successors and lawful assigns;
- (j) where a reference to a party includes more than one person the rights and obligations of those persons shall be joint and several;
- (k) the Schedule and Annexures (if any) form part of this Contract.

# Schedule

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## Item 1 Initial Contract Term

4 years and 11 months commencing on the Commencement Date and expiring on 30 June 2019.

## Item 2 Initial Extension

5 years commencing on 1 July 2019 and expiring on 30 June 2024.

## Item 3 Management Fee

The Management Fee(s) set out in the Tender for the management of the Leisure Centre, unless otherwise agreed by the Town in writing.

## Item 4 Minimum Hours

### For the Leisure Centre

Day	Hours
Monday to Friday	6:00am to 9:00pm
Saturday	8:00am to 5:00pm ( Summer)
Saturday	8:00am to 7:00pm (Winter)
Sunday	Closed
Public Holidays	Closed

## Item 5 Notices

### YMCA

Address: 201 Star Street, Welshpool, Western Australia

Fax No: (08) 9227 6738

Attention: Chief Executive Officer

### Town:

Address: 89 Earl Street Narrogin WA 6312

Fax No: (08) 9881 1944

Attention: Chief Executive Officer

# Signing page

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**EXECUTED by the parties as a Deed**

2014

**THE COMMON SEAL of the Town of Narrogin**  
is affixed in the presence of -

\_\_\_\_\_  
Signature of Mayor

\_\_\_\_\_  
Name of Mayor (print)

\_\_\_\_\_  
Name of Chief Executive Officer

\_\_\_\_\_  
Name of Chief Executive Officer

**THE COMMON SEAL of The Young Mens' Christian Association of Perth** was affixed by authority of Directors in the presence of

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/director

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/president (print)

Please note: Cr Ward declared a proximity interest and departed the meeting at 7:44pm

## **10.2.301 REGIONAL WASTE COMMITMENT**

**File Reference:**

**Disclosure of Interest:** Nil

**Applicant:** Chief Executive Officer

**Previous Item Nos:** Various

**Date:** 4<sup>th</sup> June 2014

**Author:** Mr Aaron Cook - Chief Executive Officer & Mr Steve Friend  
- Environmental Health Officer Wagin

**Attachments:** Average Calculations Spread Sheet

**Summary:**

An item relating to the method of contribution by the participating Local Governments towards the expected costs of roadside bin pickup, bulk bin pickup and refuse site maintenance of the proposed new refuse site in Cuballing Shire.

**Background:**

In 2009 Frank Bowman produced a report, the "Bowman Report" into the state of the refuse sites contained within 12 local governments.

The local governments included Lake Grace, Woodanilling, West Arthur, Wagin, Shire of Narrogin, Town of Narrogin, Pingelly, Wickepin, Wandering, Williams, Cuballing and Dumbleyung.

Since the "Bowman Report", three of the Local Governments have pulled out of the group – these being Lake Grace, Woodanilling and West Arthur.

The report was very extensive and made a number of critical points and recommendations.

Chief among them was that the 12 local governments had an extraordinary amount of refuse sites between them and that all had problems with the management of the sites and varying levels of compliance with Department of Environment Regulations.

One of the recommendations was that a large number of the satellite tips should close down and that the group should look at establishing a "Regional Refuse Site" to take the waste from all of the participating LG's.

This would involve retaining the main or nominated refuse site in each LG to be converted to a transfer station to remove putrescible waste to the regional site and the other materials that are collected (scrap metal, asbestos, green waste, waste oil etc) could be handled at the LG's site.

The remaining 9 Councils have been putting \$5,000 per year to keep the group going and to try and establish a regional refuse site.

An item was presented to each remaining local government (9) in March 2014 asking that an amount of \$80,000 be committed in next year's budget to be used for the development of the proposed new waste site. This was accepted by Council to include the \$80,000 within the budget deliberations.

As a result of this request for funding to set up the new refuse site, the Shire of Wandering has withdrawn from the group, with 8 local governments remaining.

The group has since met to discuss options for the methodology of covering the costs that will be incurred in three areas –

1. Kerbside putrescible bin pickup
2. Bulk bin removal and
3. Maintenance of the new refuse site.

**Comment:**

If the three areas mentioned in *background* above are examined –

**1 Kerbside putrescible bin pickup.**

It was felt by some members of the group that for the process to proceed, the cost of the services provided (kerbside and bulk transfer of waste) should be the same for each local government, no matter where that Council was located.

For instance, it was felt that the furthest Council, Dumbleyung, should pay no more than the closest Council, Narrogin Town or Cuballing.

It was felt that this was an incentive for the members to remain united and therefore keep the costs down across all Councils.

A table has been produced showing the Councils involved, the number of bins within the group and the current individual cost per ratepayer for the bin.

Advice was sought from Great Southern Waste (contractor to six of the participating Councils) as to what freight costs could be expected to remove the kerbside waste from each town to the proposed new site at Nebrikinning Road in Cuballing, as opposed to depositing it in each local government's existing tip.

The figures given make up part of the table referred to.

There might be some argument that the figures are inflated or should not apply in the first place (freight).

Both arguments will have some merit, however when it comes time to go to tender for the service, if they are inflated figures or not relevant, the corresponding costs to the group will reflect that decrease.

As can be seen by the table, the pickup cost for the 7 local governments have been totalled (\$388,221.08).

The freight to get the waste to Nebrikinning Road from each town has been totalled (\$112,112).

The total price (pickup and freight) = \$500,333.

There were then two methods to get an average figure for each local government to pay so that the bin cost was equal – divide the total figure by the participating local governments (7 excluding Cuballing as they do not have a kerbside pickup) or divide the total figure by the number of bins within the group.

As can be seen by the table, either method varied wildly from what each local government is currently paying.

A third method used applies the same percentage that each local government currently contributes to pick up costs and applies this percentage to the new costs.

If you used Narrogin for this exercise Narrogin has 3187 bins and pays \$.96 to the contractor to pick up the bin. This amounted to \$49.92 per assessment per year or \$159,095 per year for all the bins in Narrogin.

When all the local governments are added up, the total comes to \$388,221.08 for the bin pickup only.

When the freight component is worked out, advice is that it will cost Wagin \$40,438 per year to remove the waste from the bins to the new site in Cuballing. The combined freight for the group is expected to be \$112,112.

The combined total of the pickup and the freight comes to \$500,333 across the seven local governments who have a bin pickup. If this amount is simply divided by the seven local governments (\$500,333 divided by 7) the result is \$71,476.15, a massive saving to the Town. However, this obviously would not be acceptable to the other Councils.

However if the \$500,333 is divided by the number of bins across the group (5927), the cost to Narrogin is \$269,033, an increase of \$109,938, although the cost per bin (\$84.42) is the same for all local governments.

The third scenario presented in the table shows the percentages that each local government is expected to contribute to the overall cost (including freight). Again in Narrogin's case the Town is contributing to 41% of the current cost.

If this was to extend to the expected new costs at the current percentage, it is probably as fair a method as any of calculating what it will cost this local government to continue in the scheme.

For instance, it is expected it will cost Narrogin \$199,135 (pickup and freight) per year. If the percentage of contribution currently applied is carried forward, it will cost Narrogin \$205,039. These figures may come down because the freight component has been estimated. However, please note that with the Town having the largest percentage that the Town's costs will reduce by that percentage of the savings, being the biggest gain.

The second table is the same, except that it includes a bin pickup for Cuballing. An estimated 150 bins has been applied for this equation.

Although Cuballing has indicated it is not interested in a pickup service, the table shows it would cost the Shire \$14,206.33 annually. It also shows what effect it will have on the other 7 local governments.

The third table shows what would happen if Dumbleyung withdrew from the scheme.

In the case of Wagin, if Dumbleyung pulled out, there would be a slight saving to Wagin (and in fact everyone).

The case for having Dumbleyung in or out is not convincing either way.

There will be a small saving on the bin pickup but the maintenance costs might increase and certainly the initial setup costs will increase.

Please note that with all of the information provided above there will be an increase in cost for the Bin Pick up service to the residents; however, it must be noted that the reduction in cost will appear through the % cost of the managing the Refuse Site compared to what Council is currently paying. This will be an increased cost to each of the other Local Governments. The Town will also incur costs in the Bulk Bin transfers as listed below, but it is expected that the Town's overall costs will not increase dramatically above what it is currently paying.

## **2 Bulk bin pickup**

This area is less known as there is no historical evidence of current costs or the hours to travel to wherever there might be a bulk bin placed in a Shire.

The table attached shows an estimate of the number of bulk bins within any local authority.

For instance, it has been estimated that Narrogin might have 10 in a central location.



The freight component has been worked out for each Shire based on the expected hours to go from the base (Narrogin) to the local government and includes the time to load each bulk bin and compact it in the truck, then return to Nebrikinning Road.

Most of the cost therefore is the freight (hours x \$154). The number of bins has a lesser impact, however the truck will be at any particular site longer if it has to load 8 bins as opposed to 3 bins.

The same formulas have been used to arrive at a cost to the group.

If the total cost (\$170,170) is divided by the number of participating local governments (8), the cost can be compared to what would happen if the total cost (\$170,170) is divided by the number of bins (56).

There is not as much variation in the bulk bins as compared to the kerbside bins using one of these formulas, however if the percentage scenario is used, there is still not a huge variation but probably a fairer result.

This is because, say a Shire like Wickepin might only incur a travelling cost of 1 hour there and back from Narrogin (\$154) however should a bin be placed out at Tincurrin, the travelling will be more like 2 hours (2 x \$154). Wickepin's percentage is therefore 14.12%.

The fifth table shows what would happen if Dumbleyung was to not be included in the scheme.

### **3 Refuse site maintenance**

This component seems easier to work out.

If the cost of the kerbside pickup (\$500,333) is added to the bulk bin cost (\$170,170) the total cost comes to (\$670,503).

If this amount is divided by the percentages of each participating local government, they will pay a direct proportion of the maintenance according to what they incur in the kerbside and bulk bin pickups.

An estimation of what it will cost to maintain the new refuse site, supplied by Great Southern Waste, would be \$1,500/week (\$78,000).

The percentages of this cost, as per the formulas applied (percentages) would have the following effect –

Wagin – 18% = \$14,040

Williams – 7% = \$5,460

Narrogin Town – 35% = \$27,300

Wickepin – 10% = \$7,800

Narrogin Shire – 7% = \$5,460

Pingelly – 10% = \$7,800

Cuballing – 1% = \$780

Dumbleyung – 11% = \$8,580

The figures would change as per the last table should Dumbleyung pull out of the group.

The commencement date for the new site has been discussed and determined that this should happen on July 1<sup>st</sup>, 2017.

This should give all participating local governments to time to organise themselves in relation to setting up their transfer stations.

It should also provide time to organise tenders for the services mentioned above.

It should be noted that the commencement date should be uniform to ensure the refuse site maintenance costs are borne as per the recommendation at the conclusion of this item.

It cannot happen that some start to use it and some not as the maintenance costs can't be met by just a few individual local governments.

**Consultation:**

Chief Executive Officers of the participating Local Governments

**Statutory Environment:** - Nil

**Policy Implications:** - Nil

**Financial Implications:**

The Town of Narrogin did not subscribe to the group to save monies but rather protect itself in the longer term for waste management. Potentially some cost increases could be justified; however, it is expected that the Towns costs will be contained within current expenditure levels.

**Strategic Implications:**

The strategic benefit to the Town of Narrogin can be clearly seen through security of Waste disposal for the longer term, being well past the expectations of the current refuse site. The reduction of the current site to a Transfer Station will enable the site to continue to accept levels of inert waste and will greatly reduce the buffers for the site. This benefit will potentially greatly increase the residential development in the immediate area.

**Voting Requirements:** - Simple Majority

**Council Resolution 0614.75**

**Moved: Cr Barton**

**Seconded: Cr Russell**

That Council:

Agrees that for the regional refuse site at Nebrikinning Road in the Shire of Cuballing to proceed with the formulas for paying for the kerbside pickup, bulk bin pickup and refuse site maintenance be apportioned according to a percentage of usage as currently applies; that is Narrogin will pay 41% of the cost of the kerbside pickup, 19% of the bulk bin pickup and an estimated 35% of the refuse site maintenance or a similar percentage should the Shire of Dumbleyung cease to be a part of the group.

**CARRIED 6/0**

*Please note: Cr Ward re-entered the meeting at 8:05pm*

# KERBSIDE PICKUP

CURRENT CHARGES						PROPOSED TRAVEL COSTS		COMBINED TOTAL	TOTAL DISTRIBUTED EVENLY AMONGST 7 SHIRES			TOTAL BASED ON SAME BIN COST FOR ALL		TOTAL DISTRIBUTED ACCORDING TO % OF CURRENT COSTS		
Local Government	# Bins	Pickup Cost /bin	Annual Cost/Bin Pickup No maintenance	Total Annual Cost/bin Pickup B x C x 52	% of Total Current Costs	Travelling Cost/Week Town to Nebrikinning Rd	Total Annual Travel Cost H x 52	Total Annual Bin Pickup and Travel Cost F + I	Annual Costs Distributed per Average (Total/7)	Increase/ (Decrease) F - K	New Cost Per Bin Average Method	Annual Costs Fixed Bin Cost \$84.42	Increase/ (Decrease) F - M	Annual Costs Distributed per % of Total Current Costs	Increase/ (Decrease) F - M	New Cost Per Bin % Method
Wagin	1036	\$1.35	\$70.20	\$72,727.20	19%	\$462	\$24,024	\$96,751	\$71,476.15	-\$1,251	\$69	\$87,455	\$14,728	\$93,729.64	\$21,002	\$90
Williams	321	\$1.50	\$78.00	\$25,038.00	6%	\$154	\$8,008	\$33,046	\$71,476.15	\$46,438	\$223	\$27,098	\$2,060	\$32,268.57	\$7,231	\$101
Narrogin Town	3187	\$0.96	\$49.92	\$159,095.04	41%	\$770	\$40,040	\$199,135	\$71,476.15	-\$87,619	\$22	\$269,033	\$109,938	\$205,039.13	\$45,944	\$64
Wickepin	317	\$1.98	\$102.96	\$32,638.32	8%	\$154	\$8,008	\$40,646	\$71,476.15	\$38,838	\$225	\$26,760	-\$5,878	\$42,063.74	\$9,425	\$133
Narrogin Shire	231	\$1.98	\$102.96	\$23,783.76	6%	\$154	\$8,008	\$31,792	\$71,476.15	\$47,692	\$309	\$19,500	-\$4,284	\$30,652.13	\$6,868	\$133
Pingelly	581	\$1.37	\$71.24	\$41,390.44	11%	\$154	\$8,008	\$49,398	\$71,476.15	\$30,086	\$123	\$49,046	\$7,655	\$53,343.33	\$11,953	\$92
Cuballing				\$0.00	0%		\$0	\$0		\$0		\$0	\$0	\$0.00	\$0	
Dumbleyung	254	\$2.54	\$132.08	\$33,548.32	9%	\$308	\$16,016	\$49,564	\$71,476.15	\$37,928	\$281	\$21,442	-\$12,107	\$43,236.53	\$9,688	\$170
	5927			\$388,221.08	100%	\$2,156	\$112,112	\$500,333	\$500,333	\$112,112		\$500,333	\$112,112	\$500,333	\$112,112	

Annual Fixed Bin \$84.42

CURRENT CHARGES						PROPOSED TRAVEL COSTS		COMBINED TOTAL	TOTAL DISTRIBUTED EVENLY AMONGST 8 SHIRES			TOTAL BASED ON SAME BIN COST FOR ALL		TOTAL DISTRIBUTED ACCORDING TO % OF CURRENT COSTS		
Local Government	# Bins	Pickup Cost /bin	Annual Cost/Bin Pickup No maintenance	Total Annual Cost/bin Pickup B x C x 52	% of Total Current Costs	Travelling Cost/Week Town to Nebrikinning Rd	Total Annual Travel Cost H x 52	Total Annual Bin Pickup and Travel Cost F + I	Annual Costs Distributed per Average (Total/8)	Increase/ (Decrease) F - K	New Cost Per Bin Average	Annual Costs Fixed Bin Cost \$85.45	Increase/ (Decrease) F - M	Annual Costs Distributed per % of Total Current Costs	Increase/ (Decrease) F - M	New Cost Per Bin % Method
Wagin	1036	\$1.35	\$70.20	\$72,727.20	18%	\$462	\$24,024	\$96,751	\$64,907.64	-\$7,820	\$63	\$88,523	\$15,796	\$94,614.18	\$21,887	\$91
Williams	321	\$1.50	\$78.00	\$25,038.00	6%	\$154	\$8,008	\$33,046	\$64,907.64	\$39,870	\$202	\$27,428	\$2,390	\$32,573.09	\$7,535	\$101
Narrogin Town	3187	\$0.96	\$49.92	\$159,095.04	40%	\$770	\$40,040	\$199,135	\$64,907.64	-\$94,187	\$20	\$272,319	\$113,224	\$206,974.09	\$47,879	\$65
Wickepin	317	\$1.98	\$102.96	\$32,638.32	8%	\$154	\$8,008	\$40,646	\$64,907.64	\$32,269	\$205	\$27,087	-\$5,552	\$42,460.70	\$9,822	\$134
Narrogin Shire	231	\$1.98	\$102.96	\$23,783.76	6%	\$154	\$8,008	\$31,792	\$64,907.64	\$41,124	\$281	\$19,738	-\$4,046	\$30,941.39	\$7,158	\$134
Pingelly	581	\$1.37	\$71.24	\$41,390.44	10%	\$154	\$8,008	\$49,398	\$64,907.64	\$23,517	\$112	\$49,645	\$8,254	\$53,846.74	\$12,456	\$93
Cuballing	150	\$1.40	\$72.80	\$10,920.00	3%	\$154	\$8,008	\$18,928	\$64,907.64	\$53,988	\$433	\$12,817	\$1,897	\$14,206.33	\$3,286	\$95
Dumbleyung	254	\$2.54	\$132.08	\$33,548.32	8%	\$308	\$16,016	\$49,564	\$64,907.64	\$31,359	\$256	\$21,704	-\$11,845	\$43,644.56	\$10,096	\$172
	6077			\$399,141.08	100%	\$2,310	\$120,120	\$519,261	\$519,261	\$120,120		\$519,261	\$120,120	\$519,261	\$120,120	

Annual Fixed Bin \$85.45

CURRENT CHARGES						PROPOSED TRAVEL COSTS		COMBINED TOTAL	TOTAL DISTRIBUTED EVENLY AMONGST 6 SHIRES			TOTAL BASED ON SAME BIN COST FOR ALL		TOTAL DISTRIBUTED ACCORDING TO % OF CURRENT COSTS		
Local Government	# Bins	Pickup Cost /bin	Annual Cost/Bin Pickup <small>No maintenance</small>	Total Annual Cost/bin Pickup B x C x 52	% of Total Current Costs	Travelling Cost/Week  <small>Town to Nebrikinning Rd</small>	Total Annual Travel Cost H x 52	Total Annual Bin Pickup and Travel Cost F + I	Annual Costs Distributed per Average (Total/6)	Increase/ (Decrease) F - K	New Cost Per Bin Average Method	Annual Costs  <b>Fixed Bin Cost</b> \$79.46	Increase/ (Decrease) F - M	Annual Costs Distributed per % of Total Current Costs	Increase/ (Decrease) F - M	New Cost Per Bin % Method
Wagin	1036	\$1.35	\$70.20	\$72,727.20	21%	\$462	\$24,024	\$96,751	\$75,128.13	\$2,401	\$73	\$82,319	\$9,592	\$92,432.10	\$19,705	\$89
Williams	321	\$1.50	\$78.00	\$25,038.00	7%	\$154	\$8,008	\$33,046	\$75,128.13	\$50,090	\$234	\$25,506	\$468	\$31,821.86	\$6,784	\$99
Narrogin Town	3187	\$0.96	\$49.92	\$159,095.04	45%	\$770	\$40,040	\$199,135	\$75,128.13	-\$83,967	\$24	\$253,235	\$94,140	\$202,200.68	\$43,106	\$63
Wickepin	317	\$1.98	\$102.96	\$32,638.32	9%	\$154	\$8,008	\$40,646	\$75,128.13	\$42,490	\$237	\$25,188	-\$7,450	\$41,481.43	\$8,843	\$131
Narrogin Shire	231	\$1.98	\$102.96	\$23,783.76	7%	\$154	\$8,008	\$31,792	\$75,128.13	\$51,344	\$325	\$18,355	-\$5,429	\$30,227.80	\$6,444	\$131
Pingelly	581	\$1.37	\$71.24	\$41,390.44	12%	\$154	\$8,008	\$49,398	\$75,128.13	\$33,738	\$129	\$46,165	\$4,775	\$52,604.88	\$11,214	\$91
Cuballing				\$0.00	0%		\$0	\$0		\$0		\$0	\$0	\$0.00	\$0	
Dumbleyung				\$0.00	0%		\$0	\$0		\$0		\$0	\$0	\$0.00	\$0	
	5673			\$354,672.76	100%	\$1,848	\$96,096	\$450,769	\$450,769	\$96,096		\$450,769	\$96,096	\$450,769	\$96,096	

Annual Fixed Bin \$79.46

BULK BINS

CURRENT CHARGES								COMBINED TOTAL	TOTAL DISTRIBUTED EVENLY AMONGST 8 SHIRES			TOTAL BASED ON SAME BIN COST FOR ALL	TOTAL DISTRIBUTED ACCORDING TO % OF ACTUAL COSTS			
Local Government	No of Skip Bins	No of Hours Per Week	Weekly Cost of Pickup	Annual Pickup Cost E x 52	% of Pickup Costs			Total Annual Skip Bin Pickup	Annual Costs	Increase/ (Decrease) F - K	New Cost Per Bin Average Method	Annual Costs	Increase/ (Decrease) F - M	Annual Costs	Increase/ (Decrease) F - M	New Cost Per Bin % Method
			Rate per hour						Distributed per Average (Total/8)			Fixed Bin Cost		Distributed per % of Total Current Costs		
			\$ 154.00									\$3,038.75				
Wagin	8	3.00	\$462.00	\$24,024.00	14.12%		\$0	\$24,024	\$21,271.25	-\$2,753	\$2,659	\$24,310	\$286	\$24,024.00	\$0	\$3,003
Williams	6	2.25	\$346.50	\$18,018.00	10.59%		\$0	\$18,018	\$21,271.25	\$3,253	\$3,545	\$18,233	\$215	\$18,018.00	\$0	\$3,003
Narrogin Town	10	4.00	\$616.00	\$32,032.00	18.82%		\$0	\$32,032	\$21,271.25	-\$10,761	\$2,127	\$30,388	-\$1,645	\$32,032.00	\$0	\$3,203
Wickepin	8	3.00	\$462.00	\$24,024.00	14.12%		\$0	\$24,024	\$21,271.25	-\$2,753	\$2,659	\$24,310	\$286	\$24,024.00	\$0	\$3,003
Narrogin Shire	6	2.00	\$308.00	\$16,016.00	9.41%		\$0	\$16,016	\$21,271.25	\$5,255	\$3,545	\$18,233	\$2,217	\$16,016.00	\$0	\$2,669
Pingelly	8	1.75	\$269.50	\$14,014.00	8.24%		\$0	\$14,014	\$21,271.25	\$7,257	\$2,659	\$24,310	\$10,296	\$14,014.00	\$0	\$1,752
Cuballing	4	1.25	\$192.50	\$10,010.00	5.88%		\$0	\$10,010	\$21,271.25	\$11,261	\$5,318	\$12,155	\$2,145	\$10,010.00	\$0	\$2,503
Dumbleyung	6	4.00	\$616.00	\$32,032.00	18.82%		\$0	\$32,032	\$21,271.25	-\$10,761	\$3,545	\$18,233	-\$13,800	\$32,032.00	\$0	\$5,339
	56			\$170,170.00	100%	\$0	\$0	\$170,170	\$170,170	\$0	\$0	\$170,170	\$0	\$170,170	\$0	\$0

Total Contract Price \$170,170.00

CURRENT CHARGES								COMBINED TOTAL	TOTAL DISTRIBUTED EVENLY AMONGST 7 SHIRES			TOTAL BASED ON SAME BIN COST FOR ALL	TOTAL DISTRIBUTED ACCORDING TO % OF ACTUAL COSTS			
Local Government	No of Skip Bins	No of Hours Per Week	Weekly Cost of Pickup	Annual Pickup Cost E x 52	% of Pickup Costs			Total Annual Skip Bin Pickup	Annual Costs	Increase/ (Decrease) F - K	New Cost Per Bin Average Method	Annual Costs	Increase/ (Decrease) F - M	Annual Costs	Increase/ (Decrease) F - M	New Cost Per Bin % Method
			Rate per hour						Distributed per Average (Total/7)			Fixed Bin Cost		Distributed per % of Total Current Costs		
			\$ 154.00									\$2,762.76				
Wagin	8	3.00	\$462.00	\$24,024.00	17.39%		\$0	\$24,024	\$19,734.00	-\$4,290	\$2,467	\$22,102	-\$1,922	\$24,024.00	\$0	\$3,003
Williams	6	2.25	\$346.50	\$18,018.00	13.04%		\$0	\$18,018	\$19,734.00	\$1,716	\$3,289	\$16,577	-\$1,441	\$18,018.00	\$0	\$3,003
Narrogin Town	10	4.00	\$616.00	\$32,032.00	23.19%		\$0	\$32,032	\$19,734.00	-\$12,298	\$1,973	\$27,628	-\$4,404	\$32,032.00	\$0	\$3,203
Wickepin	8	3.00	\$462.00	\$24,024.00	17.39%		\$0	\$24,024	\$19,734.00	-\$4,290	\$2,467	\$22,102	-\$1,922	\$24,024.00	\$0	\$3,003
Narrogin Shire	6	2.00	\$308.00	\$16,016.00	11.59%		\$0	\$16,016	\$19,734.00	\$3,718	\$3,289	\$16,577	\$561	\$16,016.00	\$0	\$2,669
Pingelly	8	1.75	\$269.50	\$14,014.00	10.14%		\$0	\$14,014	\$19,734.00	\$5,720	\$2,467	\$22,102	\$8,088	\$14,014.00	\$0	\$1,752
Cuballing	4	1.25	\$192.50	\$10,010.00	7.25%		\$0	\$10,010	\$19,734.00	\$9,724	\$4,934	\$11,051	\$1,041	\$10,010.00	\$0	\$2,503
Dumbleyung			\$0.00	\$0.00	0.00%		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0.00	\$0	\$0
	50			\$138,138.00	100%	\$0	\$0	\$138,138	\$138,138	\$0	\$0	\$138,138	\$0	\$138,138	\$0	\$0

Total Contract Price \$138,138.00

## **10.2.302 SALE OF LAND FOR RECOVERY OF UNPAID RATES**

File Reference: A192300  
Disclosure of Interest: Nil  
Applicant: Nil  
Previous Item Nos: 10.2.467  
Date: 26 May 2014  
Author: Narelle Rowe, Finance Officer Rates

**Attachments:** Nil.

### **Summary:**

Council is requested to consider the sale by public auction 63 Fox Street, Narrogin as a result of unpaid rates of 3 years under Section 6.64 of the Local Government Act 1995.

### **Background:**

63 Fox Street, Narrogin has outstanding rates and charges of 3 years as at May 2014 totalling \$4,434.27. A title search of the property has shown the property to be in the ownership of Narrogin Bethel Christian Fellowship Inc.

The premises appears to have been unoccupied for a number of years and as a result has incurred substantial damage from vandals and subsequent deterioration. Discussions with the Environmental Health Officer has revealed that a Work Order was issued and more recently has been declared unfit for habitation. In addition, a notice to clear and repair the premises within 60 days has been issued with a follow up inspection to be undertaken in July. Failure to comply with the notice within the specified time frame may result in the matter being referred for legal action and possibly for Council to undertake the works and recover the costs associated with such works.

Due to the property being vacant, all correspondence including Rate Notices and requests for payment have been directed to the last known postal address.

Since October 2013, the property has been subject to debt collection procedures including Final Notices, written requests for payment and subsequent referral to debt collection including issuance of Final Demand letter and a General Procedure Claim (GPC) served on 9 March 2014. The GPC was served by the Bailiff appointed by Austral Mercantile to a person residing at 37 Lefroy Street, Narrogin.

### **Comment:**

The next step after issuance of a GPC would be to issue a Property Seizure and Sale Order to seize any goods at the property to the value of the debt however due to substantial deterioration of the premises it is the author's opinion this would not result in the collection of outstanding monies. The sale of any property to recover unpaid rates and service charges is not the preferred course of action normally pursued as other legal proceedings have generally proven to be successful, however, the Town has exhausted all other options available to recover outstanding arrears.

A search of the Certificate of Title of the land has shown the property to be free of any encumbrances.

**Consultation:**

- Local Government Act 1995
- Colin Bastow – Director Corporate and Community Services
- Rhona Hawkins – Manager of Finance

**Statutory Environment:**

Section 6.64 of the Local Government Act 1995 provides that, if any rates or service charges due to a local government have been unpaid for at least three years, the local government may take possession of the land and proceed to sell the land. Section 6.68 (1) of the Local Government Act 1995 prevents the local government from exercising the power of sale unless the local government has at least once attempted to recover money due as described under 6.56 of the Local Government Act 1995.

In order to take possession of the property and proceed with its sale, Council must give notification to the owner requiring the payment of rates under Schedule 6.3 of the Local Government Act 1995. Such notice is also to be served on any party and with an interest in the land includes the mortgagee by certified mail. This notice is to be posted on the Town's official notice board for a period of not less than 35 days. If at the expiration of three months from the date of issue of the notice the rates remain unpaid, the Town of Narrogin may proceed with selling the land by public auction, with the auction to occur not more than 12 months from the date of the notice.

If the matter takes this course and the property is sold by public auction, under Clause 5 of the Schedule 6.3 of the Local Government Act 1995, the outstanding rates, any additional legal expenses and the cost of the sale or incidental to the sale of the property can be recovered by the Town. Any residual amount from the sale of the property is to be held by the Town in the event of the owners or associated parties making a claim. If after 12 months the amount has not been claimed, the residual funds are to be paid to the Supreme Court under Section 99 of the Trustees Act.

**Policy Implications:** Nil.

**Financial Implications:**

The sale of this land will equate to a decrease in the level of outstanding rates by \$4434.27 plus interest.

All costs associated with taking possession and selling the land can be recovered from the proceeds of sale together with outstanding rates and charges in accordance with Section 6.56 of the Local Government Act 1995.

**Strategic Implications:**

Nil.

**Voting Requirements:**

Absolute Majority

**Council Resolution 0614.76**

**Moved: Cr Russell**

**Seconded: Cr Ward**

That Council:

Approve administrative action to recover outstanding arrears by the sale of the land situated at 63 Fox Street, Narrogin as a result of rates outstanding for three years under Section 6.64(1)(b) of the Local Government Act 1995.

**CARRIED 7/0**



## 10.2.303 PAYMENT ARRANGEMENT

**File Reference:** A138200 and A208100  
**Disclosure of Interest:** Nil.  
**Applicant:** Nil.  
**Previous Item Nos:** 10.2.276  
**Date:** 4 June 2014  
**Author:** Narelle Rowe

### Attachments:

### Summary:

This report requests that Council consider the payment proposal submitted by the ratepayer for properties situated at 12 Doney Street, Narrogin and 47 George Street, Narrogin.

### Background:

Rate arrears exist on both properties.

**12 Doney Street, Narrogin** has outstanding rates and charges of 2 years as at June 2014 totalling \$18,481.02. The premises are currently being operated as a Hotel.

A General Procedure Claim (GPC) was served on 11 May 2014 by the Bailiff appointed by Austral Mercantile to the last known postal address of the owners. The ratepayer was given 14 days in which to complete and lodge a response to the GPC. No response was received by either the Town of Narrogin or Austral Mercantile within the stated time.

Since 2012, three Payment Arrangements have been entered into between the Council and the ratepayer in an effort to clear the debt. These have all been defaulted upon. The last payment received for this property was \$500.00 on 9 August 2013.

Discussions with the Environmental Health Officer has revealed that the premises received several infringements in 2012 in accordance with the Food Act and due to non-compliance was fined \$20,000.00 for breaches of the Food Act in December 2012.

A Payment Arrangement was filed at the Court consisting of \$200.00 per month and has been upheld to date. The current debt owing to Council is \$18,500.00.

**47 George Street, Narrogin** has outstanding rates and charges of 2 years as at June 2014 totalling \$3,752.53.

Similarly, previous Payment Arrangements entered into by the ratepayer have not been honoured by the ratepayer. The last payment received for this property was \$500.00 on 9 August 2013.

GPC's were served by the Bailiff on 9 March 2014.

In April 2014, Item 10.2.276, Council resolved to issue a Property Seizure and Sale Order (PSSO) to recover outstanding rates for 47 George Street, Narrogin.

At the time of writing this report, Austral Mercantile have advised the author the documentation has been processed and is currently with the Bailiff who is attempting to serve.

**Comment:**

In correspondence dated 27 May 2014, a co-owner has proposed another Payment Arrangement consisting of \$300.00 per fortnight (ie. \$75.00 week for each property) to cover the debts via direct debit. The co-owner has advised that she is currently experiencing financial hardship due to a marital breakdown 18 months ago and is not receiving any assistance from her estranged spouse, being the other co-owner of the properties, and is attempting to resolve the outstanding accounts by herself.

In her letter to the Town she advises she anticipates she will continue paying off the debt until such time as either the Hotel has been sold or the amount finally paid. The author has contacted the three local Real Estate Agencies who have confirmed the hotel is not listed with their agencies. It is believed there is a 'For Sale' sign in a window of the premises however this could not be confirmed at the time of writing this report.

**Consultation:**

Director of Corporate and Community Services

**Statutory Environment:**

Local Government Act

**Policy Implications:**

**Financial Implications:**

A calculation to estimate the time required to clear the existing debt on the properties is as follows:

12 Doney Street, Narrogin is \$18,476.19 / \$75.00 week = 246 weeks **(5 years)**

47 George Street, Narrogin is \$3,751.35 / \$75.00 week =50 weeks **(1 year)**

**Strategic Implications:** Nil

**Voting Requirements:** Simple Majority

**OFFICER RECOMMENDATION**

That Council:

1. Refuse the proposed payment arrangement offered as it is considered unreasonable due to the anticipated time to repay the debt and;
2. Approve the issuing of a PSSO on 12 Doney Street, Narrogin.

NB. Council has previously approved the issuing of a PSSO on 47 George Street, Narrogin

ALTERNATIVE MOTION:

That Council:

Accept the payment arrangement offered by the Ratepayer for the existing rate arrears and advise Austral Mercantile to hold serving of the Property Seizure and Sale Order.

- Penalty interest of 11% per annum is accruing on a daily basis.

**Council Resolution 0614.77**

**Moved: Cr Paternoster**

**Seconded: Cr Bartron**

That Council:

1. Refuse the proposed payment arrangement offered as it is considered unreasonable due to the anticipated time to repay the debt and;
2. Approve the issuing of a PSSO on 12 Doney Street, Narrogin.

NB. Council has previously approved the issuing of a PSSO on 47 George Street, Narrogin

**CARRIED 7/0**

## 10.2.304 DCP FAMILY INFORMATION DAY

**File Reference:**

**Disclosure of Interest:** Nil

**Applicant:** Department of Child Protection and Family Support

**Previous Item Nos:** Nil

**Date:** 5 June 2014

**Author:** Susan Guy Manager of Leisure and Culture

**Attachments:**

- Letter from the Department for Child Protection and Family Support's (DCP) Case Worker - Parent Support, Responsible Parenting Services requesting the Town of Narrogin's support by way of sponsorship for Family Day and the consequent reduction in fees for the hire of the Narrogin Regional Leisure Centres (NRLC) three indoor stadiums.

**Summary:**

Council is requested to consider approving the CEO to reduce the NRLC venue hire fees for the three internal stadiums by 40 percent on 15 July 2014 as a way of sponsoring a Department of Child Protection Family Information Day.

**Background:**

In May 2014, the Chief Executive Officer received correspondence from Ms Di Spanswick , a DCP Case Worker which provided a brief of a community event the Department's Responsible Parenting Services is planning with the intent of engaging local and hard to reach indigenous families.

The event is scheduled to take place on 15 July 2014 during the school holiday period. The NRLC is viewed as a suitable venue and DCP has booked the three netball courts to accommodate a range of stakeholder stalls and activities and entertainment for children attending with parents.

DCP's budget for the event includes venue hire, catering and entertainment (including bringing the popular youth hip hop dance group Urban Youth Crew to Narrogin for the day). To assist with DCP's overall costs, the Department has invited the Town to sponsor this event by way of reducing the hire fees of the three stadiums for the day. Sponsorship would be fully acknowledged including displaying the Town of Narrogin flag at the event.

The object of the initiative is to enable indigenous families in the Narrogin community to interact and engage with agency workers in an informal/casual setting and take the opportunity to discuss and receive advice from various social and welfare services. Stakeholders will include: Centrelink, Police, RDA Wheatbelt, Holyoake, CANWA, Education, Primary Health, Mental health, Share and Care – Djookanka House, Avon Youth, Department for Housing, RSPCA, Department of Sport and Recreation, Department for Communities, Parenting WA, accessibility, PCYC, YMCA, Department of Agriculture, KEEDAC and Best Start. Baptistcare, the Salvation Army and a financial counsellor may also attend.

**Comment:**

DCP particularly aims to engage with families who wouldn't normally access mainstream services and the event is being planned in consultation with DCP Aboriginal staff and practice leaders. It will focus on providing information and referrals from a range of agencies to assist with matters such as accessing and understanding Centrelink programs and assistance, as well as job search, Department of Housing issues, education and training programs and opportunities, immunisation checks, women's and men health, policing and corrective services, dental checks, mental health, healthy lifestyle choices and domestic pet care.

The event will also provide a forum for marginalised and disadvantaged families to have a voice and express their needs and concerns on social, economic and welfare issues relevant to them. In this context it can benefit Narrogin as a community and it is DCP's intention to invite the Town's Mayor and the CEO to attend for part of the day to mix and mingle with stakeholders including family members. Ultimately the Town of Narrogin has an opportunity to engage in positive dialogue with attending families and support services.

**Consultation:**

- Aaron Cook , CEO Town of Narrogin
- Ms Di Spanswick, Department for Child Protection and Family Support's (DCP) Case Worker - Parent Support, Responsible Parenting Services

**Statutory Environment:**

Local Government Act 1995.

**Policy Implications:**

Nil

**Financial Implications:**

DCP has booked the three indoor NRLC stadiums for a total of six hours (9am to 3pm) at a cost of \$105 per hour amounting to a venue hire cost of \$1, 890. Should the Town sponsor the DCP Family Information Day by reducing its hire fees by 40 percent, its inkind donation will amount to \$756. DCP would in turn pay a total of \$1,134 for venue hire. (In addition they are paying \$140 for staff time to set up and pack up on the day).

**Strategic Implications:**

The Town of Narrogin's Corporate Business plan 2012/13 – 2016/17 includes a number of objectives, strategies and actions aimed to support the Town's indigenous communities.

These include:

- Key objective 2 - Community Development/Services. To promote, facilitate and partner with external organisations to ensure that Narrogin residents and community are engaged both mentally and physically through participation and involvement in a wide range of activities including Sports, Arts, Volunteering, Events and other social activities;

- Strategy 2.4 – Provide ongoing proactive support, where possible, to the Local Indigenous Noongar Community towards positive actions within the community; and
- Actions key objective 2.4 -Work with partnering organisations for the development of Indigenous activities and services to result in positive actions within Narrogin.

**Voting Requirements:** Simple Majority

**OFFICER RECOMMENDATION**

That Council:

Approve the CEO to reduce the NRLC venue hire fees for the three internal stadiums by 40 percent on 15 July 2014 as a way of sponsoring a Department of Child Protection Family Information Day.

**Council Resolution 0614.78**

**Moved: Cr Bartron**

**Seconded: Cr Russell**

That Council:

As per Councils policy approve the CEO to reduce the NRLC venue hire fees for the three internal stadiums by 25 percent, to being a cost of \$1,418.00 on 15 July 2014 as a way of sponsoring (\$472.00) a Department of Child Protection Family Information Day.

**CARRIED 7/0**

*Please note: Reason for change was that Council wanted to apply the adopted policy regarding this matter.*



Government of Western Australia  
Department for Child Protection

## Parent Support

Monday 26th May, 2014

Mr Aaron Cook  
Chief Executive Officer  
Town of Narrogin  
89 Earl Street  
NARROGIN WA 6312

Dear Mr Cook,

### Responsible Parenting Services Community Event

Responsible Parenting Services across the Wheatbelt region are organising, co-ordinating and actively participating in a community event to engage our hard to reach families. We are hoping to hold this event on Tuesday 15th July, 2014 at the Narrogin Regional Leisure Centre and utilise the netball courts for activities and discussion.

To assist with overall costs the Department would like to invite the Town of Narrogin to sponsor this important event by way of reducing the hire fees of the three Narrogin Leisure Centre's netball courts for the day.

Your sponsorship would be fully acknowledged including displaying the Town of Narrogin flag at the event.

The object of this initiative is for families in our communities to be able to interact with agency workers and have easy, informal face to face access to information from all local Government and Non Government agencies.

We particularly want to engage with families who wouldn't normally access mainstream services. We also want our Aboriginal families to have a sense of belonging and we are planning this event in consultation with our Aboriginal colleagues and practice leaders.

We will be incorporating a focus on some of our families everyday struggles such as; Centrelink assistance, employment, Department of Housing issues, education, health issues, immunisation checks, women's and men health in separate areas, police, corrective services, dental checks, mental health, healthy eating and exercise.

Parent Support Team  
Government Building  
Park Street  
NARROGIN WA 6312  
Ph: 9881 0123 Fax: 9881 2952

## LATE ITEM

### 10.2.305 OFFICE SPACE LEASE OLD CAFÉ JOHN HIGGINS CENTRE

**File Reference:** 5.6.7  
**Disclosure of Interest:** Nil  
**Applicant:** YMCA Perth  
**Previous Item Nos:** Nil  
**Date:** 10<sup>th</sup> June 2014  
**Author:** Mr Aaron Cook - Chief Executive Officer

**Attachments:** - Nil

#### **Summary:**

It is presented to Council to endorse a one year lease, with the option of an additional year, for the vacant office space created within the old Café at the John Higgins Centre.

#### **Background:**

The Town converted the old disused Café into office space for the Healthy Lifestyles project. During this time two officers were located in this large room with still space available.

It has been office space now for a period to two years. It will continue to be utilised as office space for the Healthy Lifestyles program until this grant has been acquitted and the author plans to locate the Club Development Officer from this location as well.

#### **Comment:**

It is presented to Council to rent office space from the Old Café, located at the John Higgins Centre, to the YMCA for two Officers to be located at this location.

The YMCA's current rental property has been sold and the lease transferred to another location which the YMCA has assessed as being unacceptable for their purposes. With the Tender for the Leisure Centre being accepted by Council and their increased presence at the Leisure Centre it was seen as being consolidating their presence in Narrogin.

The main function of the staff that are proposed to be relocated involves Sport and Recreation, hence befitting being located at the Leisure Centre.

It is proposed that only half of the Old Café be provided within the lease to allow Council to ensure that there is allocated space for the Club Development Officer and in the instance that another grant is received another Council officer can be located in the office.

Please note that the officer's positions funded by the YMCA are grant funded and, as such, the lease will have the ability for the YMCA to withdraw should the grant funding not be extended.

#### **Consultation:**

Rohan Gunton - YMCA Perth



**Statutory Environment:**

Local Government Act 1995 - Disposing of Property S3.58; however is excluded under section 30 to the Local Government (Functions and General) Regulations 1996.

**Policy Implications:** - Nil

**Financial Implications:**

The leasing of this space increases Council's revenue from this location where currently there are little plans to fully utilise the space.

**Strategic Implications:** - Nil

**Voting Requirements:** Simple Majority

<b>Council Resolution 0614.79</b>
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**Moved: Cr Russell**

**Seconded: Cr Schutz**

That Council:

Approve the request to lease office space for two officers from the YMCA Perth, from within the old Café area at the John Higgins Centre for a period of one year with an option of an additional year for a rental return of \$5,000 per annum.

**CARRIED 7/0**

**11. ELECTED MEMBER'S MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

NIL

**12. NEW BUSINESS OF AN URGENT NATURE APPROVED BY THE PERSON PRESIDING OR BY DECISION OF THE MEETING**

NIL

**13. CLOSURE OF MEETING**

Mayor Ballard closed the meeting at 8:33 pm.