

SHIRE OF HARVEY

DEVELOPMENT SERVICES COMMITTEE

MINUTES OF THE MEETING OF THE DEVELOPMENT SERVICES COMMITTEE HELD ON TUESDAY, 5TH DECEMBER 2017, IN THE COUNCIL CHAMBER, YOUNG STREET, HARVEY COMMENCING AT 4.00P.M.

ATTENDANCE

Shire President	Cr.	T.G.	Jackson
Deputy Shire President	Cr.	P.J.	Beech
	Cr.	F.	Burgoyne
	Cr.	M.	Boylan
	Cr.	D.	Simpson

STAFF

Chief Executive Officer	Mr.	M.	Parker
Executive Manager Technical Services	Mr.	R.	Lotznicker
Principal Building Surveyor	Mr.	M.	Stewart
Principal Environmental Health Officer	Mr.	S.	Dandridge
Manager Planning Services	Mr.	S.	Hall

OBSERVERS

	Cr.	W.	Dickinson
	Cr.	M.	Campbell

GALLERY

	Mr.	J.	Fisher	4.00p.m. – 5.01p.m.
	Mr.	R.	White	
	Mrs	D.	Burrows	4.00p.m. – 4.43p.m.

1. OFFICIAL OPENING

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

2. RECORD OF ATTENDANCE/APOLOGIES

Apologies Cr. Lovitt

Cr. Simpson advised the Committee that he would be an apology for the next Ordinary Council meeting to be held Tuesday, 12th December 2017.

3. DECLARATIONS OF MEMBERS' AND OFFICER'S PERSONAL INTEREST

Nil.

4. RESPONSE TO PREVIOUS QUESTIONS TAKEN ON NOTICE

Nil.

5. PUBLIC QUESTION TIME**PERCY DEWE PARK**

Mr. Rob White advised the Committee that he was pleased to see work being done on Herbert Road. Mr. White then asked whether Hocart Lodge had made payment for the portion of Percy Dewe Park that Council has previously agreed to dispose of.

The Manager of Planning Services, Mr. Simon Hall, advised, that payment had not yet been received. He explained that an Offer and Acceptance had been signed and the matter is awaiting Settlement. Furthermore, he advised that he would follow up progress with the new Chairperson of Hocart Lodge.

6. PETITIONS/DEPUTATIONS/PRESENTATIONS/SUBMISSIONS**ITEM 8.1.2 – REVISED APPLICATION - PROPOSED AQUACULTURE – JASON FISHER – LOT 31 NORAH BROOK ROAD, BENDER (A006339).**

Mr. Jason Fisher addressed the Committee regarding Item 8.1.2. He raised his concern with Conditions 7 and 8 of the Officer's Recommendation.

In respect to condition 7, he outlined that whilst a buffer zone around the proposed ponds was a condition of his previous approval, no reason for it had been given. In regards to this application, no neighbours were concerned with the proposal, no bird netting is proposed, the block has no road fronting it and he is not aware of other marron farms in the Shire or elsewhere having such a condition.

Regarding Condition 8, Mr. Fisher outlined that a rehabilitation plan has not previously been required and a bank guarantee of \$5,000 was a considerable value of the overall development. Mr. Fisher advised this condition was not included in the draft conditions provided to him on 28th November 2017.

Mr. Fisher suggested that regarding condition 10, the marron he will grow are the same as wild marron but he felt this was a minor issue that could be addressed.

Finally, Mr. Fisher requested that Conditions 7 and 8 of the Officer's Recommendation be removed as they would make the venture commercially unviable.

Cr. Simpson queried the water level proposed as the ponds included in the application are shallower than those previously approved. Mr. Fisher explained that he would be installing diffusers to turn the water over and that water temperature would be maintained from 22°C– 26°C, the most suitable growing conditions.

Cr. Simpson also asked why no sheds were proposed as part of the development. Mr. Fisher explained that he owns an adjacent property, as does his father, so sheds are close by if needed, however it is not proposed to need sheds for the processing proposed.

ITEM 8.1.1 – MYALUP GULL REDEVELOPMENT – AMENDED SOUTHERN JOINT DEVELOPMENT ASSESSMENT PANEL APPLICATION – PLANNING SOLUTIONS ON BEHALF OF PUMA ENERGY AUSTRALIA PTY LTD – LOT 14 (NO. 7080) FORREST HIGHWAY (CORNER TARANTO ROAD), BINNINGUP (A002445).

Ms. Deborah Burrows, the Retail Development Manager for Puma Energy, addressed the committee in relation to Item 8.1.1. Ms Burrows explained that the proponent was seeking an amendment to the approval previously granted by the Joint Development Assessment Panel (JDAP). She advised that the proponent supports the Officer's Report and Recommendation and that she understood that the condition regarding the location of a crossover on Taranto Road would be changed given the latest advice from Main Roads WA.

Ms. Burrows explained the reason for seeking the amendment to the planning approval was due to the original condition to alter the Forrest Highway intersection. They are now seeking to rotate the orientation of the building saving on building costs, enabling them to contribute to the intersection and to provide an additional setback to the canopy structure.

Further to the above, Ms. Burrows explained that the recent fire at the Myalup Roadhouse had led to the need for the matter to be determined more quickly due to the damage incurred. They are now looking at the timeframe involved in obtaining an approval and the commercial impacts. This is the reason for moving to have Council as the decision maker rather than awaiting a JDAP Meeting.

7. CONFIRMATION OF PREVIOUS MINUTES

7.1 DEVELOPMENT SERVICES COMMITTEE MEETING – Tuesday, 14th November 2017.

That the Minutes of the meeting held on Tuesday, 14th November 2017, be confirmed.

RECOMMENDATION

That the Minutes of the Meeting, held on Tuesday, 14th November 2017, as printed be confirmed as a true and correct record.

DS-17/120.

Simpson/Boylan

“That the Minutes of the meeting held on Tuesday, 14th November 2017, as printed be confirmed as a true and correct record.”

CARRIED 5-0

8. REPORTS OF OFFICERS

8.1 PLANNING REPORT (Green)

Item No.	8.1.1
Subject:	Myalup Gull Redevelopment – Amended Southern Joint Development Assessment Panel Application
Proponent:	Planning Solutions on Behalf of Puma Energy Australia Pty Ltd
Location:	Lot 14 (No. 7080) Forrest Highway (Corner Taranto Road), Binningup
Reporting Officer:	Planning Officer (ND)
File No.:	A002445 Attachment Reg. No. 17/34253

Summary

A Development Assessment Panel Application (DAP) has been received for an amendment to the DAP approval for the redevelopment of the Gull Service Station site, granted on the 1st November 2016. The application proposes to reorientate the building through 90°, increase the setback from Forrest Highway, reconfigure vehicle circulation throughout the site and extend the current approval term by a further 12 months until 1st November 2019. The application also seeks to remove existing condition 5 which requires an increase in the separation between the proposed access to Taranto Road and Forrest Highway.

The application is referred to Council for comment only, as the approving body is the Southern Joint Development Assessment Panel (JDAP). Staff recommend that Council advises the JDAP it supports the amended proposal and the removal of condition 5 subject to the retention of all other conditions as applied to the original DAP approval.

Background

The service station site is more commonly known as the 'Myalup Roadhouse', however it is actually located within the locality of Binningup. The locality of Myalup extends north of Taranto Road on the western side of Forrest Highway.

The site is located 18km north of the Australind town centre and 3.5km north east of the Binningup townsite (refer **Attachment 1**).

Current Development

Myalup Service Station currently contains the fuel outlet a vacant shop and bakery that previously sold items catering to the travelling public. The service station site covers an area of approximately 40m x 80m (3,200m²) in the north eastern portion of Lot 14, which has a total area of 2.0236ha. The access and parking areas also extend into the Forrest Highway road reserve (about 4,000m²) which is managed by Main Roads Western Australia (MRWA) (refer **Attachment 2**).

Previous Assessment Process and JDAP Approval

The Shire of Harvey advertised the application by notification to nearby landowners, relevant referral agencies and advertisements in the local newspaper. No objections to the proposal were received. Approval for the redevelopment of the site was granted by the JDAP on the 1st November 2016 (16/23879) subject to conditions.

A copy of the approved site plan is contained within **Attachment 3** and the associated conditions within **Attachment 4**.

JDAP Process

As the subject application was made pursuant to r.17(1)(a) of the *Planning and Development (Development Assessment Panels) Regulations 2011*, the application is to be determined by the Southern JDAP. The Shire is required to assess the application and provide its recommendation via a Responsible Authority Report (RAR), pursuant to r.12(2). The RAR is provided in **Attachment 4** for Council's endorsement.

In this case the DAP application has been accepted by the Department of Planning as a minor amendment and to be determined within a 60 day period (advertised applications have a 90 day period). Therefore the application is not required to be advertised or referred out to government agencies for comment.

Proposed Amended DAP Application

The amended plans are contained in **Attachment 5**.

On 14th September 2017, Puma and Planning Solutions met with representatives of the Shire and Main Roads WA separately to discuss the amended plans and both authorities were generally supportive.

Listed below are the various components of the proposed amendments to the current approval:

- The development site area is reduced from 9,472m² to 7,342m².
- The retail building, forecourt and fuel canopy is reorientated to face Forrest Highway and comprises 231m² Gross Floor Area – reduced from 311m².
- The setback is shown as 42.5m from the Forrest Highway Road Reserve instead of 19.24m.
- The canopy of the truck refuelling area is increased from 6 to 6.2 metres in height.
- The service yard is repositioned to the side of the retail building.
- On site car parking bays are reduced from 39 to 29 with an increase of bays in the Forrest HWY Reserve from 8 to 9.
- The total number of truck bays is reduced from 16 to 14.
- Increase the size of the onsite effluent disposal treatment area to 520m². No change in the location.
- The provision of three 2.65m high water storage tanks adjacent to the Taranto Road crossover. A screen is proposed to conceal the tanks from view.
- The provision of a 102m² stormwater basin at the south-west corner of the development site.
- On site landscaping is reduced from 1,410m² to 1,180m² noting that the development site area is also reduced.

Comment

Vehicle Access and Manoeuvring

On receipt of the application and preliminary assessment additional information was required in relation to vehicle movements; southbound via Forrest Highway, and Eastbound via Taranto Road.

Following the supply of the requested information, Staff conclude that the amended plan is an improvement on the existing approved plan in terms of vehicle manoeuvring throughout the whole of the site and no traffic impact assessment is considered necessary. The proposed changes do not affect traffic movement outside of the site except that the Taranto Road crossover is actually shown to be wider and hence more effective.

Landscaping

The change of onsite landscaping is from 1,410m² down to 1,180m². The applicant has however indicated the site area as now 7,342m², reduced from 9,472m². Site area normally relates to the whole area of the subject lot, however for the purpose of calculating landscaping the 'effective' site area needs to be taken into consideration. This is because the whole of Lot 14 covers over 2ha which would mean a landscaping area of 10% of 20,000m² i.e. 2,000m². This is considered excessive given the actual size of the development area in relation to the whole of Lot 14. It is therefore considered that the amount of landscaping area provided is sufficient.

Deletion of Existing Condition 5

The applicant has also requested that existing Condition 5 be removed. It states:

"The existing access to Taranto Road to be located further west within the boundary of Lot 14 to increase separation from Forrest Highway to the satisfaction of the Shire of Harvey, in consultation with Main Roads."

It is stated in the applicant's report that:

"It was agreed and confirmed with MRWA that the current location of access to Taranto Road is acceptable in the context of the amended service station layout and that Condition 5 can be removed."

As this was not requested by the Shire condition retention is considered appropriate unless written confirmation being received from Main Roads WA that it can be removed.

Parking Requirement

The Scheme requirement for Service Station Car Parking is "1 space per 50m² display area GFA". If the entire Service Station Shop is considered as 'display area' therefore a parking requirement for the amended application of 253m²/50 applies i.e. 6 bays hence the parking provision is in excess of the minimum requirement.

Setbacks

Condition 15 of the current approval requires the need for “a minimum setback of 20m to all structures (including the canopy) is to apply to all boundaries”. The revised plan complies with this condition however, retention of it is considered appropriate.

Bushfire Management

Albeit not part of the application as submitted, Staff note that the Bushfire Guidelines have been amended since the issue of the existing approval and to this effect the following condition is recommended to replace existing condition 7:

- “7. *A Bushfire Management Plan and Emergency Response Plan shall be prepared, approved and relevant provisions implemented in accordance with WAPC’s Guidelines for Planning in Bushfire Prone Areas Version 1.2, August 2017 to the satisfaction of the Shire of Harvey and the Department of Fire and Emergency Services.*”

It is not anticipated that this update to the condition will significantly alter the current approved bushfire management plan for the site.

Conditions of Approval

Staff advise that the formatting and wording of the conditions contained within the Officer’s Recommendation are consistent with that issued by the JDAP.

Conclusion

The main impact of the plan amendments relates to internal vehicle manoeuvring aspects of the site which are in turn, affected by the relocation and size change of the retail building. The changes generally represent reductions in development intensity as the size of the retail building is reduced and other changes are to improve the servicing aspects of the site in relation to water supply and effluent disposal. The manoeuvring aspects of the site are considered to be improved by the amended plan and the increased setback to the retail building is also considered as an improvement to the overall plan.

It is therefore recommended that approval be granted by the JDAP with similar conditions relating to the original November 2016 approval. Proposed changes to conditions are as follows:

Condition 7

Changed from:

- “7. *A Bushfire Management Plan and Emergency Response Plan shall be prepared, approved and relevant provisions implemented in accordance with WAPC’s Planning for Bushfire Protection Guidelines Edition 2, May 2010 (as amended) to the satisfaction of the Shire of Harvey.*”

And replace with (amendment shown in **bold**):

- “7. *A Bushfire Management Plan and Emergency Response Plan shall be prepared, approved and relevant provisions implemented in accordance with WAPC’s Guidelines for Planning in Bushfire Prone Areas **Version 1.2, August 2017** to the satisfaction of the Shire of Harvey and the Department of Fire and Emergency Services.*”

Statutory/Policy Environment

Greater Bunbury Region Scheme

The property falls within the 'Rural' Zone and located adjacent to a Primary Regional Road Reserve under the Greater Bunbury Region Scheme (GBRS). Under usual circumstances i.e. a "non-DAP" referral, the Shire would be given delegated authority to deal with the GBRS application. However as the Department of Planning is the responsible authority it has not been necessary for the Shire to supplement the application with a GBRS application.

Shire of Harvey District Planning Scheme No.1 (the Scheme)

The site is zoned 'General Farming', and is adjacent to a Scenic Road (Section 7.1) and lies within a 'Place of Landscape Value' (Section 8.1). The existing Service Station is a "Non-Conforming Use" and is subject to section 10 of the Scheme.

Development Standards

Table 27 – "Zoning and Development Standards" of the Scheme for the 'General Farming' zone applies however the use class of Service Station is not listed in this zone. Hence Table 38 which relates to the Service Station zone is utilised. It specifies a minimum lot area of 1,500m², minimum effective frontage of 40m, minimum of 6 car parking spaces and 10% minimum landscaping area. It also specifies setbacks, however as the Service Station is within the 'General Farming' zone it is more appropriate that the 'General Farming' zone setbacks apply as per Table 27.

Setbacks

The Forrest Highway (previously Old Coast Road) is designated as a "Scenic Road" in section 7.1(a) 8 of the Scheme and a setback of 80m each side (excluding townsites) should apply. This is normally to be added to the 20m setback that applies to the 'General Farming' Zone giving a total setback requirement of 100m.

In order to vary this requirement Council may utilise Clause 8.1(c) of the Scheme which states as follows:

"8. ADDITIONAL DEVELOPMENT REQUIREMENTS IN RURAL ZONES

8.1 SCENIC ROADS VISUAL PROTECTION

- (a) *Council may from time to time declare that certain roads of scenic value, shall be the subject of a building setback line either by specifying a distance or by marking in a plan certified by the Shire Clerk. Such a setback or building line shall apply in addition to the setback specified for the zone or use specified in the Zoning and Development Table.*

- (c) *Without prejudice to the provisions of Clause 8.1(a) where it can be demonstrated that the lot configuration prohibits a structure from being located behind the building lines declared by Council or where the proposed structure is to form part of an existing group or cluster of buildings Council may, by resolution passed by an absolute majority, grant planning consent to the development subject to any conditions the Council thinks fit provided the structure is sited no closer to the front boundary than the setback specified for the zone."*

Section 1.6 – Objectives

Relevant Objectives are as follows:

- (b) *to encourage and control the continued orderly development of land within the Shire in a manner that enhances the quality of life of the Shire community;*
- (c) *to ensure that the existing standard of roads water supply, effluent disposal, electricity supply and other community services are sufficient for the additional demands proposed development would create;*
- (d) *to promote economic development and tourism within the Shire and increase local employment opportunities;*
- (f) *to retain the pre-eminence of agriculture and restrict development that detracts from the potential of significant agricultural land;*

Section 9.1 – Places of Landscape Value

Section 9.1 details the requirement for preservation of the scenic value of Places of Landscape Value and the requirement for Special Approval for proposals within these areas.

Section 10 – Non-Conforming Uses

Section 10 details the requirements for non-conforming uses in terms of rights, extension of, change and discontinuance. It is considered that the proposed redevelopment is a continuance of the non-conforming use rights associated with the property. Nevertheless the same provisions should apply as for an “Extension of Non-Conforming Use” in section 10.2 where the requirements of the zone (10.2(a) and (b)), use class (10.2(c)) and any other requirements (10.2(d)) that Council may specify also apply.

Shire of Harvey Policy 15.21 – Setbacks for all structures within the ‘Intensive Farming’ and ‘General Farming’ zones

This policy requires that all setbacks for structures in the ‘General Farming’ zone be a minimum of 20m. The proposed setback in the amended application is 42.5 metres therefore complies with this requirement.

Planning and Development (Development Assessment Panels) Regulations 2011

The following are portions of the Regulations that are relevant to this application:

- 17. Amendment or Cancellation of Development Approval by DAP
 - (1) An owner of land in respect of which a development approval has been granted by a DAP pursuant to a DAP application may apply for the DAP to do any or all of the following —
 - (a) to amend the approval so as to extend the period within which any development approved must be substantially commenced;

12. Responsible Authority Must Report to DAP

- (2) A responsible authority to which a DAP application is made must give the presiding member of the DAP that will determine the application a report on the application in a form approved by the Director General.

Strategic Framework

Within the Shire's Strategic Community Plan 2017 - 2027, Strategy 1.1.9 states:

"To be a diverse and innovative economy supporting a range of local employment opportunities."

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 advises the Southern Joint Development Assessment Panel it supports the amended application for the redevelopment of the Service Station site on Lot 14 Forrest Highway, Binningup subject to the conditions listed below:

1. The layout of the site and the size, design and location of the buildings and works permitted must always accord with the endorsed plan and must not be altered or modified without the further written consent of Council;

Prior to the Issue of a Building Permit

2. Detailed plans and specifications of the proposed method of stormwater disposal being submitted for approval by the Executive Manager of Technical Services prior to the issue of a Building Permit. Such plans should identify invert levels, cover levels and pipe size and grade;
3. The Applicant to enter into a licence or lease agreement with the Commissioner for Main Roads for use of the Forrest Highway road reserve for proposed access / driveways and car parking areas;
4. The applicant to enter into a proportional funding agreement with Main Roads in relation to the access to Forrest Highway for the provision of an on-ramp (acceleration lane) for traffic turning left out of Taranto Road with an agreement made prior to commencement of construction;

5. The existing access to Taranto Road to be located further west within the boundary of Lot 14 to increase the separation from Forrest Highway to the satisfaction of the Shire of Harvey, in consultation with Main Roads;
6. The proposed access/driveways and car parking located within the Forrest Highway road reserve to be designed and constructed to the specifications and satisfaction of Main Roads;
7. A Bushfire Management Plan and Emergency Response Plan shall be prepared, approved and relevant provisions implemented in accordance with WAPC's Guidelines for Planning in Bushfire Prone Areas **Version 1.2, August 2017** to the satisfaction of the Shire of Harvey and the Department of Fire and Emergency Services.”;
8. Implementation of traffic management to be in accordance with the Transport Assessment Study by Transcore, July 2016, as amended to cater for the amended plan to the satisfaction of Main Roads WA and the Executive Manager of Technical Services;
9. Carparking areas, crossovers and accessways to be suitably constructed, sealed, drained, kerbed and line marked and maintained to the satisfaction of the Executive Manager of Technical Services;
10. Dimensions of parking spaces to be not less than 2.5m by 5.5m. A 6.5m manoeuvring area is to be provided for each parking space and a minimum of one (1) accessible parking/disabled access car space and set down bay is to be provided in accordance with AS 5431 for that exclusive use and is to be located as close as practicable to the front entrance to the building;
11. The parking areas to be illuminated to the satisfaction of the Executive Manager of Technical Services during the hours of darkness when they are in use or might be sought to be used by patrons;
12. The location and details of any signage associated with the development (including signs painted on the building), to be to the satisfaction of the Principal Building Surveyor and approved prior to installation. This includes painted on advertising media, flags, bunting, streamers or similar devices used for advertising, and the control extends to an advertisement inside a building which can ordinarily be seen by a person who is outside the building;
13. Submission and approval of a detailed landscaping plan. Plan to specify details of the vegetation to be provided and such details to be incorporated in the site of plans and specifications submitted for a Building Permit approval, and the landscaping, as shown and approved, to be established within 60 days of the practical completion of the development and from then on maintained to the specification and satisfaction of the Manager of Planning Services. Such landscaping is to be fully reticulated;
14. Lodgement of a landscaping bond for \$5,000 with the Shire of Harvey, to be held in trust subject to completion and the establishment of required works;
15. A minimum setback of 20m to all structures (including the canopy) is to apply from Forrest Highway.

- 16. This approval is valid until the 1st November 2019. If development is not substantially commenced within this period, a new approval must be obtained before commencing or continuing development;**

Prior to the Issue of Occupancy Certificate

17. The development is to be connected to an approved potable water supply; and
18. Stormwater should be fully contained onsite for small and minor storm events.

Advice Notes:

1. The Applicant should use industry best practice measures to minimise any fuel or other contaminant access to stormwater drains or soakage;
2. It is recommended that Applicants are advised to familiarise themselves with the State's Cultural Heritage Due Diligence Guidelines. These have been developed to assist proponents identify any risks to Aboriginal heritage and to mitigate risk where heritage sites may be present;
3. Care should be taken during the redevelopment to ensure that any mobilisation of hydrocarbons/ chemicals is avoided, and any spills are to be appropriately managed;
4. It should be noted that there is a Water Corporation water pipe in vicinity of development, both on Taranto Road and also Forrest Hwy; and the Applicant may therefore wish to consider connecting to a reticulated water supply;
5. The Applicant may need to apply for a Dangerous Goods Site Licence amendment for the proposed dangerous goods storage (fuels) at the site if the storage quantity changes;
6. Any information provided to you by Western Power should not be used in isolation and we recommend that you refer to the Occupational Safety and Health Act 1984 and Occupational Safety and Health Regulations 1996. These documents outline WorkSafe WA requirements for working near electricity;
7. The Applicant is advised that any variation from the approved plans contained herein will require a separate Planning Approval. Should the plans for a Building Permit differ from these plans, a Building Permit will not be issued until such time as a new Planning Approval is granted;
8. The Applicant is to obtain a Building Permit (including roof details) from Council's Building Department prior to the commencement of site works;
9. The development is to comply with:
 - The Building Code of Australia (Volume One of Class 6);
 - The Disability (Access to Premise Buildings) Standards 2010; and
 - The Food Act 2008 and Health Act 1911.

10. Compliance with the Department of Water's requirements for evaluation and treatment of site contamination, stormwater treatment, storage of toxic or hazardous substances, tanks and pipe construction, ongoing maintenance of sumps and the tank systems and hydrocarbon management;
11. Method of on-site waste water disposal to the satisfaction of the Department of Health;
12. The building and internal facilities are to be designed having particular regard to the accessibility and convenience of disabled people in accordance with the Building Regulations 2012 and the Building Code of Australia;
13. The food business is required to be registered by the Shire of Harvey under the Food Act 2008 prior to the business commencing;
14. Drainage from the development area to be retained on-site and not impinge on the Forrest Highway Road Reserve;
15. Operation of the proposed Bio-Max wastewater treatment should be in accordance with the requirements such as an appropriate maintenance schedule and options for improved nutrient removal, such as alum dosing for phosphorus retention;
16. The Applicant should manage stormwater in accordance with the 'Decision process for stormwater management in WA (DoW 2009)' and the 'Stormwater Management Manual for Western Australia (DoW 2004–2007)'; and
17. 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. The 'Danger Zone' is set out in Western Australian Occupational Safety and Health Regulation 1996 – Specifically Reg 3.64.

Note: An Amendment to this Item was tabled at the meeting as follows:

Item No.	8.1.1
Subject:	Myalup Gull Redevelopment
Proponent:	Planning Solutions on Behalf of Puma Energy Australia Pty Ltd
Location:	Lot 14 (No. 7080) Forrest Highway (Corner Taranto Road), Binningup
Reporting Officer:	Planning Officer (ND)
File No.:	A002445
	Attachment Reg. No. 17/34253

The following additional information is provided in regard to Item 8.1.1.

Comment

On Wednesday evening, 29th November 2017, the Myalup Gull Service Station kitchen was significantly damaged by fire. Given the high cost of repairs the owners, Puma Energy Australia Pty Ltd, wish to proceed as quickly as possible with re-development of the site to accommodate the proposed Puma Service Station.

It is understood that the Joint Development Assessment Panel (JDAP) will not be able to consider the application until mid – late January 2018. On Monday 4th December 2017, the applicant, Planning Solutions on behalf of Puma, advised the JDAP that they were withdrawing the application from the Department of Planning, Lands and Heritage (DoPLH) *“in order for the Shire to become the decision maker”*. JDAP Staff has confirmed that pursuant to section 4.4 of the JDAPs Procedure Manual withdrawal is possible:

“An applicant may choose to withdraw a current DAP application at any time before it is determined. Written notification of application withdrawal is required to be provided to the local government and the DAP secretariat.”

Formal withdrawal from the JDAP has been provided in writing to the DoPLH and the Shire of Harvey. The applicant has completed and submitted the necessary Development Application forms to both the Shire and the DoLHP. To this effect, the Shire of Harvey is now the decision maker under Clause 77 of the *Planning and Development (Local Planning Schemes) Regulations 2015*

As evidenced by the Officer’s Report, Staff are supportive of the proposed modifications and this addendum ensures that the revised approval is issued pursuant to the appropriate legislation.

Additionally the resolution confirms that Council is exercising its delegation under the Greater Bunbury Region Scheme (GBRS) and advising the JDAP accordingly.

Statutory/Policy Environment

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Regulations 2015

Clause 77 - Amending or cancelling development approval

- “(1) An owner of land in respect of which development approval has been granted by the local government may make an application to the local government requesting the local government to do any or all of the following —*
- (c) to amend an aspect of the development approved which, if amended, would not substantially change the development approved;*
- (2) An application under subclause (1) —*
- (a) is to be made in accordance with the requirements in Part 8 and dealt with under this Part as if it were an application for development approval; and*
 - (b) may be made during or after the period within which the development approved must be substantially commenced.*
- (4) The local government may determine an application made under subclause (1) by-*
- (a) approving the application without conditions; or*
 - (b) approving the application with conditions; or*
 - (c) refusing the application.”*

Planning and Development (Development Assessment Panels) Regulations 2011

Clause 17A - Amendment or cancellation of development approval by responsible authority

- “(1) An owner of land in respect of which a development approval has been granted by a DAP pursuant to a DAP application may apply, under the relevant planning instrument, for the responsible authority under that instrument to amend or cancel the development approval (an application).*
- (2) For the purposes of subregulation (1), the provisions of the Act, the Planning and Development (Local Planning Schemes) Regulations 2015, the Planning and Development Regulations 2009 and the relevant planning instrument apply to the making and determination of, and the review of a decision on, an application as if the development approval —*
- (a) had not been granted pursuant to a DAP application; and*
 - (b) had been granted by the responsible authority.*
- (3) As soon as practicable after an application is determined, the responsible authority must give the administrative officer of the DAP that granted the development approval written notification of the determination which must include the following —*
- (a) the date of the determination;*
 - (b) the determination;*
 - (c) the terms of any condition to which the approval of the application is subject;*
 - (d) reasons for any refusal of the application.”*

Amended Officer’s Recommendation

That Council:

1. Pursuant to Clause 77(1)(c) of the *Planning and Development (Town Planning Schemes) Regulations 2015*, approves the request to Amend the Development Approval issued by the Joint Development Assessment Panel dated 1st November 2016 for the redevelopment of the Service Station site on Lot 14 Forrest Highway, Binningup subject to the following conditions:
 - a. The layout of the site and the size, design and location of the buildings and works permitted must always accord with the endorsed plan and must not be altered or modified without the further written consent of Council;

Prior to the Issue of a Building Permit

- b. Detailed plans and specifications of the proposed method of stormwater disposal being submitted for approval by the Executive Manager of Technical Services prior to the issue of a Building Permit. Such plans should identify invert levels, cover levels and pipe size and grade;
- c. The Applicant to enter into a licence or lease agreement with the Commissioner for Main Roads for use of the Forrest Highway road reserve for proposed access/driveways and car parking areas;

- d. The applicant to enter into a proportional funding agreement with Main Roads in relation to the access to Forrest Highway for the provision of an on-ramp (acceleration lane) for traffic turning left out of Taranto Road with an agreement made prior to commencement of construction;
- e. The existing access to Taranto Road to be located further west within the boundary of Lot 14 to increase the separation from Forrest Highway to the satisfaction of the Shire of Harvey, in consultation with Main Roads;
- f. The proposed access/driveways and car parking located within the Forrest Highway road reserve to be designed and constructed to the specifications and satisfaction of Main Roads;
- g. A Bushfire Management Plan and Emergency Response Plan shall be prepared, approved and relevant provisions implemented in accordance with WAPC's Guidelines for Planning in Bushfire Prone Areas Version 1.2, August 2017 to the satisfaction of the Shire of Harvey and the Department of Fire and Emergency Services.”;
- h. Implementation of traffic management to be in accordance with the Transport Assessment Study by Transcore, July 2016, as amended to cater for the amended plan to the satisfaction of Main Roads WA and the Executive Manager of Technical Services;
- i. Carparking areas, crossovers and accessways to be suitably constructed, sealed, drained, kerbed and line marked and maintained to the satisfaction of the Executive Manager of Technical Services;
- j. Dimensions of parking spaces to be not less than 2.5m by 5.5m. A 6.5m manoeuvring area is to be provided for each parking space and a minimum of one (1) accessible parking/disabled access car space and set down bay is to be provided in accordance with AS 5431 for that exclusive use and is to be located as close as practicable to the front entrance to the building;
- k. The parking areas to be illuminated to the satisfaction of the Executive Manager of Technical Services during the hours of darkness when they are in use or might be sought to be used by patrons;
- l. The location and details of any signage associated with the development (including signs painted on the building), to be to the satisfaction of the Principal Building Surveyor and approved prior to installation. This includes painted on advertising media, flags, bunting, streamers or similar devices used for advertising, and the control extends to an advertisement inside a building which can ordinarily be seen by a person who is outside the building;
- m. Submission and approval of a detailed landscaping plan. The plan is to specify details of the vegetation to be provided and such details to be incorporated in the site of plans and specifications submitted for a Building Permit approval, and the landscaping, as shown and approved, to be established within 60 days of the practical completion of the development and from then on maintained to the specification and satisfaction of the Manager of Planning Services. Such landscaping is to be fully reticulated;

- n. Lodgement of a landscaping bond for \$5,000 with the Shire of Harvey, to be held in trust subject to completion and the establishment of required works;
- o. A minimum setback of 20m to all structures (including the canopy) is to apply from Forrest Highway;
- p. This approval is valid until the 1st November 2019. If development is not substantially commenced within this period, a new approval must be obtained before commencing or continuing development;

Prior to the Issue of Occupancy Certificate

- q. The development is to be connected to an approved potable water supply; and
- r. Stormwater should be fully contained onsite for small and minor storm events.

Advice Notes:

- i. The Applicant should use industry best practice measures to minimise any fuel or other contaminant access to stormwater drains or soakage;
- ii. It is recommended that Applicants are advised to familiarise themselves with the State's Cultural Heritage Due Diligence Guidelines. These have been developed to assist proponents identify any risks to Aboriginal heritage and to mitigate risk where heritage sites may be present;
- iii. Care should be taken during the redevelopment to ensure that any mobilisation of hydrocarbons/ chemicals is avoided, and any spills are to be appropriately managed;
- iv. It should be noted that there is a Water Corporation water pipe in vicinity of development, both on Taranto Road and also Forrest Hwy; and the Applicant may therefore wish to consider connecting to a reticulated water supply;
- v. The Applicant may need to apply for a Dangerous Goods Site Licence amendment for the proposed dangerous goods storage (fuels) at the site if the storage quantity changes;
- vi. Any information provided to you by Western Power should not be used in isolation and we recommend that you refer to the Occupational Safety and Health Act 1984 and Occupational Safety and Health Regulations 1996. These documents outline WorkSafe WA requirements for working near electricity;
- vii. The Applicant is advised that any variation from the approved plans contained herein will require a separate Planning Approval. Should the plans for a Building Permit differ from these plans, a Building Permit will not be issued until such time as a new Planning Approval is granted;
- viii. The Applicant is to obtain a Building Permit (including roof details) from Council's Building Department prior to the commencement of site works;
- ix. The development is to comply with:

- The Building Code of Australia (Volume One of Class 6);
 - The Disability (Access to Premise Buildings) Standards 2010; and
 - The Food Act 2008 and Health Act 1911.
- x. Compliance with the Department of Water's requirements for evaluation and treatment of site contamination, stormwater treatment, storage of toxic or hazardous substances, tanks and pipe construction, ongoing maintenance of sumps and the tank systems and hydrocarbon management;
- xi. Method of on-site waste water disposal to the satisfaction of the Department of Health;
- xii. The building and internal facilities are to be designed having particular regard to the accessibility and convenience of disabled people in accordance with the Building Regulations 2012 and the Building Code of Australia;
- xiii. The food business is required to be registered by the Shire of Harvey under the Food Act 2008 prior to the business commencing;
- xiv. Drainage from the development area to be retained on-site and not impinge on the Forrest Highway Road Reserve;
- xv. Operation of the proposed Bio-Max wastewater treatment should be in accordance with the requirements such as an appropriate maintenance schedule and options for improved nutrient removal, such as alum dosing for phosphorus retention;
- xvi. The Applicant should manage stormwater in accordance with the 'Decision process for stormwater management in WA (DoW 2009)' and the 'Stormwater Management Manual for Western Australia (DoW 2004–2007); and
- xvii. 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. The 'Danger Zone' is set out in Western Australian Occupational Safety and Health Regulation 1996 – Specifically Reg 3.64.
2. Advises the Applicant that in accordance with its delegation under Clause 27 Notice and Delegations Instruments advises the Applicant that Application 17/34253 shall be deemed to be approved under the Greater Bunbury Region Scheme; and
3. Advises the Joint Development Assessment Panel of Council's determination pursuant to clause 17A(3) of the Planning and Development (Development Assessment Panels) Regulations 2011.

DS-17/121. **Burgoyne/Simpson**
"That Council:

1. Pursuant to Clause 77(1)(c) of the *Planning and Development (Town Planning Schemes) Regulations 2015*, approves the request to Amend the Development Approval issued by the Joint Development Assessment Panel dated 1st November 2016 for the redevelopment of the Service Station site on Lot 14 Forrest Highway, Binningup subject to the following conditions:
 - a. The layout of the site and the size, design and location of the buildings and works permitted must always accord with the endorsed plan and must not be altered or modified without the further written consent of Council;

Prior to the Issue of a Building Permit

- b. Detailed plans and specifications of the proposed method of stormwater disposal being submitted for approval by the Executive Manager of Technical Services prior to the issue of a Building Permit. Such plans should identify invert levels, cover levels and pipe size and grade;
- c. The Applicant to enter into a licence or lease agreement with the Commissioner for Main Roads for use of the Forrest Highway road reserve for proposed access / driveways and car parking areas;
- d. The applicant to enter into a proportional funding agreement with Main Roads in relation to the access to Forrest Highway for the provision of an on-ramp (acceleration lane) for traffic turning left out of Taranto Road with an agreement made prior to commencement of construction;
- e. The existing access to Taranto Road to be located to the satisfaction of the Shire of Harvey, in consultation with Main Roads;
- f. The proposed access/driveways and car parking located within the Forrest Highway road reserve to be designed and constructed to the specifications and satisfaction of Main Roads;
- g. A Bushfire Management Plan and Emergency Response Plan shall be prepared, approved and relevant provisions implemented in accordance with WAPC's Guidelines for Planning in Bushfire Prone Areas Version 1.2, August 2017 to the satisfaction of the Shire of Harvey and the Department of Fire and Emergency Services.";

- h. Implementation of traffic management to be in accordance with the Transport Assessment Study by Transcore, July 2016, as amended to cater for the amended plan to the satisfaction of Main Roads WA and the Executive Manager of Technical Services;**
- i. Carparking areas, crossovers and accessways to be suitably constructed, sealed, drained, kerbed and line marked and maintained to the satisfaction of the Executive Manager of Technical Services;**
- j. Dimensions of parking spaces to be not less than 2.5m by 5.5m. A 6.5m manoeuvring area is to be provided for each parking space and a minimum of one (1) accessible parking/disabled access car space and set down bay is to be provided in accordance with AS 5431 for that exclusive use and is to be located as close as practicable to the front entrance to the building;**
- k. The parking areas to be illuminated to the satisfaction of the Executive Manager of Technical Services during the hours of darkness when they are in use or might be sought to be used by patrons;**
- l. The location and details of any signage associated with the development (including signs painted on the building), to be to the satisfaction of the Principal Building Surveyor and approved prior to installation. This includes painted on advertising media, flags, bunting, streamers or similar devices used for advertising, and the control extends to an advertisement inside a building which can ordinarily be seen by a person who is outside the building;**
- m. Submission and approval of a detailed landscaping plan. The plan is to specify details of the vegetation to be provided and such details to be incorporated in the site of plans and specifications submitted for a Building Permit approval, and the landscaping, as shown and approved, to be established within 60 days of the practical completion of the development and from then on maintained to the specification and satisfaction of the Manager of Planning Services. Such landscaping is to be fully reticulated;**

- n. **Lodgement of a landscaping bond for \$5,000 with the Shire of Harvey, to be held in trust subject to completion and the establishment of required works;**
- o. **A minimum setback of 20m to all structures (including the canopy) is to apply from Forrest Highway;**
- p. **This approval is valid until the 1st November 2019. If development is not substantially commenced within this period, a new approval must be obtained before commencing or continuing development;**

Prior to the Issue of Occupancy Certificate

- q. **The development is to be connected to an approved potable water supply; and**
- r. **Stormwater should be fully contained onsite for small and minor storm events.**

Advice Notes:

- i. **The Applicant should use industry best practice measures to minimise any fuel or other contaminant access to stormwater drains or soakage;**
- ii. **It is recommended that Applicants are advised to familiarise themselves with the State's Cultural Heritage Due Diligence Guidelines. These have been developed to assist proponents identify any risks to Aboriginal heritage and to mitigate risk where heritage sites may be present;**
- iii. **Care should be taken during the redevelopment to ensure that any mobilisation of hydrocarbons/ chemicals is avoided, and any spills are to be appropriately managed;**
- iv. **It should be noted that there is a Water Corporation water pipe in vicinity of development, both on Taranto Road and also Forrest Hwy; and the Applicant may therefore wish to consider connecting to a reticulated water supply;**

- v. **The Applicant may need to apply for a Dangerous Goods Site Licence amendment for the proposed dangerous goods storage (fuels) at the site if the storage quantity changes;**
- vi. **Any information provided to you by Western Power should not be used in isolation and we recommend that you refer to the Occupational Safety and Health Act 1984 and Occupational Safety and Health Regulations 1996. These documents outline WorkSafe WA requirements for working near electricity;**
- vii. **The Applicant is advised that any variation from the approved plans contained herein will require a separate Planning Approval. Should the plans for a Building Permit differ from these plans, a Building Permit will not be issued until such time as a new Planning Approval is granted;**
- viii. **The Applicant is to obtain a Building Permit (including roof details) from Council's Building Department prior to the commencement of site works;**
- ix. **The development is to comply with:**
 - **The Building Code of Australia (Volume One of Class 6);**
 - **The Disability (Access to Premise Buildings) Standards 2010; and**
 - **The Food Act 2008 and Health Act 1911.**
- x. **Compliance with the Department of Water's requirements for evaluation and treatment of site contamination, stormwater treatment, storage of toxic or hazardous substances, tanks and pipe construction, ongoing maintenance of sumps and the tank systems and hydrocarbon management;**
- xi. **Method of on-site waste water disposal to the satisfaction of the Department of Health;**

- xii. The building and internal facilities are to be designed having particular regard to the accessibility and convenience of disabled people in accordance with the Building Regulations 2012 and the Building Code of Australia;
 - xiii. The food business is required to be registered by the Shire of Harvey under the Food Act 2008 prior to the business commencing;
 - xiv. Drainage from the development area to be retained on-site and not impinge on the Forrest Highway Road Reserve;
 - xv. Operation of the proposed Bio-Max wastewater treatment should be in accordance with the requirements such as an appropriate maintenance schedule and options for improved nutrient removal, such as alum dosing for phosphorus retention;
 - xvi. The Applicant should manage stormwater in accordance with the 'Decision process for stormwater management in WA (DoW 2009)' and the 'Stormwater Management Manual for Western Australia (DoW 2004–2007); and
 - xvii. 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. The 'Danger Zone' is set out in Western Australian Occupational Safety and Health Regulation 1996 – Specifically Reg 3.64.
2. Advises the Applicant that in accordance with its delegation under Clause 27 Notice and Delegations Instruments advises the Applicant that Application 17/34253 shall be deemed to be approved under the Greater Bunbury Region Scheme; and
3. Advises the Joint Development Assessment Panel of Council's determination pursuant to clause 17A(3) of the Planning and Development (Development Assessment Panels) Regulations 2011."

CARRIED 5-0

Note: a change to the Amended Officer's Recommendation 1. e. is updated in the Committee's Resolution based on updated advice from Main Roads WA.

Mrs Burrows left the meeting at 4.43p.m.

Item No.	8.1.2
Subject:	Revised Application - Proposed Aquaculture
Proponent:	Jason Fisher
Location:	Lot 31 Norah Brook Road, Bengier
Reporting Officer:	Planning Officer (ND)
File No.:	A006339
	Attachment Reg. No. 17/30766

Summary

At its meeting held 15th April 2014, Council approved a Development Application at Lot 31 Norah Brook Road, Bengier, for aquaculture that consisted of 50 marron ponds to grow and harvest marron. Since then the applicant has concluded there is an alternative method to farm marron which is more appropriate and sustainable. A revised Development Application reflecting this approach has now been received.

The proposal involves the development of ten (10) marron ponds and three (3) water ponds but does not include any buildings. Following consultation with State Government authorities, Staff recommend approval subject to conditions.

Background

Existing Situation

Lot 31 Norah Brook Road, Bengier (the site) is located 6km north of the Brunswick town site (refer **Attachment 1**). It is zoned 'Intensive Farming' by District Planning Scheme No. 1 and has an area of 46.64 ha. The site is predominantly flat, cleared and currently used for grazing. There are no buildings however a dam of about 2,000m² in area is located in the south east corner of the site. The site lies within the Collie Irrigation District whereby the water supply is from the Wellington Dam and a Water Corporation controlled irrigation drain (Bengier Main Drain) runs adjacent to the northern and western boundaries of the site.

Aquaculture is classified as an "AA" use in the Shire of Harvey District Planning Scheme No.1 (the Scheme) which means Council may, at its discretion, permit the use. The Manager of Planning Services has delegated authority to approve an "AA" use however in this case, due to the complexity of the proposal and a number of non-standard conditions from referral agencies, Staff consider it appropriate for it to be determined by Council.

Former Approval

An approval for aquaculture was granted by Council at its meeting on the 15th April 2014. This proposal consisted of 50 marron ponds to grow and harvest marron and did not to include processing. It was estimated to take four (4) years to undertake earthworks.

A copy of the site plan for the approved proposal can be found in **Attachment 4**. A copy of the approval and conditions can be found in **Attachment 5**. That approval has lapsed given that the two year approval period and that no works on the aquaculture project have been undertaken.

Current Proposal

A totally revised proposal has been submitted to the Shire for the purpose of achieving a development approval. The revised proposal (refer **Attachments 2** and **3**) includes the following features:

- Ten (10) marron ponds, each being 100m x 100m x 1.5m (10,000m²) to hold 15,000m³ each and separated from each other by 3 metres. All ponds are to be constructed to achieve a 1:4 batter slope.
- Three (3) water storage ponds being 150m x 40m x 1.5m (6,000m²) to hold 9,000m³ each. All ponds are to be constructed to achieve a 1:3 batter slope.
- No buildings are proposed.

The following points are made by the applicant:

1. There are high levels of heavy black clay, therefore minimal seepage;
2. Air diffusers are to be utilised to keep the water moving for marron health and for minimising sediment build up;
3. Water ponds are not to be constructed on-stream;
4. No vegetation removal is required;
5. The annual water requirement estimated to be 120-150 mega litres;
6. The estimated evaporation loss is 5mm per day, yearly average and is replaced by rainfall;
7. The applicant considers that a licence is not required by the Dept of Water re Water Rights and Irrigation (Staff comment: DWER did not mention in its submission that this was required 17/32898);
8. A licence from the Clearing section of the Department of Water and Environmental Regulation is not required as there is no clearing proposed;
9. A 20 metre buffer zone to the Benger Main Drain has been allowed for (as required by Water Corporation 17/31503);
10. There will be minimal noise, dust and vibration in the construction phase in the area as there are no nearby dwellings to the site. (Staff comment: The nearest dwellings are about 450 metres to the west and 650 metres to the east of the site);
11. Monitoring and maintenance stated to be conducted on a weekly basis;
12. The volume of excavated materials estimated to be 70,000m³. These are to be used as pond walls. There is a need to only excavate a maximum of 1 metre to achieve a depth of 1.5 m;

13. Excavated materials are to be stored on-site for dam walls, wetland walls, turkey dam build up, access ways and will not exceed 4m in height;
14. All setbacks a minimum of 20m as per the rural requirement;
15. No settlement sump is required as harvesting to be done by trapping rather than pond 'raindown';
16. No netting is to be involved when trapping the marron;
17. Acid Sulphate Soils – (ASS) investigation will need to be undertaken – It is a high to moderate risk area;
18. Estimated stocking density has been indicated as 150,000 marron; and
19. A five (5) year completion timeline is requested to complete earthworks.

Advertising

Based on the scale of the proposal, referral to adjoining landowners and Government agencies was considered appropriate. The referral period closed on 1st November 2017, and no submissions from adjoining landowners were received. The following Government Agencies provided comments:

- The Department of Water and Environmental Regulation;
- Harvey Water;
- The Leschenault Catchment Council;
- The Department of Planning Lands and Heritage;
- The Department of Agriculture & Food; and
- The Department of Fisheries.

Seven (7) submissions were received from Government departments. Although no objections were received, there were a number of comments regarding the use and management of water and nutrients within and off the site. Hence many of the conditions are technical in nature and a direct result of comments from the external agencies. Conditions that have been requested as part of the development approval are detailed in bold text in the Table of Submissions (refer **Attachment 6**).

Request for additional Information

Council's Health Department requested information on the following matters. The following is additional information given by the Applicant in this regard.

1. Marron Harvesting Method:

"They are trapped using Marron/Yabbie Traps. Stocking density was given at 150,000 in the applicant's report – this likely also means the amount harvested.

2. Marron Packaging and transportation:

"They are harvested, placed into foam eskys and driven to the wholesalers."

3. How are the marron transported?

"Foam esky"

4. Staff on Site and Amenities:

"No staff. Only me"

5. Buildings for Processing:

"No processing, I'm selling direct to the wholesaler."

6. Is the marron for local supply or for export?

"That's up to the wholesalers"

7. Reason for Five Year Time Frame:

"The reason it will take so long is I am doing it myself in stages, and not employing an earthmoving contractor as I am unable to afford it. And the earthmoving can only be done during the summer months because winter is too wet here."

Comment

Council has previously granted approval to a proposal which totalled a surface water area of 5.81 hectares (139 mega litres) consisting of:

- 50 x 1,000m² marron ponds, 1.75m deep (125 mega litres)
- 6,000m² wetland, 1.5m deep (9 mega litres)
- 2,100m² settling sump (5.25 mega litres).

The new proposal totals a surface water area of 11.36 hectares (172 mega litres) consisting of:

- 10 x 10,000m² , marron ponds, 1.5 metres deep (150 mega litres)
- 2 x 6,000m² wetlands, 1.5 metres deep (18 mega litres)
- 1 x 1,600m² water storage dam, 1.5 metres deep (4 mega litres)

The new proposal represents an increase in surface water area of 5.55 hectares and an increase in water volume of 32 mega litres. This represents an increase of approximately 24% in terms of water volume. Notwithstanding this increase all relevant referral authorities are supportive of the proposal.

A modification is the depth of the proposed ponds which is now proposed at 1.5m compared to 1.75m in the original proposal. The excavation depth of the ponds remains the same (approximately 1m below current ground level) resulting in a lower bund height for the pond walls. Given the similar depth to the previously approved ponds, retaining conditions requiring the need for an Acid Sulphate Soil assessment is recommended.

As evidenced by **Attachment 2** there is no longer any waste water being discharged off-site. This modification is considered to be the most significant as it reduces the potential risk of increased nutrient loading into the Benger Drain that abuts the property. Notwithstanding, the need for a Nutrient Irrigation Management Plan remains a recommended condition. Additionally in the event of a 1 in 100 year storm all water is to remain on the property however, should this not be possible, Water Corporation has advised that discharge to the Water Corporation drains must be *"compensated to pre-development levels"*. To determine the flood level the applicant should contact the Department of Water and Environmental Regulations.

The applicant has requested that the previous condition requiring the need for buffer planting be removed due to potential impacts on the functioning of the ponds. Staff, however remain of the opinion that the scale of development warrants the need for some visual mitigation through planting vegetation. The type and nature of vegetation can be selected to not impact on the ponds and achieve the desired screening. A landscape plan is recommended to address this matter. Albeit the proposal is a rural land use, the modifications to the landform are significant and in the event that the proposal is not successful it is considered appropriate that the ponds be removed and the site rehabilitated. The proposed rehabilitation of the site should be detailed within the required landscaping plan.

The proposal is considered be a more sustainable and efficient design than previously approved and all development provisions, particularly setbacks required by the Scheme have been achieved. Concern remains that no supporting infrastructure, such as sheds, purge tanks etc are proposed and to this effect advice notes to reaffirm the need for further approvals is recommended.

It is therefore considered that the application be approved subject to the conditions requested by the referral authorities and standard Shire conditions.

Statutory/Policy Environment

Zoning

Lot 31 Norah Brook Road is zoned 'Intensive Farming' by District Planning Scheme No. 1 and 'Rural' by the Greater Bunbury Region Scheme. Aquaculture is designated as an 'AA' use in the 'Intensive Farming' zone which means it is a use that requires Council approval. The Manager of Planning Services can have delegated authority to approve the proposal if the proposal complies with all the provisions of the Scheme and Council Policy and are subject to standard planning conditions as deemed appropriate. In this case due to the complexity of the proposal and that there are a number of non-standard conditions that need to be applied, the proposal has been submitted to Council for consideration.

Strategic Framework

Within the Shire's Strategic Community Plan 2017 - 2027, Strategies 1.1.7 and 2.3.1 state:

1.1.7 *"Support and promote diverse and small-medium sized businesses."*

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;*
- *Allow for a diverse range of agricultural, horticultural, viticultural and aquaculture pursuits;*
- *Provide an awareness of the potential adverse impact of traditional uses on new industries;*
- *Ensure the use of valuable irrigated land reflects the key principle of sustainable development; and*
- *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 advice is given or conditions 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 approves the application for Aquaculture at Lot 31 Norah Brook Road, Benger (Ref: 17/30766) lodged on the 9th October 2017, subject to the following conditions:

1. A person shall not without the written approval of Council, use the land or part of the land in respect of which Council has granted Planning Consent subject to conditions, until all of those conditions have been complied with to the satisfaction of Council;
2. The layout of the site and the size, design and location of the land use and works permitted must always be in accordance with the endorsed plan and must not be altered or modified without the further written consent of Council;
3. Prior to commencement of site works the Landowner/Operator is to obtain an aquaculture licence from the Department of Fisheries and is to hold a valid licence at all times of the operation;
4. The development of an operational Nutrient Irrigation Management Plan, to the satisfaction of the Department of Water and the Manager of Planning Services, which addresses but is not limited to:
 - i. No drainage outflow from the aquaculture operations leaving the property; and
 - ii. No extraction occurs below 0.5m above the average maximum groundwater level.
3. A Waste Disposal Management Plan being endorsed by the Principal Environmental Health Officer prior to the commencement of operations. This is to outline disposal of waste such as excrement, carcasses and a contingency plan for the management and disposal of marron in the event of a mass death;
4. An acid sulfate soils self-assessment form and, if required as a result of the self-assessment, an acid sulfate soils report and an acid sulfate soils management plan shall be submitted to and approved by the Department of Water and Environmental Regulation before any works or development are commenced. Where an acid sulfate soils management plan is required to be submitted, all works shall be carried out in accordance with the approved management plan. (Department of Water and Environmental Regulation);
5. A 20m setback being achieved for all development and earthworks from the property boundary;

6. Excess excavated material from the construction of the dams is to be kept to a maximum height of 4m above the natural ground level and kept a minimum of 20m from the property boundaries. A dust management plan, to the satisfaction of the Manager of Planning Services is required to ensure all excavated material is appropriately stored and managed on-site;
7. The Landowner/Operator is to submit and implement prior to commencement of the operations a detailed Buffer and Rehabilitation Plan to the satisfaction of the Manager of Planning Services. This is to highlight plant species, numbers, planting locations and timeframes for planting to be conducted for all vegetated areas. This is to be endorsed prior to the commencement of site works;
8. The Landowner/Operator is to lodge a Bond/Bank Guarantee with the Shire of Harvey for the works associated with the required planting for a sum of \$5000. This is to be held for a period of no less than three (3) years from completion of the ponds to ensure the satisfactory survival of planting, which is a minimum 80% survival rate otherwise additional planting will be required;
9. In the event of a flood all discharge to the Water Corporation drains must be compensated to pre-development levels;
10. All ponds are to be designed to the satisfaction of the Manager of Planning Services and the Department of Biodiversity, Conservation and Attractions – Parks and Wildlife Service, to ensure that non-locally endemic marron do not enter the riparian ecosystem; and
11. This approval is valid for a period of two (2) years. If development is not substantially commenced within this period, a new approval must be obtained before commencing or continuing development.

Advice Notes:

Advises the Applicant of the following additional requirements that are not included as conditions of the approval:

- i. Compliance with the Fisheries Occasional Paper No. 11 'Inland Aquaculture in Western Australia' (February 2013) produced by the Department of Fisheries;
- ii. If water is required from the nearby drainage lines the landowner/operator will need to obtain a 'by law licence' from Harvey Water;
- iii. The developer is required to fund the full cost of protecting or modifying any of the existing Water Corporation drainage facilities or infrastructure which may be affected by the development;
- iv. Discharge to the Water Corporation drains must be compensated to pre-development levels. To determine the flood level the developer should contact the Department of Water and Environmental Regulations;
- v. Any discharges associated with the operations must comply with the Environmental Protection (Unauthorised Discharges) Regulations 2004;

- vi. The proponent should ensure all marron are contained on site, using suitable containment materials such as netting, to restrict marron straying from ponds;
- vii. All operations are to comply with the Health (Miscellaneous Provisions) Act 1911, Food Act 2008 and Public Health Act 2016; and
- viii. All operations are to be in accordance with the Department of Water's – Water Quality Protection Note – Aquaculture.
- ix. Any future structures or development requires a further approval of Council.

DS-17/122. **Beech/Boylan**

“That Council approves the application for Aquaculture at Lot 31 Norah Brook Road, Benger (Ref: 17/30766) lodged on the 9th October 2017, subject to the following conditions:

- 1. **A person shall not without the written approval of Council, use the land or part of the land in respect of which Council has granted Planning Consent subject to conditions, until all of those conditions have been complied with to the satisfaction of Council;**
- 2. **The layout of the site and the size, design and location of the land use and works permitted must always be in accordance with the endorsed plan and must not be altered or modified without the further written consent of Council;**
- 3. **Prior to commencement of site works the Landowner/Operator is to obtain an aquaculture licence from the Department of Fisheries and is to hold a valid licence at all times of the operation;**
- 4. **The development of an operational Nutrient Irrigation Management Plan, to the satisfaction of the Department of Water and the Manager of Planning Services, which addresses but is not limited to:**
 - i. **No drainage outflow from the aquaculture operations leaving the property; and**
 - ii. **No extraction occurs below 0.5m above the average maximum groundwater level.**
- 3. **A Waste Disposal Management Plan being endorsed by the Principal Environmental Health Officer prior to the commencement of operations. This is to outline disposal of waste such as excrement, carcasses and a contingency plan for the management and disposal of marron in the event of a mass death;**

4. **An acid sulfate soils self-assessment form and, if required as a result of the self-assessment, an acid sulfate soils report and an acid sulfate soils management plan shall be submitted to and approved by the Department of Water and Environmental Regulation before any works or development are commenced. Where an acid sulfate soils management plan is required to be submitted, all works shall be carried out in accordance with the approved management plan. (Department of Water and Environmental Regulation);**
5. **A 20m setback being achieved for all development and earthworks from the property boundary;**
6. **Excess excavated material from the construction of the dams is to be kept to a maximum height of 4m above the natural ground level and kept a minimum of 20m from the property boundaries. A dust management plan, to the satisfaction of the Manager of Planning Services is required to ensure all excavated material is appropriately stored and managed on-site;**
7. **The Landowner/Operator is to submit and implement prior to commencement of the operations a detailed Landscaping and Rehabilitation Plan to the satisfaction of the Manager of Planning Services. This is to highlight plant species, numbers, planting locations and timeframes for planting to be conducted for all vegetated areas. This is to be endorsed prior to the commencement of site works;**
8. **The Landowner/Operator is to lodge a Bond/Bank Guarantee with the Shire of Harvey for the works associated with the required planting for a sum of \$5000. This is to be held for a period of no less than three (3) years from completion of the ponds to ensure the satisfactory survival of planting, which is a minimum 80% survival rate otherwise additional planting will be required;**
9. **In the event of a flood all discharge to the Water Corporation drains must be compensated to pre-development levels;**
10. **All ponds are to be designed to the satisfaction of the Manager of Planning Services and the Department of Biodiversity, Conservation and Attractions – Parks and Wildlife Service, to ensure that non-locally endemic marron do not enter the riparian ecosystem; and**
11. **This approval is valid for a period of two (2) years. If development is not substantially commenced within this period, a new approval must be obtained before commencing or continuing development.**

Advice Notes:

Advises the Applicant of the following additional requirements that are not included as conditions of the approval:

- i Compliance with the Fisheries Occasional Paper No. 11 'Inland Aquaculture in Western Australia' (February 2013) produced by the Department of Fisheries;
- ii. If water is required from the nearby drainage lines the landowner/operator will need to obtain a 'by law licence' from Harvey Water;
- iii. The developer is required to fund the full cost of protecting or modifying any of the existing Water Corporation drainage facilities or infrastructure which may be affected by the development;
- iv. Discharge to the Water Corporation drains must be compensated to pre-development levels. To determine the flood level the developer should contact the Department of Water and Environmental Regulations;
- v. Any discharges associated with the operations must comply with the Environmental Protection (Unauthorised Discharges) Regulations 2004;
- vi. The proponent should ensure all marron are contained on site, using suitable containment materials such as netting, to restrict marron straying from ponds;
- vii. All operations are to comply with the Health (Miscellaneous Provisions) Act 1911, Food Act 2008 and Public Health Act 2016; and
- viii. All operations are to be in accordance with the Department of Water's – Water Quality Protection Note – Aquaculture.
- ix. Any future structures or development requires a further approval of Council.

CARRIED 5-0

Note: a change in the Officer's Recommendation to Condition 7 was included in the Committee's Resolution to require a *Landscaping and Rehabilitation Plan* instead of a *Buffer and Rehabilitation Plan* due to clarification of what was required.

Mr. Fisher left the meeting at 5.01p.m.

Item No.	8.1.3
Subject:	Application for Development Approval – Building Envelope Modification
Proponent:	AJ & JS Hughes
Location:	Lot 14 (No. 20) Bayley Close, Australind
Reporting Officer:	Planning Officer (EE)
File No.:	A14794
	Attachment Reg. 17/24124

Summary

An Application for Development Approval has been received for Lot 14 (No. 20) Bayley Close, Australind to modify the location of the building envelope and increase its total area from 700m² to 792m². (refer **Attachment 1**). The current building envelope is not capable of accommodating the proposed dwelling and site works required in response to the irregular shape and relatively steep slope of the lot. Staff do not have delegation to increase the size of a building envelope and therefore requires Council determination. It is recommended the application be approved subject to relevant conditions.

Background

Site Description

Lot 14 (No. 20) Bayley Close, Australind is zoned “Residential” under the Shire’s District Planning Scheme No. 1 (the Scheme) and is located within a designated Bushfire Prone Area. The site is of irregular shape with an area of 2,115m² and has a slope of approximately 11% from the front (north) to the rear (south). It has some existing vegetation and is subject to a Building Envelope of 700m² (refer **Attachment 2**).

The lots on Bayley Close are subject to a Restrictive Covenant that is registered on the Certificate of Titles (refer **Attachment 3** – extract is provided). Amongst other matters, the Restrictive Covenant specifies:

“2.2 the carrying out of Authorised Development within a building envelope (which may be in two or more separate areas) not exceeding 700m² in area, which building envelope may be totally cleared and does not include the area of any driveway;”

Proposal

The application proposes to modify the building envelope to allow for the construction of a single dwelling and associated earthworks, retaining walls and future ancillary structures such as outbuildings. The application proposes to establish a building envelope for the proposed dwelling of approximately 603m² and a separate envelope for future ancillary structures of approximately 189m² (refer **Attachment 4**). The total building envelopes (more than one is provided for by the Restrictive Covenant) area is 792m².

Due to the site’s topography, the proposed dwelling has been designed and positioned on the site to reduce the extent of earthworks required. Retaining walls proposed include:

- Eastern wall: Single Portion 1.5m high, Terraced Portion 1.187m & 1.17m high; and
- Western wall: Single Portion 2.05m high, Terraced Portion 1.187m & 1.417m high.

SIGNED _____ DATED 16th January 2018.

A Bushfire Attack Level (BAL) Assessment has been provided and the site was assessed at the time as having a rating of BAL-40 due to the existing vegetation on the adjoining Lot 15 (eastern side). The plans were amended to provide a separation distance of 12m between the dwelling and the vegetation on Lot 15 and can therefore achieve a rating of BAL-29.

Advertising

Despite advertising not being required, the owners of the adjoining Lot 13 (western side) were invited to submit comments on the proposal but no comments were received.

Comment

Retaining Walls

With respect to the proposed retaining walls, Council's Local Planning Policies (LPP) 4.2.8 *Cut and Fill – Footings (General), Sand Pad Policy, Control of Earthworks on Escarpment Lots and Building Sites (Filling)* and 4.2.18 *Retaining Walls* are not applicable for the following reasons:

1. LPP 4.2.8 relates to the control of earthworks on escarpment lots and the subject site is not considered to be an escarpment lot; and
2. LPP 4.2.18 relates to retaining walls on the boundary and the subject retaining walls are not proposed to be on the boundary. Rather, they are setback in accordance with the Residential Design Codes.

Restrictive Covenant

The Restrictive Covenant was required by the State Administrative Tribunal as a condition of subdivision approval. Whilst it is not common for Residential zoned land to be subject to building envelopes, the building envelopes for Bayley Close were imposed with the intention of protecting the vegetation on the land.

Whilst the Restrictive Covenant specifies a maximum building envelope area of 700m², it is acknowledged that the Scheme is not bound by a Restrictive Covenant and the Scheme does make provision for building envelopes to be modified. Given this, Council has also previously approved a building envelope modification in Bayley Close with the area increased to 810m².

Building Envelope

Staff have been working closely with the applicant to reduce any potential impacts of the proposed building envelope modification. This has resulted in a number of revisions to the building envelope. Since the application was submitted, the proposed building envelope has been reduced from 900m² and 850m² to the current proposal of two building envelopes totalling 792m². The applicant has advised that the second smaller building envelope will be used for the construction of a shed which, by constructing the shed in the proposed location, will only require a small retaining wall on the northern side. It is proposed that vehicle access to the shed would be obtained by driving along the western boundary of the site. As required by the Scheme, all development is required to be contained within the building envelope. Therefore, any future vehicle access outside of the building envelope would need to be of a temporary nature (eg. gravel/limestone) in order to not be considered as 'development'.

Lot 14 could be considered as a difficult site to develop due to its irregular shape, relatively steep slope and the requirement for sufficient separation from the vegetation on Lot 15 to achieve the required BAL-29 rating. The reduction of 108m² from the originally proposed building envelope demonstrates the applicant's willingness to work with the Shire and to reduce any potential impacts from their development.

The Scheme makes provision for Council to *"modify the size, shape or position of any building envelope on a lot provided it is satisfied that such action would result in less disturbance to existing vegetation on the lot and would not increase the exposure of any development from outside the lot"*. The proposed building envelope modification will result in one additional Peppermint tree being removed that is outside the original building envelope. However, a Jarrah tree will now be retained (that is currently within the original building envelope) as it will be outside the proposed envelope. The proposed building envelope will not increase the exposure of the development from outside the lot.

Conclusion

The proposed building envelope will not result in additional vegetation being removed and the proposed total area of 792m² is comparable with a previous Council approval for an increase in the building envelope for a different property on Bayley Close. The site is considered to be a difficult site due to its shape and steep slope and the applicant has been respectful of the Shire's requirements to reduce the overall development footprint. It is therefore recommended that Council approve the application subject to appropriate conditions.

Statutory/Policy Environment

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Regulations 2015

- Section 67 – Matters to be Considered by Local Government

"In considering an application for development approval the local government is to have due regard to the following matters to the extent that, in the opinion of the local government, those matters are relevant to the development the subject of the application —

(a) *the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;*

(b) *the requirements of orderly and proper planning including any proposed local planning scheme or amendment to this Scheme that has been advertised under the Planning and Development (Local Planning Schemes) Regulations 2015 or any other proposed planning instrument that the local government is seriously considering adopting or approving;"*

"(g) any local planning policy for the Scheme area;"

"(m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;

(n) *the amenity of the locality including the following —*

(ii) *the character of the locality;”*

“(s) *the adequacy of –*

(i) *the proposed means of access to and egress from the site;”*

“(w) *the history of the site where the development is to be located;”*

“(zb) *any other planning consideration the local government considers appropriate.”*

- Section 78D – Proposed Development in a Bushfire Prone Area

“(1) *...before commencing any development on a development site a person ... must cause to be prepared a bushfire attack level assessment...”*

Shire of Harvey District Planning Scheme No.1

Clause 6.2.6 of District Planning Scheme No. 1 states that:

“Council may modify the size, shape or position of any building envelope on a lot provided it is satisfied that such action would result in less disturbance to existing vegetation on the lot and would not increase the exposure of any development from outside the lot.”

Strategic Framework

Within the Shire’s Strategic Community Plan 2017 - 2027, Strategy 2.3.1 states:

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

- *minimise land use conflict;*
- *protect significant vegetation, where possible.”*

Budget Implications

Nil.

Risk Management

The Risk Theme Profile identified as part of this report is ***Providing Inaccurate Advice/Information***. The Consequence could be Environmental, Financial, Reputational or Compliance if incorrect advice is given or a condition 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.

Officer's Recommendation

That Council:

1. Approves the Application for Development Approval to modify the Building Envelope on Lot 14 (No. 20) Bayley Close, Australind from 700m² to 792m² in accordance with the 'Proposed Building Envelope Changes' plan (refer **Attachment 4**), 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 first obtaining approval from the Shire;
 - 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. All development (including outbuildings, effluent disposal systems, batters and associated earthworks) shall be contained within the allocated building envelope as indicated on the approved plan to the satisfaction of the Principal Building Surveyor;
 - d. Only endemic vegetation (being vegetation native to the local area) shall be planted outside of the allocated building envelope to the satisfaction of the Manager Planning Services;
 - e. No vegetation shall be removed between the boundaries of the property and the allocated building envelope to the satisfaction of the Manager Planning Services; and
 - f. The proposed development shall be constructed, and thereafter maintained, to comply with the BAL-29 requirements of AS 3959 *Construction of Buildings in Bushfire Prone Areas* in accordance with the approved Bushfire Management Plan/Statement to the satisfaction of the Principal Building Surveyor;
2. Advises the Applicant of the following additional requirements that are not included as conditions of the approval:
 - i. 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; and
 - ii. The development is required to comply with the *Building Code of Australia, Building Regulations 2012* and the *Local Government Act 1995*.
 - iii. The landowner is advised that any future vehicle access outside of the building envelope would need to be of a temporary nature (eg. gravel/limestone) in order to not be considered as 'development'.

DS-17/123. **Burgoyne/Simpson**

"That the Officer's Recommendation be adopted."

CARRIED 5-0

SIGNED _____ DATED 16th January 2018.

Item No.	8.1.4
Subject:	Application for Development Approval – Inert Waste and Composting Facility
Proponent:	B & J Catalano Pty Ltd
Location:	Lots 4 and 7 Runnymede Road, Wellesley
Reporting Officer:	Planning Officer (ND)
File No.:	A002628 & A002575
	Attachment Reg. No. 17/22348

Summary

At its meeting on 29th August 2017, Council resolved to advertise an application for an “Inert Waste and Composting Facility” as a “use not listed” subject to further information being submitted. Prior to advertising and the supply of additional information, a State Administrative Tribunal (SAT) determination on a separate application, deemed an ‘Inert Waste and Composting Facility’ is actually a “Light or General Industry”. Neither of these land uses are permitted in the ‘Kemerton Industry Buffer’ zone. Approval could be contemplated via a site specific rezoning and to this effect Staff sought comment from the key government stakeholders. No support from those stakeholders was forthcoming thereby ruling out an option for a site specific rezoning.

In light of the above the approval cannot be granted and it is therefore recommended that the application be refused.

Background

The Application & Council’s Initial Decision

The location of the proposed Inert Waste Facility and Composting Facility is shown in **Attachment 1** and the relevant site plans are shown in **Attachments 2, 3** and **4**. The full report regarding the facility along with Council’s previous decision can be found in the Minutes for 29th August 2017 Council meeting, Item 8.1.3 pages 8-13 (Decisions 17/235 and 17/236).

Council’s decision at the 29th August 2017 Ordinary meeting was as follows:

“That Council, pursuant to Clause 4.2.4(c) of the Shire of Harvey’s District Planning Scheme No. 1, determines that the proposed “Use Not Listed” detailed in the Application for Development Approval for Lots 4 and 7 Runnymede Road, Binningup can be considered as “Inert Waste Facility inclusive of a Composting Facility” which may be consistent with the objectives and purpose of the ‘Kemerton Industry Buffer’ zone.” (Decision 17/235) and;

“That Council:

- 1. Requests the Applicant to provide the following additional information in order for Council to make an informed decision on the Application for Development Approval for an “Inert Waste Facility inclusive of a Composting Facility” on Lots 4 and 7 Runnymede Road, Binningup:*
 - a. Site specific, scientific information to support the consideration of the Composting Facility at a distance less than 1800m from the nearest sensitive land use; and*
 - b. A Fire Management Plan suitable for the proposed development.*

2. *Pursuant to Clause 4.2.4. (c) of the Shire of Harvey's District Planning Scheme No. 1, upon receipt of the above required additional information, the Application for Development Approval for an "Inert Waste Facility inclusive of a Composting Facility" on Lots 4 and 7 Runnymede Road, Binningup be advertised for public comment in accordance with Section 64(3) (a) of the Planning and Development (Local Planning Schemes) Regulations 2015." (Decision 17/236)*

The Recent SAT Decision relating to a Similar Facility

On 18th September 2017, a decision of the SAT was made public in regard to *Di Trento and the Shire of Northam [2017] WASAT 121* (refer **Attachment 5** for the full SAT report) in which the Tribunal determined that a similar development described as a 'materials recycling facility' was not a 'use not listed' but rather was a form of "Industry". It was not necessary for the Tribunal to conclude whether it was 'general' or 'light industry' as both industrial use classes were prohibited in the zone relevant to the appeal.

Neither 'general' or 'light industry' are permitted within the Kemerton Industry Buffer zone and as such approval cannot be considered by Council.

In light of the above, advice from Council's solicitors was sought as to the appropriate process required to determine the proposal. Two (2) options were provided as follows:

1. *Continue the advertising process which was initiated on the basis that the development could be considered as a use not listed. After advertising and collating submissions the matter be referred to Council with a statement that it must be refused as it cannot be considered as a use not listed.*
2. *Defer advertising and bring the application immediately before Council on the basis that the development is prohibited and must be refused.*

For full copy of advice from Council's solicitors, refer **Confidential Attachment 6**.

Follow up to SAT Decision

Following the above advice a meeting with the proponents was organised on the 25th October 2017 to discuss the options.

It was discussed that if approval could not be granted by Council due to the SAT decision, could a rezoning be considered to allow for the waste facility site? It was then decided that advice was required from the relevant State Government departments to be able to gauge if a rezoning was worth pursuing. Advice from these agencies is given below.

Comments from Key Government Agencies

Comments from the relevant State Government Departments regarding development in Special Control Area 2 (which includes the Kemerton Strategic Industry zone and the Kemerton Industry Buffer zone) under the Greater Bunbury Region Scheme are as follows:

Department of Jobs, Tourism, Science and Innovation – Infrastructure and Land Planning, Policy Planning and Science Section (formerly the Department of State Development) (refer **Attachment 7**):

- *The Department of Jobs, Tourism, Science and Innovation (JTSI) and LandCorp support the advice provided by the Department of Planning, Lands and Heritage in relation to this matter (see below).*
- *Given the information provided the proposal is not consistent with the objectives and purpose of the Kemerton Industry Buffer. Proposed land uses within the Kemerton Industry Buffer are intended to be low intensity and must not compromise the noise, air and risk modelling emissions for existing and future industry within the Kemerton SIA. JTSI and LandCorp do not support amendments to the Kemerton Industry Buffer zone which provide precedence for further development inconsistent with the objective of the zone.*

NB: It is to be noted that the above division of JTSI was formerly the Department of State Development.

Department of Planning, Lands and Heritage (GBRS Team) (refer **Attachment 8**):

- *Lots 4 and 7 Runnymede Road are zoned Rural under the provisions of the GBRS, and fall within the SCA No2 – Kemerton Industrial Zone Buffer area. The following uses are not permitted in SCA No 2:*
 - *(e) general, noxious, hazardous and light industry uses as defined in State Planning Policy No.4.1: State Industrial Buffer Policy.*
- *As detailed in the 2009 draft SPP4.1 (as amended) “Industry” is defined in the interpretations. The proposed use would appear to be consistent with the definition of industry general or light, and is therefore not permitted within SCA No.2.*
- *A Local Planning Scheme Amendment to modify the Scheme to accommodate the proposed use within the Kemerton Industry buffer zone or an alternate zone would most probably be a complex amendment because it would seek to introduce a use that could have an impact that is significant, relative to development in the locality – r. 34 Complex Amendment (c) and (b). However in stating this, the introduction of “Industry” as a permitted use under the local scheme within the SCA No.2 area would not be consistent with the GBRS and therefore unlikely to be supported. Additionally it is unlikely that an amendment to the GBRS to allow this landuse would also be supported.*

LandCorp:

LandCorp acknowledged being contacted regarding the proposal but have not yet returned comment. Nevertheless it can be considered that its comments are included within that of the JTSI (former Department of State Development) submission.

Comment

Staff are of the opinion that the SAT determination has established sufficient and relevant case law to determine that the proposed Inert Waste Facility on Lots 4 and 7 Runnymede Road is a “general or light industry”. As neither of these uses are permitted within the Kemerton Industry Buffer zone, Development Approval cannot be granted, unless a site specific rezoning was undertaken. Given the comments from the relevant State Government agencies a site specific rezoning would not be supported.

All of the above matters have been discussed with the applicant, who has requested that the Council determine the application. To this effect, advertising of the application is not necessary and it is recommended that the proposed Inert Waste Facility and Composting Facility be refused.

Statutory/Policy Environment

Shire of Harvey District Planning Scheme No.1

TABLE 33 – ZONING AND DEVELOPMENT STANDARDS – Kemerton Industry Buffer

The land uses of Industry – “Light and Industry – General” are not included in this table as uses that can be approved in the Kemerton Industry Buffer zone.

Strategic Framework

Within the Shire’s Strategic Community Plan 2017 - 2027, Strategy 2.3.1 in part:

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

- *Minimise land use conflict.*
- *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 assignment of the land use is applied plus if an approval is issued ultra virus to the Scheme. The Risk is mitigated by the Staff recommendation and 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, in recognition of the case law established by State Administrative Tribunal Decision [2017] WASAT 121 and legal advice obtained:

1. Determines that the proposed land use of an “inert waste facility and composting site” on Lots 4 and 7 Runnymede Road is defined as an industrial use and not a “use not listed”;
2. Resolves not to proceed with the previously required advertising period for the “inert waste facility and composting site” on Lots 4 and 7 Runnymede Road;
3. Refuses the Application for Development Approval for the “inert waste facility and composting site” on Lots 4 and 7 Runnymede Road for the following reasons:

- a. The proposed use as is 'Industry – General' or 'Industry – Light' use which are not permitted land uses in the Kemerton Industry Buffer zone under the Shire of Harvey District Planning Scheme No. 1; and
- b. The proposed use as is 'Industry – General' or 'Industry – Light' use which are not permitted land uses in the Special Control Area No. 2 – Kemerton Industrial Zone Buffer area (SCA No. 2) under the Greater Bunbury Region Scheme.

DS-17/124. **Burgoyne/Beech**

“That at the request of the applicant, Item 8.1.4 be withdrawn from the Agenda.”

CARRIED 5-0

Item No.	8.1.5
Subject:	Review of Local Planning Policy 4.2.6 – Oversize Outbuildings
Proponent:	Shire of Harvey
Location:	Shire of Harvey
Reporting Officer:	Planning Officer (EE)
File No.:	PS/P/003

Summary

At its meeting held on 12th September 2017, Council considered a review of its Local Planning Policies (LPP) which included LPP 4.2.6 – Oversize Outbuildings (refer **Attachment 1**). The draft amended LPP was referred to the Western Australian Planning Commission (WAPC) as it proposed variations to the *Residential Design Codes* (R-Codes), thus requiring the approval of the WAPC.

The WAPC has advised that the draft amended LPP is inconsistent with the R-Codes and therefore is not supported. Staff have further reviewed the LPP and recommend Council adopts minor amendments to the LPP.

Background

The LPP was originally adopted by Council on 24th March 1997. In 2002, a revised R-Codes became operational which introduced the need for “Regional Exceptions” to the R-Codes to be approved by the WAPC. All LPP’s were reviewed by Council against the 2002 R-Codes and this LPP required the approval of the WAPC as per the “Regional Exceptions” provisions. The LPP was referred to the WAPC in 2004 and approved on 18th May 2007 as a regional variation to the R-Codes. The main purpose of the LPP is to provide a maximum area, ridge and wall heights for outbuildings. An outbuilding is defined in the R-Codes as:

An enclosed (an area bound on three or more sides by a permanent wall and covered in water impermeable material) non-habitable structure that is detached from any dwelling.

Research indicates that the original intent of the LPP was to restrict the size of all structures detached from the dwelling (including a shed, carport, lean-to and the like) which are Class 10a and Class 10b structures under the *Building Code of Australia*.

Therefore, at its meeting held on 12th September 2017, Council supported amendments to LPP 4.2.6 to include all Class 10a and Class 10b buildings (garages, carports, lean-to's, etc not attached to the dwelling) in the maximum aggregate floor area restriction to reflect the original intent of the LPP (refer **Attachment 2**) and resolved to adopt the draft amended LPP for the purpose of advertising.

Advertising

The draft amended LPP was advertised in the Harvey Reporter, Bunbury Herald and South Western Times and on the Shire's website for public comment pursuant to Clause Part 2, Division 2, Clause 5(1) of the *Planning and Development (Local Planning Schemes) Regulations 2015*. No submissions from the public were received.

The draft amended LPP was also referred to the WAPC as the proposed variation to the R-Codes requires the approval of the WAPC. The WAPC advised that, in relation to Residential zoned land (along with Special Residential and Special Rural zoned land which may potentially be changed to low density Residential zoned land in the Shire's new Local Planning Scheme), the *"proposed variations to the policy are inconsistent with the R-Codes and as such cannot be supported"* (refer **Attachment 3**). A summary of the WAPC's comments are as follows:

1. The inclusion of these structures (gazebo, carport, lean-to, etc) would have a limiting effect on the addition of various 'unenclosed' structures that would otherwise be permitted under the 'Definitions' section and 'Open Space' provisions in Table of the R-Codes;
2. The site area provisions provided in the 'Open Space' definitions section of the R-Codes prescribes which structures can constitute 'open space' and an LPP cannot vary these site area provisions as they are not deemed-to-comply provisions; and
3. An LPP can only vary a deemed-to-comply provision in accordance with clause 7.3.2 of the R-Codes.

Comment

Clause 7.1 of the R-Codes prevents the R-Codes being amended or modified *"to provide for greater or lesser requirements unless it relates to matters expressly permitted under the R-Codes to be amended or modified."* Clause 7.3.1 of the R-Codes provides for a range of Deemed-to-Comply provisions that can be varied by a LPP, local development plan, structure plan or activity centre plan. The matters permitted to be amended or modified are included in the "Statutory/Policy Environment" section of this report. Clause 7.3.2 of the R-Codes provides for the WAPC to approve a variation to any other Deemed-to-Comply provision if it can be demonstrated that the variation is consistent with the objectives and design principles of the R-Codes.

The objectives and design principles of the R-Codes relating to outbuildings are concerned with protecting the:

1. Privacy of adjoining dwellings and private open space; and
2. Amenity of the streetscape and views along the street by ensuring that outbuildings and other structures attached to buildings do not detract from the streetscape and are not visually intrusive to neighbouring properties or adjoining public space.

The WAPC's reasons for not supporting the draft amended LPP is based on the R-Codes allowing certain roofed structures being included in the overall open space requirement for residential land. The definition of "open space" in the R-Codes allows for the following structures to be included as open space, and therefore excluded from the maximum area of the site covered by buildings/roof area:

- Open areas of accessible and useable flat roofs and outdoor living areas above natural ground level;
- Areas beneath eaves; and
- Verandahs, patios or other such roofed structures (not more than 0.5m above natural ground level) that are unenclosed on at least two sides, and covering no more than 10% of the site area or 50m², whichever is the lesser.

Given that the WAPC has determined that the proposed additional variation is inconsistent with the R-Codes and therefore will not approve the draft amended LPP (as provided in **Attachment 2**), Staff have again reviewed the LPP (as provided in **Attachment 1**) and have recommended minor amendments which include (refer **Attachment 4**):

1. Changes to the layout of the LPP provisions resulting in the LPP being more user-friendly and understandable for landowners; and
2. Changes to the format to be consistent with the updated format of Council's Policy Manual.

The outcome of the review of this LPP is that only outbuildings (defined as being an "enclosed non-habitable structure that is detached to a dwelling") can be subject to the LPP.

The new draft amended LPP (as provided in **Attachment 4**) doesn't require re-endorsement by the WAPC as confirmed in **Attachment 5**.

Conclusion

Given that the proposed draft amended LPP endorsed by Council at its 12th September 2017 meeting is considered to be inconsistent with the R-Codes and therefore is not supported by the WAPC, it is recommended that the minor amendments to the LPP (as provided in **Attachment 4**) is adopted by Council.

Statutory/Policy Environment

Planning and Development (Local Planning Schemes) Regulations 2015

Schedule 2 – Deemed provisions for local planning schemes of the *Planning and Development (Local Planning Schemes) Regulations 2015* contains provisions relating to Local Planning Policies. The relevant provisions are as follows:

"Part 2 – Local planning framework"

"Division 2 – Local Planning Policies"

"3. Local planning policies"

"(2) A local planning policy —

- (a) *may apply generally or in respect of a particular class or classes of matters specified in the policy; and*
- (b) *may apply to the whole of the Scheme area or to part or parts of the Scheme area specified in the policy.*
- (3) *A local planning policy must be based on sound town planning principles and may address either strategic or operational considerations in relation to the matters to which the policy applies.*
- (4) *The local government may amend or repeal a local planning policy.*
- (5) *In making a determination under this Scheme the local government must have regard to each relevant local planning policy to the extent that the policy is consistent with this Scheme.”*

“4. Procedure for making local planning policy

- (1) *If the local government resolves to prepare a local planning policy the local government must, unless the Commission otherwise agrees, advertise the proposed policy as follows —*
 - (a) *publish a notice of the proposed policy in a newspaper circulating in the Scheme area, giving details of —*
 - (i) *the subject and nature of the proposed policy; and*
 - (ii) *the objectives of the proposed policy; and*
 - (iii) *where the proposed policy may be inspected; and*
 - (iv) *to whom, in what form and during what period submissions in relation to the proposed policy may be made;*
 - (b) *if, in the opinion of the local government, the policy is inconsistent with any State planning policy, give notice of the proposed policy to the Commission;*
 - (c) *give notice of the proposed policy in any other way and carry out any other consultation the local government considers appropriate.*
- (2) *The period for making submissions in relation to a local planning policy must not be less than a period of 21 days commencing on the day on which the notice of the policy is published under subclause (1)(a).*
- (3) *After the expiry of the period within which submissions may be made, the local government must —*
 - (a) *review the proposed policy in the light of any submissions made; and*
 - (b) *resolve to —*
 - (i) *proceed with the policy without modification; or*
 - (ii) *proceed with the policy with modification; or*
 - (iii) *not to proceed with the policy.*
- (4) *If the local government resolves to proceed with the policy, the local government must publish notice of the policy in a newspaper circulating in the Scheme area.*
- (5) *A policy has effect on publication of a notice under subclause (4).”*

“5. Procedure for amending local planning policy

- (1) *Clause 4, with any necessary changes, applies to the amendment to a local planning policy.*
- (2) *Despite subclause (1), the local government may make an amendment to a local planning policy without advertising the amendment if, in the opinion of the local government, the amendment is a minor amendment.*

Residential Design Codes

Clause 7.3 – Scope of Local Planning Policies, Local Development Plans, Local Structure Plans and Activity Centre Plans

“Clause 7.3.1 - Local planning policies, local development plans, local structure plans and activity centre plans may contain provisions that:

(a) amend or replace the following deemed-to-comply provisions set out in Part 5 and/or Part 6 of the R-Codes:

Context

street setbacks (clauses 5.1.2, 6.1.3)

lot boundary setbacks (clauses 5.1.3 C3.2-3.3, 6.1.4 C4.2ii)

building height (clauses 5.1.6, 6.1.2)

Streetscape

setback of garages and carports (clause 5.2.1)

garage width (clause 5.2.2)

street surveillance (clauses 5.2.3, 6.2.1)

street walls and fences (clauses 5.2.4, 6.2.2)

sight lines (clauses 5.2.5, 6.2.3)

appearance of retained dwelling (clause 5.2.6)

Site planning and design site works (clauses 5.3.7, 6.3.6 C6.3)

Building design

external fixtures (clauses 5.4.4, 6.4.5 C5.3-5.4)

Special purpose dwellings aged and dependent persons’ dwelling(s) (clause 5.5.2 C2.1ii)

(b) augment the R-Codes by providing local housing objectives to guide judgements about the merits of proposals for any aspect of residential development that does not meet the requirements or is not provided for, under the R-Codes.

Amendments or replacements to deemed-to-comply provisions are to be consistent with the relevant design principle.”

“Clause 7.3.2 – Notwithstanding clause 7.3.1, the local government may, with the approval of the WAPC, amend any other deemed-to-comply provision within the R-Codes by means of a local planning policy, local structure plan or local development plan where it can be demonstrated to the satisfaction of the WAPC that the proposed amendment:

- is warranted due to a specific need related to that particular locality or region;*
- is consistent with the objectives and design principles of the R-Codes; and*
- can be properly implemented and audited by the decision-maker as part of the ongoing building approval process.”*

Strategic Framework

Within the Shire’s Strategic Community Plan 2017 - 2027, Strategy 4.2.2 states:

“Maintain, review and ensure relevance of Council’s policies and local laws.”

Budget Implications

Nil.

Risk Management

The Risk Theme Profile identified as part of this report is ***Failure to Fulfil Compliance Requirements***. The Consequence could be Compliance/Reputation if the Local Planning Policies are not reviewed against current statutory documents. The risk is mitigated by the report and Local Planning Policy review being thoroughly researched, peer reviewed and provided by a qualified Council officer, resulting in LOW risk being present.

Officer's Recommendation

That Council:

1. Pursuant to Part 2, Division 2, Clauses 4(1) and 4(2) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, adopts the amended Local Planning Policy 4.2.6 – Variation to R-Codes – Outbuildings as detailed in ***Attachment 4***.
2. Determines that the amendments contained in the above Local Planning Policy are minor in nature and therefore, pursuant to Part 2, Division 2, Clause 5(2) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, advertising of the amended Local Planning Policy is not required.

DS-17/125. **Simpson/Burgoyne**

“That the Officer's Recommendation be adopted.”

CARRIED 5-0

8.2 **BUILDING REPORT (Gold)**

Item No.	8.2.1
Subject:	Proposed Oversized Boundary Wall
Proponent:	J Damiani
Location:	Lot 738 (No. 31) Jupiter Drive, Australind
Reporting Officer:	Building Surveyor (FF)
File No.:	A013127

Summary

An application has been received requesting Council's consideration for an oversized masonry boundary wall for a proposed 12m x 6.1m steel framed outbuilding on Lot 738 (No. 31) Jupiter Drive, Australind. The oversized boundary wall will be offset 200mm and run 12m along the eastern boundary with a height of 3.6m (refer **Attachment 1**). Staff supports the proposal.

Background

Lot 738 (No. 31) Jupiter Drive, Australind is zoned "Residential" R20 under the provisions of Council's District Planning Scheme (DPS) No.1, consists of 731m².

The Residential Design Codes (R-Codes) set out lot boundary setback requirements for structures on properties zone 'Residential' under Clause 5.1.3. P3.2 of Clause 5.1.3 refers specifically to the setback of walls up to a lot boundary for properties zoned R20:

Residential Design Codes Part 5.1.3 'Lot boundary setback'

P3.1 Buildings set back from lot boundaries so as to:

- *Reduce impacts of building bulk on adjoining properties;*
- *Provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and*
- *Minimise the extent of overlooking and resultant loss of privacy on adjoining properties.*

P3.2 Building built up to boundaries (other than the street boundary) where this:

- *Makes more effective use of space for enhanced privacy for the occupant/s or outdoor living areas;*
- *Does not compromise the design principle contained in clause 5.1.3 P3.1;*
- *Does not have any adverse impact on the amenity of the adjoining property;*
- *Ensures direct sun to major openings to habitable rooms and outdoor living areas for adjoining properties is not restricted; and*
- *Positively contribute to the prevailing development context and streetscape.*

The applicant has sought a wall height of 3.6m for a future mezzanine floor and to also accommodate for a car hoist for his hobby. It is noted the roof apex is 4.193m which does not exceed the 4.5m maximum limit under Council's delegation. Construction of the wall along the eastern boundary will not cause any overshadowing issues to the most impacted adjoining landowner.

It is noted that the dividing fence will be retained as the proposed oversized wall is to be constructed 200mm in from the rear boundary (**Attachment 2**). This will therefore significantly break up the impact of the wall and not cause any disruptions to the adjoining land owner during the construction process (refer **Attachment 3**).

The length of the boundary wall is required due to the inability to create a wider outbuilding as siting of the shed any closer to the proposed dwelling will significantly reduce natural light and ventilation provided to Bedroom 3 as per the deemed to satisfy provisions of the BCA.

Comment

The owner of the property has approached the adjoining landowners that he believed would be impacted by the wall and no adverse comment in relation to the proposed works was received. This is supported by written advice from the adjoining land owners (**Attachment 4 and 5**).

Statutory/Policy Environment

Councils District Planning Scheme No.1 zoning the property as "Residential"

Residential Design Codes Clause 5.1.3

Strategic Framework

Within the Shire's Strategic Community Plan 2017 – 2027, Outcomes 1.1 and 2.3 state:

- 1.1 *"Increased opportunities for diverse socially and environmentally responsible commercial, agricultural and industrial enterprises, and residential development."*
- 2.3 *"Land use provisions within the rural, industrial and urban areas reflect current and future needs."*

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 exercise its discretion and authorises the Principal Building Surveyor to issue a Building Permit for 12m x 6.1m steel framed outbuilding with an oversized masonry boundary wall which has a wall height of 3.6 metres and overall height of 4.193m at Lot 738 (No. 31) Jupiter, Australind, subject to:

- a. The proposed outbuilding shall not be used for human habitation or commercial purposes; and
- b. The oversized boundary wall to be constructed of face brick work compatible to the existing residence.

DS-17/126. **Burgoyne/Boylan**
"That the Officer's Recommendation be adopted."

CARRIED 4-1

SIGNED _____ DATED 16th January 2018.

Item No.	8.2.2
Subject:	Building Permit Applications Received – Building Permits Issued – November 2017
Proponent:	Shire of Harvey
Reporting Officer:	Principal Building Surveyor
File No.:	BSR017 (15) Attachment Reg. No. 17/33876

81 Building Applications have been received and 71 Building Permits issued for the month of November 2017. Details of Building Permits approved are attached.

Officer's Recommendation

That Council receives the report on building activity over the month of November 2017.

DS-17/127. **Simpson/Beech**
"That the Officer's Recommendation be adopted."

CARRIED 5-0

9. **MATTERS BEHIND CLOSED DOORS**

Nil.

10. **CLOSURE**

There being no further business to discuss, the meeting was declared closed at 5.20p.m.