



Shire of
Koorda

Drive in, stay awhile

AGENDA

Special Council Meeting

To be held in Shire of Koorda Council Chambers

10 Haig Street, Koorda WA 6475

Friday 30 August 2024

Commencing 5.00pm

**Meeting Purpose: South West Native Title Settlement
Response**

NOTICE OF MEETING

Dear Elected Members,

Notice is hereby given that a Special Meeting of Council of the Shire of Koorda will be held on Friday 30 August 2024 in the Shire of Koorda Council Chambers, 10 Haig Street, Koorda, commencing at 5.00pm.

The purpose of the meeting is for South West Native Title Settlement Response.

Zac Donovan
Chief Executive Officer
23 August 2024

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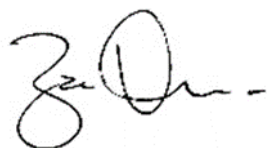
Any person or legal entity who acts or fails to act in reliance upon any statement, act or omission made in a Council or Committee meeting does so at that person's or legal entity's own risk.

In particular and without derogating in any way from the broad disclaimer above, in any discussion regarding any planning application or application for a license, and statement or intimation of approval made by a member or officer of the Shire of Koorda during the course of any meeting is not intended to be and is not to be taken as notice of approval from the Shire of Koorda.

The Shire of Koorda warns that anyone who has any application lodged with the Shire of Koorda must obtain and should only rely on **written confirmation** of the outcome of the application, and any conditions attaching to the decision made by the Shire of Koorda in respect of the application.

To be read aloud if any member of the public is present.

Signed

A handwritten signature in black ink, appearing to read 'Zac Donovan', with a stylized flourish at the end.

Zac Donovan
Chief Executive Officer

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**Shire of Koorda
Special Council Meeting
5.00pm, Friday, 30 August 2024**



1. Declaration of Opening

Cr KM Burrell requested to attend the in-person-meeting via electronic means, which has been authorised by the President JM Stratford.

The Presiding person welcomes those in attendance and declares the meeting open at x.xxpm.

2. Record of Attendance, Apologies and Leave of Absence

Councillors:

Cr JM Stratford	President
Cr NJ Chandler	
Cr KM Burrell	(Approved Electronic Attendance – via MS Teams)
Cr S Christie	

Staff:

Mr Z Donovan	Chief Executive Officer
Mrs K Harrap	Governance Officer

Members of the Public:

Apologies:

Cr GW Greaves	Deputy President
Cr GL Boyne	
Cr KA Fuchsbichler	
Miss L Foote	Deputy Chief Executive Officer

Approved Leave of Absence:

3. Public Question Time

(Please note: Being a special meeting of Council, any questions must relate to the purpose of the meeting being South West Native Title Settlement Response)

4. Disclosure of Interest


Cr JM Stratford disclosed a Proximity Interest in item 5.5 South West Native Title Settlement Response as she leases land near reserves included in the item.

A request will be made to the Minister for Local Government (via the DLGSC) for Cr Stratford to participate in the meeting to ensure a quorum for the meeting to proceed.

Correspondence was received via email (Wednesday 28 August) from the Department of Local Government, Sport and Cultural Industries confirming approval for Cr Stratford to “fully participate in agenda item 5.1 at the Special Council Meeting 30 August 2024).

5. OFFICER'S REPORTS – GOVERNANCE & COMPLIANCE

5.1. South West Native Title Settlement Response

Governance and Compliance		
Date	23 August, 2024	
Location	Not Applicable	
Responsible Officer	Zac Donovan, Chief Executive Officer	
Author	As above	
Legislation	Land Administration Act 1997 (LAA), section 14	
Disclosure of Interest	Nil	
Purpose of Report	<input checked="" type="checkbox"/> Executive Decision <input checked="" type="checkbox"/> Legislative Requirement <input type="checkbox"/> Information	
Attachments	Native Title Reserves List Annexure J - Noongar Land Base Strategy	

Background:

The Shire has received advice from the Department of Planning Lands and Heritage as to the proposed allocation of eight separate parcels of Crown land within the Shire for inclusion in the South West Native Title Settlement between the State Government and the six Noongar Agreement Groups.

The Department has requested the Shire provide comment on several aspects of the land allocation including if the Shire supports the land transfer; has any interest in the land; has any existing or planned infrastructure; or any future proposals for the land.

The deadline for the Shire to respond is **5 September 2024**.

The eight parcels of land within the Shire are all Crown reserves and none are vested in the Shire. They are located ad hoc through the Shire and range in size from 238 hectares to 7600 square metres.

The eight parcels of land are as follows (with maps of each presented in the attachment Native Title Reserves List):

Reserve Number	Location	Size Ha	Reserve Purpose	Selected Tenure
R 19823	Newcarlbeon	237.8	Water and Camping	Reserve with power to lease
R 20061	Newcarlbeon	4.86	Recreation	Reserve with power to lease
R 14358	Newcarlbeon	14.77	Camping	Reserve with power to lease
R 20251	Koorda	29.95	Public Utility	Reserve with power to lease
R 22983	Booralaming	49.63	Soil Conservation	Reserve with power to lease
R 22087	Dukin	0.76	School Site	Reserve with power to lease
R 12166	Lake Margarette	15	Water	Reserve with power to lease
R 17467	Booralaming	5.01	Racecourse and Recreation	Reserve with power to lease

At the OCM of 21 August, Council considered responding to the 9 points as requested by the Department of Planning Lands and Heritage under its obligations to consult with the Shire on the proposed transfer reserves under the *Land Administration Act 1997* (LAA), section 14.

However, at the meeting of 21 August, Council requested to be provided additional information and resolved to defer the matter to a Special Council Meeting (30 August) with staff to seek clarification on a number of points from the Department so that Council can meet the 5 September deadline.

Comment:

The Department of Planning Lands and Heritage is required to consult with the Shire on the proposed transfer reserves under the *Land Administration Act 1997* (LAA), section 14. As such the Department has requested the Shire provide comment on the following nine points:

1. Is the Shire supportive of the transfer of this land to the Noongar People under the Settlement?
2. Does the Shire have any interest in the land?
3. Does the Shire have existing or planned infrastructure within the land parcel that requires protection? If yes, please provide details and advise if access to this infrastructure will need to be maintained.
4. Is the land parcel subject to any mandatory connection to services?
5. Are any future proposals for the land identified? Please provide detail of what is proposed and in what timeframe?
6. Are there any future proposals for adjoining land that may affect the land identified in the spreadsheet? If so, in what timeframe?
7. Please advise of any proposed planning scheme amendments that may affect the zoning of this land at a State or Local government level. If a scheme amendment is to occur, what is the change proposed and when will it come into effect?
8. Please advise of any known land management issues such as site contamination, hazards, debris or rubbish dumping, unauthorised land use and environmental considerations (such as inundation or similar site constraints).
9. Please provide any additional comments on the proposed transfer of this land as part of the Settlement.

The Department has advised that if the Shire does not provide a response by 5 September 2024, it will be taken that the Shire has no comment on the land parcels and the transfer to the South West Native Title Agreement.

The Shire of Koorda CEO emailed the Department representative (Friday 23 August) with the following points for which Council required clarification, with the request that details be provided by 28 August to facilitate discussion at the 30 August Special Council meeting. The points emailed for clarification were:

1. The supplied table of the parcels of land within the Shire of Koorda are defined as “reserve with power to lease”, it is correct to assume they are leasehold rather than freehold transfers?
2. If the land is to be leasehold, do the ILUAs have a termination period (such as with other land use agreements with government such as a 99-year lease) or are they in perpetuity?
3. It is correct to assume that land (in the shire) included in the Settlement is selected on the basis of unused/vested crown land, and not based on the principle of continuous use?
4. Will the Land Sub (Trustee subsidiary) be liable for shire rates and charges?
5. Are any development or construction on the land subject to Local Government planning schemes and approvals processes?
6. Is the Land Sub liable to share any adjoining costs associated with the land (i.e. fencing cost with neighbours), or who is proposed to meet these costs?
7. Is the Land Sub responsible for bushfire mitigation (fire breaks, back burning etc), or does this liability remain with the State?

8. Will the Shire have emergency services immediate right of access to the land (such as in the case of fighting bushfires)?
9. Some of the parcels have local historical significance/assets (old buildings/facilities) that are accessed (ad hoc) by tourists, can this access continue and what will be required?
10. Is it correct that the Land Sub will be able to use the land for any purpose (farming, mining etc), or on-lease the land to any third party for any use?
11. Will neighbours (farmers) be able to access the land for day-to-day operational purposes, such as recovering livestock?
12. Which of the six Noongar Agreement Groups are associated with the parcels of land within the Shire of Koorda?

In response the Department representative provided the following email response (Friday 23 August) and attached the original email requesting Shire comment and the Noongar Land Based Strategy (attached with the item) for information.

- *The Department of Planning, Lands and Heritage (DPLH) administers Crown land across Western Australia (forming roughly 92% of the state land mass). All tenure proposals are referred to all relevant local governments in line with section 14 of the Land Administration Act 1997 (LAA). This is reflective of the role of local government in the ongoing use, management, and possible development of land.*
- *While tenure proposals referred to the Shire of Koorda (and other local governments) on a day-to-day Crown land administration context may be supported by detail of what is proposed to be undertaken on the land, this is not applicable to the delivery of the Noongar Land Estate.*
- *There is no requirement for the Trustee for the Noongar Boodja Trust to make a case for specific land parcels to be included in the Noongar Land Estate or provide a proposal for the use / management / development of the land. Therefore, DPLH cannot provide the Shire of Koorda with more detailed information on the activities proposed to be undertaken on the land.*
- *All land placed into the Noongar Land Estate must be used in accordance with the statutory and policy framework that applies to all land in Western Australia – including any planning or development controls.*
- *As a result, the Shire of Koorda will retain its role as a key decision-maker post the Allocation of the land in the tenure selected by the Trustee.*

I understand that it may not be possible for DPLH to resolve your concerns satisfactorily, but please be advised that DPLH will continue to comply with its statutory obligations under section 14 of the LAA by referring land under consideration to the Shire of Koorda where relevant. Please note that the comments remain due on the 5 September. Due to tight ILUA-prescribed timeframes, the Department may not be able to support an extension request. Where no response is received from the Shire within this timeframe, this will be taken as having no comment on the land parcels referred.

The Shire of Koorda CEO subsequently replied via email (Friday 23 August) to the Department representative explaining that while the response goes in some part to indirectly addressing some of the questions raised by Council, it does not address the key areas of Land Management (Shire questions 6 and 7) and Access (questions 8, 9 and 11).

As such the Department's representative replied (Tuesday, 27 August) with the following additional information:

- **Land Management** – *All land placed into the Noongar Land Estate must be used in accordance with the statutory and policy framework that applies to all land in Western Australia – including local planning scheme No.3 or development controls in the Shire of Koorda. Any activity that entails fencing will have to adhere to the [Dividing Fences Act 1961](#). If*

the land is transferred under Reserve tenure, then the activities carried out should comply with the purpose of the reserve. Upon transfer of land, we urge that the Shire work closely with the Trustee or land holding body on a Bushfire Management Strategy in case of fire breaks, bushfire mitigation, back burning etc. I've attached a sample management plan for your perusal.

- **Land Access** – We understand that the LL 192 consisting of PIN 746862 which has a Historically significant site, P15334 - Brown Well(attached) and PIN 747075 which has a Historically significant site, P15390 - School East Dukin (attached); however, since the land parcel will be transferred under Reserve, the land must be used in accordance with the statutory and policy framework that applies to all Reserves in Western Australia. Any future access to land must be in accordance with a mutually agreed upon management plan between the Shire and the Land Holding body post transfer including livestock recovery. As per the [Ballardong People ILUA](#):
“6.1 (a) A person Representing, or acting on behalf of a Governmental Agency is, and will be, entitled to: (i) enter on and remain within the boundaries of the Reserve in order to carry out the lawful exercise and performance of the powers, functions and duties of that Governmental Agency under a Law relevant to the Reserve, the Reserve Purpose or the conduct, activity or use undertaken by the Management Body on the Reserve or the care, control and management of the Reserve; or (ii) pass over any part of the Reserve in connection with the performance of their functions (as that term is defined in the Interpretation Act 1984) with or without vehicles, on all necessary occasions including for the purpose of accessing adjoining land, provided any prior notice to or any prior approval of the Management Body that may be required at law, as for any other management body, is first given or obtained.”
- **Noongar Agreement Group** – Shire of Koorda falls under the Ballardong People Indigenous Land Use agreement .

Consultation:

Pratibha Bhaskar, Project Officer | Native Title Agreements and Partnership, Department of Planning, Lands and Heritage

Policy Implications:

Nil

Strategic Implications:

Shire of Koorda Integrated Strategic Plan 2024

4.1 Open and transparent leadership

Financial Implications:

Nil as identified

Risk Implications:

Risk Profiling Theme	The Shire's position is not considered
Risk Category	Environmental
Risk Description	The Shire may identify issues not yet considered
Consequence Rating	Minor (2)
Likelihood Rating	Unlikely (2)
Risk Matrix Rating	Low(4)
Key Controls (in place)	Local insights of Elected Members
Action (Treatment)	Effective
Risk Rating (after treatment)	Low (4)

Statutory Implications:
Land Administration Act 1997 (LAA), section 14

Voting Requirements: ☒ Simple Majority ☐ Absolute Majority

Officer Recommendation

For Council consideration.

6. Closure