



Shire of Harvey

**ORDINARY COUNCIL
MEETING
MINUTES**

29th November 2016

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SHIRE OF HARVEYCOUNCIL MINUTESMINUTES OF THE ORDINARY MEETING OF THE HARVEY SHIRE COUNCIL, HELD IN THE COUNCIL CHAMBER, MULGARA STREET, AUSTRALIND, ON TUESDAY, 29TH NOVEMBER 2016, COMMENCING AT 4:00P.M.ATTENDANCE

Shire President	Cr.	T.G.	Jackson	
Deputy Shire President	Cr.	P.J.	Beech	
	Cr.	B.	Adams	
	Cr.	F.	Burgoyne	4.00p.m. – 4.39p.m. 4.49p.m. – 5.22p.m. 5.35p.m. – 6.04p.m. 6.22p.m. – 6.23p.m.
	Cr.	C.	Carbone	4.00p.m. – 4.39p.m. 4.49p.m. – 6.04p.m. 6.22p.m. – 6.23p.m.
	Cr.	G.	Campbell	
	Cr.	P.	Giancono	
	Cr.	A.	Lovitt	
	Cr.	P.	Monagle	
	Cr.	J.	Sabourne O.A.M. J.P.	
	Cr.	A.J.	Shortland	
	Cr.	K.J.	Wood	

STAFF

Chief Executive Officer	Mr.	M.	Parker	
Executive Manager Corporate Services	Mr.	S.	Collie	
Executive Manager Technical Services	Mr.	T.	Naudé	
Principal Building Surveyor	Mr.	M.	Stewart	4.00p.m. – 4.56p.m.
Principal Environmental Health Officer	Mr.	S.	Dandridge	4.00p.m. – 4.56p.m.
Manager Planning Services	Mr.	S.	Hall	
Manager Community & Economic Development	Mr.	P.	Quinlivan	4.00p.m. – 6.04p.m.

GALLERY

	Mrs	E.	Edwards	4.00p.m. – 4.57p.m.
	Ms.	C.	Gelmi	4.00p.m. – 6.04p.m.

PRESS

South Western Times	Mr.	L.	Bertelli	4.00p.m. – 6.04p.m.
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A. OPENING AND WELCOME

The Shire President opened the meeting at 4.00p.m.

B. PUBLIC QUESTION TIME

Nil.

C. READING FROM A BOOK OF LEARNING AND WISDOM

Read by Cr. Burgoyne.

D. APOLOGIES AND LEAVE OF ABSENCE

Leave of Absence: Cr. D. Simpson

E. DECLARATIONS OF MEMBERS' AND OFFICERS' PERSONAL INTEREST

- **Financial Interests**

Cr. Carbone declared a financial interest in Planning Item 8.1.1 – Application for Development Approval – Extractive Industry (Sand) – Peel Resources Pty Ltd – Lot 25 Tredrea Place/Forrest Highway, Myalup (A005827/EX/001).

Reason

Cr. Carbone advised that he is a Director of Carbone Bros, a company which deal in extractive industries. Cr. Carbone declared he would leave the Chamber for the duration of the item.

Cr. Carbone declared a financial interest in Confidential Item 1 – Appointment of Expert Witnesses – Proposed Granite Quarry Lot 501 Coalfields Highway, Roelands – Various Planning and Acoustic Consultant Firms – Shire of Harvey (A004761/EX/001).

Reason

Cr. Carbone advised that he is a Director of Carbone Bros, a company which deal in extractive industries. Cr. Carbone declared he would leave the Chamber for the duration of the item.

Cr. Burgoyne declared a financial interest in Planning Item 8.1.1 – Application for Development Approval – Extractive Industry (Sand) – Peel Resources Pty Ltd – Lot 25 Tredrea Place/Forrest Highway, Myalup (A005827/EX/001).

Reason

Cr. Burgoyne advised that his employer is involved in extractive industries. Cr. Burgoyne declared he would leave the Chamber for the duration of the item.

Cr. Burgoyne declared a financial interest in Confidential Item 1 – Appointment of Expert Witnesses – Proposed Granite Quarry Lot 501 Coalfields Highway, Roelands – Various Planning and Acoustic Consultant Firms – Shire of Harvey (A004761/EX/001).

Reason

Cr. Burgoyne advised that his employer is involved in extractive industries. Cr. Burgoyne declared he would leave the Chamber for the duration of the item.

- **Impartiality Interests**

Cr. Monagle declared an impartiality interest in Confidential Item 1 – Appointment of Expert Witnesses – Proposed Granite Quarry Lot 501 Coalfields Highway, Roelands – Various Planning and Acoustic Consultant Firms – Shire of Harvey (A004761/EX/001).

Reason

Cr. Monagle advised that his residence is in a nearby location to the proposed quarry. Cr. Monagle declared he would deal with the matter on its merits.

Cr. Monagle declared an impartiality interest in Technical Services Item 1 – Closure of Portion of Coalfields Highway – Main Roads Western Australia – Coalfields Highway, Roelands (ES/R/0833).

Reason

Cr. Monagle advised that his residence is in a nearby location to the proposed matter under consideration. Cr. Monagle declared he would deal with the matter on its merits.

Mr. Hall declared an impartiality interest in Planning Item 8.1.4 – Application for Development Approval – Ancillary Dwelling – C. and E. Edwards – Lot 254 (No. 14) Reef Place, Leschenault (A006982)..

Reason

Mr. Hall advised that the Applicant is a Staff Member within Council's Planning Services Section, the matter has been dealt with on its merits and the assessment and recommendation to Council has been undertaken in accord with provisions of the Shire of Harvey District Planning Scheme No 1. Furthermore, should additional advice be required Mr. Hall would provide this on the same basis.

- **Proximity Interest**

Cr. Burgoyne declared a proximity interest in Corporate Services Item 3 – Application For Exemption To Keep More Than The Prescribed Number of Dogs – Mr. M. Winwood – 7 Heppingstone Road, Brunswick (A006145).

Reason

Cr. Burgoyne advised that he resides on an intersecting street of the application. Cr. Burgoyne declared he would leave the Chamber for the duration of the item.

F. PETITIONS/DEPUTATIONS

Nil.

G. CONFIRMATION OF MINUTES**ORDINARY COUNCIL MEETING – Tuesday, 8th November 2016.****Recommendation**That the Minutes of the Council Meeting held on Tuesday, 8th November 2016, as printed be confirmed as a true and correct record.

- 16/314. **Sabourne/Wood**
“That the Minutes of the Council Meeting held on Tuesday, 8th November 2016, as printed be confirmed as a true and correct record.”
CARRIED 12-0

H. ANNOUNCEMENTS BY THE PERSON PRESIDING OR C.E.O WITHOUT DISCUSSION

Nil.

Change in Order of Business

- 16/315. **Burgoyne/Carbone**
“That the Agenda be taken out of order to consider Planning Item 8.1.4.”
CARRIED 12-0

Item No.	8.1.4
Subject:	Application for Development Approval – Ancillary Dwelling
Proponent:	C. and E. Edwards
Location:	Lot 254 (No. 14) Reef Place, Leschenault
Reporting Officer:	Manager Planning Services
File No.:	A006982
	Attachment Reg. 16/35336

Impartiality Interest:

The Manager of Planning Services (MPS), as the author of this report, declares an Impartiality Interest in this item as the owner is a Staff Member within Council's Planning Services Section. As such, there may be some perception that the author's impartiality is affected. The MPS advises that the matter has been dealt with on its merits and the assessment and recommendation to Council has been undertaken in accord with provisions of the Shire of Harvey District Planning Scheme No 1. Furthermore, should additional advice be required it will be provided on the same basis.

Summary

Council has received an Application for Development Approval for an Ancillary Dwelling on Lot 254 (No. 14) Reef Place, Leschenault (refer **Attachment 1**). This application is referred to Council as the Ancillary Dwelling is proposing a floor area of 14m² over the permitted maximum floor area of 70m².

SIGNED _____ DATED 20th December 2016.

In accord with Clause 4.4.2 of the Shire of Harvey District Planning Scheme No 1 (Scheme) the increased floor area can be considered and Staff, based on the merits of the increased floor area, recommend approval subject to conditions.

Background

Site Description

Lot 254 Reef Place is located at the end of the cul-de-sac and adjoins Lot 1 Oceanic Close to the north, Lot 253 Reef Place to the east and a Pedestrian Access Way (PAW) to the west. The site has a total area of 3,333m², is flat and contains an existing dwelling with associated outbuildings.

The site is zoned "Special Residential" under the Scheme and is located within the Special Residential "Area 1 – Leschenault Parklands and Riverlands Estates, Leschenault" of the Scheme.

An Ancillary Dwelling is an IP use (incidental use) in a Special Residential area. Given the existence of a single dwelling on the lot the proposed land use can be considered.

Lot 254 is also located within a designated Bushfire Prone Area. A Bushfire Attack Level (BAL) Assessment has been provided with the application which recommends a BAL rating of BAL-19 for the proposed Ancillary Dwelling (refer **Attachments 2a** and **2b**).

Proposal

The Ancillary Dwelling is proposed to be 12m by 7m (total floor area of 84m²) with a 1.5m wide verandah along the front of the dwelling (18m²). The proposed Ancillary Dwelling includes 2 bedrooms, bathroom/WC/laundry, kitchen and an open dining/living area (refer **Attachment 3**). The Ancillary Dwelling is proposed to be clad externally with fibre-cement boards with a low-pitched zinclume roof. The external design and finish of the Ancillary Dwelling is consistent with the existing dwelling.

The Applicant has advised that the proposed Ancillary Dwelling is to accommodate their partner's parents and have provided the following as justification for the additional 14m² floor area (refer **Attachment 4**):

"The overall objective for the provision of Ancillary Dwellings in the R-Codes is "to ensure residential development is provided to accommodate people with or without special needs". The proposed Ancillary Dwelling will accommodate my wife's parents.

Her father was very ill last year and as a result of the illness, he has limited mobility. The additional floor area of 14m² has resulted due to the need for additional floor space to cater for his mobility needs such as the use of walking aides. The use of a walking frame for example requires more room compared to the space required for a fully-mobile person walking.

The proposed Ancillary Dwelling will provide affordable housing for my wife's parents as her mother has recently retired in order to care for(sic) my wife's father.

Due to the size of our property, the proposed Ancillary Dwelling is not likely to have a detrimental impact on our neighbours. The Ancillary Dwelling will be constructed in the same style and using the same materials as our existing dwelling. The Ancillary Dwelling will also be located in close proximity to our existing dwelling thereby giving the appearance that it is an extension."

Staff acknowledge the need for increased circulation space within all aspects of a dwelling to accommodate items such as walking frames. The increased floor area is considered minor and appropriate and thus recommended for approval.

As evidenced by Statutory/Policy Environment below, an Ancillary Dwelling can also include a covered verandah area of 40m² and a covered parking area of 36m², resulting in a total allowable structure of 120m². The proposal is for 84m² of floor area and 18m² of covered verandah only. These areas total 102m² which is below the total allowable size for an Ancillary Dwelling.

Advertising

Advertising of the proposal is not required under the Scheme. Notwithstanding the minor increase in size and as it will be visible from the adjoining Lot 253 to the east, Staff requested that neighbours comment be sought. The proponent has provided evidence of their neighbour's support for the proposal (refer **Attachment 5**).

Comment

The application complies with all provisions of the Scheme (via Amendment 117) with the exception of Clause 9.13.1 (a) relating to the maximum floor area. Clause 4.4.2 of the Scheme provides Council with the ability to consider minor modifications to development standards, including the floor area of the proposed Ancillary Dwelling. The justification for the increased floor area is considered by Staff to be reasonable and is recommended for approval.

Statutory/Policy Environment

Shire of Harvey District Planning Scheme No.1

Clause 4.4 of the Scheme makes provision for development standards within the Scheme to be modified. Clause 4.4.2 is relevant to this application and states:

“The Council may relax the requirements of the zoning and Development Table in respect of a use that is incidental to the predominant use of the land or the use involves the conversion of existing premises.”

The subject application can be considered pursuant to Clause 4.4.2 as the proposed Ancillary Dwelling is an 'IP' use, that is a use that is incidental to the predominant use of the land.

Scheme Amendment No. 117

Scheme Amendment No. 117 was adopted by Council at its meeting on 27th September 2016, for final approval and the Amendment is currently awaiting final approval by the Minister. As such, the Amendment can be considered as a 'seriously entertained proposal' and therefore can be implemented. The Amendment proposes to include provisions within the Scheme text relating to Ancillary Dwellings as an 'IP' use within the Special Residential, Residential Development, Special Rural, Special Rural and Landscape Protection, Intensive Farming and General Farming zones.

The provisions relevant to the subject application are:

“Clause 9.13 Standards for Ancillary Dwelling development where the Residential Design Codes do not apply.

Clause 9.13.1 An Ancillary Dwelling will be considered on land zoned Special Residential, Residential Development, General Farming, Intensive Farming, Special Rural and Special Rural Landscape Protection subject to compliance with the following requirements:

Clause 9.13.1 (a) The maximum plot ratio area (total area of all floors) of the ancillary dwelling does not exceed 70m²;

Clause 9.13.1 (b) The area of covered verandahs which are open on at least two sides is not to exceed 40m²;

Clause 9.13.1 (c) The area of covered parking areas which are open on at least two sides is not to exceed 36m²;

Clause 9.13.1 (d) The building is to be of similar architectural style as the dwelling, and constructed using similar materials and colours or as otherwise approved by Council;

Clause 9.13.1 (e) The application complies with the required boundary clearance and setbacks;

Clause 9.13.1 (f) A minimum of 1 car parking space is to be provided;

Clause 9.13.1 (g) The accommodation is in close proximity to the existing dwelling on the property, and is to share services with that dwelling (including access roads) unless otherwise approved; and

Clause 9.13.1 (h) Council will require that a Section 70A Notice be placed on the Certificate of Title, on land which is zoned special residential, general farming, intensive farming, special rural and special rural landscape protection at the owner's/applicant's cost, prior to the issue of a building permit. Such a notice is to advise prospective purchasers that the presence of an 'ancillary dwelling' will not be the basis for any subdivision application.”

Strategic Framework

Within the Shire's Strategic Community Plan 2013 - 2023, Strategies 2.3.1 (in part) state:

“Continue to implement integrated environmental, social and land use planning which will:

- minimise land use conflict.”*

Budget Implications

Nil.

Risk Management

The Risk Theme Profile identified as part of this report is **Providing Inaccurate Advice/information**. The Consequence could be Financial, Reputational or Compliance if an incorrect approval is given. The risk is mitigated by the report being thoroughly researched, peer reviewed and provided by a qualified Council officer, resulting in LOW risk being present.

SIGNED _____ DATED 20th December 2016.

Officer's Recommendation

That Council:

1. Exercises its discretion under Clause 4.4.2 of the Shire of Harvey District Planning Scheme No 1 and approves the Development Application for the Ancillary Dwelling on Lot 254 (14) Reef Place, Leschenault subject to the following conditions:
 - a. The development and/or use shall be generally in accordance with the attached approved plans, subject to modifications required as a consequence of any condition(s) of this approval. The approved plans shall not be modified or altered without the prior written approval of Council;
 - b. This approval is valid for a period of two (2) years. If the development is not substantially commenced within this period, a new approval must be obtained before commencing or continuing development;
 - c. A notification under section 70A of *Transfer of Land Act* shall be prepared, and lodged with the Registrar of Titles at the Department of Land Information for endorsement on the Certificate of Title at the applicant's cost prior to a Building Permit being issued. The notification shall state as follows:

"The presence of an 'ancillary dwelling' shall not be used as the basis for any subdivision application."
 - d. The existing bushfire management measures shall be maintained to retain the BAL-19 rating as determined by "E. Edwards" in their BAL Assessment dated 28/10/2016, to the satisfaction of the Shire's Manager of Planning Services;
 - e. The proposed development shall be constructed, and thereafter maintained, to comply with the BAL-19 requirements of AS 3959 *Construction of Buildings in Bushfire Prone Areas* in accordance with the BAL Assessment undertaken by "E. Edwards" dated 28/10/2016 to the satisfaction of the Shire's Principal Building Surveyor;
 - f. A notification under section 70A of the *Transfer of Land Act* shall be lodged with the Registrar of Titles at the Department of Land Information for endorsement on the Certificate of Title at the Applicant's cost, prior to completion of the development. The notification shall state:

"The land is located within an area designated by the Fire and Emergency Services Commissioner as a Bushfire Prone Area. Bushfire management measures are required to maintain the existing bushfire threat as detailed in the approved BAL Assessment (as amended) and as required by the Shire of Harvey's Annual Fire Break Notice."
 - g. All stormwater shall be contained and disposed of on-site, to the satisfaction of the Shire's Executive Manager of Technical Services prior to occupation and/or use of the approved development; and
 - h. The approved development shall be connected to an effluent disposal system as approved by the Health Department of WA and/or the Shire's Principal Environmental Health Officer.

2. Advises the Applicant of the following additional requirements that are not included as conditions of this approval:
- a. In accordance with the *Building Act 2011*, a Building Permit is required to be obtained prior to the commencement of any works on the site. The development is required to comply with the *Building Code of Australia*, *Building Regulations 2012* and the *Local Government Act 1995*.

16/316. **Carbone/Wood**

“That the Officer’s Recommendation be adopted.”

CARRIED 12-0

The Order of Business as listed within the agenda was resumed at 4.20p.m.

I. **ADOPTION OF STANDING, OCCASIONAL & SUNDRY COMMITTEE MEETING MINUTES (Beige)**

Yarloop Bush Fire Anniversary Event Working Group
9th November 2016 & 15th November 2016

MINUTES

16/317.

Lovitt/Burgoyne

“That the Minutes of the Yarloop Bushfire Anniversary Event Working Group, held on Wednesday, 9th November 2016, and Tuesday, 15th November 2016, as printed, be received and the recommendations contained therein be adopted by Council.”

CARRIED 12-0

Disability Access and Inclusion Advisory Committee
15th November 2016

MINUTES

16/318.

Lovitt/Shortland

“That the Minutes of the Disability Access and Inclusion Advisory Committee, held on Tuesday, 15th November 2016, as printed, be received and the recommendations contained therein be adopted by Council.”

CARRIED 12-0

It was noted in adoption of these Minutes, Item 8.1 (Harvey Senior Citizens Centre) that Council is responsible for major capital expenditure and upgrade expenses and that the lessee remains responsible for normal upkeep and maintenance of the Centre. It was also noted in Item 8.2 (DAIP Building Audit) that Council’s Principal Building Surveyor is to be included with any building assessment to be undertaken.

Bush Fire Advisory Committee
21st November 2016**MINUTES**

16/319.

Beech/Wood

“That the Minutes of the Bushfire Advisory Committee, held on Monday, 21st November 2016, as printed, be received and the recommendations contained therein be adopted by Council.”

CARRIED 12-0**Audit Committee**
29th November 2016**MINUTES**

Item No.	8.2	
Subject	Shire of Harvey, Annual Report – 2015/2016	
Proponent:	Shire of Harvey	
Location:	Shire of Harvey	
Reporting Officer:	Finance Manager	
File No.:	FM/S/001	Attachment Reg. No.

Summary

Following Council’s Annual Financial Audit for 2015/2016, Staff present the Shire of Harvey, Annual Report – 2015/2016 for Council to accept and to determine a date for the Annual General Meeting of Electors.

Background

Subject to Sections 5.53 and 5.54 of the Local Government Act 1995, the Local Government is to accept its Annual Report which includes the following:

- Reports from the Shire President and CEO
- An overview of the Plan for the Future
- The Financial Report
- The Auditor’s Report
- Disability Services Report
- Details of Entries made on the Register of Complaints
- Other prescribed notes and information

Comment

Attached is the Annual Report for the financial year ending 30th June, 2016. The report is consistent with the requirements of the Local Government Act, 1995 and is presented for Council’s acceptance.

With the completion of the Annual Report along with receipt of the independent audit report, Council is in a position to hold its annual General Meeting of Electors. It is proposed that Council holds this meeting on Tuesday, 20th December 2016, at 6.00p.m. in the Council Chamber following Council’s Ordinary Meeting. This will be the first available Ordinary Council Meeting following the statutory advertising period required for an annual General Meeting of Electors.

SIGNED _____ DATED 20th December 2016.

Statutory / Policy Environment

Division 5 of the Local Government Act 1995, deals with the reporting requirements and acceptance by the Local Government of its Annual Report. Section 5.54 states that if the Audit Report is available, the Annual Report is to be accepted by Council prior to 31st December by Absolute Majority. Section 5.55 of the Act states the requirement to advertise availability of the Annual Report.

Section 5.27 of the Local Government Act 1995, outlines the requirements to hold a General Meeting of Electors (but not more than fifty six (56) days after acceptance of Annual Report).

Section 5.29 of the Local Government Act 1995, outlines the requirements for the advertising of the annual General Meeting of Electors (fourteen (14) days advertising period).

Strategic Framework

Within the Shire's Strategic Community Plan 2013 - 2023, Strategy 4.3.4 states:

"Monitor and ensure compliance with the regulatory framework for Local Government Business."

Risk Management

The Risk Theme Profile identified as part of this report is **Failure to Fulfil Compliance Requirements**. The Consequence could be "Compliance" should Council not follow the correct process in compiling and presenting its Annual Report. The risk is mitigated by having qualified and experienced staff in place compiling the Annual Report as well as having a sound understanding of the compliance matters required, resulting in a LOW risk being present.

Budget Implications

Nil.

Officer's Recommendation:

That Council:

1. Accepts the Shire of Harvey, Annual Report 2015/2016;
2. Advertises the availability of the Shire of Harvey, Annual Report 2015/2016; and
3. Sets the date of Tuesday, 20th December 2016, as the date of the Annual General Meeting of Electors, commencing at 6.00p.m. in the Council Chamber (Harvey) and advertises the meeting as required.

ABSOLUTE MAJORITY REQUIRED

16/320. **Beech/Shortland**
“That Council:

1. **Accepts the Shire of Harvey, Annual Report 2015/2016, with the inclusion of the Brunswick Skatepark as an asset of Council on page 21 in the list of Skateboard facilities;**
2. **Advertises the availability of the Shire of Harvey, Annual Report 2015/2016; and**
3. **Sets the date of Tuesday, 20th December 2016, as the date of the Annual General Meeting of Electors, commencing at 6.00p.m. in the Council Chamber (Harvey) and advertises the meeting as required.”**

CARRIED BY ABSOLUTE MAJORITY 12-0

Audit Committee
29th November 2016

MINUTES

16/321. **Burgoyne/Shortland**

“That the Minutes of the Audit Committee, held on Tuesday, 29th November 2016, be received and the recommendations listed hereunder be adopted en-bloc.”

- 8.1 Audit and Management Reports 2015/16 – AMD Chartered Accountants – Shire of Harvey (FMU003).
- 8.3 Corruption and Crime Commission Report – Shire of Dowerin – Chief Executive Officer – Shire of Dowerin (PLL003).
- 8.4 2016 Financial Management Systems Review – Chief Executive Officer – Shire of Harvey (PMU003).

CARRIED 12-0

Corporate Services Committee
29th November 2016

MINUTES

Item No.	7.11
Subject:	Shire of Harvey Dogs Local Law
Proponent:	Shire of Harvey
Location:	Shire of Harvey
Reporting Officer:	Executive Manager Corporate Services
File No.:	LS/B/034

Summary

This report proposes the making of a new Dogs Local Law pursuant to Section 3.12 (4) of the Local Government Act 1995.

SIGNED _____ DATED 20th December 2016.

Background

The Shire of Harvey currently has a Dogs Local Law as published in the Government Gazette on 20th March 2001. At Council's meeting held on 26th July 2016, Council resolved to give Statewide public notice that it intended to make the Shire of Harvey Dogs Local Law 2017.

Public consultation was undertaken as part of the advertising process required by Section 3.12(3) of the Local Government Act 1995, and must be for a minimum period of 42 days. The proposed Local Law was advertised on 13th August 2016, with a closing date for submissions of 30th September 2016.

No community submissions were received, however the Department of Local Government on behalf of the Minister for Local Government and Communities made a number of comments.

Comment

The purpose of this report is to:

1. Consider the submissions received on the proposed Shire of Harvey Dogs Local Law 2017;
2. Give notice to the purpose and effect of the Shire of Harvey Dogs Local Law 2017;
3. Make the Shire of Harvey Dogs Local Law 2017;
4. Authorise the Local Law's gazettal in the Government Gazette;
5. Give public notice, (after gazettal), of the date of the Shire of Harvey Dogs Local Law 2017;
6. Authorise the affixing of the Common Seal to this Local Law.

To comply with the provisions of section 3.12 of the Act, when proposing to make a Local law, the Presiding Person is required to give notice of the purpose and effect of the proposed Local Law at the Council meeting where the Local Law is being considered.

The purpose and effect of the proposed Dogs Local Law is –

Purpose: To provide Council with controls and regulatory measures in relation to impounding of dogs, the number of dogs that can be kept, establishment of approved kennels and the manner in which dogs are to be confined by the occupier of a premises.

Effect: To extend the control over dogs which exist under the Dog Act 1976.

Section 3.5 of the Local Government Act 1995, provides the power for local governments to make Local Laws and prescribing all matters that are required or permitted to be prescribed by a Local Law, or are necessary or convenient for it to perform any of its functions.

The Dog Act 1976 is administered and enforced by local governments within their respective districts. This Act addresses the control and registration of dogs; the ownership and keeping of dogs; and the obligations and rights of dog owners and others. The State Government in 2013 passed the Dog Amendment Bill which amends the Dog Act 1976 to:

- Improve community safety, through increased controls over dangerous dogs and higher penalties to encourage more responsible dog ownership.
- Enable nuisance behaviour, including barking, to be more effectively dealt with.
- Recognise assistance dogs as an extension of the guide dog provisions.
- Require mandatory microchipping, lifetime dog registrations and impounding provisions.

SIGNED _____ DATED 20th December 2016.

These changes became law on 1st November 2013.

The Dog Act contains a range of measures to improve community safety, encourage responsible dog ownership, and enable nuisance behaviour to be more effectively dealt with and to recognise assistance dogs. The legal rights and responsibilities of dog owners are outlined in the Dog Act, the Dog Regulations 2013 and in Local Government Local Laws. Collectively, these laws provide for the registration, ownership and control of dogs in Western Australia.

It is recommended that the Shire of Harvey Dogs Local Law be remade to account for these amendments in legislation and better practice given that the current Local Law is over 15 years old.

The comments made by the Department of Local Government on behalf of the Minister for Local Government and Communities are listed in the table below and actions noted in the right hand column.

Comment	Recommended Action
<p>1. Clause 1.4 - Repeal The gazettal date for the previous <i>Shire of Harvey Dogs Local Law</i> is incorrect. This should be amended to refer to “20 March 2001”.</p>	Noted and amended.
<p>2. Clause 1.5 – Interpretation It is suggested that the definition of “authorised person” be deleted and replaced with the following: <i>authorised person means a person who is appointed under section 29 of the Act.</i></p> <p>It is also suggested that the Shire clarifies the meaning of, or inserts definitions for, the following terms which are used throughout the local law:</p> <p>a. “owner” (e.g. has the meaning given to it under section 3 of the Act); b. “General or Intensive Farming Zone”; and– c. “vectors of disease”.</p>	<p>Noted and amended.</p> <p>a. Amended. b. Not amended – this is clearly defined in the Shire’s Town Planning Scheme. c. Not amended.</p>
<p>3. Clause 4.3 - Notice of proposed use Clause 4.3(3)(b) requires that the notice published in the newspaper be of a size and placement that, in the opinion of the Shire, serves the purpose of notifying persons of the proposed use of the premises. This may be considered onerous or difficult to interpret as the Shire has not made clear its preferred size or placement of the notice. The Shire may wish to specify the size and placement of the notice so that applicants are aware of the requirements prior to publishing the notice.</p>	Noted and not amended.

<p>4. Clause 4.8 – Conditions of Approval</p> <p>Clause 4.8 concerns the use of determination devices. The Committee has been fairly reluctant to allow the use of determination devices as it may enable local governments to change the Local Law without scrutiny. The Shire may wish to expand on clause 4.8 to indicate how applicants will be notified of any variations to conditions placed on a licence. This could include by providing the applicant with written notice of such variations.</p>	Noted and not amended.										
<p>5. Clause 4.12 – Variation or cancellation of a licence</p> <p>Clause 4.12(2)(c) provides that a local government may cancel a licence if the licensee is not a “fit and proper person”. It is suggested that the term “fit and proper” be clarified, since it is not certain what circumstances may qualify as sufficient grounds for cancellation.</p>	Noted and amended.										
<p>6. Schedule 3 – Item column</p> <p>It is suggested that an “Item” column be inserted into the table in Schedule 3 (to the left of the “Nature of offence” column) as this will make the Local Law easier to amend in the future. For example:</p> <table border="1" data-bbox="180 920 975 1095"> <thead> <tr> <th>Item</th> <th>Clause</th> <th>Offence</th> <th>Modified Penalty</th> <th>Dangerous Dog Modified Penalty</th> </tr> </thead> <tbody> <tr> <td>xx</td> <td>xx</td> <td>xxx</td> <td>\$xxx</td> <td>\$xxx</td> </tr> </tbody> </table> <p>If the Shire chooses to insert an Item column into Schedule 3 the relevant references to columns in clause 6.2 should be updated accordingly to ensure they are accurate and refer to the correct columns.</p>	Item	Clause	Offence	Modified Penalty	Dangerous Dog Modified Penalty	xx	xx	xxx	\$xxx	\$xxx	Noted and amended.
Item	Clause	Offence	Modified Penalty	Dangerous Dog Modified Penalty							
xx	xx	xxx	\$xxx	\$xxx							

The Department also recommended a number of minor edits, which have been undertaken.

The Local Law can now be finalised, and will come into effect 14 days after its publication in the Government Gazette.

Statutory/Policy Environment

Section 3.12 of the LGA 1995 specifies the procedures to be followed when making a Local Law. Section 3.12 states:

3.12. Procedure for making local laws

- (1) *In making a local law a local government is to follow the procedure described in this section, in the sequence in which it is described.*
- (2) *At a council meeting the person presiding is to give notice to the meeting of the purpose and effect of the proposed local law in the prescribed manner.*
- (3) *The local government is to —*
 - (a) *give Statewide public notice stating that —*
 - (i) *the local government proposes to make a local law the purpose and effect of which is summarized in the notice; and*
 - (ii) *a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and*

- (iii) *submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given;*
- and*
- (b) *as soon as the notice is given, give a copy of the proposed local law and a copy of the notice to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister; and*
- (c) *provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.*
- (3a) *A notice under subsection (3) is also to be published and exhibited as if it were a local public notice.*
- (4) *After the last day for submissions, the local government is to consider any submissions made and may make the local law* as proposed or make a local law* that is not significantly different from what was proposed.*
- * Absolute majority required.*
- (5) *After making the local law, the local government is to publish it in the Gazette and give a copy of it to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister.*
- (6) *After the local law has been published in the Gazette the local government is to give local public notice —*
- (a) *stating the title of the local law; and*
- (b) *summarizing the purpose and effect of the local law (specifying the day on which it comes into operation); and*
- (c) *advising that copies of the local law may be inspected or obtained from the local government's office.*
- (7) *The Minister may give directions to local governments requiring them to provide to the Parliament copies of local laws they have made and any explanatory or other material relating to them.*

VOTE REQUIREMENT: *Absolute Majority*

Strategic Framework

Within the Shire's Strategic Community Plan 2013 – 2023, Strategy 4.2.2 states:

"Maintain, review and ensure relevance of Council's policies and local laws."

Risk Management

The Risk Theme Profile identified as part of this report is ***Failure to fulfil Compliance Requirements***. The Consequence identified is ***Compliance***. The prescriptive process followed in making this Local Law has been carefully followed as set out in Section 3.12 of the Local Government Act 1995 which has determined that the Risk Rating for this matter is LOW.

Budget Implications

Council has allocated sufficient funding in the 2016/17 Budget to complete the process of creating a number of new Local Laws where the recently completed 8 year Local Laws Review undertaken recommended such action be taken.

SIGNED _____ DATED 20th December 2016.

Officer's Recommendation

That Council:

1. Notes the submission received from the Department of Local Government and Communities in respect of the proposed new Shire of Harvey Dogs Local Law 2017 amending the proposed Local Law where indicated in the body of this report, considering that the proposed changes made to the advertised Local Law are not considered significantly different per Section 3.12 (4) of the Local Government Act 1995;
2. Adopt by Absolute Majority the Shire of Harvey Dogs Local Law 2017 as per **Attachment 1** in accordance with Section 3.12(4) of the Local Government Act;
3. Note the purpose and effect of the Local Law being:

Purpose: To provide Council with controls and regulatory measures in relation to impounding of dogs, the number of dogs that can be kept, establishment of approved kennels and the manner in which dogs are to be confined by the occupier of a premises.

Effect: To extend the control over dogs which exist under the Dog Act 1976.
3. Authorise the Local Law's gazettal in the Government Gazette;
4. Authorise the public notice advertisement, (after gazettal), of the date of the Shire of Harvey Dogs Local Law 2017; and
5. Authorise the Shire President and the Chief Executive Officer to affix the Shire's Common Seal to the Shire of Harvey Dogs Local Law 2017.

ABSOLUTE MAJORITY VOTE REQUIRED

- 16/322. **Monagle/Carbone**
"That the Officer's Recommendation be adopted."
CARRIED BY ABSOLUTE MAJORITY 12-0

Item No.	7.12
Subject:	Shire of Harvey Parking and Parking Facilities Local Law
Proponent:	Shire of Harvey
Location:	Shire of Harvey
Reporting Officer:	Executive Manager Corporate Services
File No.:	LS/B/034

Summary

This report proposes the making of a new Parking and Parking Facilities Local Law pursuant to Section 3.12 (4) of the Local Government Act 1995.

Background

At Council's meeting held on 16th August 2016, Council resolved to provide Statewide public notice that it intended to make the Shire of Harvey Parking and Parking Facilities Local Law 2017. Public consultation was undertaken as part of the advertising process required by Section 3.12(3) of the Local Government Act 1995, which is for a minimum period of 42 days.

SIGNED _____ DATED 20th December 2016.

The proposed Local Law was advertised on 20th August 2016, with a closing date for submissions of 7th October 2016.

No community submissions were received however the Department of Local Government on behalf of the Minister for Local Government and Communities made a number of comments.

The Shire of Harvey currently has a Parking and Parking Facilities Local Law as published in the Government Gazette on 23rd June 2000. The Minister for Local Government has carriage of the powers conferred by the Local Government Act 1995 for the Parking and Parking Facilities Local Law. The current Local Law references outdated terminologies and also fails to address the Parking (Disabled) Regulations and there is a need to update the prescribed Offences Schedule to increase penalties in line with current standards.

Comment

The purpose of this report is to:

1. Consider the submissions received on the proposed Shire of Harvey Parking and Parking Facilities Local Law 2017;
2. Give notice to the purpose and effect of the Shire of Harvey Parking and Parking Facilities Local Law 2017;
3. Make the Shire of Harvey Parking and Parking Facilities Local Law 2017;
4. Authorise the Local Law's gazettal in the Government Gazette;
5. Give public notice, (after gazettal), of the date of the Shire of Harvey Parking and Parking Facilities Local Law 2017;
6. Authorise the affixing of the Common Seal to the Local Law.

To comply with the provisions of section 3.12 of the Act, when proposing to make a Local Law, the Presiding Person is required to give notice of the purpose and effect of the proposed Local Law at the Council meeting where the Local Law is being considered.

Purpose: To constitute a parking region, enable the local government to regulate the parking of vehicles within the parking region and provide for the management and operation of parking facilities occupied by the local government.

Effect: A person parking a vehicle within the parking region is to comply with the provisions of this Local Law.

The comments made by the Department of Local Government on behalf of the Minister for Local Government and Communities are listed in the table below and actions noted in the right hand column.

Comment	Recommended Action
<p>1. Page numbering and footer It is suggested that page numbers in the footer be removed from the Local Law as they will not be necessary when the Local Law is published in the <i>Government Gazette</i>. In the event that the Shire chooses to maintain a public version of the Local Law in hard copy or electronic format, the Shire can choose to retain the page numbers in that version.</p>	<p>Noted and amended (The use of page numbers made referencing the document easier in the drafting stage).</p>

<p>2. Contents page Due to the length of the Local Law, it is suggested that the Local Law include a Table of Contents page. This will enable readers to determine the contents of the Local Law at a glance. However, page numbers are not necessary in the contents page.</p>	<p>Noted and amended to include a Table of Contents page.</p>
<p>3. Clause 1.4 Interpretation It is suggested that the Shire inserts a definition for each of the following terms which are used in the Local Law:</p> <ul style="list-style-type: none"> • built-up area • kerb <p>Whilst not all of these definitions are necessary, they may assist readers and reduce the possibility of misinterpretation.</p> <p>It is suggested the term bicycle path is removed as there is no other mention of the word in the Local Law.</p> <p>It is noted that the Shire has included definitions for both <i>carriageway</i> and <i>loading zone</i>. Both terms are already defined in the Code and the definitions given by the Shire are slightly different. It is suggested that these definitions are also replaced with the words “<i>has the meaning given to it by the Code</i>”. Alternatively, the definitions should be amended to match what is given in the Code.</p>	<p>Noted and amended.</p>
<p>4. Australian Standards The Department notes that an Australian Standard is referenced at the defined term symbol in clause 1.4. The Committee has previously requested that Standards be referred to in full. It appears that the full title of AS 1742.11:1999 is “Manual of uniform traffic control devices – Parking controls”; however it is for the Shire to confirm that this is the correct Standard.</p> <p>The Committee has also expressed that where Australian Standards are used, the general public should be informed by the Shire as to where they can freely access these Standards. The Committee may inquire as to how this information will be made available to the public.</p> <p>The Department notes that the Road Traffic Code contains an extensive list of traffic signs and their corresponding symbols. Since the Code is a public document, the Shire may wish to define symbols by reference to the Code instead of by reference to the Standard.</p>	<p>Noted and amended.</p>

<p>5. Schedules</p> <p>It is suggested that the Schedule titles be reformatted in line with best drafting principles. They should be bold, centralised, and include the relevant clause. For example:</p> <p style="text-align: center;">Schedule 1 – Prescribed offences and modified penalties [CI 8.2]</p> <p>In addition, it appears that Schedule 4 – Deemed Parking Stations is empty. The Shire should consider whether any parking stations need to be in this Schedule. If not, it is suggested that Schedule 4 be deleted. If the Shire chooses to make this change, references to Schedule 4 should also be removed from the Local Law.</p>	Noted and amended.
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The Department also recommended a number of minor edits, which have been undertaken.

The Local Law can now be finalised, and will come into effect 14 days after its publication in the Government Gazette.

Statutory/Policy Environment

Section 3.12 of the LGA 1995 specifies the procedures to be followed when making a Local Law. Section 3.12 states:

3.12. Procedure for making local laws

- (1) *In making a local law a local government is to follow the procedure described in this section, in the sequence in which it is described.*
 - (2) *At a council meeting the person presiding is to give notice to the meeting of the purpose and effect of the proposed local law in the prescribed manner.*
 - (3) *The local government is to —*
 - (a) *give Statewide public notice stating that —*
 - (i) *the local government proposes to make a local law the purpose and effect of which is summarized in the notice; and*
 - (ii) *a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and*
 - (iii) *submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given;*
 - and*
 - (b) *as soon as the notice is given, give a copy of the proposed local law and a copy of the notice to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister; and*
 - (c) *provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.*
 - (3a) *A notice under subsection (3) is also to be published and exhibited as if it were a local public notice.*
 - (4) *After the last day for submissions, the local government is to consider any submissions made and may make the local law* as proposed or make a local law* that is not significantly different from what was proposed.*
- * Absolute majority required.*
- (5) *After making the local law, the local government is to publish it in the Gazette and give a copy of it to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister.*

- (6) *After the local law has been published in the Gazette the local government is to give local public notice —*
- (a) *stating the title of the local law; and*
 - (b) *summarizing the purpose and effect of the local law (specifying the day on which it comes into operation); and*
 - (c) *advising that copies of the local law may be inspected or obtained from the local government's office.*
- (7) *The Minister may give directions to local governments requiring them to provide to the Parliament copies of local laws they have made and any explanatory or other material relating to them.*

VOTE REQUIREMENT: *Absolute Majority*

Strategic Framework

Within the Shire's Strategic Community Plan 2013 – 2023, Strategy 4.2.2 states:

"Maintain, review and ensure relevance of Council's policies and local laws."

Risk Management

The Risk Theme Profile identified as part of this report is ***Failure to fulfil Compliance Requirements***. The Consequence identified is ***Compliance***. The prescriptive process followed in making this Local Law has been carefully followed as set out in Section 3.12 of the Local Government Act 1995 which has determined that the Risk Rating for this matter is LOW.

Budget Implications

Council has allocated sufficient funding in the 2016/17 Budget to complete the process of creating a number of new Local Laws where the recently completed 8 year Local Laws Review undertaken recommended such action be taken.

Officer's Recommendation

That Council:

1. Notes the submission received from the Department of Local Government and Communities in respect of the proposed new Shire of Harvey Parking and Parking Facilities Local Law 2017 amending the proposed Local Law where indicated in the body of this report, considering that the proposed changes made to the advertised Local Law are not considered significantly different per Section 3.12 (4) of the Local Government Act 1995;
2. Adopt by Absolute Majority the Shire of Harvey Parking and Parking Facilities Local Law 2017 as per ***Attachment 1*** in accordance with Section 3.12(4) of the Local Government Act 1995;
3. Note the purpose and effect of the Local Law being:
 - Purpose:** To constitute a parking region, enable the local government to regulate the parking of vehicles within the parking region and provide for the management and operation of parking facilities occupied by the local government.
 - Effect:** A person parking a vehicle within the parking region is to comply with the provisions of this Local Law.

SIGNED _____ DATED 20th December 2016.

3. Authorise the Local Law's gazettal in the Government Gazette;
4. Authorise the public notice advertisement, (after gazettal), of the date of the Shire of Harvey Parking and Parking Facilities Local Law 2017; and
5. Authorise the Shire President and the Chief Executive Officer to affix the Shire's Common Seal to the Shire of Harvey Parking and Parking Facilities Local Law 2017.

ABSOLUTE MAJORITY VOTE REQUIRED

16/323. **Lovitt/Shortland**
"That the Officer's Recommendation be adopted."
CARRIED BY ABSOLUTE MAJORITY 12-0

Item No.	7.13
Subject:	Shire of Harvey Local Government Property Local Law
Proponent:	Shire of Harvey
Location:	Shire of Harvey
Reporting Officer:	Executive Manager Corporate Services
File No.:	LS/B/034

Summary

This report proposes the making of a new Local Government Property Local Law pursuant to Section 3.12 (4) of the Local Government Act 1995.

Background

At Council's meeting held on 16th August 2016, Council resolved to provide Statewide public notice that it intended to make the Shire of Harvey Local Government Property Local Law 2017. Public consultation was undertaken as part of the advertising process required by section 3.12(3) of the Local Government Act 1995, which is for a minimum period of 42 days. The proposed Local Law was advertised on 20th August 2016, with a closing date for submissions of 7th October 2016.

No community submissions were received however the Department of Local Government on behalf of the Minister for Local Government and Communities made a number of comments.

The Shire of Harvey currently has a Local Government Property Local Law as published in the Government Gazette on 23rd June 2000. It is recommended that the Shire of Harvey Local Government Property Local Law be remade to account amendments in legislation and better practice given that the current Local Law is over 15 years old.

Sections 3.5 of the Local Government Act 1995 (LGA) provides the power for local governments to make Local Laws and prescribing all matters that are required or permitted to be prescribed by a Local Law, or are necessary or convenient for it to perform any of its functions.

It is proposed that this Local Law be repealed and replaced in accordance with section 3.12 of the Local Government Act 1995. The proposed Local Law will provide guidance on activities which are permitted only under a permit as determined by Council and some activities are restricted or prohibited. Offences are created for inappropriate behaviour in or on local government property. This Local Law will be effective in establishing the requirements a person needs to meet when using or being on all local government property.

SIGNED _____ DATED 20th December 2016.

Comment

The purpose of this report is to:

1. Consider the submissions received on the proposed Shire of Harvey Local Government Property Local Law 2017;
2. Give notice to the purpose and effect of the Shire of Harvey Local Government Property Local Law 2017;
3. Make the Shire of Harvey Local Government Property Local Law 2017;
4. Authorise the Local Law's gazettal in the Government Gazette;
5. Give public notice, (after gazettal), of the date of the Shire of Harvey Local Government Property Local Law 2017;
6. Authorise the affixing of the Common Seal to the Local Law.

To comply with the provisions of section 3.12 of the Act, when proposing to make a Local Law, the Presiding Person is required to give notice of the purpose and effect of the proposed Local Law at the Council meeting where the Local Law is being considered.

The purpose and effect of the proposed Local Government Property Local Law is –

Purpose: To regulate the care, control and management of all property of the local government except thoroughfares.

Effect: To control the use of local government property. Some activities are permitted only under a permit or under a determination and some activities are restricted or prohibited. Offences are created for inappropriate behaviour in or on local government property.

The comments made by the Department of Local Government on behalf of the Minister for Local Government and Communities are listed in the table below and actions noted in the right hand column.

Comment	Recommended Action
<p>1. Enactment Clause The current date in the enactment clause of 5 July 2016 is incorrect. Under section 3.12(4) of the <i>Local Government Act 1995</i>, a Local Law can only be made after the public submission period has closed.</p> <p>The date that should appear in the enactment clause will be a date after the public submission period, when the Council considers the final copy of the proposed Local Law and resolves to "make" that Local Law. The Shire should ensure the correct date appears in the final copy of the Local Law when it is formally made by the Council – a failure to do this may result in the Joint Standing Committee on Delegated Legislation requesting an undertaking to amend the Local Law.</p>	<p>Noted and amended.</p>

<p>2. Assistance Animals</p> <p>Several clauses in the Local Law may potentially be interpreted as restricting the use of guide dogs and other assistance animals.</p> <p>Clause 2.7 provides that determinations may regulate when animals may be brought on local government property. The Joint Standing Committee on Delegated Legislation has recently raised concerns that such clauses may be inconsistent with the <i>Disability Discrimination Act 1992</i> (Commonwealth).</p> <p>In past situations, the Committee has requested that the following clause be inserted into local government property Local Laws:</p> <p>Assistance Animals</p> <p>This Local Law is subject to any written law and law of the Commonwealth about assistance animals as defined in the <i>Disability Discrimination Act 1992</i> (Commonwealth) section 9(2).</p> <p>It is suggested that a similar clause be added to the Local Law at Part 1 - Preliminary. This will ensure that the Local Law cannot be interpreted in a manner contrary to federal anti-discrimination legislation. If the Shire does not make this change, it is highly likely that the Committee will request an undertaking for it to be made.</p>	<p>Noted and amended.</p>
<p>3. Clause 1.3 Definitions</p> <p>Some terms used in the Local Law are not defined at clause 1.3. The Shire may wish to include definitions for the following terms:</p> <ul style="list-style-type: none"> <input type="checkbox"/> surf lifesaving club; <input type="checkbox"/> prohibited drug (example - <i>has the same meaning as given in Section 3 of the Misuse of Drugs Act 1981</i>); and <input type="checkbox"/> Schedule (example – <i>means a Schedule to this Local Law</i>). <p>Whilst these definitions may not be necessary, they may also assist readers and reduce the possibility of misinterpretation.</p> <p>It is also suggested that the defined term vehicle expressly exclude a shopping trolley – shopping trolleys tend to be in the same class as other common exceptions, such as wheelchairs and prams.</p>	<p>Noted and amended where appropriate.</p>

<p>4. Clause 1.5 Application and Part 7 – Jetties and Bridges Clause 1.5 concerns the application of the Local Law and Part 7 relates to jetties and bridges. The Shire should ensure that the water on which any jetties and bridges are located is within its district.</p> <p>Under section 3.5(2) of the <i>Local Government Act 1995</i>, a Local Law may only apply to the local government’s district. Whilst WALGA’s local government property Local Law model, which appears to have been used here, provides the words for the Local Law to apply “throughout the district and in the sea adjoining the district of 200 metres seaward...”, the Shire should check to ensure that these waters under and around the jetties are within the Shire’s district boundaries.</p> <p>If the waters under and around the jetties and bridges are not within the Shire’s boundaries, then in accordance with section 3.5 of the <i>Local Government Act 1995</i>, the Shire must obtain the Governor’s approval to make a Local Law outside the district. Without the Governor’s approval, the Local Law would only apply to the area of the jetty that lay within the district boundaries.</p>	Noted and not required to be amended (All jetties are located in waters within the district).
<p>5. Clause 3.7 Agreement for building It is suggested that clause 3.7 be deleted. While the majority of the Local Law deals with the use of local government property, clause 3.7 appears to relate to private agreements with the Shire regarding the ownership of material brought onto local government property from non-local government property. Since the Shire has the power to make such private agreements without the Local Law, it seems unnecessary to address the matter in clause 3.7.</p>	Noted and amended.
<p>6. Clause 11.4(3) Prescribed offences It is suggested that the phrase “For the purpose of guidance only” be removed from subclause (3). This phrase is problematic for two reasons:</p> <p>(a) it implies that the clause has no direct legal effect, meaning it is more appropriate to set out in a policy document; and</p> <p>(b) it could be misinterpreted to mean that the local government can issue infringement notices for non-minor and non-straightforward offences, which would contradict section 9.17(2) of the <i>Local Government Act 1995</i>.</p>	Noted and amended.

The Department also recommended a number of minor edits, which have been undertaken. The Local Law can now be finalised, and will come into effect 14 days after its publication in the Government Gazette.

Statutory/Policy Environment

Section 3.12 of the *LGA 1995* specifies the procedures to be followed when making a Local Law. Section 3.12 states:

3.12. Procedure for making local laws

- (1) *In making a local law a local government is to follow the procedure described in this section, in the sequence in which it is described.*
- (2) *At a council meeting the person presiding is to give notice to the meeting of the purpose and effect of the proposed local law in the prescribed manner.*
- (3) *The local government is to —*
 - (a) *give Statewide public notice stating that —*

SIGNED _____ DATED 20th December 2016.

- (i) *the local government proposes to make a local law the purpose and effect of which is summarized in the notice; and*
 - (ii) *a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and*
 - (iii) *submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given;*
- and*
- (b) *as soon as the notice is given, give a copy of the proposed local law and a copy of the notice to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister; and*
 - (c) *provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.*
- (3a) *A notice under subsection (3) is also to be published and exhibited as if it were a local public notice.*
- (4) *After the last day for submissions, the local government is to consider any submissions made and may make the local law* as proposed or make a local law* that is not significantly different from what was proposed.*
- * Absolute majority required.*
- (5) *After making the local law, the local government is to publish it in the Gazette and give a copy of it to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister.*
- (6) *After the local law has been published in the Gazette the local government is to give local public notice —*
- (a) *stating the title of the local law; and*
 - (b) *summarizing the purpose and effect of the local law (specifying the day on which it comes into operation); and*
 - (c) *advising that copies of the local law may be inspected or obtained from the local government's office.*
- (7) *The Minister may give directions to local governments requiring them to provide to the Parliament copies of local laws they have made and any explanatory or other material relating to them.*

VOTE REQUIREMENT: *Absolute Majority*

Strategic Framework

Within the Shire's Strategic Community Plan 2013 – 2023, Strategy 4.2.2 states:

"Maintain, review and ensure relevance of Council's policies and local laws."

Risk Management

The Risk Theme Profile identified as part of this report is **Failure to fulfil Compliance Requirements**. The Consequence identified is **Compliance**. The prescriptive process followed in making this Local Law has been carefully followed as set out in Section 3.12 of the Local Government Act 1995 which has determined that the Risk Rating for this matter is LOW.

Budget Implications

Council has allocated sufficient funding in the 2016/17 Budget to complete the process of creating a number of new Local Laws where the recently completed 8 year Local Laws Review undertaken recommended such action be taken.

SIGNED _____ DATED 20th December 2016.

Officer's Recommendation

That Council:

1. Notes the submission received from the Department of Local Government and Communities in respect of the proposed new Shire of Harvey Local Government Property Local Law 2017 amending the proposed Local Law where indicated in the body of this report, considering that the proposed changes made to the advertised Local Law are not considered significantly different per Section 3.12 (4) of the Local Government Act 1995;
2. Adopt by Absolute Majority the Shire of Harvey Local Government Property Local Law 2017 as per **Attachment 1** in accordance with Section 3.12(4) of the Local Government Act;
3. Note the purpose and effect of the Local Law being:

Purpose: To regulate the care, control and management of all property of the local government except thoroughfares.

Effect: To control the use of local government property. Some activities are permitted only under a permit or under a determination and some activities are restricted or prohibited. Offences are created for inappropriate behaviour in or on local government property.
4. Authorise the Local Law's gazettal in the Government Gazette;
5. Authorise the public notice advertisement, (after gazettal), of the date of the Shire of Harvey Local Government Property Local Law 2017; and
6. Authorise the Shire President and the Chief Executive Officer to affix the Shire's Common Seal to the Shire of Harvey Local Government Property Local Law 2017.

ABSOLUTE MAJORITY VOTE REQUIRED

- 16/324. **Carbone/Beech**
"That the Officer's Recommendation be adopted."
CARRIED BY ABSOLUTE MAJORITY 12-0

Item No.	7.14
Subject:	Shire of Harvey Cemeteries Local Law
Proponent:	Shire of Harvey
Location:	Shire of Harvey
Reporting Officer:	Executive Manager Corporate Services
File No.:	LS/B/034

Summary

This report proposes the making of a new Cemeteries Local Law pursuant to Section 3.12 (4) of the Local Government Act 1995.

SIGNED _____ DATED 20th December 2016.

Background

At Council's meeting held on 26th July 2016, Council resolved to provide Statewide public notice that it intended to make the Shire of Harvey Cemeteries Local Law 2017.

Public consultation was undertaken as part of the advertising process required by Section 3.12(3) of the Local Government Act 1995 and must be for a minimum period of 42 days. The proposed Local Law was advertised on 13th August 2016, with a closing date for submissions of 30th September 2016.

No community submissions were received however the Department of Local Government on behalf of the Minister for Local Government and Communities made a number of comments.

The Shire of Harvey currently has a Cemeteries Local Law as published in the Government Gazette on 23rd June 2000. The Minister for Local Government has carriage of the powers conferred by the Cemeteries Act 1986 and in 2012 engaged the Department of Local Government to review the Cemeteries Model Local Law. The review led to changes of a technical drafting and content nature and the proposed WALGA Model Local Law now reflects current legislation requirements.

It is recommended that the Shire of Harvey Cemeteries Local Law be remade to account for the above amendments in legislation and better practice given that the current Local Law pre dates the 2012 Model Local Law review. The current Local Law is over 15 years old.

Comment

The purpose of this report is to:

1. Consider the submissions received on the proposed Shire of Harvey Cemeteries Local Law 2017;
2. Give notice to the purpose and effect of the Shire of Harvey Cemeteries Local Law 2017;
3. Make the Shire of Harvey Cemeteries Local Law 2017;
4. Authorise the Local Law's gazettal in the Government Gazette;
5. Give public notice, (after gazettal), of the date of the Shire of Harvey Cemeteries Local Law 2017;
6. Authorise the affixing of the Common Seal to this Local Law.

To comply with the provisions of section 3.12 of the Act, when proposing to make a Local Law, the Presiding Person is required to give notice of the purpose and effect of the proposed Local Law at the Council meeting where the Local Law is being considered.

The purpose and effect of the proposed Cemeteries Local Law is –

Purpose: To provide for the orderly management of the Shire of Harvey Cemeteries in accordance with established plans and to create offences for inappropriate behaviour within the cemeteries grounds.

Effect: All persons engaged in the administration of the cemeteries, burying deceased in the cemeteries, or otherwise providing services to or making use of the cemeteries, are to comply with the provisions of this Local Law.

The comments made by the Department of Local Government and Communities on behalf of the Minister for Local Government and Communities are listed in the table below and actions noted in the right hand column.

SIGNED _____ DATED 20th December 2016.

Comment	Recommended Action
<p>1. Clause 1.2 – Application It is suggested that to more accurately identify where the Local Law will apply, that the reserve number for each cemetery is included. For example: This Local Law applies to the Harvey Shire (Reserve xx), Harvey Lawn (Reserve xx), Australind (Reserve xx), and Cookernup (Reserve xx) Cemeteries located in the district.</p>	Noted and amended.
<p>2. Clause 1.5 - Interpretation 1. It is suggested that definitions for the following terms, which are used throughout the local law, are inserted in clause 1.5: i. “crypt”; ii. “memorial”; iii. “memorial plaque”; iv. “monument”; v. “monumental work”; and vi. “vehicle”.</p> <p>2. The definition of “monumental mason” appears to be unnecessary. While the term appears in the title of Division 3, it does not appear in the text of any clauses in the Local Law. As titles are not interpreted to be an operative part of the clause and have no legislative effect in themselves, the definition does not serve much purpose.</p> <p>Although the term “monumental mason’s licence” is used in the Local Law, it is not necessary to include a definition for “monumental mason”. However, it is suggested that the following definition be inserted: monumental mason’s licence means a licence issued under clause 7.16;</p>	Noted and amended.
<p>3. It is suggested that the term “nuisance” be defined in the Local Law, as clause 5.5 requires that a person must not be a nuisance. A suggested definition for the Shire’s consideration, which has been used by other local governments in the past, is as follows: nuisance means – (a)an activity or condition which is harmful or annoying and which gives rise to legal liability in the tort of public or private nuisance at law; (b)an unreasonable interference with the use and enjoyment of a person of his or her ownership or occupation of land; or interference which causes material damage to land or other property on the land affected by the interference;</p>	Noted and amended.

<p>4. It is also suggested the term “personal representative” be defined in the Local Law. Below is an example only, for the Shire’s consideration:</p> <p>personal representative means –</p> <p>(a) The administrator or executor of an estate of a deceased person;</p> <p>(b) The person who, by law of practice, has the right to apply for administration of the estate of the deceased person; or</p> <p>(c) A person having lawful custody of a dead body;</p>	Noted and amended.
<p>5. Clause 4.3 – Application refusal</p> <p>Clause 4.3 refers to the refusal of an application for a single funeral permit “on any other grounds”. For the purposes of clarity, the Shire may wish to consider including (in further paragraphs) specific grounds on which a single funeral permit would be refused.</p>	Noted and not amended. This suggested amendment was considered unnecessary.
<p>6. Clause 5.3 – Vehicle entry restricted</p> <p>The Shire may wish to provide that subclause (1) does not apply to vehicles approved by the CEO or an authorised officer. This will enable the Board to waive the requirement under subclause (1) where appropriate.</p>	Noted and amended.
<p>7. Clause 7.16 – Monumental Mason’s Licence</p> <p>It is suggested that the Local Law contain a clause dealing with the cancellation of monumental mason licences.</p> <p>Clause 7.20 of the WALGA model (which the Shire appears to have used in the development of this Local Law) deals with the cancellation of mason licences. While the Joint Standing Committee on Delegated Legislation has previously objected to subclause (3) of the clause in the model, the Committee has also objected to Local Laws that attempt to omit the clause entirely.</p> <p>The Committee has objected to versions of subclause (3) which grant a right of review to the SAT. The Committee has determined that the <i>Cemeteries Act 1986</i> does not expressly provide a right of review to monumental masons. With this in mind, it is suggested that the Shire includes a clause dealing with the cancellation of monumental mason licences but does not include a grant of right of review to the SAT.</p>	<p>Noted and amended as follows:</p> <p>(1) The Board may by notice in writing to the holder of a monumental mason’s license terminate the license on any of the following grounds—</p> <p>(a) that the holder of the license has committed a breach of the requirements and conditions of the license, this Local Law, the Act or any other written law which may affect the carrying out of monumental works;</p> <p>(b) that, in the opinion of the Board, the conduct of the holder of the license or any person in the employ of that holder in carrying out or attempting to carry out any works within the cemetery, is inappropriate or unbecoming; or</p> <p>(c) that the holder of the license has purported to transfer the license issued to that holder.</p> <p>(2) Upon the termination of a monumental mason’s license under this clause no part of any fee paid for the issue of that license is refundable by the Board.</p>

8. Schedules

- a) Schedule titles should be centralised and in bold, and the clause reference placed in square brackets. For example:

Schedule 1 – Modified Penalties
[Clause 9.2]

- b) Forms 1-12 at the end of the local law do not appear to be formally contained within a Schedule to the Local Law – the infringement and withdrawal notices are each contained in their own Schedule. If the Shire chooses to retain Forms 1-12 consideration should be given to creating a “Schedule 4” to the Local Law and placing the forms within that Schedule.
- c) The Shire should also ensure the clause references in the Schedules are correct. For example, Form 10 refers to clause 5.12, which does not appear in the Local Law and Forms 5 and 6 refer to clauses 3.4(1) and (2), when it appears the correct references are actually 3.3(1) and (2).
- d) There are also a number of forms which are not referenced within the content of the Local Law itself. If the Shire wants to prescribe the forms for use in conjunction with its Local Law, every form should have an enabling clause reference in square brackets, and the specific clause should refer to the relevant form. For example, clause 3.3(1), regarding certificates of identification, should refer to an application being made in Form 5.
- e) Another consideration for the Shire is that there are forms that do not relate to the content of the Local Law. For example, Form 3 deals with the assignment of grant of right of burial, which is dealt with under section 25 of the *Cemeteries Act 1986* and therefore does not need to be explicitly addressed in the Local Law. However, the content of the Local Law does not include any reference to prescribed forms for the assignment of a grant of right of burial.
- f) Similarly, it is noted that the Shire has provided forms for a person to apply for a funeral director’s licence (Form 7).
- g) The Department notes that licensing of funeral directors is dealt with in sections 16-19 of the *Cemeteries Act 1986*. As the Shire would be aware, it is unnecessary to mirror the provisions of an enabling Act in a Local Law if the provisions of the enabling Act are sufficient for the Shire’. However, this also means that the local law does not indicate that Form 7 must be used to apply for a funeral director’s licence.

The amendment to remove the forms from the Local Law and have them available in guidance material for administrative purposes is accepted and amended accordingly.

This is viewed as an administrative amendment and does not affect the intent of this Local Law.

This provides some advantages, since it means the forms can be amended without having to amend the Local Law itself.

<p>h) If the Shire wants to prescribe forms for these purposes, the Shire may want to insert provisions into the Local Law indicating that the licensing of funeral directors and granting of rights of burial are dealt with in the Act, but that the forms for such applications are (for example) "Form 7 of Schedule X". If the Shire chooses to take this option, it should ensure that the correct clauses of the Local Law or sections of the <i>Cemeteries Act 1986</i> are included in the form titles, as appropriate.</p> <p>i) An alternative solution is for the Shire to remove the forms from the Local Law and have them available in guidance material for administrative purposes. This provides some advantages, since it means the forms can be amended without having to amend the Local Law itself. If this option is taken the Shire would need to ensure that the Local Law does not refer to specific forms and instead refers to "the form approved by the Board from time to time".</p>	
<p>9. Significantly different from originally proposed local law</p> <p>The Department is aware that the effect of some of its suggestions may have the potential for the Local Law to be significantly different than the Local Law that was originally advertised by the Shire.</p> <p>Where the final Local Law to be adopted by Council is significantly different, then the section 3.12 procedure must be restarted in accordance with section 3.13 of the Act.</p> <p>While the Department is not able to advise definitely on this matter (it is considered by the Committee), the general rule has been it would be prudent to restart the process where any revisions change any obligations under the Local Law. Amendments relating to grammatical or formatting changes or changes which remove inconsistencies with Acts or Regulations are unlikely to be considered significantly different.</p>	<p>Consultation with Stephen Brockway, Advisory Officer, Legislative Council, has advised in writing that his view has always been that if there is a power to grant a licence to do something, then there should also be a power to withdraw or cancel the right to do that thing. Moreover, what you have at clause 7.19 would be meaningless without some sort of sanction.</p> <p>He advised that the suggested clause is eminently sensible and also, as it is really an extension of what has gone before in clause 7.19, did not think this would be considered a significant material change to the Local Law that would warrant readvertising.</p> <p>This amendment is progressed without the need to readvertise.</p>

The Department also recommended a number of minor edits, which have been undertaken.

There were also two minor changes made to the Local Law after the advertising period as a result of staff reviewing the draft being (clauses 7.13 (1) (ii) and 7.13 (1) (d). The changes relate to sizes and consistency in the size of monuments which are specific to the circumstances at the Harvey Lawn Cemetery. The sizes included in the previous Local Law have been retained.

The Local Law can now be finalised, and will come into effect 14 days after its publication in the Government Gazette.

SIGNED _____ DATED 20th December 2016.

Statutory/Policy Environment

Section 3.12 of the LGA 1995 specifies the procedures to be followed when making a Local Law. Section 3.12 states:

3.12. Procedure for making local laws

- (1) *In making a local law a local government is to follow the procedure described in this section, in the sequence in which it is described.*
 - (2) *At a council meeting the person presiding is to give notice to the meeting of the purpose and effect of the proposed local law in the prescribed manner.*
 - (3) *The local government is to —*
 - (a) *give Statewide public notice stating that —*
 - (i) *the local government proposes to make a local law the purpose and effect of which is summarized in the notice; and*
 - (ii) *a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and*
 - (iii) *submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given;*

and
 - (b) *as soon as the notice is given, give a copy of the proposed local law and a copy of the notice to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister; and*
 - (c) *provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.*
 - (3a) *A notice under subsection (3) is also to be published and exhibited as if it were a local public notice.*
 - (4) *After the last day for submissions, the local government is to consider any submissions made and may make the local law* as proposed or make a local law* that is not significantly different from what was proposed.*
- * Absolute majority required.*
- (5) *After making the local law, the local government is to publish it in the Gazette and give a copy of it to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister.*
 - (6) *After the local law has been published in the Gazette the local government is to give local public notice —*
 - (a) *stating the title of the local law; and*
 - (b) *summarizing the purpose and effect of the local law (specifying the day on which it comes into operation); and*
 - (c) *advising that copies of the local law may be inspected or obtained from the local government's office.*
 - (7) *The Minister may give directions to local governments requiring them to provide to the Parliament copies of local laws they have made and any explanatory or other material relating to them.*

VOTE REQUIREMENT: *Absolute Majority*

Strategic Framework

Within the Shire's Strategic Community Plan 2013 – 2023, Strategy 4.2.2 states:

"Maintain, review and ensure relevance of Council's policies and local laws."

Risk Management

The Risk Theme Profile identified as part of this report is **Failure to fulfil Compliance Requirements**. The Consequence identified is **Compliance**. The prescriptive process followed in making this Local Law has been carefully followed as set out in Section 3.12 of the Local Government Act 1995 which has determined that the Risk Rating for this matter is LOW.

Budget Implications

Council has allocated sufficient funding in the 2016/17 Budget to complete the process of creating a number of new Local Laws where the recently completed 8 year Local Laws Review undertaken recommended such action be taken.

Officer's Recommendation

That Council:

1. Notes the submission received from the Department of Local Government and Communities in respect of the proposed new Shire of Harvey Cemeteries Local Law 2017 amending the proposed Local Law where indicated in the body of this report, considering that the proposed changes made to the advertised Local Law are not considered significantly different per Section 3.12 (4) of the Local Government Act 1995;
2. Adopt by Absolute Majority the Shire of Harvey Cemeteries Local Law 2017 as per **Attachment 1** in accordance with Section 3.12(4) of the Local Government Act 1995;
3. Note the purpose and effect of the Local Law being:
Purpose: To provide Council with controls and regulatory measures in relation to impounding of Cemeteries, the number of Cemeteries that can be kept, establishment of approved kennels and the manner in which Cemeteries are to be confined by the occupier of a premises.
Effect: To extend the control over Cemeteries which exist under the Cemeteries Act 1976.
4. Authorise the Local Law's gazettal in the Government Gazette;
5. Authorise the public notice advertisement, (after gazettal), of the date of the Shire of Harvey Cemeteries Local Law 2017; and
6. Authorise the Shire President and the Chief Executive Officer to affix the Shire's Common Seal to the Shire of Harvey Cemeteries Local Law 2017

ABSOLUTE MAJORITY VOTE REQUIRED

- 16/325. **Carbone/Giancono**
"That the Officer's Recommendation be adopted."
CARRIED BY ABSOLUTE MAJORITY 12-0

Item No.	7.15
Subject:	Shire of Harvey Bush Fire Brigades Local Law
Proponent:	Shire of Harvey
Location:	Shire of Harvey
Reporting Officer:	Executive Manager Corporate Services
File No.:	LS/B/034

Summary

This report proposes the making of a new Bush Fire Brigades Local Law pursuant to Section 3.12 (4) of the Local Government Act 1995.

Background

At Council's meeting held on 26th July 2016, Council resolved to provide Statewide public notice that it intended to make the Shire of Harvey Bush Fire Brigades Local Law 2017.

Public consultation was undertaken as part of the advertising process required by Section 3.12(3) of the Local Government Act 1995 and must be for a minimum period of 42 days. The proposed Local Law was advertised on 13th August 2016, with a closing date for submissions of 30th September 2016. No comments were received from the public however in the previous overall Local Law review undertaken earlier in 2016 a minor amendment was suggested to this Local Law being in the banking transaction area. The proposed new Local Law incorporates that change.

The WA Department of Local Government on behalf of the Minister for Local Government and Communities made a number of comments.

The Shire of Harvey current Bush Fire Brigades Local Law was published in the Government Gazette on 11th June 2001. Since its adoption many of the Acts and Codes within the Local Law have been modified. It is recommended that Council's Bush Fire Brigades Local Law be remade to account amendments in legislation and better practice given that the current Local Law is over 15 years old. The proposed new Local Law is based on the WALGA Model Local Law and reflects current legislation requirements.

Comment

The purpose of this report is to:

1. Consider the submissions received on the proposed Shire of Harvey Bush Fire Brigades Local Law 2017;
2. Give notice to the purpose and effect of the Shire of Harvey Bush Fire Brigades Local Law 2017;
3. Make the Shire of Harvey Bush Fire Brigades Local Law 2017;
4. Authorise the Local Law's gazettal in the Government Gazette;
5. Give public notice, (after gazettal), of the date of the Shire of Harvey Bush Fire Brigades Local Law 2017;
6. Authorise the affixing of the Common Seal to this Local Law.

To comply with the provisions of section 3.12 of the Act, when proposing to make a Local Law, the Presiding Person is required to give notice of the purpose and effect of the proposed Local Law at the Council meeting where the Local Law is being considered.

The purpose and effect of the proposed Bush Fire Brigades Local Law is –

Purpose: To make provisions about the organisation, establishment, maintenance and equipment of bush fire brigades.

Effect: To align existing Local Laws with changes in the law and operational practice.

Comments made by the WA Department of Local Government on behalf of the Minister for Local Government and Communities on the proposed new Local Law are listed below –

Comment	Recommended Action
<p>1. Minister of Emergency Services Bush fire brigades Local Laws are made under the <i>Local Government Act 1995</i> and the <i>Bush Fires Act 1954</i>. Accordingly, the local government must ensure that it provides a copy of the proposed Local Law to the Minister for Emergency Services as soon as possible, if it has not done so already.</p>	<p>Noted. Letter to Minister of Emergency Services sent 23 August 2016.</p>
<p>2. Clause 1.3 – Interpretation It is suggested that definitions for the following terms which are used throughout the Local Law are inserted in clause 1.3. Where the Shire wishes to adopt a definition for a term which is already defined in the Act, the definition may be drafted as “has the meaning given in the Act”.</p> <ul style="list-style-type: none"> <input type="checkbox"/> “cadet member” <input type="checkbox"/> “bush fire control officer” <input type="checkbox"/> “Chief Bush Fire Control Officer” <input type="checkbox"/> “volunteer bush fire brigades” <input type="checkbox"/> “firefighting activities” – the definition should be clear as to how it differs from the meaning of “normal brigade activities”. <input type="checkbox"/> “simple majority” – define either by reference to the <i>Local Government Act 1995</i> or referring to a majority vote of all members present at a meeting and any proxy votes. 	<p>Noted and Amended.</p>
<p>3. Chief Bush Fire Control Officer As noted in comment 3 above, it is suggested that the Shire defines “bush fire control officer” and “Chief Bush Fire Control Officer”.</p> <p>The Shire should also insert a clause specifying how the Chief Bush Fire Control Officer is to be appointed.</p>	<p>Noted and Amended.</p> <p>Not Amended – covered in the Act - BUSH FIRES ACT 1954 - SECT 38</p> <p>38. Local government may appoint bush fire control officer</p> <p>(1) A local government may from time to time appoint such persons as it thinks necessary to be its bush fire control officers under and for the purposes of this Act, and of those officers shall subject to section 38A(2) appoint 2 as the Chief Bush Fire Control Officer and the Deputy Chief Bush Fire Control Officer who shall be first and second in seniority of those officers, and subject thereto may determine the respective seniority of the other bush fire control officers appointed by it.</p>

	<p>(2A) The local government shall cause notice of an appointment made under the provisions of subsection (1) to be published at least once in a newspaper circulating in its district.</p> <p>(2C) The local government shall fill any vacancy occurring in the office of Chief Bush Fire Control Officer or Deputy Chief Bush Fire Control Officer within one month after the vacancy occurs and if the local government fails or neglects to do so within that time, the FES Commissioner may by notice in writing require the local government to appoint a person to the vacant office within one month after service on it of such notice.</p>
<p>There may be a situation that arises where there is not more than one bush fire control officer in the local government district. To ensure that a sole bush fire control officer can exercise the role of the “Chief”, the Shire may wish to consider inserting the following subclause (with any necessary amendments the Shire thinks fit) in the appointment clause: --- (X) Where only one person is appointed as a bush fire control officer by the local government, that person is a Chief Bush Fire Control Officer for the purposes of this Local Law.</p>	<p>Noted and Amended. Division 2 – Chief Bush Fire Control Officer 3.3 Managerial role of Chief Bush Fire Control Officer (a) Subject to any directions by the local government the Chief Bush Fire Control Officer has primary managerial responsibility for the organisation and maintenance of bush fire brigades. (b) Where only one person is appointed as a bush fire control officer by the local government, that person is a Chief Bush Fire Control Officer for the purposes of this Local Law.</p>
<p>4. Clause 3.1 – Local government responsible for structure As clause 3.1 is currently drafted, the “Council” is responsible for ensuring there is an appropriate structure in the bush fire brigades (this differs from the clause title, which refers to the “local government”). The use of the term “Council” may be interpreted to mean that only the Council will be able to make a decision (by resolution), even if the matter is minor or procedural. The Shire should consider whether this clause reflects the Shire’s intentions. The Shire may wish to replace the reference to the “Council” with the “local government”. This would enable the Shire to delegate such decisions in accordance with section 5.16 of the <i>Local Government Act 1995</i> (e.g. to a committee).</p>	<p>Noted and Amended.</p>

The Department also recommended a number of minor edits, which have been undertaken. A minor administrative amendment is the inclusion of the Schedule 1 – Rules governing the operation of bush fire brigades [Cl 2.4] contains information within this section.

SIGNED _____ DATED 20th December 2016.

The Local Law can now be finalised, and will come into effect 14 days after its publication in the Government Gazette.

Statutory/Policy Environment

Section 3.12 of the LGA 1995 specifies the procedures to be followed when making a Local Law. Section 3.12 states:

3.12. Procedure for making local laws

- (1) *In making a local law a local government is to follow the procedure described in this section, in the sequence in which it is described.*
 - (2) *At a council meeting the person presiding is to give notice to the meeting of the purpose and effect of the proposed local law in the prescribed manner.*
 - (3) *The local government is to —*
 - (a) *give Statewide public notice stating that —*
 - (i) *the local government proposes to make a local law the purpose and effect of which is summarized in the notice; and*
 - (ii) *a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and*
 - (iii) *submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given;*

and

 - (b) *as soon as the notice is given, give a copy of the proposed local law and a copy of the notice to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister; and*
 - (c) *provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.*
 - (3a) *A notice under subsection (3) is also to be published and exhibited as if it were a local public notice.*
 - (4) *After the last day for submissions, the local government is to consider any submissions made and may make the local law* as proposed or make a local law* that is not significantly different from what was proposed.*
- * Absolute majority required.*
- (5) *After making the local law, the local government is to publish it in the Gazette and give a copy of it to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister.*
 - (6) *After the local law has been published in the Gazette the local government is to give local public notice —*
 - (a) *stating the title of the local law; and*
 - (b) *summarizing the purpose and effect of the local law (specifying the day on which it comes into operation); and*
 - (c) *advising that copies of the local law may be inspected or obtained from the local government's office.*
 - (7) *The Minister may give directions to local governments requiring them to provide to the Parliament copies of local laws they have made and any explanatory or other material relating to them.*

VOTE REQUIREMENT: *Absolute Majority*

Strategic Framework

Within the Shire's Strategic Community Plan 2013 – 2023, Strategy 4.2.2 states:

"Maintain, review and ensure relevance of Council's policies and local laws."

SIGNED _____ DATED 20th December 2016.

Risk Management

The Risk Theme Profile identified as part of this report is **Failure to fulfil Compliance Requirements**. The Consequence identified is **Compliance**. The prescriptive process followed in making this Local Law has been carefully followed as set out in Section 3.12 of the Local Government Act 1995 which has determined that the Risk Rating for this matter is LOW.

Budget Implications

Council has allocated sufficient funding in the 2016/17 Budget to complete the process of creating a number of new Local Laws where the recently completed 8 year Local Laws Review undertaken recommended such action be taken.

Officer's Recommendation

That Council:

1. Notes the submission received from the Department of Local Government and Communities in respect of the proposed new Shire of Harvey Bush Fire Brigades Local Law 2017 amending the proposed Local Law where indicated in the body of this report, considering that the proposed changes made to the advertised Local Law are not considered significantly different per Section 3.12 (4) of the Local Government Act 1995;
2. Adopt by Absolute Majority the Shire of Harvey Bush Fire Brigades Local Law 2017 as per **Attachment 1** in accordance with Section 3.12(4) of the Local Government Act;
3. Note the purpose and effect of the Local Law being:
Purpose: To make provisions about the organisation, establishment, maintenance and equipment of bush fire brigades.
Effect: To align existing Local Laws with changes in the law and operational practice.
4. Authorise the Local Law's gazettal in the Government Gazette;
5. Authorise the public notice advertisement, (after gazettal), of the date of the Shire of Harvey Bush Fire Brigades Local Law 2017; and
6. Authorise the Shire President and the Chief Executive Officer to affix the Shire's Common Seal to the Shire of Harvey Bush Fire Brigades Local Law 2017.

ABSOLUTE MAJORITY VOTE REQUIRED

- 16/326. **Beech/Campbell**
"That the Officer's Recommendation be adopted."
CARRIED BY ABSOLUTE MAJORITY 12-0

SIGNED _____ DATED 20th December 2016.

Corporate Services Committee
29th November 2016**MINUTES**

16/327.

Monagle/Carbone**“That the Minutes of the Corporate Services Committee, held on Tuesday, 29th November 2016, be received and the recommendations listed hereunder be adopted en-bloc.”**

- 7.1 Financial Statement for the Period Ending 31st October 2016 – Shire of Harvey (CCC062).
- 7.2 Debtors Reconciliation – Shire of Harvey (FMS006).
- 7.3 Statement of Investments – Shire of Harvey (FMS006).
- 7.4 Accounts for Payment – Shire of Harvey (FMS006).
- 7.5 Accounts for Payment by Electronic Fund Transmission – Shire of Harvey (FMS006).
- 7.6 Schedule of Credit Card Payments Submitted – Shire of Harvey (FMS006).
- 7.7 Major Projects – Status Report – Shire of Harvey (FMS006).
- 7.8 Write-Off – Sundry Debtors – Various Debtors – Shire of Harvey (FMR001).
- 7.9 Galway Green Reticulation Failure – Vandalism Damage – Manager Works and Services – Galway Green (S000003).
- 7.10 Strategic Community Plan – Performance Report and Review – Shire of Harvey (B000157).
- 7.16 Customer Service Charter – Adoption and Implementation – Chief Executive Officer – Shire of Harvey (PS/F/001).

CARRIED 12-0**Development Services Committee**
22nd November 2016**MINUTES****Cr. Burgoyne and Cr. Carbone, having declared financial interests in the following item, left the Chamber at 4.39p.m.**

Item No.	8.1.1
Subject:	Application for Development Approval – Extractive Industry (Sand)
Proponent:	Peel Resources Pty Ltd
Location:	Lot 25 Tredrea Place/Forrest Highway, Myalup
Reporting Officer:	Planning Officer (ND)
File No.:	A005827/EX/001
	Attachment Reg. No. 16/28696

Summary

Council has received an Application for Development Approval for a sand extractive industry at Lot 25 Tredrea Place/Forrest Highway, Myalup. The long term proposal is to extract sand from 32 ha in 16 stages (approximately 2ha each) over a period of ten years. The total area of extraction is proposed as 33.07 ha with an extraction volume total of 1.14 million m³.

SIGNED _____ DATED 20th December 2016.

For the purpose of this planning approval and Extractive Industry Licence this application relates to extracting 356,250m³ from stages 1 -5 only. Approval subject to conditions is recommended.

Background

Lot 25 has an area of 40 ha and is located approximately 600m north of the Myalup Service Station Site on the corner of Taranto Road and Forrest Highway (refer **Attachment 1**). The site is zoned 'General Farming' under the Shire of Harvey District Planning Scheme No. 1 and 'Rural' under the Greater Bunbury Region Scheme. The site does not have direct access to Forrest Highway.

The primary use of the property has been for a pine plantation and this was harvested in 2012. Now the site is mostly devoid of vegetation except for a 35-40m wide strip of native vegetation along the boundary to Forrest Highway and two small patches of native vegetation as shown in the aerial photo (refer **Attachment 2**).

The majority of the site varies randomly in height between 6m to 8m AHD. There is a non-perennial wetland on the eastern side of Forrest Highway, opposite Lot 25 however this is separated by the Forrest Highway reserve and is about 200m from the nearest point of the excavation area.

Proximity to sensitive land uses

The subject site is not in close proximity to any "Environmentally Sensitive Areas" as designated by the Environmental Protection Authority, with the nearest being 980m to the north west where there is a wetland adjacent to the Myalup Diversion Drain.

The Development Proposal

The long term proposal is to extract sand from 32 ha in 16 (2ha) stages over a period of ten years. The total area of extraction is proposed as 33.07 ha with an extraction volume total of 1.14 million m³.

For the purpose of this Development Approval and Extractive Industry Licence this application relates to extracting 356,250m³ from stages 1 – 5 only.

Site access will be off Tredrea Place which adjoins Taranto Road 600m to the north. Taranto Road is also the access to Forrest Highway utilised by the Myalup Service Station site (Development Approval has been granted for its redevelopment) and the Binningup Desalination Plant. It is also utilised by a number of other extractive industry operators.

The Applicant estimates an average of an additional five (5) truck trips per day (in and out) with half of the trucks being standard rigid trucks and the remaining half being single semi-loaders. Operating times are proposed to be Monday – Saturday 7.00am to 4.30pm. No activities are to occur on Sundays or public holidays.

A site plan of the proposal is contained within **Attachment 3 – Site and Staging Plan**. A complete copy of the proposal inclusive of relevant extracts from the proposed management plans is contained within **Attachment 4 – Management Report**.

Advertising

The proposal was advertised in accordance with Clause 2.3 of the Scheme for a minimum period of 21 days. Fourteen (14) submissions were received, 13 being from referral agencies, which are supportive of the proposal subject to appropriate conditions. One submission from a nearby landowner was received. This was not an objection to the proposal but a request that the Applicant also contribute to road maintenance costs on Taranto Road as is the case with the existing extractive industries that use the road.

A summary of the submissions is provided in **Attachment 5 – Schedule of Submissions**.

In terms of government agency submissions, most were standard comments and statements of non-objection. The Department of Water (DoW) has requested that the Applicant establish their proposed depth of extraction on the maximum end-of-season groundwater level (MGL) rather than the 'average annual maximum groundwater level' (AAMGL), as is expected for extractive industry proposals.

Comment

Staff note that the proposal is located in an area which is already extensively developed for extractive industries and there are no objecting landowners in the locality. In terms of Government agency comment the most notable issue raised is related to the request to upgrade the intersection of Taranto Road and Forrest Highway for the right turn treatment at the full cost of the Applicant (refer **Attachment 6**).

The Applicant has argued that there are other businesses using the intersection and that the vehicles from Lot 25 Tredrea Place will be turning left to go to Pinjarra, not to Bunbury.

Clearing

A pine plantation was harvested on the property in 2012 and there has been some native and introduced species regrowth, nevertheless this is exempt from the native clearing regulations (Reg. 5, Item 14 of the Environmental Protection (Clearing of Native Vegetation) Regulations 2004). This exemption allows clearing of native vegetation that has regrown on land that has been used for forestry over the previous 20 years.

There are isolated patches of mature native vegetation on stages 8 to 15 of the site but these stages are not the subject of this extractive industry application (refer **Attachment 2**) and will be assessed accordingly at the time approval is sought.

Weeds

The Applicant has indicated that there is widespread weed coverage and this includes the declared weed "Narrowleaf Cottonbush". It is proposed that the cottonbush will be removed from each stage as it progresses and reoccurrence will be monitored. Topsoil is to be stockpiled in large quantities for a sufficient period to enable natural die off of the weed seed bank within the topsoil. The topsoil will be reseeded with pasture grasses during rehabilitation.

Alteration of the Land Surface & Visual Impacts

At the completion of extraction moderate slopes of 1:6 will remain and the majority of the area will be a gently sloping flat paddock suitable for intensive horticulture. It is stated that existing topsoil from the site will be placed over the site in a staged manner such that each excavation stage area is rehabilitated to the final landform.

WaterSurface and Stormwater Management

Given the site's low slopes and high permeability of the sandy soils, water and stormwater management is not considered to be an issue.

Groundwater Management

The following conditions can be applied from the DoW's comments:

- The extractive industry shall not intercept the water table.
- Excavation is permitted only to a depth that is 0.3m higher than the maximum seasonal groundwater level.
- Dewatering of the extraction area is not permitted without authorisation under the 'Rights in Water and Irrigation Act 1914'.
- There shall be no standing water occurring at the end of the extractive operation.
- If any interception of groundwater occurs, work shall cease and an advice notice provided to the Shire within 48 hours, followed by agreed remedial action.
- No stormwater is to leave the active extraction areas.
- All site stormwater is to be managed, where required.
- No onsite storage of fuel, oil, coolants or lubricants is permitted.

The following comments are considered to be appropriate as advice notes:

- The process of rehabilitating each extraction stage should be well underway before the subsequent stage has commenced.
- A detailed contingency plan should be in place for contaminant spills.

Noise

A separation distance of 300-500m is recommended by the EPA for sand extraction (Guidance Statement No. 3 – Separation Distances between Industrial and Sensitive Land Uses) to avoid conflict between incompatible land uses. The nearest residences lie between 550m and 670m from the site and are therefore outside the buffer separation area.

Dust

Staff note that the issue of dust has not been raised by any adjoining landowner during the life of the current pits in the area. Notwithstanding, the need for a condition requiring an ongoing commitment to dust minimisation it is recommended as part of a Development Approval.

Dieback Management

Sand is not a known source of Dieback and as such management measures are not as stringent as for gravel extraction, however, consistent with other recent approvals a Dieback Management Plan is considered appropriate.

Proposed Revegetation/Rehabilitation

Objective

The applicant has stated that consultation with DAFWA indicates that the site should be rehabilitated to a final landform to support potential future horticulture. This is due to the potential for the State Government's Water for Food program to increase the availability of irrigation water in Myalup at some point in the future.

Final Landform

In the application report it is stated that to support future horticulture it is proposed that the site will be levelled to a final landform comprising 1 in 6 side slopes from the site boundaries down to a floor level of 3.75m AHD in the west rising to 4.7m AHD in the east, as presented in the Rehabilitation Design (Appendix 3). The DoW however prescribe in their submission on the proposal:

"that the proposed depth of extraction is to be based on the maximum end of season groundwater level (MGL), rather than the 'average annual maximum groundwater level' (AAMGL), as it is expected for extractive proposals"

Hence the above depths will need to be reviewed subject to an appropriate Water Management Plan being assessed and approved to the satisfaction of the DoW.

Topsoil Management

Following clearing, it is proposed that the top 250mm of topsoil will be removed and retained for rehabilitation purposes. The removal and storage of top soil will be progressive. Topsoil will be stockpiled in large quantities for a sufficient period to enable die-off of the weed seed bank within the soil, prior to application of the topsoil on the final landform.

Stockpiled topsoil will be located alongside the pit to assist in meeting safety requirements. The pit manager and all applicable staff and contractors will be made aware of these requirements.

Revegetation

The site will be seeded with pasture grasses upon rehabilitation, to provide a stabilising site cover, prevent weed infestation and enable agricultural production prior to the site's conversion to horticulture. Should horticulture be proposed at some point in the future, a separate application will be submitted accordingly.

Road Maintenance

In relation to the applicant's contribution towards road upgrading for both Tranto Road and Tredrea Place, it is recommended that the WALGA methodology as prescribed by the document: *"Estimating the Incremental Cost Impact on Sealed Local Roads from Additional Freight Tasks, May 2015"*, be utilised.

Tredrea Place is current constructed to an unsealed standard and to this effect, should the applicant wish to upgrade and maintain Tredrea Place, a separate agreement to the satisfaction of the Executive Manager of Technical Services addressing the standard of maintenance will be required.

Statutory/Policy Environment

District Planning Scheme No. 1 – zones the property as ‘General Farming’ within which an Extractive Industry is an ‘SA’ use.

Clause 9.13 – sets out the requirements for lodging an extractive industry application.

Shire of Harvey Extractive Industries Local Law 2007 requires the issue of an Extractive Industry Licence prior to the commencement of any site works.

Strategic Framework

Within the Shire’s Strategic Community Plan 2013 - 2023, Strategies 2.3.1 and 2.3.2 state in part:

2.3.1 *“Continue to implement integrated environmental, social and land use planning which will:*

- *Minimise land use conflict.*
- *Protect significant vegetation, where possible.”*

2.3.2 *“Ensure compliance of rehabilitation plans for extractive industry areas.”*

Risk Management

The Risk Theme Profile identified as part of this report is ***Providing Inaccurate Advice/Information***. The Consequence could be Financial, Reputational or Compliance if an incorrect approval is given or a condition is missed. The risk is mitigated by the report being thoroughly researched, peer reviewed and provided by a qualified Council officer, resulting in LOW risk being present.

Budget Implications

Nil

Officer’s Recommendation

That Council:

1. Grants Development Approval for the extraction of 356,250m³ sand from Lot 25 Tredrea Place, Myalup within stages 1-5 only (Reference 16/28696) subject to the following conditions and advice notes:
 - a. A person shall not without the written approval of Council, undertake a land use in respect of which Council has granted Development Approval subject to conditions, until all of those conditions have been complied with to the satisfaction of Council;
 - b. Compliance with the approved plans submitted on 2nd September 2016, by Strategen for Peel Resource Recovery Pty Ltd (16/28696), as modified by this approval;

SIGNED _____ DATED 20th December 2016.

- c. All extraction to achieve compliance with:
- i) The Shire of Harvey Extractive Industry Local Law 2007, including the holding of a valid licence for all periods of operation;
 - ii) The Department of Industry and Resources (DoIR) "*Environmental Management of Quarries: Development, Operation and Rehabilitation Guidelines*";
 - iii) The Department of Environmental South West Region Guideline Series "*Extractive Industries within the Coastal Strip of the Shire of Harvey (Limestone and Sand)*"; and
 - iv) The Department of Water's "Water Resource Considerations for Extractive Industries 2014".
- d. The Applicant is to submit and implement a dust management plan to the satisfaction of the Executive Manager of Technical Services prior to the issue of an Extractive Industry Licence;
- e. Stockpiles are to be kept to a maximum height of 5m to avoid visual impact and/or material wind drift;
- f. Operating hours are restricted to 7.00am – 4.30pm, Monday to Saturday. No activities to occur on Sundays or Public Holidays;
- g. Any proposed clearing of native vegetation is prohibited unless done under a clearing permit issued in accordance with the Environmental Protection Act 1986, or the clearing is exempt from the need for a clearing permit;
- h. No extraction should occur within 15m of any native tree crown drip zones along the boundaries of the extraction areas.
- i. A suitable temporary demarcation barrier is erected 15m from the crown drip zone of retained trees to protect the trees and root systems from accidental machinery damage.
- j. Prior to the issue of an Extractive Industry Licence, the Applicant is required to provide a rehabilitation management and monitoring plan to the satisfaction of the Manager of Planning Services which is to include:
- i) All slopes of the batters at the end of excavation, being retained at no more than 1:6 vertical to horizontal;
 - ii) Revegetation and rehabilitation of the extraction area to pasture suitable for horticulture to the satisfaction of the Department of Agriculture and the Shire of Harvey; and
 - iii) Rehabilitating each extraction stage is to be well underway before the subsequent stage has commenced.
- k. A reinstatement bond of \$25,000 (for 5ha at \$5,000 per hectare) is to be received prior to the issue of an Extractive Industry Licence, and retained for up to three (3) years beyond the completion of rehabilitation works, to ensure success of planting;

- l. The Applicant is to have the approved pit boundaries surveyed and fenced by a suitably qualified surveyor, with the location of such pegs being to the satisfaction of the Manager of Planning Services prior to the issue of an Extractive Industry Licence. The pegs are to remain in place for the duration of the operation;
- m. Provision of a detailed Water Management Plan for approval by the Department of Water prior to the issue of an Extractive Industry Licence. The Water Management Plan should contain monitoring and management measures in addition to mapping at a scale of no less than 1:500 indicating:
- i) Contours;
 - ii) Watershed boundaries;
 - iii) Property boundaries;
 - iv) Proposed extraction areas; and
 - v) Availability of water for the purposes of rehabilitation and dust suppression.

The Water Management Plan may be combined with the Storm Water Management Plan and is to be compiled and implemented to the satisfaction of the Executive Manager of Technical Services and the Department of Water;

- n. A detailed Storm Water Management Plan being prepared to the satisfaction of the Department of Water and approved by the Executive Manager of Technical Services prior to the issue of an Extractive Industry License which includes the following items:
- i) The proposed depth of extraction is to be based on the maximum end of season groundwater level (MGL), rather than the 'average annual maximum groundwater level' (AAMGL), as it is expected for extractive proposals;
 - ii) The extractive industry shall not intercept the water table;
 - iii) Excavation is permitted only to a depth that is at least 0.3m above the maximum seasonal groundwater level;
 - iv) Dewatering of the extraction area is not permitted without authorisation under the 'Rights in Water and Irrigation Act 1914';
 - v) There shall be no standing water occurring at the end of the extraction operation;
 - vi) If any interception of groundwater occurs, work shall cease and an advice notice provided to the Department of Water within 48 hours, followed by agreed remedial action;
 - vii) No stormwater is to leave the extraction areas;
 - viii) All site stormwater is to be managed, where required; and
 - ix) No onsite storage of fuel, oil, coolants or lubricants is permitted.

The Storm Water Management Plan may be combined with the Water Management Plan and is to be compiled and implemented to the satisfaction of the Executive Manager of Technical Services and Department of Water;

- o. The Applicant is to provide an information brochure, which has been prepared to the satisfaction of the Department of Parks and Wildlife and the Manager of Planning Services, to all purchasers of material intended for landfill detailing the following:
 - i) The extracted material is considered to be 'uninterpretable' and may therefore contain Phytophthora Dieback;
 - ii) The material should not be used adjoining any vegetation which is known to be susceptible to Phytophthora Dieback;
 - iii) A list of vegetation which is known to be susceptible is to be attached; and
 - iv) The Applicant is to retain a list of purchasers to which the above information has been provided, a copy of which is to be included in the annual audit report.
- p. Weed control shall be undertaken in accordance with an approved Management Plan to the satisfaction of the Manager of Planning Services and the Department of Agriculture and Food;
- q. Any refuelling activities must be undertaken in accordance with the Department's Water Quality Protection Note - Toxic and Hazardous Substance Storage and Use. There is to be no storage of hydrocarbons on-site and no major vehicle or machinery repairs or maintenance is to take place on-site;
- r. The intersection of Taranto Road and Forrest Highway to be upgraded at a cost to the Applicant, which is to be designed and constructed to the specifications and satisfaction of Main Roads Western Australia, to include an appropriate right turn treatment in the median;
- s. The Applicant making a contribution towards the maintenance and upgrading of Taranto Road and Tredrea Place in accordance with the methodology adopted by WALGA in the document "Estimating the Incremental Cost Impact on Sealed Local Roads from Additional Freight Tasks, May 2015" to the satisfaction of the Executive Manager of Technical Services.

In the event the Applicant is willing to upgrade and maintain Tredrea Place, they will be required to enter into an agreement to the satisfaction of the Executive Manager of Technical Services detailing the applicable construction and maintenance standards;
- t. The Applicant is to engage a suitably qualified independent expert to carry out an annual audit of compliance of the conditions of Development Approval and extractive industry license. Such an audit must be submitted prior to an annual renewal licence being issued by Council;
- u. Activities such as crushing and screening, may be prescribed and as such, require a Works Approval, License or Registration under Part V of the Environmental Protection Act 1986 (EP Act); and

- v. This approval is valid for a period of five (5) years. If development is not completed within this period, a new approval must be obtained before commencing or continuing development.

Advice Notes:

1. As the proposed work is near energised electrical installations and powerlines, the person in control of the work site must ensure that no person, plant or material enters the "Danger Zone" of an overhead powerline or other electrical network assets; and
2. The Department of Aboriginal Affairs recommends that reference be made to the State's Aboriginal Heritage Due Diligence Guidelines.

16/328.

Beech/Monagle

"That Council:

1. **Grants Development Approval for the extraction of 356,250m³ sand from Lot 25 Tredrea Place, Myalup within stages 1-5 only (Reference 16/28696) subject to the following conditions and advice notes:**
 - a. **A person shall not without the written approval of Council, undertake a land use in respect of which Council has granted Development Approval subject to conditions, until all of those conditions have been complied with to the satisfaction of Council;**
 - b. **Compliance with the approved plans submitted on 2nd September 2016, by Strategen for Peel Resource Recovery Pty Ltd (16/28696), as modified by this approval;**
 - c. **All extraction to achieve compliance with:**
 - i) **The Shire of Harvey Extractive Industry Local Law 2007, including the holding of a valid licence for all periods of operation;**
 - ii) **The Department of Industry and Resources (DoIR) "*Environmental Management of Quarries: Development, Operation and Rehabilitation Guidelines*";**
 - iii) **The Department of Environmental South West Region Guideline Series "*Extractive Industries within the Coastal Strip of the Shire of Harvey (Limestone and Sand)*"; and**
 - iv) **The Department of Water's "*Water Resource Considerations for Extractive Industries 2014*".**

- d. **The Applicant is to submit and implement a dust management plan to the satisfaction of the Executive Manager of Technical Services prior to the issue of an Extractive Industry Licence;**
- e. **Stockpiles are to be kept to a maximum height of 5m to avoid visual impact and/or material wind drift;**
- f. **Operating hours are restricted to 7.00am – 4.30pm, Monday to Saturday. No activities to occur on Sundays or Public Holidays;**
- g. **Any proposed clearing of native vegetation is prohibited unless done under a clearing permit issued in accordance with the Environmental Protection Act 1986, or the clearing is exempt from the need for a clearing permit;**
- h. **No extraction should occur within 15m of any native tree crown drip zones along the boundaries of the extraction areas.**
- i. **A suitable temporary demarcation barrier is erected 15m from the crown drip zone of retained trees to protect the trees and root systems from accidental machinery damage.**
- j. **Prior to the issue of an Extractive Industry Licence, the Applicant is required to provide a rehabilitation management and monitoring plan to the satisfaction of the Manager of Planning Services which is to include:**
 - i) **All slopes of the batters at the end of excavation, being retained at no more than 1:6 vertical to horizontal;**
 - ii) **Revegetation and rehabilitation of the extraction area to pasture suitable for horticulture to the satisfaction of the Department of Agriculture and the Shire of Harvey; and**
 - iii) **Rehabilitating each extraction stage is to be well underway before the subsequent stage has commenced.**
- k. **A reinstatement bond of \$25,000 (for 5ha at \$5,000 per hectare) is to be received prior to the issue of an Extractive Industry Licence, and retained for up to three (3) years beyond the completion of rehabilitation works, to ensure success of planting;**

- I. The Applicant is to have the approved pit boundaries surveyed and fenced by a suitably qualified surveyor, with the location of such pegs being to the satisfaction of the Manager of Planning Services prior to the issue of an Extractive Industry Licence. The pegs are to remain in place for the duration of the operation;**
- m. Provision of a detailed Water Management Plan for approval by the Department of Water prior to the issue of an Extractive Industry Licence. The Water Management Plan should contain monitoring and management measures in addition to mapping at a scale of no less than 1:500 indicating:**
- i) Contours;**
 - ii) Watershed boundaries;**
 - iii) Property boundaries;**
 - iv) Proposed extraction areas; and**
 - v) Availability of water for the purposes of rehabilitation and dust suppression.**

The Water Management Plan may be combined with the Storm Water Management Plan and is to be compiled and implemented to the satisfaction of the Executive Manager of Technical Services and the Department of Water;

- n. A detailed Storm Water Management Plan being prepared to the satisfaction of the Department of Water and approved by the Executive Manager of Technical Services prior to the issue of an Extractive Industry License which includes the following items:**
- i) The proposed depth of extraction is to be based on the maximum end of season groundwater level (MGL), rather than the 'average annual maximum groundwater level' (AAMGL), as it is expected for extractive proposals;**
 - ii) The extractive industry shall not intercept the water table;**
 - iii) Excavation is permitted only to a depth that is at least 0.3m above the maximum seasonal groundwater level;**
 - iv) Dewatering of the extraction area is not permitted without authorisation under the 'Rights in Water and Irrigation Act 1914';**

- v) **There shall be no standing water occurring at the end of the extraction operation;**
- vi) **If any interception of groundwater occurs, work shall cease and an advice notice provided to the Department of Water within 48 hours, followed by agreed remedial action;**
- vii) **No stormwater is to leave the extraction areas;**
- viii) **All site stormwater is to be managed, where required; and**
- ix) **No onsite storage of fuel, oil, coolants or lubricants is permitted.**

The Storm Water Management Plan may be combined with the Water Management Plan and is to be compiled and implemented to the satisfaction of the Executive Manager of Technical Services and Department of Water;

- o. **The Applicant is to provide an information brochure, which has been prepared to the satisfaction of the Department of Parks and Wildlife and the Manager of Planning Services, to all purchasers of material intended for landfill detailing the following:**
 - i) **The extracted material is considered to be 'uninterpretable' and may therefore contain Phytophthora Dieback;**
 - ii) **The material should not be used adjoining any vegetation which is known to be susceptible to Phytophthora Dieback;**
 - iii) **A list of vegetation which is known to be susceptible is to be attached; and**
 - iv) **The Applicant is to retain a list of purchasers to which the above information has been provided, a copy of which is to be included in the annual audit report.**
- p. **Weed control shall be undertaken in accordance with an approved Management Plan to the satisfaction of the Manager of Planning Services and the Department of Agriculture and Food;**
- q. **Any refuelling activities must be undertaken in accordance with the Department's Water Quality Protection Note - Toxic and Hazardous Substance Storage and Use. There is to be no storage of hydrocarbons on-site and no major vehicle or machinery repairs or maintenance is to take place on-site;**

- r. The intersection of Taranto Road and Forrest Highway to be upgraded at a cost to the Applicant, which is to be designed and constructed to the specifications and satisfaction of Main Roads Western Australia, to include an appropriate right turn treatment in the median;
- s. The Applicant making a contribution towards the maintenance and upgrading of Taranto Road and Tredrea Place in accordance with the methodology adopted by WALGA in the document “Estimating the Incremental Cost Impact on Sealed Local Roads from Additional Freight Tasks, May 2015” to the satisfaction of the Executive Manager of Technical Services.

In the event the Applicant is willing to upgrade and maintain Tredrea Place, they will be required to enter into an agreement to the satisfaction of the Executive Manager of Technical Services detailing the applicable construction and maintenance standards;

- t. The Applicant is to engage a suitably qualified independent expert to carry out an annual audit of compliance of the conditions of Development Approval and extractive industry license. Such an audit must be submitted prior to an annual renewal licence being issued by Council;
 - u. Activities such as crushing and screening, may be prescribed and as such, require a Works Approval, License or Registration under Part V of the Environmental Protection Act 1986 (EP Act); and
 - v. This approval is valid for a period of five (5) years. If development is not completed within this period, a new approval must be obtained before commencing or continuing development.
2. Advises the Applicant that approval to Stages 1 - 5 should not be considered as support for future stages that shall be assessed on merit at the time of application.

Advice Notes:

- 1. As the proposed work is near energised electrical installations and powerlines, the person in control of the work site must ensure that no person, plant or material enters the “Danger Zone” of an overhead powerline or other electrical network assets; and
- 2. The Department of Aboriginal Affairs recommends that reference be made to the State’s Aboriginal Heritage Due Diligence Guidelines.”

CARRIED 10-0

Cr. Burgoyne and Cr. Carbone returned to the Chamber at 4.49p.m.

Item No.	8.1.2
Subject:	Application for Development Approval – Proposed Horticulture
Proponent:	Pearson Nominees Pty Ltd
Location:	Lots 9, 10, 2940 and 3025 Ludlow Road, Myalup
Reporting Officer:	Senior Planning Officer/Manager Planning Services
File No.:	A000177 Attachment Reg. No. 15/31302

Summary

Council has received an Application for Development Approval proposing 53.8ha of horticulture at Lots 9, 10, 2940 and 3025 Ludlow Road, Myalup. The use of the land for horticulture purposes is supported however the proposed clearing of remnant Tuart trees is opposed by the Department of Parks and Wildlife. Approximately 1.5ha of the site consists of remnant vegetation and a further 5.6ha is located in a buffer to the nearby Yalgorup National Park. The total area of the site which is unsuitable for horticulture is 7.1ha.

A portion of the Application traverses an unconstructed road reserve. It is unlikely that a roadway will be required within this portion of road reserve and to this effect Staff are supportive of it being used for horticulture. A permit allowing horticulture in the road reserve will need to be issued under the Shire of Harvey “*Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2008*”.

It is recommended that Council grant Development Approval for 46.7ha only, subject to conditions.

Background

Lots 9, 10, 2940 and 3025 are located 14.6km north of the Myalup townsite and 19.4km north west of the Harvey townsite (refer **Attachment 1 – Location Plan**). The subject land is zoned ‘General Farming’ by the Shire of Harvey District Planning Scheme No. 1.

The proposal is to develop the subject land for horticulture (refer **Attachment 2**). The Applicant advises that the horticultural crops likely to be grown include cauliflower, broccoli, carrots, potatoes and onions.

The application was received on 4th December 2015. The application was then referred to various government departments including the Department of Water, Department of Parks and Wildlife and the Department of Agriculture and Food. The Department of Agriculture and Food advised that it was unable to comment on the application given that the application did not contain sufficient information for an assessment to be undertaken. Specifically, the Department requested information on soil type, irrigation type, planned crops and rotation of crops. Further information was provided by the Applicant on 16th May 2016, however still did not contain all of the required information. On 1st August 2016, further information was received from the Applicant and was referred to the Department of Agriculture and Food. On 30th September 2016, the Department advised that the additional information provided by the Applicant was satisfactory. The following information was provided:

SIGNED _____ DATED 20th December 2016.

Fertiliser

Most fertiliser will be applied via fertigation through the irrigation system. If required, top dressed applications may be made. Applications of fertiliser are continuous throughout the crop life, with low amounts applied at regular intervals, to minimise potential leaching losses and maintain balanced nutrient supply. Trace elements including copper, zinc and manganese are applied pre planting if required, with the majority of phosphorus and nitrogen requirements applied early in the crop life (1-8 weeks) when plant uptake and vegetative growth is rapid. Potassium applications are maintained through the life of the crop. Plant tissue tests are taken at around 4-6 weeks of crop development, to monitor plant available levels of nutrients. These are correlated with soil test results and application records to ensure nutrient use efficiency is maintained. Occasionally, based on the results of the plant testing, foliar trace elements may be applied.

Method of irrigation scheduling

Irrigation is scheduled based on Evapotranspiration (ET_o) data from the DAFWA Myalup Weather station and field conditions. Frequent, lighter irrigation events are made to maintain soil moisture in the top 20cm of the soil profile and avoid leaching of nutrient through the soil profile. Soil moisture monitoring equipment is used to measure the volume of moisture present in the soil and to determine the amount of water to be applied. Maintaining soil moisture to the surface also helps to minimise any top soil loss from wind erosion, which also prevents nutrient loss from the soil.

Exact rotation and time of fallow between crops

Typically crop rotations will be Brassica (Cauliflower / Broccoli), Carrots, Potatoes and Onions, however, these may change as market conditions will determine the amount and type of crop area planted across the farms. Agronomic factors such as soil fertility, weed, insect and disease burden will also determine where a crop is planted. Annual crops have a life of 12-18 weeks, and with the phased nature of planting and harvesting schedules, any one block of land will be dedicated to a crop type for approximately 6 months, which allows time for ground preparation, pre planting applications, planting, crop growth, harvesting, and finally incorporation of crop residue.

Comment**Remnant Vegetation**

The Applicant seeks to clear 1.5ha of remnant vegetation consisting of approximately 145 trees, and has previously applied to the Department of Environment Regulation for a clearing permit (refer **Attachment 3**). The majority of the trees to be removed are Tuarts. The clearing permit application was cancelled given that the Applicant had not obtained Development Approval from Council.

The Department of Parks and Wildlife advises that Lots 9, 10 and 2940 contains Tuart woodland which may be habitat for the threatened black cockatoos. Black cockatoos are listed as a threatened species under the Commonwealth of Australia's Environment Protection and Biodiversity Conservation Act 1999 and Western Australia's Wildlife Conservation Act 1950. Major threats to black cockatoos include habitat loss. Consequently, the Department does not support the clearing of Tuart trees in Lots 9, 10 and 2940.

Buffers

The Department of Parks and Wildlife recommends a suitable buffer to the Tuart woodland areas to minimise potential chemical spray drift, pollutant and weed impacts. The Department recommends that a minimum 20m vegetated buffer be provided along drainage lines through the subject lots and a 40m vegetated buffer be provided to the adjacent Yalgorup National Park. These buffers are required to protect water quality and the National Park from chemical spray drift, pollutants and weed invasion. A plan prepared by DPAW depicting a portion of the site classified as an environmentally sensitive area forms **Attachment 4**.

Water

The Department of Water was invited to comment on the proposal and advises that it raises no objection to horticulture operations occurring on the subject lots. The Department advises that the Applicant holds an existing groundwater extraction licence and any further groundwater extraction will require approval from the Department. The extraction of groundwater will be subject to water quality monitoring and a maximum allocation of 4,000KL/ha per annum.

Road Reserve

There is an unconstructed road reserve between Lots 9 and 10. The Applicant seeks approval to crop the reserve for horticulture. In response to the advice from the Department of Parks and Wildlife the portion of road reserve that contains remnant Tuart trees is not supported. The remaining portion is considered appropriate to allow for contiguous cropping and the installation of irrigation pipes etc.

Based on advice from the Department of Lands this portion of road reserve could be closed and offered for sale to the Applicant or a permit allowing horticulture in the road reserve could be issued under the Shire of Harvey *“Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2008”*. Staff do not recommend closing the road reserve and consider the granting of a permit to be the most appropriate option.

Department of Agriculture and Food

The Department of Agriculture and Food raises no objection to the proposal.

Biosecurity and Agricultural Management (Stable Fly) Management Plan 2013

Legislation regulating the use of poultry manure for the control of Stable Fly is the *Biosecurity and Agricultural Management (Stable Fly) Management Plan 2013*. It is appropriate that a condition be imposed requiring the compliance with this legislation given that poultry manure is often used as fertiliser in the horticultural industry.

Statutory/Policy Environment

District Planning Scheme No.1

Lots 9, 10, 2940 and 3025 are zoned ‘General Farming’ by District Planning Scheme No. 1. The land use category ‘Viticulture/Horticulture’ is an ‘AA’ land use in Table 28 of the Scheme and is defined in Schedule 13 ‘Interpretations’ of the Scheme as *“the intensive cultivation and production of grapes, flowers or vegetables for commercial purposes of any area exceeding 1,000m².”*

Greater Bunbury Region Scheme

Development Approval under the Greater Bunbury Region Scheme (GBRs) is required given that the proposed development is located in a strategic agricultural resource policy area.

Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2008

Section 2.2 Activities Allowed With a Permit – General, provides the ability for Council grant a permit allowing the use of a road reserve for horticultural activities and associated infrastructure such as irrigation.

Strategic Framework

Within the Shire's Strategic Community Plan 2013 – 2023, Strategies 1.1.9 and 2.3.1 state:

1.1.9 *“Continue to support the agricultural industry by encouraging appropriate land uses.”*

2.3.1 *“Continue to implement integrated environmental, social and land use planning which will:*

- *Minimise land use conflict;*
- *Protect valuable agricultural land for food production;*
- *Protect significant vegetation, where possible.”*

Risk Management

The Risk Theme Profile identified as part of this report is ***Providing Inaccurate Advice/Information***. The Consequence could be Financial, Reputational or Compliance if an incorrect approval is given or a condition is missed. The risk is mitigated by the report being thoroughly researched, reviewed and provided by a qualified Council officer, resulting in LOW risk being present.

Budget Implications

Nil.

Officer's Recommendation

That Council:

1. Grants Development Approval for 46.7ha of horticulture on Lots 9, 10, 2940 and 3025 Ludlow Road and portion of unconstructed road reserve, Myalup, subject to the following conditions:
 - a. A person shall not without the written approval of Council, use the land in respect of which Council has granted Development Approval subject to conditions, until all of those conditions have been complied with to the satisfaction of Council;
 - b. Horticulture production being limited to 46.7 ha as depicted in the plan labelled 'Area Approved for Horticulture' (refer ***Attachment 6***);

SIGNED _____ DATED 20th December 2016.

Prior to Site Works

- c. The Applicant is to submit for approval by the Manager of Planning Services a detailed buffer plan to establish a minimum 20m vegetated buffer along drainage lines through the subject lots and a 40m vegetated buffer to the adjacent Yalgorup National Park. These buffers are required to protect water quality and the National Park from chemical spray drift, pollutants and weed invasion. The Buffer Plan is to detail endemic vegetation species, frequency and distribution. The Buffer Plan is to be approved prior to commencement of site works;
- d. The Applicant is to obtain a Permit under the Shire of Harvey's Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2008, associated with use of a road reserve for horticulture production to the satisfaction of the Executive Manager of Technical Services;

Ongoing

- e. The development and land use is to comply with the *Biosecurity and Agricultural Management (Stable Fly) Management Plan 2013* and *Health Act 1911* at all times;
- f. Clearing of Tuart trees (*Eucalyptus gomphocephala*) is not permitted;

Prior to Commencement of Use

- g. The Applicant obtaining approval from the Department of Water for any proposed groundwater abstraction;

Other

- h. Planting of all buffer areas is to be completed by no later than the 31st August 2017;
 - i. The Applicant is to organise and facilitate a site inspection with Council's Planning Staff by the 31st August 2017, to ensure that buffer planting has been completed to a satisfactory standard to the satisfaction of the Manager of Planning Services; and
 - j. This approval is valid for a period of two (2) years. If development is not completed within this period, a new approval must be obtained before commencing or continuing development.
2. In accordance with its delegation under Clause 27 Notice and Delegations Instruments advises the Applicant that revised Application 15/31302 shall be deemed to be approved under the Greater Bunbury Region Scheme.

16/329.

Carbone/Wood**"That Council:**

1. **Grants Development Approval for 46.7ha of horticulture on Lots 9, 10, 2940 and 3025 Ludlow Road and portion of unconstructed road reserve, Myalup, subject to the following conditions:**

- a. A person shall not without the written approval of Council, use the land in respect of which Council has granted Development Approval subject to conditions, until all of those conditions have been complied with to the satisfaction of Council;
- b. Horticulture production being limited to 46.7 ha as depicted in the plan labelled 'Area Approved for Horticulture' (refer *Attachment 6*);

Prior to Site Works

- c. The Applicant is to submit for approval by the Manager of Planning Services a detailed buffer plan to establish a minimum 20m vegetated buffer along drainage lines through the subject lots and a 40m vegetated buffer to the adjacent Yalgorup National Park. These buffers are required to protect water quality and the National Park from chemical spray drift, pollutants and weed invasion. The Buffer Plan is to detail endemic vegetation species, frequency and distribution. The Buffer Plan is to be approved prior to commencement of site works;
- d. The Applicant is to obtain a Permit under the Shire of Harvey's Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2008, associated with use of a road reserve for horticulture production to the satisfaction of the Executive Manager of Technical Services;
- e. The Applicant is to upgrade and maintain the vehicle crossover to the satisfaction of the Executive Manager of Technical Services;

Ongoing

- f. The development and land use is to comply with the *Biosecurity and Agricultural Management (Stable Fly) Management Plan 2013 and Health Act 1911* at all times;
- g. Clearing of Tuart trees (*Eucalyptus gomphocephala*) is not permitted;

Prior to Commencement of Use

- h. The Applicant obtaining approval from the Department of Water for any proposed groundwater abstraction;

Other

- i. Planting of all buffer areas is to be completed by no later than the 31st August 2017;

- j. **The Applicant is to organise and facilitate a site inspection with Council’s Planning Staff by the 31st August 2017, to ensure that buffer planting has been completed to a satisfactory standard to the satisfaction of the Manager of Planning Services; and**
 - k. **This approval is valid for a period of two (2) years. If development is not completed within this period, a new approval must be obtained before commencing or continuing development.**
2. **In accordance with its delegation under Clause 27 Notice and Delegations Instruments advises the Applicant that revised Application 15/31302 shall be deemed to be approved under the Greater Bunbury Region Scheme.”**
CARRIED 12-0

Development Services Committee
22nd November 2016

MINUTES

16/330.

Monagle/Shortland

“That the Minutes of the Development Services Committee Meeting, held on Tuesday, 22nd November 2016, be received and the recommendations listed hereunder be adopted en-bloc.”

8.1 PLANNING REPORT

- 8.1.3 Proposed Setback Variation for Patio – R. Emmott – Lot 202 (No. 13) Norah Brook Road, Benger (A009199).
- 8.1.5 Memorandum of Understanding - Reserve 47920, Rosamel Swamp – D. Michal and N. Kelly – Reserve 47920 Rosamel Swamp (A009485).
- 8.1.6 Continuation of Council Provenance Seed Bank – Cape Life – Shire of Harvey (HSV003).

8.2 BUILDING REPORT

- 8.2.1 Building Permit Applications Received – Building Permits Issued – October 2016 – Shire of Harvey (BSR017 (15)).

CARRIED 12-0

Mr. Dandridge and Mr. Stewart left the meeting at 4.56p.m.

Mrs Edwards left the meeting at 4.57p.m.

J. REPORTS BY OFFICERS OF COUNCIL**TECHNICAL SERVICES**

Item No.	1	
Subject:	Closure of Portion of Coalfields Highway	
Proponent:	Main Roads Western Australia	
Location:	Coalfields Highway, Roelands	
Reporting Officer:	Executive Manager Technical Services	
File No.:	ES/R/0833	Attachment Reg. No.

Summary

Main Roads Western Australia (MRWA) is progressively upgrading the Coalfields Highway to improve road conditions and safety of the road. As part of the overall works, MRWA initiated action to acquire land to accommodate the widening of a section of the Coalfields Highway in Roelands.

A formal request has been received from MRWA for Council to support the closure of a redundant section of the Coalfields Highway pursuant to section 58 of the Land Administration Act (1997). It is recommended that Council supports this request.

Background

As part of MRWA's Capital Works program, significant upgrades and improvements have been undertaken to the Coalfields Highway over recent years. Upgrades that have been undertaken include road reconstruction, widening, improved geometry (in some instances new road alignment), construction and sealed shoulders including extending the guard railing as well as improvements to passing lanes.

Council previously supported the acquisition and dedication of additional land required for the upgrade of Coalfields Highway. At its meeting on 9th July 2013, Council resolved as follows:

"That Council supports Main Roads Western Australia's request for the future dedication of the land being acquired for road purposes for the Coalfields Highway and endorses the acquisition of the six (6) parcels of land as depicted on Main Roads Western Australia drawing No. 201302-0001 required to accommodate widening of a section of the Coalfields Highway in Roelands."

An integral part of the upgrade was the construction of a 4 km extension to the passing lane on Roelands Hill, which provides for a 7km continuous passing lane and the completion of the upgrade east and west of Gastaldo Road.

As part of the land acquisition process for the extension to the passing lane, MRWA has negotiated a land exchange with the owners of Lot 170 Coalfields Highway, Roelands, where the land required for the additional road widening (Lots 404 to 406 on Deposited Plan (DP) 400543) will be exchanged for the section of redundant road as shown as Lot 500 on DP 406289, refer to **Attachments 1 and 2** respectively.

MRWA advised that "in principle" approval has already been obtained from the Department of Lands to the land exchange and is now seeking Council's support for the closure of this section of the Coalfields Highway.

Comment

Staff are in support of the widening of the Coalfields Highway in order to extend the climbing lane to provide for safer passing of slow moving vehicles. MRWA previously indicated that negotiations with the land owners have commenced and this partial closure is not anticipated to have any detrimental effect on the land or usage thereof.

MRWA will arrange to have the closure advertised in the local paper and seek comments from the public and relevant service authorities and will advise the Shire once the advertising period has been completed.

Statutory/Policy Environment

Section 58 of the Land Administration Act 1997 provides for the permanent closure of roads and subsequent dealings thereof.

Section 56 of the Land Administration Act (1997) deals with “*Dedication of land as road*”, which requires Council’s support for the formal acquisition process to proceed.

Strategic Framework

Within the Shire’s Strategic Community Plan 2013 - 2023, Strategy 4.3.4 states:

“Monitor and ensure compliance with regulatory framework for local government business.”

Risk Management

The Risk Theme Profile identified as part of this report is ***Providing Inaccurate Advice/Information***. The Consequence could be Financial, Reputational or Compliance if correct procedures are not followed for acquiring land under the Land Administration Act (1997). The risk is mitigated as this request was previously endorsed by Council. Further advertising of the requested closure and Council support is required as part of the process, resulting in LOW risk being present.

Budget Implications

Nil – Main Roads WA will be responsible for all costs associated with this process.

Officer’s Recommendation

That Council supports the request from MRWA for the closure of a section of the Coalfields Highway, as indicated on Deposited Plans 400543 and 406289, in accordance with Section 58 of the Land Administration Act 1997 subject to:

1. MRWA being responsible for the advertising of the proposed road closure for 35 days to seek comments from providers of public utility services and the general public; and
2. Following the public advertising period if objections are received the matter be referred back to Council for further consideration.

16/331. **Burgoyne/Carbone**
“That the Officer’s Recommendation be adopted.”

CARRIED 12-0

SIGNED _____ DATED 20th December 2016.

CORPORATE SERVICES

Item No.	1
Subject:	Application for Exemption To Keep More Than The Prescribed Number of Dogs
Proponent:	Ms. Victoria Wiles-Day
Location:	44 Valentine Way, Australind
Reporting Officer:	Administrator Law & Safety Services
File No.:	A006408
	Attachment Reg. No. 16/23078

Summary

An application for exemption to keep more than the prescribed number of dogs has been received from Ms Victoria Wiles-Day (the Applicant) of 44 Valentine Way, Australind. A copy of the application received is attached (refer **Attachment 1**) to this report. It is recommended that this application be approved subject to conditions.

Background

The Applicant currently has two (2) dogs that are registered with the Shire, those being a Maltese Cross, Female, aged 5 years, Amber, Registration Number 182055, and a Golden Retriever, aged 3 years, Rueben, Registration Number 1602017.

The property at 44 Valentine Way, Australind is owned by the Applicant, zoned Residential and 1,232m² in area. The Applicant seeks approval to locate at her premises a female Golden Retriever as a companion dog for her existing sterilised male Golden Retriever. Note it is understood that the third dog is already located at the premises.

The Applicant has advertised in the Harvey Reporter newspaper advising residents of her intentions and inviting submissions to be made to Council within the prescribed time (refer **Attachment 2**). A second advertisement was undertaken as the Harvey Reporter is not home delivered in the Australind area. The second advertisement was placed in the Bunbury Herald of 25th October 2016 (refer **Attachment 4**). No objections were received as a result of this advertisement.

The surrounding property owners were notified by Staff of the application with one objection being received within the prescribed response time (refer **Confidential Attachment 3**).

Provisions under the Dog Act 1976, and Council's Dog Local Law 2008, stipulate that a person may only keep two (2) dogs over the age of three months and the young of those dogs under that age. Section 26 of the Dog Act 1976 does, however, allow the Council to approve more than the prescribed number of dogs to be kept on a property.

Comment

This application has been considered and reviewed in line with the general indicia established by the State Administrative Tribunal, GADD V SHIRE OF HARVEY CC 1153 OF 2007, being:

- **Attributes of the dogs, such as their breed, size, nature whether de-sexed and any history of complaints:**

The Applicant currently has two dogs registered with the Shire, one being a Maltese Cross and the other a Golden Retriever. Both dogs are micro chipped and sterilised. There is one objection recorded stating that when the dogs are left unattended they bark excessively (refer **Confidential Attachment 3**).

- **The size, location and zoning of the premises at which the dogs are housed:**

The property at 44 Valentine Way, Australind is zoned Residential comprising of 1,232m² in area. The size of the property does provide sufficient area for three dogs of the size and breed nominated.

- **The conditions of the dogs accommodation, for example, the standard of fencing shade, security, cleanliness; and factors that may affect their welfare:**

An inspection of the property by Staff found:

- Provision of shade/water - Adequate shade, sufficient food and water provided;
 - Property fences - Suitable fencing;
 - General Condition of dogs - Both dogs are clean and well cared for; and
 - Cleanliness of property - Property is clean and tidy.
- **Other factors such as aggregation of dogs in the same area, the Applicant's experience in and methods of handling dogs and motivation in obtaining more than the prescribed number of dogs:**
 - There are six (6) dogs registered in properties surrounding the Applicant and no other properties have approval for more than two dogs

During the consultation period there was one objection received stating that when the dogs are left unattended they bark excessively (refer **Confidential Attachment 3**). This situation will need to be monitored and would be actioned if any complaints are received. It is unable to be stated whether the barking of the dogs is related to whether there is two or three dogs located at the premises or if there are any other factors involved.

Statutory/Policy Environment

Dog Act 1976 - Section 26. Controls the number of dogs permitted.

Shire of Harvey Dog Local Law 2008 - Clause 3.2, limitations on the number of dogs permitted.

Strategic Framework

Within the Shire's Strategic Community Plan 2013 - 2023, Strategy 3.1.3 states:

"Monitor and ensure compliance with the regulatory framework for local government business."

Risk Management

The Risk Theme Profile identified as part of this report is **Inadequate Environment Management** (considered the neighbourhood and noise environment). The Consequence would be Environment if there is an increase in dog barking behaviour with the third dog located at the premises. The consequence rating is considered Moderate (3) and the Likelihood as Possible (3), giving a moderate rating of (9).

Council has the full authority pursuant to the Dog Act 1976 to approve or refuse the application. Points 2 and 7 of the recommendation below mitigates the risk by stating that the exemption will automatically lapse on any offence relating to the Dog Act 1976, which is relevant considering that an issue of barking has been raised as part of the application process.

Budget Implications

Nil.

Officer's Recommendation

That Council approves the application from Ms. Victoria Wiles-Day, of 44 Valentine Way, Australind for exemption to keep three (3) dogs subject to:

1. The exemption applies only to the dogs listed on the application and once any of the dogs are deceased, sold or otherwise disposed of, the exemption automatically lapses;
2. The exemption will automatically lapse on any offence relating to the Dog Act 1976, by the dogs or any person in charge of these dogs;
3. The property must be kept clear of all animal excreta using proper disposal methods;
4. Adequate cover and protection is available for the dogs at all times;
5. The dogs being at all times adequately confined in accordance with the Dog Act 1976;
6. Access be given to the Council for annual inspections or more regularly if the Council so determines;
7. The exemption may be revoked or varied at any time in a manner provided for in Section 26 (3)(c) of the Dog Act 1976; and
8. The exemption only applies to 44 Valentine Way, Australind and should the Applicant move to another address or the dogs be relocated to another address the approval shall lapse.

16/332.

Adams/Woods

"That Council refuses the application from Ms. Victoria Wiles-Day to keep three (3) dogs at 44 Valentine Way, Australind as no compelling reason was provided in support of the application and due to an objection being received stating that the dogs bark excessively when left unattended."

CARRIED 7-5

Note: the reason for the change to the Officer's Recommendation is contained within the motion stated above.

SIGNED _____ DATED 20th December 2016.

Item No.	2
Subject:	Application for Exemption To Keep More Than The Prescribed Number of Dogs
Proponent:	Ms. R. Putt
Location:	20 Craigie Drive, Roelands
Reporting Officer:	Administrator Law & Safety Services
File No.:	A013737
	Attachment Reg. No.

Summary

An application for exemption to keep more than the prescribed number of dogs has been received from Ms. Ruby Putt (the Applicant) of 20 Craigie Drive, Roelands. A copy of the application received is attached (refer **Attachment 1**) to this report and it is recommended that this application be approved subject to conditions.

Background

The Applicant currently has two (2) dogs that are registered with the Shire that being a King Charles Cavalier, Female, aged 3 years, Lola, Registered Number 172349, a King Charles Cavalier, Male, aged 2 years, Jasper, Registered Number 172358.

The third dog is a King Charles Cavalier, Male, aged 1 year, Jet, Registered Number LT 2682 which is registered with the Shire at a relative's address within the Shire.

The property at 20 Craigie Drive, Roelands is owned by the Applicant, zoned Special Residential and 3,994m² in area.

The reason for the application is that the Applicant and her partner have moved from Perth to Roelands with their two dogs. Due to the size of the property and the dogs they wish to purchase a third dog (refer **Attachment 2**).

The Applicant has advertised in the Bunbury Mail newspaper advising residents of her intentions and inviting submissions to be made to Council within the prescribed time (refer **Attachment 3**).

The surrounding property owners were notified by Staff of the application with no objections being received within the prescribed response time (refer **Attachment 4**).

There were no objections received during either time period resulting from the advertisement or from surrounding property owners.

Provisions under the Dog Act 1976, and Council's Dog Local Law 2008, stipulate that a person may only keep two (2) dogs over the age of three months and the young of those dogs under that age. Section 26 of the Dog Act 1976 does, however, allow the Council to approve more than the prescribed number of dogs to be kept on a property.

Comment

This application has been considered and reviewed in line with the general indicia established by the State Administrative Tribunal, GADD V SHIRE OF HARVEY CC 1153 OF 2007, being:

- **Attributes of the dogs, such as their breed, size, nature whether de-sexed and any history of complaints:**

The Applicant currently has two dogs registered with the Shire as listed previously in this report and the third dog is also registered with the Shire. All three are micro chipped and sterilised.

There are no known complaints concerning either the owner or the dogs.

- **The size, location and zoning of the premises at which the dogs are housed:**

The property at 20 Craigie Drive, Roelands is zoned Special Residential within the Residential area of Roelands comprising of 3994m² in area. The size of the property does provide sufficient area for three dogs of the size and breed nominated.

- **The conditions of the dogs accommodation, for example, the standard of fencing shade, security, cleanliness; and factors that may affect their welfare:**

An inspection of the property by Staff found: (refer **Attachment 5**)

- Provision of shade/water - Adequate shade, sufficient food and water provided;
 - Property fences - Suitable fencing; small square wire external boundary;
 - General Condition of dogs - All dogs are clean and well cared for; and
 - Cleanliness of property - Property is clean and tidy.
- **Other factors such as aggregation of dogs in the same area, the Applicant's experience in and methods of handling dogs and motivation in obtaining more than the prescribed number of dogs.**
 - There are two (2) dogs registered in properties surrounding the Applicant and no other properties have approval for more than two dogs.

Statutory/Policy Environment

Dog Act 1976 - Section 26. Controls the number of dogs permitted.

Shire of Harvey Dog Local Law 2008 - Clause 3.2 limitations on the number of dogs permitted.

Strategic Framework

Within the Shire's Strategic Community Plan 2013 - 2023, Strategy 3.1.3 states:

"Monitor and ensure compliance with the regulatory framework for local government business."

Risk Management

The Risk Theme Profile identified as part of this report is ***Providing Inaccurate Advice/Information***. The Consequence could be Property or Environment if the approval results in any complaints being received regarding the dogs. The Consequence rating would Moderate (3) and Likelihood **Possible (3)** resulting in a MODERATE risk rating.

Budget Implications

Nil.

Officer's Recommendation

That Council approves the application from Ms. Ruby Putt from 20 Craigie Drive, Roelands for exemption to keep three (3) dogs subject to:

1. The exemption applies only to the dogs listed on the application and once any of the dogs are deceased, sold or otherwise disposed of, the exemption automatically lapses;
2. The exemption will automatically lapse on any offence relating to the Dog Act 1976, by the dogs or any person in charge of these dogs;
3. The property must be kept clear of all animal excreta using proper disposal methods;
4. Adequate cover and protection is available for the dogs at all times;
5. The dogs being at all times adequately confined in accordance with the Dog Act 1976;
6. Access be given to the Council for annual inspections or more regularly if the Council so determines;
7. The exemption may be revoked or varied at any time in a manner provided for in Section 26 (3) (c) of the Dog Act 1976; and
8. The exemption only applies to 20 Craigie Drive, Roelands and should the Applicant move to another address or the dogs be relocated to another address the approval shall lapse.

16/333. **Adams/Woods**
"That Council refuses the application from Ms. Ruby Putt to keep three (3) dogs at 20 Craigie Drive, Roelands as no compelling reason was provided for the keeping of three dogs."

LOST 4-8

16/334. **Carbone/Monagle**
"That the Officer's Recommendation be adopted."

CARRIED 10-2

Cr. Burgoyne declared a proximity interest at this time in Corporate Services Item 3 and left the Chamber at 5.22p.m.

Item No.	3
Subject:	Application for Exemption To Keep More Than The Prescribed Number of Dogs
Proponent:	Mr. M. Winwood
Location:	7 Heppingstone Road, Brunswick
Reporting Officer:	Administrator Law & Safety Services
File No.:	A006145
	Attachment Reg. No. 16

Summary

An application for exemption to keep more than the prescribed number of dogs has been received from Mr. Michael Winwood (the Applicant) of 7 Heppingstone Road, Brunswick. A copy of the application received is attached (refer **Attachment 1**) to this report and it is recommended that this application be approved subject to conditions.

Background

The Applicant currently has one (1) dog that is registered with the Shire that being a Golden Retriever, Male, aged 2 years, Kai, Registered Number 161755. His partner has recently moved from another Shire and is living with the Applicant.

She has two (2) dogs, those being a Staffordshire/Red Heeler Cross, Male, aged 1 year, Griff, Registered Number 172377 and Great Dane Cross, Male, aged 7 months, Caboose, Registered Number 172419.

The property at 7 Heppingstone Road, Brunswick is rented by the Applicant, zoned "Other Community" and is 809m² in area. The property has a non-conforming use right to be used as a residence. The property is an old church site in Brunswick. The zoning of the property does not alter the requirement for the application to be determined by Council pursuant to the Dog Act 1976 and Shire of Harvey Dogs Local Law 2008.

Correspondence was sent to the owner requesting any objections to this application and no reply was received (refer **Attachment 2**). The Applicant has stated the owners of the property are aware of this application and they have no objections (refer **Attachment 3**). The property agent was also contacted and no objection was received.

The Applicant has advertised in the Harvey Reporter newspaper advising residents of his intentions and inviting submissions to be made to Council within the prescribed time (refer **Attachment 4**). During the advertising period there were no objections received.

The surrounding property owners were notified by Staff of the application with no objections being received within the prescribed response time (refer **Attachment 5**).

Provisions under the Dog Act 1976, and Council's Dogs Local Law 2008, stipulate that a person may only keep two (2) dogs over the age of three months and the young of those dogs under that age. Section 26 of the Dog Act 1976 does, however, allow the Council to approve more than the prescribed number of dogs to be kept on a property.

Comment

Initially this item was deferred from Council's meeting held on 8th November 2016, due to their being some confusion in the supporting documents to the application as to the breed and number of dogs. It has been confirmed with the owner that there are 3 dogs subject of the application and that the dog that was the subject of the confusion is the Staffordshire/Red Heeler Cross. This dog was described in different terms (A Red Heeler) in one letter and in a second letter as a Staffordshire Cross. It has been confirmed to be the same dog.

This application has been considered and reviewed in line with the general indicia established by the State Administrative Tribunal, GADD V SHIRE OF HARVEY CC 1153 OF 2007, being:

- **Attributes of the dogs, such as their breed, size, nature whether de-sexed and any history of complaints:**

The Applicant currently has three dogs registered with the Shire as listed previously in this report. All three are micro chipped and the Staffordshire Cross is sterilised. The other two dogs are not sterilised.

Contrary to what the Applicant has stated in his application, there were a number of complaints concerning his dog, the Golden Retriever in the Shire of Corrigin. This dog was rushing aggressively at people, however it did not bite anyone. The reason given for this behaviour the given by the Local Ranger was the substandard fencing on the property where the Applicant was residing.

- **The size, location and zoning of the premises at which the dogs are housed:**

The property at 7 Heppingstone Road, Brunswick is Zoned Residential within the Residential area of Brunswick comprising of 809m² in area. The size of the property does provide sufficient area for three dogs of the size and breed nominated.

- **The conditions of the dogs accommodation, for example, the standard of fencing shade, security, cleanliness; and factors that may affect their welfare;**

An inspection of the property by Staff found (refer **Attachment 6**):

- Provision of shade/water - Adequate shade, sufficient food and water provided;
 - Property fences - Suitable fencing;
 - General Condition of dogs - All dogs are clean and well cared for;
 - Cleanliness of property - Property is clean and tidy.
- **Other factors such as aggregation of dogs in the same area, the Applicant's experience in and methods of handling dogs and motivation in obtaining more than the prescribed number of dogs.**
 - There are five (5) dogs registered in properties surrounding the Applicant and no other properties have approval for more than two dogs.

The reason for the application is that the Applicant and his partner have moved in together and they do not wish to dispose of one of the dogs (refer **Attachment 3**).

Statutory/Policy Environment

Dog Act 1976 - Section 26. Controls the number of dogs permitted.

Shire of Harvey Dog Local Law 2008 - Clause 3.2. Limitations on the number of dogs permitted.

Strategic Framework

Within the Shire's Strategic Community Plan 2013 - 2023, Strategy 3.1.3 states:

"Monitor and ensure compliance with the regulatory framework for local government business."

Risk Management

The Risk Theme Profile identified as part of this report is ***Providing Inaccurate Advice/Information***. The Consequence could be Property or Environment if the approval results in any complaints being received regarding the dogs. The Consequence rating would Moderate (3) and Likelihood **Possible (3)** resulting in a MODERATE risk rating.

Budget Implications

Nil.

Officer's Recommendation

That Council approves the application from Mr. Michael Winwood of 7 Heppingstone Road, Brunswick, for exemption to keep three (3) dogs subject to:

1. The exemption applies only to the dogs listed on the application and once any of the dogs are deceased, sold or otherwise disposed of, the exemption automatically lapses;
2. The exemption will automatically lapse on any offence relating to the Dog Act 1976, by the dogs or any person in charge of these dogs;
3. The property must be kept clear of all animal excreta using proper disposal methods;
4. Adequate cover and protection is available for the dogs at all times;
5. The dogs being at all times adequately confined in accordance with the Dog Act 1976;
6. Access be given to the Council for annual inspections or more regularly if the Council so determines;
7. The exemption may be revoked or varied at any time in a manner provided for in Section 26 (3)(c) of the Dog Act 1976; and
8. The exemption only applies to 7 Heppingstone Road, Brunswick and should the Applicant move to another address or the dogs be relocated to another address the approval shall lapse.

- 16/335. **Carbone/Giancono**
 “That the Officer’s Recommendation be adopted.”
LOST 3-8
- 16/336. **Adams/Lovitt**
 “That Council refuses the application from Mr. Michael Winwood to keep three (3) dogs at 7 Heppingstone Road, Brunswick based on the size of the property, size of the breed of dogs and previous aggressive behaviour of one of the dogs.”
CARRIED 8-3

Cr. Burgoyne returned to the Chamber at 5.35p.m.

Item No.	4	
Subject:	Request for Use of Yarloop Sports Pavilion	
Proponent:	Yarloop Community Resource Centre (CRC)	
Location:	Lot 21 Kendall Street, Yarloop	
Reporting Officer:	Executive Manager Corporate Services	
File No.:	A005544 (8)	Attachment Reg. No. 16/35962

Summary

The Yarloop CRC has written to Council (refer **Attachment 1**) seeking permission to relocate to the Yarloop Sporting Pavilion for a period of time while new premises are constructed in Yarloop that would accommodate them.

It is recommended that the proposal be advertised and any comments received be considered by Council in a further report.

Background

The Yarloop CRC premises were destroyed in the January 7th 2016 bushfire. The CRC have been operating out of the Masonic Lodge building in Yarloop since that time.

A location plan is attached of the area (refer **Attachment 2**).

Comment

The CRC advises that the Masonic Lodge premises are unsuitable, particularly as all of the CRC equipment needs to be moved when the building is used by the Masons. Security and space are other concerns that have been raised.

Council is in the process of developing plans for a Community Centre incorporating new CRC premises however this is not expected to be built and opened for an estimated 18 months. The Yarloop Town Development Working Group are presently assessing preliminary concept plans and developing the proposal.

An inspection of the Pavilion building was undertaken on 21st November 2016, which included the Chief Executive Officer and Executive Manager Technical Services. The building, while somewhat dated and in need of some maintenance works, would appear suitable as a base for the CRC for an interim period.

SIGNED _____ DATED 20th December 2016.

While the recommendation at this stage is to seek comments from the community some of the matters that would need to be considered if the building was to be utilised by the CRC for an extended period of time are as follows –

- Inability to be used by casual hirers.
- The building contains the only public shower facilities in Yarloop.
- The Yarloop Playgroup, which not currently operating, has their equipment stored in the shed at the premises.

Staff are aware of some opposition to this proposal and hence the recommendation to seek public comment.

Statutory/Policy Environment

Section 3.58 of the Local Government Act 1995, deals with the disposal of Property including leasing and Clause 30(2)(b) of the Local Government (Functions and General) Regulations 1996, provides an exemption for Community, Sporting and other similar groups.

Strategic Framework

Within the Shire's Strategic Community Plan 2013 - 2023, Strategy 3.1.3 states:

"Continue to provide facilities and services to support local community organisations."

Risk Management

The Risk Theme Profile identified as part of this report is **Business and Community Disruption**. The Consequence identified is Service Interruption. There is no Consequence Rating assigned to this report as the recommendation to Council is to seek comments only (advertise) at this stage with a decision to be recommended in a subsequent report.

Budget Implications

Nil.

Officer's Recommendation

That Council:

1. Seek community comment on the request from the Yarloop CRC occupying the Yarloop Pavilion on a short term basis (estimated 18 months) while a Community Centre incorporating a CRC is in the process of being planned and constructed; and
2. Receive a further report once community comments are received on this proposal.

16/337. **Wood/Giancono**
"That the Officer's Recommendation be adopted."

CARRIED 12-0

Item No. 5

Subject: Ottrey Park Mural Proposal
Proponent: Myalup Community Association
Location: Ottrey Park, Myalup
Reporting Officer: Community Development Officer SJ
File No.: A006241

Attachment Reg. No.**Summary**

This report presents a proposal from the Myalup Community Association (MCA) to paint a new mural onto the western wall of the public toilet facility at Ottrey Park. It is recommended that the proposal be supported subject to the design for the proposed mural being approved by Council prior to installation and certain other conditions.

Background

The Ottrey Park and Myalup Foreshore Development Plan was adopted by Council in March 2011 and included an upgrade and consolidation of play equipment at Ottrey Park. Consultation with the Myalup Community Association (MCA) and local community members took place and during that process a strong desire for the playground to incorporate elements of "nature play" was expressed.

A Lotterywest grant of \$50,000 was obtained and the balance of funds for the project was allocated from the Coastal Communities Facilities Reserve. The project has largely been completed and was officially opened by the Shire President in December 2015. The final elements of the project were planned to be completed in the early part of 2016 however the advent of the Yarloop Bushfire and the availability of staff resources caused a delay in the completion of the project. The current balance of the project budget (\$7,555) has been carried forward to 2016/17 Budget to enable the final elements to be completed.

Comment

Further consultation has taken place with the Myalup Community Association and local community and the MCA's proposal is to paint a 3600m x 2400m artwork onto the western wall of the public toilet facility at Ottrey Park, adjacent to the new playground. The attached photograph (Attachment 1) shows the proposed location of the mural and the second attached photograph (Attachment 2) shows the artists concept design.

The estimated cost for the project is as follows:

Steel Tubing and Galvanised Steel Sheets	\$269.00
Primer Paint	\$297.00
Assembling and priming base coats	\$799.00
Paint and Brushes	\$270.00
Shire contractor mounting mural on wall	<u>\$528.00</u>

Total \$2,163.00 GST inclusive

Myalup artist, Graeme McPherson has offered to donate his time for designing and painting the mural for the community.

The proposal is considered to be a positive initiative that will help promote Myalup as a small sea side town to both local residents and visitors and will provide a new mural artwork in the town at no cost to Council. Staff do not, however, support painting directly onto face brickwork. Any approval should be on the basis of a panel that can be affixed to the wall and is removable.

Should Council be supportive of the proposal it would be recommended that approval be subject to the following conditions:

- The design for the mural artwork is to be submitted for consideration by the Myalup Community Association with the Committee to recommend to Council the suitability or otherwise of the mural design.
- The MCA accepting responsibility for ongoing maintenance of the mural artwork including removal of any graffiti.
- The mural to be on a separate all weather durable panel to be affixed to the building to the satisfaction of Council's Principal Building Surveyor.
- The Shire reserves the right to remove the mural should it be vandalised or become unsightly.

Statutory/Policy Environment

N/A

Strategic Framework

Within the Shire's Strategic Community Plan 2013 – 2023, Strategies 2.4.4 and 3.1.2 state:

2.4.4 *"Provide quality amenities and accessible public spaces for our community."*

3.1.2 *"Continue to engage local community groups to understand needs, improve facilities and source grant funding."*

Risk Management

The Risk Theme Profile identified as part of this report is ***Inadequate Engagement Practices***. The consequence could be "Reputational" if Council decided not to support the proposal. The Risk Consequence is considered to be "Minor" (2), and the Likelihood as "Unlikely" (2) resulting in a LOW level of risk.

Budget Implications

All costs will be absorbed by funds remaining in the Ottrey Park upgrade account.

Officer's Recommendation

That Council approves the proposal from the Myalup Community Association to affix a mural artwork on the western wall of the public toilet facility at Ottrey Park subject to the following conditions:

1. The design for the mural artwork is to be submitted to Council for approval prior to commencement of the project;

SIGNED _____ DATED 20th December 2016.

2. The mural to be on a separate removable panel and to the satisfaction of Council's Principal Building Surveyor;
3. Myalup Community Association accepting responsibility for all costs associated ongoing maintenance of the mural artwork including removal of any graffiti; and
4. The Shire reserves the right to remove the mural should it be vandalised or become unsightly.

16/338. **Beech/Adams**
"That the Officer's Recommendation be adopted."

CARRIED 12-0

Item No.	6
Subject:	Meetings for Coming Months
File No.:	CCC001

Meeting	Location	Date	Time
Work Safety Committee	Harvey Chamber	1 st December 2016	3:00p.m.
Leschenault Leisure Centre Advisory Committee	LLC	9 th December 2016	8:00a.m.
Harvey Local Emergency Management Committee	Harvey Chamber	12 th December 2016	5:30p.m.
Special Corporate Services Committee	Harvey Chamber	13 th December 2016	3:00p.m.
Development Services Committee	Harvey Chamber	13 th December 2016	4:00p.m.
Corporate Services Committee	Harvey Chamber	20 th December 2016	2:00p.m.
Ordinary Council	Harvey Chamber	20 th December 2016	4:00p.m.
Annual Elector's Meeting	Harvey Chamber	20 th December 2016	6:00p.m.

Officer's Recommendation

That the Meetings for Coming Months be noted.

16/339. **Wood/Lovitt**
"That the Officer's Recommendation be adopted."

CARRIED 12-0

K. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil.

L. NOTICE OF MOTION FOR CONSIDERATION AT THE FOLLOWING MEETING

Cr. Lovitt requested that the following Notice of Motion be placed on the Ordinary Council Meeting Agenda of 20th December 2016:

Lovitt/_____

“That the Shire of Harvey:

- Adopt current best practice by including a formal Acknowledgement of the Elders of the Gnaala Karla Booja region of the Nyoongar nation as part of the standard Council meeting agenda.*
- Install a third flag pole at each Administration office so that the flag of the Aboriginal people can be flown at all times of the year, and that that flag be installed into both Council chambers along with those currently displayed.*
- Adopt of Protocol for Acknowledgement of the Traditional Owners of Land to make this both standardised and respectful to the local Aboriginal community.”*

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

Nil.

N. REPORTS OF MEMBERS**Cr. Giancono**

Cr. Giancono reported on his attendance at:

- Harvey Mainstreet Committee AGM with the lighting of the mural in the diversion channel to be undertaken for Christmas. The Committee has requested if Council could view the lighting after its meeting on the 20th December 2016; and**
- Binningup Community Association meeting last week. The entrance traffic island into Binningup which is maintained by Main Roads WA is unsightly and the group have enquired if Council can do anything to improve it.**

Cr. Monagle

Cr. Monagle reported on attending a meeting in Brunswick to look at the establishment of a Mens Shed. Approximately 20 people attended and a Committee of 10 was formed to progress the matter. Overall it was a very positive meeting.

Cr. Wood

Cr. Wood commended Shire Staff on preparations and presentation of its Annual Dinner held Friday, 18th November 2016.

Cr. Burgoyne

Cr. Burgoyne reported on his attendance at:

- Brunswick proposed Mens Shed meeting; and
- Thank a Volunteer Day event at Brunswick Community Resource Centre. He advised a straw poll of 45 people identified public transport as a major issue.

Cr. Lovitt

Cr. Lovitt reported on her attendance at:

- Interesting visit with DAIC to the Harvey Seniors;
- Business South West Sundowner in the Harvey Council Chambers;
- Worsley Community Engagement Meeting where they provided information on technological change where Boilermakers are creating state of the art videos in their spare time showing from the ground to the ship, the story of the ore mined, and where they now employ a data scientist to look at scheduling, as well as a cartoonist creating Occupational Health and Safety videos that are shared via mobile phone to staff. These previously cost tens of thousands and are now around \$160; and
- A Chinese tea ceremony at the Australind Library where volunteers were thanked for their work throughout the year.

Cr. Campbell

Cr. Campbell reported on his attendance at:

- Environmental Improvement Plan meeting at ALCOA which he attended with the Manager Planning Services and where a Fire Management Plan was included on the 23rd November 2016; and
- Contiguous Local Authorities Group (CLAG) meeting in Bunbury on the 28th November discussing the 'Fight the Bite Program' (mosquitos).

Cr. Adams

Cr. Adams reported on his attendance at:

- Morrissey Homestead Committee meeting on the 14th November 2016, with the main topic being an organisational review;
- Bunbury Harvey Regional Council Workshop on the 16th November 2016, with discussion on the Stanley Road facility extension;
- Shire of Harvey Annual Dinner held 18th November 2016;
- Bunbury Harvey Regional Council meeting held 24th November 2016, noting that Bunbury Harvey Regional Council compost has received certification; and
- CLAG meeting along with Cr. Campbell held on the 28th November 2016.

Cr. Beech

Cr. Beech reported on his attendance at:

- Small Business Sundowner on the 15th November 2016;
- Harvey Recreation and Cultural Centre meeting noting the fundraising for the new extension is progressing well and they are confident the targets will be met;
- Shire of Harvey Annual Dinner held 18th November 2016, with many thanks to staff involved for a wonderful evening;
- Australind Library on the 21st November 2016, where volunteers were acknowledged for their work throughout the year;
- Citizenship Ceremony held in the Australind Chamber on the 22nd November 2016; and
- Regional Road Group meeting along with the Executive Manager Technical Services on the 28th November 2016, with the following points being discussed:
 - Raymond Road, funds of \$3.3m are available from the Safer Roads Program to construct and widen 3.5kms of road. Works are planned for Feb-Apr 2017.
 - Funds of \$210,000 are available for preconstruction (State Blackspot) for a left turn acceleration lane at the Old Coast Road intersection (north end of Australind).
 - SW Regional Road Group Proposed Road Project Grants 2017/18 – Programme over subscribed by \$2,249,243.
 - 11 Shire of Harvey projects submitted \$2,124,000.
 - 5 recommended projects totalling \$1,090,330. If successful and Council agrees a budget allocation of \$545,165 will be required. Some will be funded by the Joint Town Planning Scheme.
 - State Government Black Spot - 1 project \$16,667 (Black Spot) \$8,333 Council Budget.
 - Treendale Bridge, on time at present to be completed by December 2017.
 - Main Roads WA will only mow road verges two mower strips wide due to funding. Gained support for an initiative to seek funding to carry out more aggressive weed control and fire mitigation controls in road corridors.

Cr. Jackson

Cr. Jackson reported her attendance at:

- Small Business Sundowner on the 15th November 2016;
- Bunbury Harvey Regional Council Workshop on the 16th November 2016;
- Two meetings of the Regional Cities Growth Development Plan;
- Bunbury Port Sundowner;
- Shire's Annual Dinner held 18th November 2016;
- WA Australian of the Year Awards;
- Australind Library's thanking of volunteers held 21st November 2016;
- Citizenship Ceremony held in the Australind Chamber on the 22nd November 2016;
- South West Zone meeting - Plastic Bags agenda item passed;
- South West Development Commission meeting which discussed the Regional Grant Scheme; and
- Cocktail party hosted by the Shire of Murray.

O. ORDERS OF THE DAYOfficer's Recommendation:

That approval be granted to affix the Common Seal of the Shire of Harvey to the following items:

- | | | |
|----|--|--------------------------------|
| 1. | 70A Notification – Ancillary Accommodation – Lot 176 Heppingstone Road, Brunswick. | Prepared By
Shire of Harvey |
| 2. | Amendment No. 115 to District Planning Scheme No. 1 – Lot 9000 Waterloo Road, Roelands. | Shire of Harvey |
| 3. | Section 70A Notification Lots 3, 616 – 623 and 648 – 655 – Treendale Nominees Pty Ltd – Specified Area Rate. | Shire of Harvey |
| 4. | Section 70A Notification – Lot 9520 Aquamarine Terrace, Australind – Subdivision Approval – Condition 19 – Stage 9E. | Shire of Harvey |
| 5. | Section 70A Notification – Lot 9520 Aquamarine Terrace, Australind (91 Residential Lots) – Specified Area Rate – Stage 9E. | Shire of Harvey |
| 6. | Section 70A Notification – Lot 254 Reef Place, Leschenault – Bush Fire Management and Ancillary Dwelling. | Shire of Harvey |

- 16/340. **Monagle/Burgoyne**
“That the Officer’s Recommendation be adopted.”

CARRIED 12-0

P. MOTIONS WITHOUT NOTICE (by permission of majority of members)

Nil.

Q. MATTER BEHIND CLOSED DOORS (under Section 5.23 (2) of the Local Government Act 1995)**Suspension of Standing Orders**

- 16/341. **Burgoyne/Monagle**
“That Council suspends Standing Orders and Moves Behind Closed Doors in accordance with Section 5.23 (2)(d) of the Local Government Act 1995, to deal with matters that relate to legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting.”

CARRIED 12-0

Standing Orders were suspended at 6.04p.m.

Mr. Bertelli, Ms. Gelmi and Mr. Quinlivan left the meeting at 6.04p.m.

Cr. Burgoyne and Cr. Carbone, having declared financial interests in the following Confidential Item, left the Chamber at 6.04p.m.

SIGNED _____ DATED 20th December 2016.

CONFIDENTIAL ITEM 1 – APPOINTMENT OF EXPERT WITNESSES – PROPOSED GRANITE QUARRY LOT 501 COALFIELDS HIGHWAY, ROELANDS – VARIOUS PLANNING AND ACOUSTIC CONSULTANT FIRMS – SHIRE OF HARVEY (A004761/EX/001).

16/342. Campbell/Adams
“That Council:

1. Notes the Confidential Report in relation to the appointment of Expert Witnesses for the State Administrative Tribunal application for the refusal to extract granite from Lot 501 Coalfields Highway, Roelands dated 29th November 2016; and
2. Delegates the Chief Executive Officer authority to engage suitably qualified consultants to undertake the necessary works on behalf of Council based on the preliminary costings identified in the Confidential Report on the matter dated 29th November 2016.

**ABSOLUTE MAJORITY REQUIRED”
CARRIED BY ABSOLUTE MAJORITY 10-0**

Cr. Burgoyne and Cr. Carbone returned to the Chamber at 6.22p.m.

Resumption of Standing Orders

16/343. Monagle/Burgoyne
“That Standing Orders be resumed.”

CARRIED 12-0

Standing Orders were resumed at 6.23p.m.

R. CLOSURE

There being no further business to discuss, the meeting was declared closed at 6.23p.m.

I, Tania Gae Jackson certify that the aforesaid Minutes of the meeting held on Tuesday, 29th November 2016, are confirmed as a true and correct record of that meeting on Tuesday, 29th November 2016.

Tania G. Jackson
SHIRE PRESIDENT

SIGNED _____ DATED 20th December 2016.