



A G E N D A

SPECIAL MEETING

To Be Held

Tuesday, 16 April 2019
Commencing at 5.00pm

At

Shire of Dardanup
ADMINISTRATION CENTRE EATON
1 Council Drive - EATON

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NOTICE OF A SPECIAL COUNCIL MEETING

Dear Council Member

A Special Meeting of the Shire of Dardanup will be held on Tuesday, 16 April 2019 in the Council Chambers, Shire of Dardanup - Administration Centre Eaton, 1 Council Drive, Eaton - commencing at 5.00pm. The purpose of the meeting is to consider the decisions made at the Special Meeting of Electors held 20 March 2019, in accordance with s5.33 of the Local Government Act 1995.



MR ANDRÉ SCHÖNFELDT
Chief Executive Officer

Date: 11 April 2019

Note: If interested persons would like to make comment on any items in this agenda, please email records@dardanup.wa.gov.au or hand deliver written comment to the Shire of Dardanup – Administration Centre Eaton, 1 Council Drive, Eaton. To be included in the meeting comments are to be delivered no later than 48 hours prior to the meeting.

The Chief Executive Officer will use his discretion as to whether the written comments are relevant and applicable to the meeting before approving their inclusion in the meeting.

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COUNCIL ROLE

Advocacy	When Council advocates on its own behalf or on behalf of its community to another level of government / body /agency.
Executive/Strategic	The substantial direction setting and oversight role of the Council eg. Adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.
Legislative	Includes adopting local laws, town planning schemes and policies.
Review	When Council reviews decisions made by Officers.
Quasi-Judicial	<p>When Council determines an application/matter that directly affects a person's rights and interests. The Judicial character arises from the obligations to abide by the principles of natural justice.</p> <p>Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg: under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</p>

DISCLAIMER

"Any statement, comment or decision made at a Council or Committee meeting regarding any application for an approval, consent or licence, including a resolution of approval, is not effective as an approval of any application and must not be relied upon as such.

Any person or entity that has an application before the Shire must obtain, and should only rely on, written notice of the Shire's decision and any conditions attaching to the decision, and cannot treat as an approval anything said or done at a Council or Committee meeting.

Any advice provided by an employee of the Shire on the operation of a written law, or the performance of a function by the Shire, is provided in the capacity of an employee, and to the best of that person's knowledge and ability. It does not constitute, and should not be relied upon, as a legal advice or representation by the Shire. Any advice on a matter of law, or anything sought to be relied upon as a representation by the Shire should be sought in writing and should make clear the purpose of the request."

SHIRE OF DARDANUP

AGENDA FOR THE SHIRE OF DARDANUP SPECIAL MEETING OF COUNCIL TO BE HELD ON TUESDAY 16 APRIL 2019, AT SHIRE OF DARDANUP – EATON ADMINISTRATION CENTRE, COMMENCING AT 5.00PM.

1 DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS

The Presiding Member to declare the meeting open, welcome those in attendance and refer to the Disclaimer, Acknowledgement of Country, Emergency Procedures and the Affirmation of Civic Duty and Responsibility on behalf of Councillors and Officers:

Acknowledgement of Country

The Shire of Dardanup wishes to acknowledge that this meeting is being held on the traditional lands of the Noongar people. In doing this, we recognise and respect their continuing culture and the contribution they make to the life of this region by recognising the strength, resilience and capacity of Wardandi people in this land.

Affirmation of Civic Duty and Responsibility

Councillors and Officers of the Shire of Dardanup collectively declare that we will duly, faithfully, honestly and with integrity fulfil the duties of our respective office and positions for all the people in the district according to the best of our judgement and ability. We will observe the Shire's Code of Conduct and Standing Orders to ensure efficient, effective and orderly decision making within this forum.

Emergency Procedure

In the event of an emergency, please follow the instructions of the Chairperson who will direct you to the safest exit route. Once outside, please proceed to the Assembly Area points located to the western side of the front office car park near the skate park and gazebo where we will meet (and complete a roll call).

2 RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE PREVIOUSLY APPROVED

2.1 Attendance

2.2 Apologies

3 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

None.

4 PUBLIC QUESTION TIME

5 APPLICATIONS FOR LEAVE OF ABSENCE

None.

6 PETITIONS/DEPUTATIONS/PRESENTATIONS

7 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

None.

8 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

**9 ANNOUNCEMENTS OF MATTERS FOR WHICH MEETING MAY BE
CLOSED**

None.

10 QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN

None.

11 DECLARATION OF INTEREST

"Members should fill in Disclosure of Interest forms for items in which they have a financial, proximity or impartiality interest and forward these to the Presiding Member before the meeting commences."

Key Management Personnel (which includes Elected Members, CEO and Directors) are reminded of their requirement to disclose biannually transactions between Council and related parties in accordance with Council Policy CP039.

12 REPORTS OF OFFICERS AND COMMITTEES

12.1 Title: Department of Water and Environment Regulation [DWER]
Responses to Public Question Time of Special Electors Meeting held
20 March 2019

Reporting Department: Engineering & Development Services
Reporting Officer: Mrs Suzanne Occhipinti – Senior Planning Officer
Legislation: Local Government Act 1995
 Planning and Development Act 2005

Background -

There were several questions put to the Special Meeting of Electors held 20 March 2019. The minutes of the meeting outlines the questions under Item 4.3 of the minutes and can be found in (Appendix SP: 12.2).

Legal Implications - None.

Strategic Community Plan

- Strategy 1.1.2 - Monitor and ensure compliance with the regulatory framework for local government governance and operations. (Service Priority: High).
- Strategy 2.1.2 - Preserve and protect the ecological value of watercourses. (Service Priority: Very High).
- Strategy 2.1.3 - Provide our community with a variety of waste disposal options to minimise the impact of waste disposal on our natural environment. (Service Priority: Very High).

Environment - None.

Precedents - None.

Budget Implications - None.

Budget – Whole of Life Cost - None.

Council Policy Compliance - None.

Risk Assessment - Low.

Officer Comment -

Refer 'Item 4.3 - Public Questions' in the Minutes of the Special Meeting of Electors held 20 March 2019. The following questions required response from Department of Water and Environment Regulation [DWER]. Staff have requested the information from DWER and provide the following responses:

QUESTIONS PUT AT SPECIAL MEETING OF ELECTORS HELD 20 MARCH 2019 – DWER RESPONSES & OFFICER COMMENTS

SUBMITTER	SUBMISSION DATE & TIME	QUESTION	DWER RESPONSE
1. Damien and Rachel Addison (793 Joshua Creek Rd Crooked Brook)	Monday 18 March 2019. 18:11pm.	<p>Question 1. Did the original waste facility licence application asses the risk of contamination of the Yarragadee aquifer?</p> <p>Was the risk deemed acceptable? (Refer to below DWER response Part 2 Q 2.)</p>	<p>27 March 2019</p> <p><i>The initial application for works approval under Division III, Part V of the Environmental Protection Act 1986 (EP Act) was received in June 1997 by the then Department of Environmental Protection (now Department of Water and Environmental Regulation). The applicant, J & P Metals Pty Ltd, sought to develop a privately owned landfill over an existing gravel quarry at Lot 2 Banksia Road in the locality of Crooked Brook. Works Approval W2548 was subsequently issued on 13 November 1998 for the construction of two clay-lined waste cells (each 120m x 60m) and a gravity leachate collection system.</i></p> <p><i>In May 2005, approval was granted for the upgrade of the Banksia Road landfill to Class III. This decision was appealed and subsequently dismissed by the Minister for Environment.</i></p> <p><i>The documentation associated with these approvals has been requested from DWER's offsite archives, but was not available for review within the timeframe of this information request. It is, however, understood that comprehensive geological data on Lot 2 was available from exploration conducted during Iluka Resources Ltd's previous tenure of the site and that the significant depth to groundwater and heavy clay soil profile in the proposed area factored in the initial assessment.</i></p> <p><i>The proposal was also referred to the Environmental Protection Authority in August 1997. On 5 September 1997, the Level of Assessment was set at 'Not Assessed – managed under part V of the EP Act'.</i></p>

QUESTIONS PUT AT SPECIAL MEETING OF ELECTORS HELD 20 MARCH 2019 – DWER RESPONSES & OFFICER COMMENTS			
SUBMITTER	SUBMISSION DATE & TIME	QUESTION	DWER RESPONSE
1. Damien and Rachel Addison (793 Joshua Creek Rd Crooked Brook)	Monday 18 March 2019. 18:11pm.	<p>Question 2. Have subsequent amendments to the waste facility licence revisited the risk assessment to account for the increased volumes and more hazardous nature of material being treated and stored?</p> <p>Is the risk still deemed acceptable? (Refer to below DWER response Part 2 Q 2.)</p>	<p>27 March 2019 – DWER Response</p> <p><i>Yes. Whilst separate risk assessments have been conducted over the years as part of the assessment of applications for the site in accordance with DWER's assessment process of the day, a full review of the Banksia Road Landfill Licence and reassessment of operations was conducted in 2017 (Licence number L8094/2015/1).</i></p> <p><i>This reviewed Licence is available online at https://www.der.wa.gov.au/our-work/licences-and-works-approvals/current-licences (via a search for L8904) or via direct link</i></p> <p><i>https://www.der.wa.gov.au/component/k2/item/download/8105_85784958a98f33c46f6cde270be6559.</i></p>
SUBMITTER	SUBMISSION DATE & TIME	QUESTION	DWER RESPONSE
1. Damien and Rachel Addison (793 Joshua Creek Rd Crooked Brook)	Monday 18 March 2019. 18:11pm.	<p>2. Pt II</p> <p>Is the risk still deemed acceptable?</p>	<p>27 March 2019 – DWER Response</p> <p><i>Yes. A detailed risk assessment is included in the Decision Report attached to Licence L8904 as previously linked.</i></p>
SUBMITTER	SUBMISSION DATE & TIME	QUESTION	DWER RESPONSE
4. Raelene Birch (268 Banksia Rd)	Tuesday 19 March 2019. 13:52pm	<p>Question 2. What current longitudinal studies are being done on the water monitoring and dust monitoring at the site to capture any incremental rises in data of the monitored results?</p>	<p>27 March 2019 – DWER Response</p> <p><i>Monitoring and reporting requirements are detailed under sections 2 and 3 of the Licence. Condition 2.4.1 requires six-monthly monitoring of groundwater bores at the premises for</i></p> <p><i><input type="checkbox"/> Standing water level</i></p> <p><i><input type="checkbox"/> pH</i></p>

QUESTIONS PUT AT SPECIAL MEETING OF ELECTORS HELD 20 MARCH 2019 – DWER RESPONSES & OFFICER COMMENTS			
SUBMITTER	SUBMISSION DATE & TIME	QUESTION	DWER RESPONSE
			<p> <input type="checkbox"/> Electrical conductivity <input type="checkbox"/> Redox potential <input type="checkbox"/> Chemical oxygen demand <input type="checkbox"/> Nitrate nitrogen <input type="checkbox"/> Ammonia nitrogen <input type="checkbox"/> Total nitrogen <input type="checkbox"/> Total phosphorus <input type="checkbox"/> Total dissolved solids <input type="checkbox"/> Total organic carbon <input type="checkbox"/> Dissolved oxygen <input type="checkbox"/> Major cations and anions: calcium, magnesium, potassium, sodium, chloride, bicarbonate and sulphate <input type="checkbox"/> Heavy Metals: Aluminium, Arsenic, Cadmium, Chromium, Copper, Iron (total) Lead, Manganese, Mercury, Nickel, Selenium and Zinc <input type="checkbox"/> PFAS; and <input type="checkbox"/> Organics </p> <p>Condition 3.4.2 requires that data is presented in graphical format for trend analysis.</p> <p>As a result of the Licence review outlined under Q3 above, additional monitoring bores were required to be installed onsite to ensure that potential emissions and impacts to groundwater are being appropriately monitored. Additional monitoring parameters were also added to the licence.</p> <p>Licence condition 1.4.13 requires the Licence Holder to actively manage dust emissions. No specific dust monitoring is required under Licence L8904.</p>

QUESTIONS PUT AT SPECIAL MEETING OF ELECTORS HELD 20 MARCH 2019 – DWER RESPONSES & OFFICER COMMENTS			
SUBMITTER	SUBMISSION DATE & TIME	QUESTION	DWER RESPONSE
5. Jill Cross (513 Crooked Brook Rd)	Tuesday 19 March 2019. 14:02pm	Question 1. Why is it that Cleanaway hasn't had to contain their stormwater runoff on the southern boundary as per the licence conditions?	<p><i>27 March 2019 – DWER Response</i></p> <p><i>All licensed premises are subject to regular inspections/audits by DWER's Compliance and Enforcement section. The most recent licensing inspection at Banksia Road Landfill was conducted in 2018. Licence inspections have not identified breaches of licence conditions related to stormwater management.</i></p> <p><i>The reassessment of Licence L8904 in 2017 included a requirement for the installation of upgraded storm water management infrastructure.</i></p>
			OFFICER COMMENT
			<p>A Development Approval application was lodged with the Shire in January 2016, for Stormwater Infrastructure Works to be undertaken for the Banksia Road Landfill site in accordance with its licence requirements.</p> <p>The DWER licence requires the licence holder to maintain a stormwater management system in accordance with certain physical controls and limits. It requires the stormwater ponds and spillways and eastern area stormwater diversion to a size that accommodate a 1 in 100 year ARI (Average Recurrence Interval) rainfall event.</p> <p>The 2016 DA lodged with the Shire indicates that consultants were engaged by the licence holder to prepare design and construction drawings for the stormwater infrastructure work for the whole site.</p> <p>The modelled runoff generated as a result of the 100 year 24 hour duration storm event across the Site was estimated to be 81,840m³.</p>

QUESTIONS PUT AT SPECIAL MEETING OF ELECTORS HELD 20 MARCH 2019 – DWER RESPONSES & OFFICER COMMENTS			
SUBMITTER	SUBMISSION DATE & TIME	QUESTION	DWER RESPONSE
			<p>Although Cleanaway may be complying with the licence conditions, it is noted that this may be insufficient to ensure that all stormwater is contained on site.</p> <p>The DA was approved on 18 April 2016 with Condition 2 requiring the following:</p> <p style="text-align: center;"><i>“2. All stormwater from the property shall be contained on site as indicated on the approved plans and in accordance with the Shire’s specifications (ENG 20- Stormwater Discharge from buildings) at all times.”</i></p> <p>Given Condition 2 states that <i>“All stormwater from the property shall be contained on site...”</i>, this is a compliance matter for Shire officers to resolve with the operator.</p>
SUBMITTER	SUBMISSION DATE & TIME	QUESTION	OFFICER COMMENT
11. Patricia Sherwood	Tuesday 19 March 2019. 14:02pm	Question 2: What does the council intend to do to enforce redress of the existing breaches of conditions already imposed upon Cleanaway in relation to dust control, waste contamination of surrounding sites, water control, southern boundary vegetation buffer etc etc.?	<p>The questions from Patricia Sherwood relate to various conditions on the 1999 approval and the Stormwater Infrastructure Works approved in April 2016, as listed:</p> <p>Condition 4 on the 1999 approval:</p> <p><i>4. Monitoring bores to be installed on the northern boundary of the site adjacent to the Shire’s public waste disposal facility to the satisfaction of Council and bores are to be sampled and monitored with results of sampling to be submitted to Council.</i></p> <p>Compliance with Condition 4 of 1999: Cleanaway will be requested to provide information to the Shire to demonstrate compliance with this condition.</p>

SUBMITTER	SUBMISSION DATE & TIME	QUESTION	OFFICER COMMENT
			<p>Condition 6 on the 1999 approval – relevant to dust and litter control: <i>6. A management plan to be submitted to and approved by Council covering items such as, but not limited to, litter, dust and vermin control.</i></p> <p>Compliance with Condition 6 of 1999: Cleanaway will be requested to provide information to the Shire to demonstrate ongoing compliance with this condition.</p> <p>Condition 3 on the April 2016 approval: <i>3. A Native Vegetation Buffer Plan shall be prepared to the specifications of the Department of Parks and Wildlife (DPaW) and submitted to and approved in writing by the Shire and DPaW, prior to the commencement of development.</i></p> <p><i>The Native Vegetation Buffer Plan shall provide a 20 metre wide native vegetation buffer along the entire southern boundary of Lot 2 Banksia Road, Crooked Brook and be implemented to the satisfaction of the Director Development and Engineering Services within 3 months of completion of the proposed development and thereafter maintained.</i></p> <p>Compliance with Condition 3 of 2016: Officers can confirm that a Native Vegetation Buffer Plan (NVBP) (dated 29/07/2016, Version 2) was approved by DPaW and the Shire on 5/08/2016. Confirmation in Council's records dated 3/07/2017 indicates that the plan has been implemented, and that the applicant is to maintain the vegetation in accordance with the approved plan. Officers would need to do a site visit to investigate whether the vegetation is being maintained.</p> <p>Officers are preparing a compliance regime that will identify all DA conditions, as well as any areas of noncompliance which will need to be resolved with Cleanaway.</p>

Council Role - Quasi-Judicial.

Voting Requirements - Simple Majority

Change to Officer Recommendation

No Change. **OR:**

As per Local Government (Administration) Regulations 1996 11(da) Council records the following reasons for amending the Officer Recommended Resolution:

OFFICER RECOMMENDED RESOLUTION

THAT Council note the additional information and responses from the Department of Water and Environmental Regulation to the public questions taken on notice at the Special Meeting of Electors held on 20 March 2019.

12.2 MINUTES OF SPECIAL MEETING OF ELECTORS – 20/03/2019

MINUTES OF THE SHIRE OF DARDANUP – SPECIAL MEETING OF ELECTORS HELD ON WEDNESDAY – 20 MARCH 2019, COMMENCING AT 7.00PM AT THE DARDANUP HALL, FERGUSON ROAD, DARDANUP.

Officer Comment

The minutes of the Special Electors meeting held 20 March 2019 are attached (Appendix SP: 12.2).

OFFICER RECOMMENDED RESOLUTION

THAT Council receives the minutes of the Special Electors meeting held 20 March 2019.

SPECIAL MEETING OF ELECTORS RESOLUTION “1”

THAT the Dardanup Shire does not approve developments relating to the storage of lithium tailings and associated leachate ponds on Lot 2 Banksia Road, or any other part of the Waste Precinct as currently identified in the Local Planning Strategy.

Chief Executive Officer Comment

The development applications were withdrawn on 11 April 2019. As such Officers recommend that Council notes the resolution of the electors and take no further action in this regard.

The Shire is required to consider the development applications based on the relevant planning merits in accordance with the Planning and Development Act 2005, Planning and Development (Local Planning Scheme) Regulation 2015 and the Shire’s Town Planning Scheme No. 3.

The Department of Local Government Operational Guidelines Number 12 provides the following:

Decisions made in relation to development applications are made under the local government’s town planning scheme and the discretions allowed under that scheme. Elected members must not lose sight of the fact that when making decisions on development applications they have to apply the rules and discretions, as they exist, not as they might want them to be. The local government will need to comply with the provisions of the legislation dealing with planning decisions.

*The role of an elected member in the decision-making process is to determine the application on the information and recommendation provided by the professional staff. The role of the professional staff is to assess the application and provide an impartial, professional opinion and recommendation to the elected members. **To avoid prejudicing the eventual decision, elected members must not make up their minds about a development application until they have read the officer’s reports and heard all the debate.** (Emphasis added)*

As Officers have not yet provided Council with an assessment of the application nor with a recommendation on the merits of the application; it is recommended that Council at this point in time, only note the resolution made by the electors meeting and that this resolution be included as part of the submissions received on the application at the time the application is presented to Council for consideration.

OFFICER RECOMMENDED RESOLUTION

THAT Council notes the resolution of the 20 March 2019 Special Meeting of Electors as follows:

“THAT the Dardanup Shire does not approve developments relating to the storage of lithium tailings and associated leachate ponds on Lot 2 Banksia Road, or any other part of the Waste Precinct as currently identified in the Local Planning Strategy.”

SPECIAL MEETING OF ELECTORS RESOLUTION “2”

- a) **That the Dardanup Shire Council does not approve the Cleanaway application to amend the reference to Class III landfill site to Waste Disposal Facility.**
- b) **That the Dardanup Shire Council and associated salaried staff, pursue changes to the current Local Planning Strategy to remove reference to a Waste Precinct as currently identified across the seven lots, and the Waste Precinct to be limited to Lot 2 Banksia Road.**

Chief Executive Officer Comment

The development applications were withdrawn on 11 April 2019. As such Officers recommend that Council notes the resolution of the electors and take no further action in this regard.

Similar to 1 above, resolution 2 a) is recommended for Council to note and to consider in more detail once the application is presented to Council for determination.

With Regards to resolution 2 b), the Shire is currently preparing a new Local Planning Scheme Number 9. As part of this process there will be an opportunity for Council to consider how it wishes to implement the strategy in the new scheme, or if it intends to amend the strategy as part of the process of preparing the new Scheme. As such it is recommended that Council note the resolution from the electors meeting in regard to the proposed amendments to the Local Planning Strategy and request that this be given further consideration as part of the preparation of Local Planning Scheme Number 9.

OFFICER RECOMMENDED RESOLUTION**THAT Council:**

1. **Notes the resolution of 20 March 2019 Special Meeting of Electors as follows:**
 - “2a) That the Dardanup Shire Council does not approve the Cleanaway application to amend the reference to Class III landfill site to Waste Disposal Facility.”***
2. **Notes the resolution of 20 March 2019 Special Meeting of Electors as follows:**
 - “2b) That the Dardanup Shire Council and associated salaried staff, pursue changes to the current Local Planning Strategy to remove reference to a Waste Precinct as currently identified across the seven lots, and the Waste Precinct to be limited to Lot 2 Banksia Road.”***
3. **Requests the Chief Executive Officer to ensure further consideration is given to the resolution pertaining to the Local Planning Strategy as part of the preparation of Local Planning Scheme No. 9.**

SPECIAL MEETING OF ELECTORS RESOLUTION “3”

That Council takes into consideration the previous consistent conditions placed on the Tip Site operational hours and continues to enforce these conditions to enable residents to enjoy the quiet atmosphere and amenity expected when residing in a rural area with limited access to services and facilities offered in more metropolitan residential areas.

Chief Executive Officer Comment

The current approvals date back to 1999 and now totals 13 approvals. Existing conditions and how these conditions apply to the site are somewhat unclear. As a result, officers have sought legal advice pertaining to the current applications and an independent planning consultant has been appointed to determine what the current approvals and associated obligations are. On 10 April 2019, Shire Officers and the Independent Consultant conducted a site inspection with Cleanaway at which point the matter of compliance was again impressed upon Cleanaway. Cleanaway also undertook to do an audit of their existing approvals and obligations themselves in order for everyone to be on the same page as to what needs to get done.

Once a holistic understanding of the current form of the development, the uses permitted and the obligations on the landowners and operators are established, Officers will be in a better position to undertake appropriate enforcement actions. As such it is recommended that Council support the resolution made by the electors and allocates resources to undertake the related investigations. Officers and Council are currently reviewing the Workforce Plan with an aim to create a new position within the organisation for a Statutory Enforcement Officer. This position will be tasked with ensuring planning and related development compliance actions are scheduled and followed up regularly.

OFFICER RECOMMENDED RESOLUTION**THAT Council:****1. Supports the following elector’s motion:**

“Takes into consideration the previous consistent conditions placed on the Tip Site operational hours and continues to enforce these conditions to enable residents to enjoy the quiet atmosphere and amenity expected when residing in a rural area with limited access to services and facilities offered in more metropolitan residential areas.”

2. Request the Chief Executive Officer to ensure that the appropriate resources are allocated in future workforce and budgets to ensure continual compliance monitoring as may be required.

SPECIAL MEETING OF ELECTORS RESOLUTION “4”

That Council considers our questions, concerns and motions at the next possible Council Meeting, and gives due consideration to resolving to work collaboratively with the Dardanup Community and the Department of Water & Environmental Regulation to increase the monitoring and control of current emissions from Lot 2 Banksia Road, and disallowing the storage or ensiling of other sources of industrial processing tailings or leachate on the site.

Chief Executive Officer Comment

There are currently no conditions on any of the previously approved Development Approvals that require Cleanaway to liaise with a community reference group or any other working group. Cleanaway has however, established a community reference group, called the *Dardanup Landfill Community Reference Group* (DLCRG). It is noted that the DLCRG has been established voluntarily by Cleanaway. There is no Shire representation on this Group.

Officers understand that the first meeting of the DLCGR was held on 22 November 2018, and that a second meeting was held on 28 February 2019. Cleanaway has advised that it intends to hold DLCRG quarterly thereafter. Neither the agenda nor the minutes of the meeting February 2019 are available on the Cleanaway website at this time, however the terms of reference states that minutes will be published on Cleanaway’s website within a week “of finalisation”.

The terms of reference states that the DLCRG will comprise the following members:

- Facilitator appointed by Cleanaway;
- Up to six community members;
- Up to two representatives from regulatory authority;
- Up to two representatives from the Shire of Dardanup; and
- Up to three Cleanaway staff.

Cleanaway’s *Dardanup Landfill Community Reference Group* (DLCRG) consists of the following members:

- Ian Watkins (IW Projects) – Independent Facilitator
- Ian Trigwell – Resident
- James Szabadics- Resident
- Ellen Lilly - Resident
- Janice Dow – (Resident, recently resigned from CRG)
- John Mulholland – Regional Manager, Cleanaway
- Sean Sibly – Operations Manager, Cleanaway
- Louis Sparks – Engineering Manager, Cleanaway
- Steven Davis – Operations Supervisor, Cleanaway
- Olga Ghiri – Stakeholder and Community Engagement Manager, Cleanaway

It should be noted that presently there are no representatives from the Shire of Dardanup on the DLCRG. Cleanaway has advised that it extended an invitation to the Department of Water and Environmental Regulation (DWER) to nominate a representative and the Department advised that Steve Checker - Manager Waste

Industries, Regulatory Services, will attend the meeting as required but not as a regular member.

In December 2018 Cleanaway wrote to the Shire to formally seek endorsement for Cr Janice Dow to represent the Shire on the DLCRG. However, Council resolved at its meeting of 23 January 2019 not to appoint a Councillor to the DLCRG, stating that “it does not appoint Councillors as Council representatives to commercial enterprises or their subsidiaries” (resolution [11-19]).

The DLCRG terms of reference states the following:

- *The primary purpose of the CRG is to function as a reference body for Cleanaway, their stakeholders and the community. The CRG is an advisory group only and not a decision-making body and operates as a regular consultative forum where representatives of Cleanaway, the community, individual residents and other interested parties can discuss the operations of Cleanaway’s Dardanup Landfill.*
- *Discussions will be focussed on matters that the CRG can influence, such as operational activities that include short-term and longer-term remediation controls used at the landfill to mitigate odour, litter and dust.*
- *The CRG will be kept informed of operational and monitoring regimes, and will listen to and acknowledge community concerns.*
- *Cleanaway commits to:*
 - *Listening to community concerns and keeping them informed of operational activities;*
 - *Providing regular updates and reporting back on mitigation efforts; and*
 - *Maintaining regulatory compliance through ongoing remediation and environmental management.*
- *Community members commit to:*
 - *Showing a willingness to build trust and acceptance of the facts presented about the operations, environmental compliance and site remediation;*
 - *Openly and unbiasedly sharing information and outcomes achieved through the CRG with the broader community;*
 - *Providing input into achieving meeting objectives and environmental outcomes consistent with community aspirations; and*
 - *Attending all scheduled meetings; submitting an apology if unable to attend; and requesting a leave of absence or to be replaced on the group if unable to attend for three meetings in a row.*

Given the broad scope of the DLCRG and its intended multilateral representation (being from the community, statutory bodies, the Shire of Dardanup, and Cleanaway staff), it is not considered necessary to duplicate this ‘working group’ by creating another for the same purpose, and with the same representation. Rather, it is considered that it would be a better use of time and resources for all involved if the DLCRG was well represented by Shire Officers, DWER and DBCA, and for the meeting minutes and monitoring results to be provided to the Shire for assessment and publication in a timely manner. To that end, it is recommended that Council supports the appointment of two officers to the DLCRG, and that the meeting agenda, minutes and monitoring results are posted on Council’s website as soon as practically possible before and after each meeting.

A high level of technical expertise will be required for officers to contribute in a meaningful way. It is therefore recommended that Council supports Officers being appointed to the DLCRG are senior, experienced officers from either of the Shire's Environmental Health, Engineering and/or Planning Departments.

Given that Council cannot require representation from DBCA or DWER on the DLCRG, it is recommended that all correspondence pertaining to the group is forwarded to the relevant officers at those departments by the Shire. This will foster collaboration across relevant agencies and ensure that all agencies are kept abreast of issues for discussion.

The appointment of Shire Officers to the DLCRG will attract a cost to the Shire in officer time to review agendas, prepare relevant correspondence, attend meetings, report internally on outcomes and progress, assess compliance, and publish relevant documents. Council will need to be satisfied that the benefits of appointing officers to the DLCRG will outweigh the cost.

It appears that whilst Cleanaway may be complying with their DWER licencing reporting and auditing conditions, the reporting of monitoring results to the Shire has not been satisfactory to date, and this will need to be addressed through an active enforcement regime as proposed in the item above.

Council can however not pre-empt the outcome of future development applications. As such Council cannot support the second part of the resolution made by the special electors ***“disallowing the storage or ensiling of other sources of industrial processing tailings or leachate on the site.”***

It is therefore recommended that Council only notes the resolution and further authorises the CEO to appoint officers to the DLCRG to give effect to the part of the resolution pertaining to working collaboratively with the Community on ensuring compliance and monitoring regimes.

OFFICER RECOMMENDED RESOLUTION

THAT Council

- 1. Notes the resolution of the special electors meeting as follows:**

“That Council considers our questions, concerns and motions at the next possible Council Meeting, and gives due consideration to resolving to work collaboratively with the Dardanup Community and the Department of Water & Environmental Regulation to increase the monitoring and control of current emissions from Lot 2 Banksia Road, and disallowing the storage or ensiling of other sources of industrial processing tailings or leachate on the site.”

- 2. Authorises the Chief Executive Officer to appoint two senior, experienced officers from across either of the Shire's Environmental Health, Engineering or Planning Departments to the Dardanup Landfill Community Reference Group (DLCRG) to consider the monitoring and control of emissions from Lot 2 Banksia Road, and**

- 3. Request the Chief Executive Officer to ensure all correspondence relating to the DLCRG are forwarded to relevant officers of the Department of Water and Environmental Regulation (DWER) and the Department of Biodiversity, Conservation and Attractions (DBCA) as soon as practically possible after receiving it, and work collaboratively with those agencies to identify monitoring and emissions concerns and/or non-compliance with approvals.**

SPECIAL MEETING OF ELECTORS RESOLUTION “5”

That the Dardanup Shire Council refer the proposals by Cleanaway to increase the scope of their Waste Facility site on Banksia Road Dardanup, to the EPA to be assess through an Environmental Impact Assessment.

Chief Executive Officer Comment

As the applications has been withdrawn it is no longer possible to refer the proposals to the EPA. However, the Works Approval Application from DWER is still active and it may be more appropriate to refer this as a third party to EPA for review. The process for referring an application to EPA has been outlined in the following paragraphs.

An application may be referred to the EPA under Section 38 of the Environmental Protection Act 1986 (EP Act) by a proponent, decision-making authority or community member/third party. A decision-making authority is required to refer a proposal that appears to be a significant proposal.

The referral must be in the prescribed form in order for the EPA:

- (a) to determine whether it is a valid referral;*
- (b) to receive sufficient information about a proposal to decide whether or not to assess it; and*
- (c) to determine the level of assessment, if it decides to assess the proposal.*

The EPA may refuse to assess an application that has been referred to it, if it believes that the referral application lacks justification. That is, if the EPA does not believe the proposal is a ‘significant proposal’ (that the likely effect on the environment is not so significant as warrant assessment by the EPA), or if the proposal has previously been referred to the EPA. The EPA’s decision not to assess an application is not appealable.

If the EPA decides that the proposal requires formal environmental impact assessment (EIA), it may require the proponent to undertake an environmental review and provide a report on the environmental review to the EPA. It may also require the proponent to produce Environmental Management Plans to demonstrate how proposed management measures will reduce environmental impacts to an acceptable level.

The EPA considers the following ‘environmental factors’ (amongst others), in assessing a proposal:

- *Significant physical landforms*
- *Environmental values of land and soils*
- *Groundwater and surface water quality*
- *Air quality*
- *Flora and fauna*
- *Human health*
- *Social surroundings.*

Based on the above factors, Officers consider that potential impacts such as noise, dust, odour, light spill, groundwater contamination, and offsite stormwater discharge

would fall into the above mentioned 'environmental factors' for EPA consideration, and that referral is justified.

Once an application is referred to the EPA and the EPA has given notice that it will assess the proposal, the Department of Water Environmental Regulation (DWER) is unable to approve the application until after EPA's assessment has been finalised, and pending the EPA's recommendation to the Minister for Environment, which is made publicly available. Decisions and recommendations of the EPA are appealable.

As such Officers recommend that Council requests the Chief Executive Officer to refer the DWER Works Approval Application to EPA as a Third Party.

OFFICER RECOMMENDED RESOLUTION

THAT Council:

- 1. Notes the resolution of the special electors meeting as follows:**

“That the Dardanup Shire Council refer the proposals by Cleanaway to increase the scope of their Waste Facility site on Banksia Road Dardanup, to the EPA to be assess through an Environmental Impact Assessment.”

- 2. Requests the Chief Executive Officer to refer the DWER Works Approval Application proposals by Cleanaway for the proposed storage of tailings at the Waste Facility site on Banksia Road Dardanup, to the Environmental Protection Authority to be assessed through an Environmental Impact Assessment.**

SPECIAL MEETING OF ELECTORS RESOLUTION “6”

That the Dardanup Shire Council set aside funds to engage an Independent Environmental Consultancy, who specialises in Tailings Storage Facilities, to provide a report of the impact, now and in the future of Cleanaway’s proposed expansion and how the existing risks can be best managed and that this occur as soon as possible.

Chief Executive Officer Comment

As outlined in the item above it is recommended that council refers the DWER Works Approval Application to EPA. The EPA as an independent body would then assess any proposal for Tailings Storage Facility and its potential impact as part of the Environmental Impact Assessment required under the relevant legislation.

In addition as the applications have now been withdrawn the Shire’s focus will be on establishing what the current form of development, land uses and obligations on the operators and landowners are as per the existing approvals. Once this is established the Shire will be in a better position to consider the environmental impacts and mitigation obligations of the operations. This would also allow more specific questions to be asked by an independent environmental consultant if required, regarding either the existing approvals or as part of any potential new development applications that may be received. The shire has appointed an independent planning consultant to undertake this body of work, however this was unfortunately not yet complete at the time of writing this report. Officers will continue to work with the consultant to establish the current “baseline” from which to consider any future proposals.

The current contract was funded from the Town Planning Consultancy Reserve after Council in March 2019 resolved to amend the budget to make a provision of \$20,000 for the body of work. The body of work only cost \$10,000 and therefore there is still \$10,000 available in this financial year should further independent advice be required. Should future additional funds be required this will be presented to Council with an aim to consider funding such activities from the Town Planning Consultancy Reserve.

As such, Council has previously resolved to allocate funds for independent advice and also to refer the DWER application to EPA for independent assessment. Therefore Officers recommend that Council notes the electors resolution but take no further action in this regard.

OFFICER RECOMMENDED RESOLUTION

THAT Council notes the resolution of the special electors meeting as follows:

“That the Dardanup Shire Council set aside funds to engage an Independent Environmental Consultancy, who specialises in Tailings Storage Facilities, to provide a report of the impact, now and in the future of Cleanaway’s proposed expansion and how the existing risks can be best managed and that this occur as soon as possible.”

SPECIAL MEETING OF ELECTORS RESOLUTION “7”

That the community would like the Dardanup Shire Council to seek restitution from Cleanaway or the Landowner of Lot 2 Banksia Road for any funds spent to engage an Independent Environmental Consultant who specialises in Tailings Storage Facilities for the expansion and risks on Cleanaway’s proposed site.

Chief Executive Officer Comment

The Planning and Development Regulations 2009, Regulation 49 provides the ability for the Shire to seek restitution for professional advice and technical reports in some instances, if they are deemed to be required by the Shire for the assessment of a proposal but have not been undertaken by the applicant. These include:

- (a) costs and expenses of any specific assessment, such as an environmental assessment, required in relation to the application;
- (b) costs and expenses of technical resources and equipment, such as computer modelling, required in relation to the application; and
- (c) costs and expenses of specialist advice required in relation to the application.

Where studies or professional advice of this nature has been submitted, but the Shire disagrees with that advice and seeks additional advice, the Shire cannot charge an additional fee for the assessment or peer review of the studies that were submitted by the applicant.

Under Regulation 49, the Shire can either invoice the applicant for the estimated cost to engage specialists and have them prepare reports, or can require the applicant to pay the actual costs and expenses after they are incurred. As such, it is recommended that Council:

- (a) notes the resolution from the electors meeting,
- (b) notes its ability to seek restitution for certain studies (other than other than for the assessment of studies already provided by the applicant), and
- (c) requests that the applicant reimburses the Shire for the additional costs borne by the Shire in preparing such studies as the Shire deems necessary, as well as for the assessment of such studies.

As the applications under the Planning and Development Act have now been withdrawn the Shire does not have the ability to undertake additional assessments pertaining to those applications. Additionally it should be noted that there is no ability for the Shire to seek restitution for an independent Environmental Assessment of the DWER Works Approval Application as the Shire is only a referring agency and not the decision making authority. Therefore Officers have recommended above that the DWER works Approval be referred to EPA for independent assessment rather than expending ratepayers money on an independent review. Such a peer review is estimated to cost in the order of \$20,000 for an initial review only. Additional or a more detailed review would likely continue to increase expenditure.

As such Officers recommend that Council notes the resolution of the electors but take no further action in this regard.

OFFICER RECOMMENDED RESOLUTION

THAT Council notes the resolution of the special electors meeting as follows:

“That the community would like the Dardanup Shire Council to seek restitution from Cleanaway or the Landowner of Lot 2 Banksia Road for any funds spent to engage an Independent Environmental Consultant who specialises in Tailings Storage Facilities for the expansion and risks on Cleanaway’s proposed site.”

13 ELECTED MEMBERS MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

None.

14 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING
--

None.

15 PUBLIC QUESTION TIME

16 MATTERS BEHIND CLOSED DOORS

None.

17 CLOSURE OF MEETING

The Presiding Officer advises that the date of the next Ordinary Meeting of Council will be Wednesday 17 April 2019, commencing at 5.00pm at the Shire of Dardanup - Administration Centre Eaton.

There being no further business the Presiding Officer to declare the meeting closed.