



Ordinary Council Meeting **Minutes**

**Harvey Council Chamber
Tuesday, 17 December 2019
4pm**

Contents

1.	Official Opening	5
2.	Record of Apologies and Leave of Absence	5
3.	Applications for Leave of Absence	5
4.	Reading from a Book of Learning and Wisdom	5
5.	Declarations of Members' and Officers' Personal Interest	5
6.	Response to Previous Questions Taken on Notice	6
7.	Public Question Time	6
8.	Petitions/Deputations/Presentations	6
9.	Announcements by Presiding Member or CEO Without Discussion	7
10.	Confirmation of Minutes	7
11.	Receipt of Minutes and Recommendations from Committees	7
12.	Officer's Reports	
	12.1 Chief Executive Officer	
	12.1.1 Bunbury Geographe Tourism Partnership MOU - Shire of Harvey - Bunbury Geographe Region (IM/T/005)	9
	12.2 Technical Services	
	12.2.1 Myalup Beach - Improved Access and Safety Improvements - Shire of Harvey - Myalup Beach (F000267).....	12
	12.3 Development Services	
	12.3.1 Proposed Structure Plan - Element (on behalf of Fabray Pty Ltd and Paris Road Australind Pty Ltd) - Lot 561 Paris Road, Australind and portion of unconstructed Victoria Road reserve (A005606, P000018)	15
	12.3.2 Application for a "Use Not Listed" (Reception Centre with Camping Area) - A & D Boaden - Lot 4177 (No. 530) Niger Road, Mornington (A004733).....	40
	12.3.3 Extension to Non-Conforming Use (Sawmill) - Mr Greg Esmond - Lot 341 (No. 425) Crampton Road, Uduc (A002320)	48
	12.3.4 Proposed Building Envelope Modification and Oversized Outbuilding - Jonathon and Jodi Read - Lot 123 (No. 6) Fletcher Court, Leschenault (A009458)	53

12.3.5 Amendment to Local Planning Policy 4.2.6 – Variation to R-Codes – Outbuildings - Shire of Harvey (PS/P/003)	60
12.3.6 Expression of Interest for Trading in Public Places for Food Vendors - Platinum Trust, trading as the Crazy Cow Group - Binningup Beach Carpark (Part Reserve 48823) (LS/B/032)	65 / 87
12.3.7 Local Government Development Assessment Panel Member Nominations - Government of Western Australia – Development Assessment Panels - Shire of Harvey (and Local Governments within the jurisdiction of the South West Development Assessment Panel) (PSL005(5)).....	66
12.4 Corporate Services	
12.4.1 Strategic Community Plan Report on Performance – 2018-2019 - Shire of Harvey (B000157)	68
12.4.2 Application for Exemption to Keep More than the Prescribed Number of Dogs - Ms. Susan Joyce Pessotto - 40 Tributary Place Leschenault (A008003)	71
12.4.3 Listing of Accounts Paid – October 2019 - Shire of Harvey (FMS006)	75
12.4.4 Financial Statements as at 31 October 2019 - Shire of Harvey (CC/C/062)	77
12.5 Community Services	
12.5.1 Memorandum of Agreement for Brunswick Hall Meeting Room - Brunswick River Cottages (Inc.) - Brunswick Town Hall, Brunswick (A004511)	79
12.5.2 Harvey Recreation and Cultural Centre – Technical Systems Upgrade to Function Room - Harvey Recreation and Cultural Centre - Harvey Recreation and Cultural Centre, Tom Latch Drive, Harvey - T142019.	81
13. Elected Members Motions of Which Previous Notice Has Been Given.....	84
14. Notice of Motion for Following Meeting	85
15. Questions by Members of Which Due Notice Has Been Given	85
16. Reports of Members	85
17. Seal Register	86
18. New Business of an Urgent Nature Introduced by Decision of Meeting.....	87
19. Matters Behind Closed Doors.....	87
19.1 Proposed Sale of Land (A009179) (IM/T/005).....	91
19.2 Proposed Sale of Land (A009844) (IM/T/005).....	91
19.3 Proposed Sale of Land (A013139) (IM/T/005).....	91
20. Closure of Meeting	92

Shire of Harvey Council Minutes

Minutes of the Ordinary Council Meeting of the Harvey Shire Council, held in the Council Chamber, Young Street, Harvey, on Tuesday, 17 December 2019, commencing at 4pm.

Attendance

Shire President	Cr. P.	Gillett	
	Cr. B.	Adams	
	Cr. P.	Beech	
	Cr. M.	Boylan	
	Cr. J.	Bromham	
	Cr. M.	Campbell	
	Cr. C.	Carbone	
	Cr. R.	Coleman	
	Cr. W.	Dickinson	(4.01pm – 6.00pm)
	Cr. T.	Jackson	
	Cr. A.	Lovitt	
	Cr. D.	Simpson	

Staff

Acting Chief Executive Officer	Mr. S.	Collie	
Executive Manager Technical Services	Mr. R.	Lotznicker	
Principal Building Surveyor	Mr. M.	Stewart	
Principal Environmental Health Officer	Mr. S.	Dandridge	(4.00pm – 5.45pm)
Manager Planning Services	Mr. S.	Hall	(4.01pm – 6.00pm)
Manager Community & Economic Development	Mr. P.	Quinlivan	
Finance Manager	Mr. D.	Winter	
Senior Environmental Health Officer	Mr. H.	Jones	
Accountant	Ms. L.	Davies	
Marketing and Communications Officer	Ms. C.	Eadie	
Senior Planning Officer	Mrs. E.	Edwards	(4.00pm – 5.16pm)
Planning Officer	Ms. I.	Fry	(4.00pm – 5.16pm)
Agendas and Minutes Officer	Ms. K.	Hough	

There were 12 members of the public and one (1) member of the press present.

Minutes

1. Official Opening

The meeting was declared open at 4pm.

Acknowledgement of Country

The Shire of Harvey acknowledges the traditional custodians of the land and their continuing connection to the land, waters and community. We pay our respects to all members of the Aboriginal communities and their cultures; and to Elders both past and present.

Cr. Dickinson and Mr. Hall entered the Chamber at 4.01pm.

2. Record of Apologies and Leave of Absence

Apologies

Councillor Francis Burgoyne.

Leave of Absence

Nil.

3. Applications for Leave of Absence

Nil.

4. Reading from a Book of Learning and Wisdom

Read by Councillor Craig Carbone.

5. Declarations of Members' and Officers' Personal Interest

Impartiality Interest

Cr. Beech declared an Impartiality Interest in Item 12.5.1 - Memorandum of Agreement for Brunswick Hall Meeting Room - Brunswick River Cottages (Inc.) - Brunswick Town Hall, Brunswick (A004511). Cr. Beech advised that he is a Council delegate on the Brunswick River Cottages Committee. Cr. Beech declared he would deal with the matter on its merits and stay in the Chamber for the duration of the item.

Cr. Beech declared an Impartiality Interest in Item 12.5.2 - Harvey Recreation and Cultural Centre – Technical Systems Upgrade to Function Room - Harvey Recreation and Cultural Centre - Tom Latch Drive, Harvey - T142019. Cr. Beech advised that he is a Council delegate on the Harvey Recreation and Cultural Centre Management Committee. Cr. Beech declared he would deal with the matter on its merits and stay in the Chamber for the duration of the item.

Cr. Gillett declared an Impartiality Interest in Item 12.5.2 - Harvey Recreation and Cultural Centre – Technical Systems Upgrade to Function Room - Harvey Recreation and Cultural Centre - Harvey Recreation and Cultural Centre, Tom Latch Drive, Harvey - T142019. Cr. Gillett advised that he is a Council delegate on the Harvey Recreation and Cultural Centre Management Committee. Cr. Gillett declared he would deal with the matter on its merits and stay in the Chamber for the duration of the item.

Cr. Gillett declared an Impartiality Interest in Item 12.3.2 - Application for a “Use Not Listed” (Reception Centre with Camping Area) - A & D Boaden - Lot 4177 (No. 530) Niger Road, Mornington (A004733). Cr. Gillett advised that he has a closely related person who works in the same industry. Cr. Gillett declared he would deal with the matter on its merits and stay in the Chamber for the duration of the item.

Cr. Lovitt declared an Impartiality Interest in Confidential Item 19.1 - Proposed Sale of Land (A009179). Cr. Lovitt advised that she lives in the same street as the land owner. Cr. Lovitt declared she would deal with the matter on its merits and stay in the Chamber for the duration of the item.

Mr. Hall declared an Impartiality Interest in Item 12.3.1 - Proposed Structure Plan - Element (on behalf of Fabray Pty Ltd and Paris Road Australind Pty Ltd) - Lot 561 Paris Road, Australind and portion of unconstructed Victoria Road reserve (A005606, P000018). Mr Hall advised that he has a professional relationship with the consultant, Mr Hall advised that the assessment and recommendation to Council has been undertaken in accordance with the provisions of the Shire of Harvey Planning Scheme No 1.

6. Response to Previous Questions Taken on Notice

Nil.

7. Public Question Time

Nil.

8. Petitions/Deputations/Presentations

Mr John Hovey spoke against the officer’s recommendation on Item 12.3.1 Proposed Structure Plan - Element (on behalf of Fabray Pty Ltd and Paris Road Australind Pty Ltd) - Lot 561 Paris Road, Australind and portion of unconstructed Victoria Road reserve (A005606, P000018).

Mr Alex Denham addressed Council regarding the previously proposed Local Area Traffic Management works on Hinge Road. Mr Denham put forward his concerns regarding the safety of the road and the need for traffic management.

Mr Ross Underwood spoke in support of the officer’s recommendation on Item 12.3.1 Proposed Structure Plan - Element (on behalf of Fabray Pty Ltd and Paris Road Australind Pty Ltd) - Lot 561 Paris Road, Australind and portion of unconstructed Victoria Road reserve (A005606, P000018).

Mr Dave Allan spoke in support of the officer's recommendation on Item 12.3.1 Proposed Structure Plan - Element (on behalf of Fabray Pty Ltd and Paris Road Australind Pty Ltd) - Lot 561 Paris Road, Australind and portion of unconstructed Victoria Road reserve (A005606, P000018).

Mr Travis Taylor spoke in support of the officer's recommendation on Item 12.3.1 Proposed Structure Plan - Element (on behalf of Fabray Pty Ltd and Paris Road Australind Pty Ltd) - Lot 561 Paris Road, Australind and portion of unconstructed Victoria Road reserve (A005606, P000018).

9. Announcements by Presiding Member or CEO Without Discussion

Nil.

10. Confirmation of Minutes

Ordinary Council Meeting – Tuesday, 19 November 2019

Recommendation

That the Minutes of the Council Meeting held on Tuesday, 19 November 2019, as printed be confirmed as a true and correct record.

19/301. Moved: Cr. Simpson Seconded: Cr. Lovitt

That the Minutes of the Council Meeting held on Tuesday, 19 November 2019, as printed be confirmed as a true and correct record."

CARRIED 12-0

11. Receipt of Minutes and Recommendations from Committees

Bush Fire Advisory Committee Meeting – Monday, 18 November 2019

Recommendation

That the Minutes of the Bush Fire Advisory Committee, held on Monday, 18 November 2019, as printed, be received and the recommendations contained therein be adopted by Council.

19302. Moved: Cr. Boylan Seconded: Cr. Adams

That the Minutes of the Bush Fire Advisory Committee, held on Monday, 18 November 2019, as printed, be received and the recommendations contained therein be adopted by Council.

CARRIED 12-0

Special Bush Fire Advisory Committee – Monday, 2 December 2019

Recommendation

That the Minutes of the Special Bush Fire Advisory Committee, held on Monday, 2 December 2019, as printed, be received and the recommendations contained therein be adopted by Council.

19/303. Moved: Cr. Lovitt Seconded: Cr. Campbell

That the Minutes of the Special Bush Fire Advisory Committee, held on Monday, 2 December 2019, as printed, be received and the recommendations contained therein be adopted by Council.”

CARRIED 12-0

Audit Committee – Tuesday, 3 December 2019

Recommendation

That the Minutes of the Audit Committee, held on Tuesday, 3 December 2019, as printed, be received and the recommendations contained therein be adopted by Council.

19/304. Moved: Cr. Dickinson Seconded: Cr. Simpson

That the Minutes of the Audit Committee, held on Tuesday, 3 December 2019, as printed, be received and the recommendations contained therein be adopted by Council.

CARRIED 12-0

12. Officer's Reports

Chief Executive Officer

Item No.	12.1.1	
Subject:	Bunbury Geographe Tourism Partnership MOU	
Proponent:	Shire of Harvey	
Location:	Bunbury Geographe Region	
Reporting Officer:	Chief Executive Officer	
File No.:	IM/T/005	Attachment Reg. No.

Summary

In 2016, a Memorandum of Understanding (MOU) was entered into between the Shires of Dardanup, Collie, Harvey, Capel, Donnybrook-Balingup and Boyup Brook as well as the City of Bunbury to deliver outcomes listed within the Regional Tourism Development Strategy. A copy of the signed MOU is attached (refer **Attachment 1**).

The MOU was developed in cooperation with the Bunbury Wellington Group of Councils to create a unified approach for the management of tourism development, marketing and infrastructure.

The current MOU is being reviewed by each member, and as such, it is requested to seek Council's support to extend the end date of the MOU to 30 June 2020.

Background

In 2012 a tourism working group comprising of the Bunbury Wellington Group of Councils, South West Development Commission and Regional Development Australia came together to develop a sub-regional tourism strategy that would complement the Tourism Futures South West plan and the South West Regional Blueprint. As a result of the strategy, a Memorandum of Understanding was developed and entered into in 2016, with this MOU due to conclude on 12 December 2019.

The purpose of the MOU is to create a unified approach to the management of tourism development, marketing and infrastructure and continue the relationship with the members and identify and promote key areas of focus including areas:

- Identifying tourism opportunities, priorities and gaps;
- Developing a unified tourism brand for the region;
- Marketing, governance and product development; and
- Identifying infrastructure and product priorities.

Member Councils have commenced a review of the MOU which to date, has not been finalised.

A meeting was held on 13 November 2019 where members of the Bunbury-Geographe Steering Committee and Bunbury-Geographe Tourism Advisory Working Group, agreed to approach each member Council for support in extending the current MOU by a further six (6) months to 30 June 2020.

Comment

It is believed that an extension to June 2020 will allow for appropriate consultation on the MOU and structure moving forward. Furthermore, importantly, this would allow partnership funding to align with the 2020-2021 financial year.

It is considered that the continuation of the MOU will provide a coordinated approach to the development of tourism and marketing of the region that will see reduced competition between towns and a pooling of resources that will increase reach and effectiveness of tourism marketing campaigns. The governance model proposed will ensure an ongoing commitment to prioritisation, implementation and review.

The MOU has been successfully implemented, and now it is time for a fully-consultative review which has been initiated. To comprehensively review the MOU and structure, it is anticipated that industry and stakeholder consultation will occur in February/March 2020.

This will then allow for a further report to be brought before Council to enable a decision to be made in April 2020 for potential roll out 1 July 2020.

Statutory/Policy Environment

There is no Council Policy or legislation relevant to this report.

Strategic Framework

Within the Shire's Strategic Community Plan 2017 – 2027, Strategy 1.2.9 states:

“Continue to collaborate with our partners to promote regional tourism initiatives.”

Risk Management

The Risk Theme Profile identified in relation to this item is **Inadequate Engagement Practices**. The Consequence could be **Reputational** and **Financial** if there is inadequate consideration of the objectives and financial implications of extending the term of the MOU. The risk is considered Minor and the likelihood Unlikely, given that at this time an extension is only requested until 30 June 2020 and that funds are available in the Shire's Budget. This results in a Low risk being present.

Budget Implications

The MOU contained provision for the Operation/Marketing Budget of \$100,000 per year over the three (3) years. During the 2016-2017 financial year, there was no expenditure which resulted in \$100,000 being available for the current financial year (2019-2020).

The Tourism Marketing and Development Manager was employed on 18 April 2017. It was proposed by the member local governments, to each provide a pro-rata payment being 30% of each member's annual contribution to enable the ongoing engagement of the Tourism Marketing and Development Manager for the extended period of the MOU. This will result in the following contributions:

Boyup Brook	\$600
Bunbury	\$47,056
Capel	\$3,000
Collie	\$1,500
Dardanup	\$3,000
Donnybrook – Balingup	\$1,500
Harvey	\$3,000

From the Shire's perspective this would see no financial implications, as the 2019-2020 budget includes provision to cover these expenses.

Voting Requirement

Simple Majority.

Officer's Recommendation

That Council:

1. Endorses an extension of the Bunbury Geographe Tourism Partnership (BGTP) Memorandum of Understanding from 12 December 2019 to 30 June 2020.
2. That subject to item 1, Council notes:
 - a. the extension is to allow the completion of a review of the MOU and consideration by all member local governments of their continuing involvement and investment into BGTP by March 2020;
 - b. the outcomes of the March 2020 MOU review will be presented to each Council for consideration and confirmation on their position on the BGTP involvement post 30 June 2020; and
 - c. the financial provision of 30% of the Shire's annual contribution by invoice from the City of Bunbury, to enable the ongoing engagement of the Tourism Marketing and Development Manager for the extended period of the MOU.

19/305. Moved: Cr. Simpson Seconded: Cr. Jackson

That Council:

1. **Endorses an extension of the Bunbury Geographe Tourism Partnership (BGTP) Memorandum of Understanding from 12 December 2019 to 30 June 2020.**
2. **That subject to item 1, Council notes:**
 - a. **the extension is to allow the completion of a review of the MOU and consideration by all member local governments of their continuing involvement and investment into BGTP by March 2020;**
 - b. **the outcomes of the March 2020 MOU review will be presented to each Council for consideration and confirmation on their position on the BGTP involvement post 30 June 2020; and**
 - c. **the financial provision of 30% of the Shire's annual contribution by invoice from the City of Bunbury, to enable the ongoing engagement of the Tourism Marketing and Development Manager for the extended period of the MOU.**

CARRIED 12-0

Technical Services

Item No.	12.2.1	
Subject:	Myalup Beach - Improved Access and Safety Improvements	
Proponent:	Shire of Harvey	
Location:	Myalup Beach	
Reporting Officer:	Executive Manager Technical Services	
File No.:	F000267	Attachment Reg. No.

Summary

In April 2019, Shire Officers submitted an application for Coastwest grant funding to undertake access and safety improvements to Myalup Beach. At the time the project was estimated to cost \$21,800 and the project was included in the 2019-2020 Budget, with a Coastwest contribution of \$10,300 towards the project.

In August 2019 the Shire was advised that its grant funding request was unsuccessful.

Recently the project cost has been reviewed and the project is estimated to cost in the order of \$25,000.

Therefore, this report recommends that Council approve unbudgeted expenditure of \$13,500 to undertake the required access and safety improvement works at Myalup Beach, this financial year, given that it has already allocated \$11,500 for the project in the 2019-2020 Budget.

Background

Myalup Beach is a popular holiday destination with a caravan park and chalets that adjoin Myalup Beach Road, the main access road to the beach and the beach car parking area.

The shared access to and from the beach is currently via a 3.5m wide access way at the northern end of the beach and ongoing concerns have been raised regarding safety for pedestrians vs vehicles due to its narrow width. As such, residents requested that a second access be formed through the dunes, to the south.

The second access is not supported by Shire Officers, and some residents, as it would need to traverse land currently in private ownership and through sand dunes that have previously been rehabilitated and revegetated.

As such, alternative improvements to the current access were proposed involving widening the access to 6.0m wide including widening the existing footpath next to the toilet block and providing an additional safe crossing from the car parking area to the toilet block (as shown in the sketch plan at **Attachment 1**).

Comment

As the Shire was unsuccessful in receiving the Coastwest grant and as contributory funding has been included in the 2019-2020 Budget, it is considered that the funding shortfall be identified during the budget review to enable the project to be implemented this financial year.

The project outcomes will include:

- Safety improvements;
- Amenity improvements;
- Encourage more people to visit the area; and
- Obviate the need to construct a new access track to the south of the beach from the car parking area.

A Coastwest grant was submitted as it was considered that the project met all the Coastwest objectives, in that it would contribute to the implementation of the Shire of Harvey Coastal Management Plan, assist with the protection of environmental values in the coastal zone, foster sustainable recreational and tourist use of the coast, and obviate the need for the construction of a second access way through a vegetated dune area to the south.

Statutory/Policy Environment

The project is consistent with the Shire of Harvey Coastal Management Plan (CMP), with recommendations to *"Stabilise and rehabilitate dunes on Reserves"*.

Policy Statement Number P13 of the CMP states to *"Discourage uncontrolled vehicle and pedestrian access over dunes by implementing management techniques relevant to the particular site, such as fencing or signage."*

References to coastal development and pedestrian access state the requirement for pedestrian pathways to blend with their setting, follow natural contours and to ensure vegetation removal is minimised.

Strategic Framework

Within the Shire's Strategic Community Plan 2017 – 2027, Strategies 2.3.1 and 2.7.1 state, in part:

- 2.3.1 *"Continue to implement integrated environmental, social and land use planning which will:*
- *Protect significant vegetation, where possible."*
- 2.7.1 *"Improve controlled access to all of our water bodies, forests and reserves in partnership with relevant agencies."*

Risk Management

The Risk Theme Profile identified as part of this report is ***Inadequate Environmental Management***. The consequence could be to **Property** and **Environment** should the Shire not take a pro-active approach to minimising damage to vulnerable lands under its care control and management. The Risk Consequence is considered to be "Major" (4) and the likelihood "Unlikely" (2) resulting in a MODERATE (8) Risk being present.

Budget Implications

The estimated cost of implementing the proposal, as shown in ***Attachment 1***, is \$25,000 of which \$11,500 has been allocated in the 2019-2020 Budget leaving a funding shortfall of \$13,500.

Voting Requirements

Absolute Majority.

Officer's Recommendation:

That Council approves the unbudgeted expenditure of \$13,500, adjusted in the 2019-2020 Budget Review, to undertake Improved Access and Safety Improvements at Myalup Beach as outlined in the report and as shown in ***Attachment 1***.

Absolute Majority Required

19/306. Moved: Cr. Bromham Seconded: Cr. Dickinson

That Council approves the unbudgeted expenditure of \$13,500, adjusted in the 2019-2020 Budget Review, to undertake Improved Access and Safety Improvements at Myalup Beach as outlined in the report and as shown in *Attachment 1*.

CARRIED BY ABSOLUTE MAJORITY 12-0

Development Services

Item No.	12.3.1
Subject:	Proposed Structure Plan
Proponent:	Element (on behalf of Fabray Pty Ltd and Paris Road Australind Pty Ltd)
Location:	Lot 561 Paris Road, Australind and portion of unconstructed Victoria Road reserve
Reporting Officer:	Senior Planning Officer (EE)
File No.:	A005606, P000018 Attachment Reg. 19/24583, 19/33141

Declaration of Interest

The Manager of Planning Services declares an “Impartiality Interest” on this item as he has had a professional relationship with the Proponent and one of the owners, which may be construed as limiting his impartiality required for the assessment of this proposed Structure Plan. The Manager has reviewed this report on its merits and without prejudice.

The Senior Planning Officer declares an “Impartiality Interest” on this item as she is related by marriage to the organiser of the Petition, which may be construed as limiting her impartiality required for the assessment of this proposed Structure Plan. The Officer has assessed the Petition and proposed Structure Plan on its merits and without prejudice.

Summary

An application for a proposed Structure Plan for Lot 561 Paris Road, Australind and a portion of the unconstructed Victoria Road (refer **Attachment 1**) has been received. The proposed Structure Plan is referred to Council for consideration pursuant to clauses 19 and 20 of the Planning and Development (Local Planning Schemes) Regulations 2015 (Deemed Provisions).

It is recommended that Council determines the ‘proper’ use of the land, having regard to the State’s Planning Framework, as being Light Industry and does not support the proposed Structure Plan as it is inconsistent with the principles of orderly and proper planning.

Background

At its meeting held on 14 May 2019, Council considered the Applicant’s submission to the Shire’s draft Local Planning Strategy (LPS) requesting the following amendments:

- Amend Section 3.6.1.1 to acknowledge that the site will provide for a range of light industrial, residential and commercial outcomes for the site via a structure plan (Concept Structure Plan was provided with the Submission).
- Amend the implementation section as follows:

“Zone Lot 561 Paris Road, Australind to ‘Urban Development’ to facilitate comprehensive structure planning of the site prior to further subdivision or development.”
- Amend Table 29 by replacing it with the table provided in the Submission.

Council resolved not to support the modifications requested by the Applicant as the proposal was considered to be inconsistent with the principles of orderly and proper planning. It is noted that the proposed Structure Plan is essentially unchanged from the version provided with the submission to the draft LPS.

Table 29 under section 3.6 (Part 1) of the draft LPS provides the following with respect to Lot 561:

“Prior to any further subdivision or development a Structure Plan will need to address... the suitability of the industrial area for any further high trip generating land uses such as growers markets and the need for suitable industrial land uses in the locality.”

The draft LPS was considered by the Western Australian Planning Commission’s (WAPC) Statutory Planning Committee on 29 October 2019. With respect to the Applicant’s submission, the WAPC resolved to include the following under section 4.5.4.1 (Part 2):

“Consideration may be given to a proposal for land use change within a component of this site to residential use (with limited commercial) if it can be demonstrated that the current zoned industrial land to be supplied at Australind LIA would represent a surplus of industrial zoned land for the medium to longer term land needs within the locality.

Any proposal for a change in land use through an amendment to the Strategy will only be considered following consideration of a properly prepared and researched industrial lands assessment to address the demand for light industrial uses within the locality.

Such assessment must take into account the following:

- *urban growth and population trajectory and planning timeframe for the East of Treendale land holdings as a consideration of further demand for LIA land in this locality*
- *the need to provide appropriate ratios of employment to population land to ensure a sustainable long-term framework for settlement growth*
- *need to maintain appropriate levels of service to the local population through the supply of industrial zoned land uses to match population growth in the area*
- *the suitability of the site for light industrial land use as opposed to residential land use given its location, context and excellent transport connections*
- *any relevant WAPC policies regarding activity centres and/or commercial development*

If supported, any change of land use to residential will require a rezoning amendment and structure planning proposal.

While expansion of retail uses at the site would not generally be supported, any limited commercial or limited retail proposed for the site, if supported, should be limited in scale and be incidental to the existing Rural Produce Distribution centre use so as not to impact on the existing recognised centres of Eaton, Treendale, Ditchingham Place Service Commercial and Australind centre.”

The WAPC’s Local Planning Manual provides guidance to local governments on the preparation of local planning strategies and local planning schemes. With respect to local planning strategies, it provides that:

- Part 1 is the strategic plan and provides the actions to implement the Strategy; and
- Part 2 contains the relevant background, including analysis of information and rationale for the Strategy.

Given consideration to the function of Part 1 and Part 2 of the LPS, it appears that the modification required by the WAPC to the Shire's draft LPS will have no impact on the implementation of the LPS with respect to Lot 561 as the WAPC's modifications did not relate to the strategic planning component of the LPS – being Part 1 of the document.

Site Description

Lot 561 Paris Road, Australind is zoned "Light Industry" and "Recreation" under the Shire's District Planning Scheme No. 1 (the Scheme). The site is of irregular shape with an area of approximately 50.5ha. Existing development on the site, utilising approximately 12ha, includes the Spud Shed, temporary Transport Depot (for Albemarle) and a laydown/storage area adjoining MJB Industries (refer **Attachment 2**). Therefore, the site currently has approximately 38.5ha available for light industrial development.

Site History

The land within the existing developed light industry zoned area (bounded by Ditchingham Place, Piggott Drive and Sweny Drive) adjoining Lot 561 Paris Road was rezoned from General Farming to Light Industry in April 1986 via Scheme Amendment No. 11 to the now revoked Town Planning Scheme No. 10. The justification provided for the rezoning at that time included:

- Increase in population due to rapid urban expansion and therefore an increase in building and construction activity;
- Builders and subcontractors were increasingly operating from residential outbuildings or construction sites due to a lack of appropriate light industrial land in close proximity to Australind; and
- Local residents needing to travel to Bunbury or Brunswick for vehicle repairs, etc.

The balance of the land (now Lot 561) was not rezoned at this time due to the need to investigate matters such as drainage, water, sewer, etc.

Lot 561 Paris Road was rezoned from General Farming to Light Industry in January 2010 via Scheme Amendment No. 67. The justification provided for the rezoning at that time included:

- The land was in close proximity to services and infrastructure due to the rapid expansion of Treendale; and
- The Greater Bunbury Structure Plan identified the land as being appropriate for Light Industry.

In 2013, Council refused to initiate a Scheme Amendment (refer **Attachment 3**) to allow for residential and composite industrial development for the following reasons:

- There is an adequate supply of residential zoned land within the Australind/Treendale/Kingston locality;
- There is no alternative land which is zoned or proposed to be zoned for industrial use that could compensate for the reduced availability of industrial land within the medium to long term; and
- Approval would establish an opportunity for land use conflict which presently does not exist within the current structure planning for the locality.

The Spud Shed development was approved in 2015 on the basis that it was proposed for distribution and logistics being the main component which is a use that can be considered in a light industrial area.

The WAPC's Development Approval in 2015 for the Spud Shed included an advice note stating that "...comprehensive planning for the subject area to facilitate the current development and future development, which may include...structure planning, and should address matters including the relationship with the Treendale Activity Centre, the Activity Centres for Greater Bunbury Policy, uses envisaged for the area including retail component(s), appropriate buffers to protect the approved and anticipated land uses, developer contributions, traffic management with emphasis on the impact on the Forrest Highway and infrastructure." This advice note was repeated on the latest subdivision to create four superlots approved by the WAPC in December 2016 (WAPC 153812).

The proposed Structure Plan also covers a portion of the unconstructed Victoria Road reserve. The most recent subdivision approvals (January 2013 [WAPC 147060] for the creation of 137 lots and December 2016 [WAPC 153812] for the creation of four superlots) included a condition requiring the unconstructed road reserve to be amalgamated with Lot 561 (refer **Attachment 4**). The road closure process for amalgamating the unconstructed road reserve has been commenced.

Proposal

The objectives of the proposed Structure Plan include:

- Achieving a range of land uses for the locality to facilitate sustainable economic, social and environmental outcomes;
- Providing for an appropriate mix of light industrial development areas which integrate with the existing light industrial area;
- Providing for a range of residential lot sizes to meet the local demographic needs;
- Consolidation of commercial land uses within the north-eastern portion of the site;
- Achieving a suitable transition and separation between residential and light industrial land uses; and
- Respecting visual management considerations along the periphery of the subject site through integrated landscape solutions.

The Structure Plan proposes the following land uses/zones:

- Light industrial land – approximately 19.75ha;
- Residential land – approximately 13.36ha with 4.33ha being coded R25 (minimum of 300m²), 5.54ha being coded R30 (minimum of 260m²) and 3.49ha being coded R40 (minimum of 180m²);
- Commercial land – approximately 4.11ha;
- Public open space land – approximately 2.82ha; and
- Land for landscaping and drainage buffers – approximately 3.38ha.

The light industrial and residential land uses are proposed to be separated by a 1.76ha linear public open space. Indicative potential land uses for the commercial area include a tavern/restaurant, medical centre with pharmacy, fast food outlets, service station and indoor recreation centre. It is estimated that the commercial land will yield approximately 1.1ha of commercial net lettable area and approximately 1,000-1,200m² of shop-retail floorspace.

The following technical reports have been submitted to support the proposed Structure Plan:

- Acoustic Report (refer to Appendix D in **Attachment 1**);
- Industrial Land Demand Assessment (refer to Appendix E in **Attachment 1**);
- Retail Sustainability Assessment (refer to Appendix F in **Attachment 1**);

- Transport Impact Assessment (refer to Appendix G in **Attachment 1**);
- Landscape Concept Plan (refer to Appendix H in **Attachment 1**);
- Local Water Management Strategy (refer to Appendix I in **Attachment 1**);
- Bushfire Management Plan (refer to Appendix J in **Attachment 1**); and
- Engineering Servicing Report (refer to Appendix K in **Attachment 1**).

The Industrial Land Demand Assessment report (ILDA) has been prepared on the assumption that the proposed Structure Plan is approved. The report provides that Australind would have 19.56ha of light industrial land and based on a take-up rate of 0.66ha/year (10-year annual average) a supply for 29.6 years would exist. It also provides that the Shire of Dardanup has a supply for 9.3 years within the Picton East light industrial area and the City of Bunbury has a supply for 35.4 years within the Davenport, Glen Iris and Picton areas. Combined, there would be an overall supply of 23.8 years (based on a combined take-up rate of 3.01ha/year).

The Retail Sustainability Assessment report (RSA) provides that the main trade area to be served by the commercial/retail component of the proposed Structure Plan consists of the following areas:

- Primary Sector – being an approximate 8km radius from the subject site which includes Australind (including Treendale and Kingston), Leschenault, Brunswick, Roelands, Millbridge and Eaton;
- Secondary North Sector – being approximately 40km north of the subject site and includes Harvey and Binningup; and
- Secondary South Sector – being Bunbury, Dalyellup and Gelorup.

The RSA estimates the main trade area population is predicted to reach a population of almost 98,500 by 2026, which includes almost 38,500 within the Primary Sector. Taking estimated sales potential into consideration, the RSA provides that the *“estimated impacts on traditional retail centres in the primary sector are considered to be well within the reasonable bounds of normal competition, and, at around 3% or less, would not in any way threaten the viability of any retailer in the area.”* It further provides that there is an undersupply of general practitioners in the area and that the development of Eden Life would add challenges for the retirement development included in the proposed Structure Plan.

Advertising

Pursuant to Clause 18 of the Deemed Provisions, the proposed Structure Plan was advertised to nearby landowners and the public between 8 October 2019 and 7 November 2019 and was referred to ten government agencies and referral authorities between 19 September 2019 and 7 November 2019. A total of 162 public submissions were received as follows:

Submitter Location	Support	Objection
Australind resident	23	43
Australind business/landowner	3	27
Other Shire resident	3	3
Other Shire business/landowner	2	0
Non-Shire resident	9	16
Non-Shire business/landowner	1	0
No address provided	5	27
TOTAL	46	116

Submissions were also received from the following agencies and referral authorities:

- Department of Health;
- Department of Primary Industries and Regional Development;
- Department of Water and Environmental Regulation;
- Department of Jobs, Tourism, Science and Innovation;
- Department of Fire and Emergency Services;
- Main Roads WA; and
- Department of Biodiversity, Conservation and Attractions.

A summary of all submissions received is provided in **Attachment 5**.

A petition supporting the proposal was also received containing 529 signatures (refer **Attachment 6**). The petition states the following:

"We the undersigned, being electors of the Shire of Harvey, are in support of Structure Plan for Lot 561 Paris Road, Australind.

In summary, the Structure Plan seeks to provide a balanced mix of land uses for the site, which support new job opportunities and improve housing options to serve the Australind community. We understand this may allow for a medical centre, tavern, service station and a range of residential housing types, including retirement living, which we believe meets the housing needs of the community.

Your petitioners therefore respectfully request the Council of the Shire of Harvey to recommend support for: Structure Plan for Lot 561 Paris Road, Australind as advertised."

Comment

Advertising

The main points from the submissions supporting the proposal were:

- Will provide for more shops;
- Will allow for the extension of Kingston Drive;
- Will provide for residential growth; and
- Will provide for more employment;

and the main points from the submissions objecting to the proposal were:

- The area has enough shops;
- There is a lot of vacant commercial tenancies in the area so these should be filled first;
- Will impact on the further development of the Treendale District Centre;
- It's industrial land and should be used for industrial purposes; and
- The area has an oversupply of medical practitioners, medical centres and pharmacies.

Petition

Officers have assessed the petition against the requirements of Clause 6.10(1) of the Shire's Standing Orders Local Law 2017 as follows:

Clause 6.10(1) requirement	Compliance
(a) be addressed to the President	Yes
(b) be made by electors of the district	Petition contained a total of 529 signatures. Of these, 284 are electors of the Shire. Therefore, the petition contains 284 valid signatures.
(c) state the request on each page of petition	Yes
(d) contain name, address and signature of each elector making the request, and date signed by elector	Petition contains 284 valid signatures which includes the name, address, signature and date signed.
(e) contain a summary of reasons for request	Yes
(f) state name and address of person to whom notice to the petitioners can be given.	Yes. Name and address of petition organising is included on each page.

The number of submissions supporting any planning proposal in comparison to the number of submissions objecting to the proposal does not impact on the decision-making process. Rather, the decision-making process is to have due regard to the nature/reasons for the submissions and whether they represent valid planning considerations having regard to orderly and proper planning.

The petition in support of the proposal has been noted by Officers and the reason for support has been included by Officers as a consideration during the assessment of the proposed Structure Plan.

Proposal

Industrial Land

Industrial Land Demand Assessment

On the assumption that the proposed Structure Plan is approved, the ILDA provides that Australind would have 19.56ha of light industrial land representing a supply for 29.6 years. The Structure Plan proposes to reduce the current available light industrial land in Australind from approximately 38.5ha (minus land for roads) to 19.56ha – a reduction of 50.8%. Based on the Consultant's assessed take-up rate of 0.66ha/year, the proposed Structure Plan would reduce the Shire's supply of light industrial land in Australind from 58 years to 29.6 years – a reduction of 51%.

There are a number of components in the submitted ILDA that are refuted by Officers relating to land supply and land use. These are detailed as follows:

- Land supply in Australind calculated on 19.75ha – the report notes that 6.9ha of Lot 561 is already committed. This portion of land should not be included in the land supply calculation as it is not considered to be available.
- Land supply within the City of Bunbury and Shire of Dardanup – the report takes account of light industrial land in Davenport, Glen Iris and Picton within the City of Bunbury and Picton East within the Shire of Dardanup. Given that the original intent of the Australind light industrial area was to service the growing Australind population, the inclusion of the light industrial land within the City of Bunbury and Shire of Dardanup are not considered relevant. In addition, Officers consider it appropriate that the population base of Millbridge/Eaton is taken in account given the increased patronage from Millbridge/Eaton since the opening of the bridge.

- Primary function of industrial area – the report notes that based on the existing businesses, the apparent primary function of the existing industrial area is to service the local population rather than agricultural, mining or processing functions/businesses indicating the area has evolved to a more ‘service commercial’ area rather than ‘industrial’ area. One of the objectives of a light industrial area is to provide for a range of industrial uses and service industries that are generally compatible with urban areas that cannot be located in commercial zones. Therefore, it is considered that the existing industrial area is functioning as a light industrial area as intended.
- Original reason for light industrial area – the report suggests that the land was originally zoned light industry on the basis of it being located within the buffer for the Australind Waste Water Treatment Plant and as the Plant is no longer operational, the land doesn’t need to be zoned for light industry. There is no evidence within the rezoning documentation from both 1986 and 2010 to suggest this is the reason for the zoning of the land as light industry. The actual stated justification for the light industry zoning has been provided within the ‘site history’ part of this report.
- Methodology – the report has assessed the demand based only on the 10-year average annual take-up rate. The methodology should include other drivers of industrial land demand include population and location. With respect to population, the areas of Millbridge/Eaton and the future development to be located on the eastern side of Forrest Highway as an expansion of the Australind/Treendale residential area also needs to be taken into consideration as the subject light industrial area will also service these residents.

The Shire engaged a Consultant, Syme Marmion & Co, to undertake an independent brief assessment of the demand for light industrial land in Australind (refer **Attachment 7**). The following provides a summary of the Consultant’s Report:

- Industrial land demand by location has many drivers and for a large regional centre, such as Greater Bunbury, population is a dominant one. In these areas, a high proportion of land use in industrial estates overall is for regional and local services. This requires close access to customers and service users.
- A substantial component of demand is also influenced by access to major transport routes. Demand estimates for any particular site therefore needs to consider:
 - Population Factors such as access to skilled labour and access to customers and end uses; and
 - Location Factors including access to import/export transport routes, local distribution and servicing transport routes, and agglomeration economies i.e. access to goods and services in the value chain.
- These are all important when considering demand and land use for Australind and it scores well on both population factors and on transport-related location factors, with direct access to Forrest Highway. It is therefore a very valuable economic resource for the region. Such land is a scarce resource and must be treated as such. It is not easily substituted for in other locations in the same way that is possible with other land uses, particularly residential development.

- As the ALIA is largely already serviced and developed for industrial use, it is a substantial advantage and puts it in quite a different category than land which might be identified as future industrial but is yet to go through the rezoning, servicing and development process.
- Industrial land development is quite different to residential development. It has much longer time frames, both in gestation and in development, its market is much more sensitive to economic cycles and therefore has greater variation and higher risk. It may remain undeveloped for some time before the right economic conditions arise for its development and these may arise quickly. It is harder to plan for and consequently, there are always many developer advocates for residential use and many fewer advocates for employment uses, even though industrial land is an essential component of the economic health of a community. Hence, there is a direct government role in a high proportion of industrial development projects, with DevelopmentWA (previously LandCorp) being a prominent developer in Western Australia.
- The role of the planning system in these circumstances is to protect the zoned land from other uses so that it is available when needed for its long term use. For industrial land, transitional land uses are usually not practical. Therefore, protection of industrial land from land uses that will make future transition to industrial or employment uses almost impossible relies on the long term strategic planning system. Land such as the ALIA that is identified for industrial and recognised accordingly in the planning framework must therefore be protected from residential and other encroachment. Not to do so risks reduced economic performance, with a longer term shortfall of employment land and the development of industrial land in an alternative, less efficient location.
- Using a regional population-based predictor for industrial land demand is closely aligned to the workforce model that was previously used in the WAPC's Industrial Land Needs Study and the Economic and Employment Lands Strategy (EELS) and it has some correlation with economic activity. It has the advantage over other predictive models (for example using growth projections based on historic take-up rates) in that it can better reflect the underlying general economic activity in a region or sub-region. Predictive models based on historical take-up rates assume the conditions in the future will be much like those in the past. However, in a region or sub-region where population growth departs from previous trends (either faster or slower), industrial land demand is likely to not match past take-up rates.
- The EELS identified, based on the area of developed industrial land across the Perth metropolitan and Peel areas and the population in 2011, there was 49 m² of industrial land per person overall. It was distributed reasonably evenly by population, ranging from 38 m² per person in the Central sub-region to 70 m² per person in the North-East sub-region.
- This average figure can be taken as the lowest estimate for provision of industrial land in any location. As previously noted, the industrial land-use mix and proportion of industrial land per capita in a location such as Greater Bunbury is higher than in the Perth metropolitan area, so that figure will be conservative.
- Because of the more geographically diverse nature of industrial activity and of population settlement in the South West, compared with the easily defined Perth metropolitan area, this methodology when applied to the South West is a little less precise. However, some indication of industrial land as a function of population in the Greater Bunbury area can be gained from data and analysis undertaken as part of the 2011 South West Region Industrial Land Study.

- Applying the 2006 population to the Greater Bunbury area indicates 146 m² of developed light and general industrial land per person. This gives an indication of the extent to which the Perth metropolitan overall figure of 49 m² per person is conservative. Nevertheless, it is appropriate to apply it to the ALIA as new development of industrial land in the Greater Bunbury area is likely to more closely resemble development in the Perth metropolitan area.
- The ILDA estimates that there is currently 71.65ha (gross) of vacant land zoned land that is considered developable in the Greater Bunbury area. This figure does not include the land proposed to be removed by the proposed Structure Plan. Including this portion gives 87.4ha (gross) of zoned, vacant and developable land in the Greater Bunbury area which is equivalent to approximately 74.3ha net. Applying the Perth metropolitan industrial land to population ratio to the population growth figures gives the following estimate of available currently zoned land in Greater Bunbury:

Zoned, Vacant and Developable Land in Greater Bunbury (ha)					
Year	Band A	Band B	Band C	Band D	Band E
2016	74	74	74	74	74
2021	82	60	51	39	18
2026	55	26	13	3	(27)
2031	19	(14)	(26)	(37)	(72)

(Note: Band A is based on a low growth scenario and Band E is based on a high growth scenario.)

This analysis shows that, except for the low growth Band A population scenario, the Greater Bunbury area will have exhausted its supply of vacant and developable land zoned for industry before 2031. This indicates the need for retention of all sites currently zoned industrial and implies that new, and currently unzoned, land must be developed before then.

- A similar analysis can be applied to the ALIA. Population projections indicate that Australind and Leschenault will grow substantially from 17,920 in 2016 to between 23,910 and 27,835 in 2031, with 25,910 as the middle (Band C) projection. There is approximately 38.5ha (gross – approximately 32.7ha net) of undeveloped land in the ALIA which is all contained on Lot 561. Applying the Perth metropolitan industrial land to population ratio to the population growth figures for Australind and Leschenault gives the following estimate of available land in the ALIA:

Zoned, Vacant and Developable Land in Greater Bunbury (ha)					
Year	Band A	Band B	Band C	Band D	Band E
2016	32	32	32	32	32
2021	27	24	22	20	17
2026	17	12	9	6	2
2031	3	(2)	(6)	(10)	(16)

This analysis shows that, except for the very low growth Band A population scenario, the scale of local demand for the ALIA means it could be fully developed before 2031. Again, this indicates the need for retention of all sites currently zoned industrial.

Furthermore, the Consultant concludes that:

- The ALIA is a very valuable component of the long term economic prosperity of the Shire of Harvey and the Greater Bunbury area generally.
- It is very well located with direct access to Forrest Highway, giving opportunity for it to serve much more than a local service function, capitalising on its access to the location factors of import /export transport routes, local distribution and transport routes and goods and services in the value chain.
- It is available for development with short notice at any time. It cannot be easily replicated in another location at some stage in the future. If any part of it is transferred to residential use, it will be lost to the economic system forever.
- Such land is a scarce resource and must be treated as such.
- There is no case for anything but retention of the entire site for long term development for industrial use.

Discussion

The WAPC's Greater Bunbury Regional Hotspots Land Supply report (January 2015) provides the following with respect to the demand for industrial land:

- The demand for industrial land generally derives from local, national or international demand for goods and services, with value adding to both locally generated products and products generated in other regions. There are three main drivers for industrial land supply and demand cycles, being:
 - Population and settlement growth
 - Economic growth and decline cycles
 - Location criteria and market preferences;
 - The South West region is very different in terms of economic drivers and employment in comparison to the Perth metropolitan and Peel regions. The industrial land-use mix and proportion of industrial land per capita are much higher and have greater importance within the Greater Bunbury region for economic sustainability;
 - Economic growth in the region is likely to come from the continued development of existing sectors such as regional mining and processing, energy, agriculture and food production, port-related activities, and transportation and distribution. The development of related businesses, which spin-off from these sectors, will also contribute to the economic growth of the region over time;
 - Short-term demand for general and light industrial land is comfortably being met by existing industrial areas. There is a slow uptake on 'general and light industry' land with a large amount of land in the Picton and Australind areas that is yet to be developed. It is anticipated however, that demand may grow in the medium/long-term as the region's population increases;
 - The identification of suitable stocks of industrial land to promote investment and employment opportunities will be critical to realise the potential for economic development. A sufficient industrial 'land bank' should be identified to create flexible market choice, respond to short-term hyper growth situations and for emerging and inward investment opportunities; and
-

- When land is in short or limited supply, industries may be forced to delay or limit expansion plans, seek alternative sites (interstate or overseas) or cease trade altogether. Industry may also experience increased levels of competition from alternative land uses, particularly retail and commercial uses.

Industrial development and activity trends are influenced by global, national and local economic trends and associated policies, strategies and legislation. This means that the demand profile for these industries is dynamic and can change quickly and is therefore extremely difficult to predict. The Greater Bunbury area has the largest population and workforce, and is the regional centre for the South West region. Given its regional significance, it is important that Greater Bunbury maintains a suitable supply of industrial land in close proximity to the majority population centre.

Commercial/Retail Land

Retail Sustainability Assessment

There are several components in the submitted RSA that are refuted by Officers due to their inaccuracies, which are detailed as follows:

- Commercial site within Kingston – the report states that the small neighbourhood centre proposed as part of the Kingston Estate is unlikely to be progressed given the proximity to the Treendale District Centre and the Australind Shopping Centre. The Kingston commercial site is further from the Treendale District Centre and about the same distance to the Australind Shopping Centre as the commercial/retail area of the proposed Structure Plan. Using this stated position from the RSA, the likelihood of the proposed commercial/retail area would also be debatable.
- Fast food outlets – the report does not consider that the Treendale District Centre contains a dedicated site for a fast food outlet that has not yet been developed.
- Taverns – the report provides that the development of the Treendale Bar and Bistro (including a small drive thru packaged liquor store), whilst being approved in 2012, has stalled. Development Approval for a tavern and associated drive thru facility was recently approved in September 2019 and a conditional liquor licence has also been granted.
- Medical centre and pharmacy – the report provides that, based on population forecasts, the Primary Section trade area would require around 57 general practitioners by 2026 resulting in a current undersupply of 18 general practitioners. A number of local general practitioners that made submissions on the proposed Structure Plan stating that:
 - There are two existing medical centres in proximity to the proposed site (being Treendale District Centre and Leschenault Medical Centre on Leisure Drive) and one adjacent to the Australind Shopping Centre;
 - A fourth local medical centre closed recently due to low patient numbers;
 - Increasing competition between medical centres negatively impacts on patient care caused by the need to increase patient throughput thereby reducing time and attention given to each patient;
 - Oversupply of medical centres leads to cost increases for patients; and
 - The quality of care and appointment availability at the existing medical centres is excellent.

The RSA has assessed the general practitioner (GP) demand as being 13 GPs per 10,000 population in 2018 increasing to 15 GPs per 10,000 population in 2026. In contrast, the Federal Department of Health’s “General Practice – 2016 Factsheet” provides that there was an average of 92.5 GPs per 100,000 population across Australia with WA having a ratio of 88.2 GPs per 100,000 population. The following therefore provides a comparison of the RSA data with the Department of Health (DoH) data:

Submitted RSA				DoH Factsheet (WA)	
Year	Population	GP Ratio/ 10,000	GP Demand	GP Ratio/ 10,000	GP Demand
2018	32,310	13	42	8.82	29
2021	34,710	14	50	8.82	31
2026	38,460	15	57	8.82	34

As is evident from the above comparison, and comments received from local GPs, it appears the RSA has grossly overestimated the GP demand for this area.

- Original reason for light industrial area – the report suggests that the land was originally zoned light industry on the basis of it being located within the buffer for the Australind Waste Water Treatment Plant and as the Plant is no longer operational, the land doesn’t need to be zoned for light industry. There is no evidence within the rezoning documentation from both 1986 and 2010 to suggest this is the reason for the zoning of the land as light industry. The actual stated justification for the light industry zoning has been provided within the ‘site history’ part of this report.

Impact on the Treendale District Centre

The WAPC’s Activity Centres for Greater Bunbury Policy aims to “*distribute activity centres to meet different levels of community needs and enable employment, goods and services to be accessed efficiently and equitably by the community*”. This is achieved, in part, by Policy provision 3.1(3) which provides that:

“The responsible authority should consider the main role/function and typical characteristics for each centre type ... and should not support activity centre structure plans or other structure plans, scheme amendments or development proposals that are likely to:

- *undermine the activity centre hierarchy or the policy objectives”.*

The Activity Centres for Greater Bunbury Policy identifies Treendale as a District Centre and Australind Village and Kingston as Neighbourhood Centres. The Policy does not identify an activity centre on Lot 561.

The Treendale District Centre is currently only 30% developed and the adjacent Other Commercial-Showroom area is only 40% developed. As stated in Submission Nos. 74 to 81 (refer **Attachment 5**), a tavern/liquor store as proposed in the Structure Plan will severely impact on the Treendale tavern development and is likely to reduce the scope of the tavern development or prevent its progress completely. The Treendale tavern site is identified as such in the Treendale District Centre Structure Plan. Therefore, any additional commercial/retail development external to this area (such as the proposed Structure Plan), will “*undermine the activity centre hierarchy or the policy objectives*” and will therefore negatively impact on the role/function and amenity of the Treendale District Centre.

The planning framework provides landowners, developers and the community with confidence and reasonable expectations that identified land uses would be developed and investment decisions are often made on this basis. Supporting the proposed Structure Plan will detrimentally impact the planned intent for the Treendale District Centre and surrounds. At a point in time when the planned intent for the Treendale District Centre and surrounds has been accomplished, the need for an additional activity centre may be required.

Furthermore, the *Liquor Control Act 1998* and Liquor Control Regulations 1989 were recently subject to amendment resulting in location criteria being included for packaged liquor outlets. Pursuant to Clause 36B(3), the licensing authority must not determine an application if:

- (a) packaged liquor premises are situated less than the prescribed distance from the proposed licensed premises with the 'prescribed distance' for regional areas being 12 km;
- (b) the area of the retail section of those packaged liquor premises exceeds the prescribed area with the 'prescribed area' being 400 m²; and
- (c) the area of the retail section of the proposed licensed premises exceeds the prescribed area with the 'prescribed area' being 400 m².

The Development Approval granted for Treendale tavern includes 'packaged liquor premises' with a 'retail section' of 540m². The Treendale tavern will be approximately 3km from a tavern/liquor store within the proposed Structure Plan and this distance will be reduced to approximately 1km when the Kingston Drive extension is completed. Therefore, any future application for a 'packaged liquor premises' with a 'retail section' in excess of 400m², within 12km of the proposed Treendale tavern development is unlikely to be approvable based on the provisions of the amended *Liquor Control Act 1998*. Support to a Structure Plan proposing uses unlikely to be approvable is considered improper.

Residential Land

The proposed Structure Plan makes provision for an approximate residential lot yield of 451 lots which equates to an overall average density of 33 dwellings/ha. The following provides the proposed residential composition:

Density	R-Code sizes (m ²)	Area (ha)	Dwelling Yield	Residential %
R25	Min. 300 / Avg. 350	4.3302	118	26
R30	Min. 260 / Avg. 300	5.5398	176	39
R40	Min. 180 / Avg. 220	3.4935	157	35

As is evident from the above table, nearly 80% of the proposed residential land would be between 180m² and 300m². Liveable Neighbourhoods (2009) provides that in most new residential areas, densities of at least 15 dwellings/ha, and an average of 22 dwellings/ha, should be provided – noting that an R20 (i.e. 500m² average lot size) is equivalent to a density of approximately 13 dwellings/ha. In accordance with Liveable Neighbourhoods, the proposed density of 33 dwellings/ha would be suitable in strategic areas within 400m to higher order centres (such as District Centres) and 800m of railway stations.

The Applicant has justified the proposed densities against the draft Liveable Neighbourhoods (2015). The draft 2015 version has not been adopted and as such, the proposal should be assessed against the 2009 version with due regard given to the draft 2015 version. The draft 2015 version provides that the current dwelling targets in greenfield areas for the Perth and Peel region is 15 dwellings per gross urban hectare and 26 dwellings per site hectare, as outlined in the WAPC's *Directions 2031 and Beyond*. It further provides that as a guide, the dwellings per hectare and relevant R-Code (site area density) surrounding centres and high-frequency public transport routes are 30 to 50 (R30 to R50) within 400m of local or neighbourhood centres and 40 to 60 (R40 to R60) within 800m of district centres. It also provides that a key factor for a successful local or neighbourhood activity centre is a minimum local residential population of approximately 2,000 people within a 400-450m radius. Even with the densities proposed, the Structure Plan would cater for approximately 1,082 people within a 400-450m radius of the commercial/retail area.

In this instance, Officers recommend that no regard should be afforded to the draft 2015 version as it is based on the WAPC's *Directions 2031 and Beyond* which relates to the Perth metropolitan and Peel regions. As such, based on the 2009 version, the residential densities in the proposed Structure Plan are considered to be inconsistent with Liveable Neighbourhoods.

It is also noted that the proposed densities are significantly higher than the surrounding area and elsewhere in the Shire. The residential land surrounding the Treendale District Centre represents a density of approximately 15 dwellings/ha. The proposed density of 33 dwellings/ha is considered to be based on Perth metropolitan planning and is inconsistent with the Shire's local settlement pattern.

Noise Mitigation

An Acoustic Report (refer to Appendix D in **Attachment 1**) was prepared with respect to noise intrusion into sensitive residential premises from the following noise sources:

- traffic from Forrest Highway;
- activities in the Neighbourhood Centre (i.e. proposed commercial/retail area); and
- light industrial transition zone.

The analysis is based on single storey residential construction and it is noted that it does not consider noise implications for two storey dwellings given the proposed higher densities. Based on the current and modelled noise levels, the following noise treatments have been proposed by the Acoustic Report:

- 1.8m noise barriers along proposed residential R40 "cell R7" and a portion of "cell R1";
- 2.1m noise barriers along proposed residential R40 "cell R1", R30 "cells R2-R4" and R25 "cell R5"; and
- 'Quiet House Design' Package A and B for residential R40 "cell R1".

The proposed Structure Plan provides that the residential R40 cells are identified to potentially accommodate retirement living/aged persons' dwellings based on their proximity to the proposed commercial/retail land. However, a 1.8m-2.1m noise barrier around these sites diminishes their proximity to the proposed commercial/retail land as they will be a physical barrier to easy access.

Bushfire Management

The Bushfire Management Plan (BMP) was referred to the Department of Fire & Emergency Services (DFES) for assessment. Whilst DFES identified a number of issues with the BMP, the most critical issue would be vehicle access routes. The WAPC's Guidelines for Planning in Bushfire Prone Areas details bushfire protection criteria to assist in the assessment of bushfire risk management measures. To comply with the acceptable solutions for Element 3: Vehicular Access, two different vehicular access routes need to be provided, both of which connect to the public road network, provide safe access and egress to two different destinations and are available to all residents/the public at all times and under all weather conditions. The proposed Structure Plan currently only provides one vehicular access route to/from Paris Road. A future vehicular access route to/from the Kingston Drive extension cannot be included as the timeframe for the Kingston Drive extension is unknown.

There are a number of State Administrative Tribunal (SAT) cases that demonstrate compliance with this particular bushfire protection criteria is essential and non-compliance has always resulted in a refusal of the development/subdivision application, rezoning or structure plan.

Orderly and Proper Planning

The proposal needs to be assessed and determined in accordance with the principles of orderly and proper planning. While the term "orderly and proper planning" is not defined in planning legislation, there are a number of case law examples that have attempted to define the term. The starting point is the ordinary and natural meaning of the terms:

- Orderly – *characterised by or observant of order, rule, or discipline;*
- Proper – *suitable for a specified or implicit purpose or requirement, appropriate to the circumstances or conditions.*

With respect to decision making, to be orderly and proper, the assessment and determination of the proposal needs to be done in an 'orderly' (disciplined, methodical, logical and systematic, and which is not haphazard or capricious) way with planning discretion being directed to identify the 'proper' use of the land (suitable, appropriate or apt or correct use of land clearly having regard to any applicable legislation, subsidiary legislation, planning schemes and policy instruments).

While the exercise of discretion will involve a judgement about what is suitable, appropriate, or apt or correct in a particular case, that judgement must (if it is to be 'orderly') be an objective one. If the exercise of discretion is to be an orderly one, the planning principles identified as relevant to the proposal should not be lightly departed from without the demonstration of a sound basis for doing so, which basis is itself grounded in planning law or principle.

The WAPC's South West Regional Planning and Infrastructure Framework, December 2015 (SWRPIF), the Activity Centres for Greater Bunbury Policy, April 2012 (ACGBP) and the Greater Bunbury Strategy (GBS), 2013 could be considered as the relevant planning principles applicable to this proposal. These documents provide the following principles:

- Recognising the need to promote the sustainable development of both traditional and new, innovative industries through proactive land use planning (SWRPIF);

- Supporting the strengthening of the existing economic base and encourage diversification in industrial and commercial sectors in order to promote growth in traditional as well as knowledge-based, high-value and specialized industries suitable to the South West by supporting efforts to:
 - ensure the supply of industrial and business development land in appropriate locations; and
 - ensure that urban expansion does not impact on the operation or future expansion of existing industrial areas (SWRPIF).
- Distributing activity centres to meet different levels of community needs (ACGBP);
- Not supporting activity centre structure plans, other structure plans, scheme amendments or development proposals that are likely to undermine the activity centre hierarchy or policy objectives (ACGBP); and
- Activity centres shall be in accordance with the Activity Centres Policy (GBS).

Lot 561 was only recently (2010) rezoned to Light Industry on the basis of it being identified in the Greater Bunbury Structure Plan as being appropriate for Light Industry. Therefore, the recent rezoning was, and remains, consistent with the State's Planning Framework. As evident above, the preparation process for industrial land development has extended time frames in comparison to most other land uses, both in gestation and in development, and to this effect, a 10-year time period is not considered reasonable when reviewing the proposal's appropriateness.

Lot 561 is not identified for an activity centre and the proposed Structure Plan will impact on the function and further development of the Treendale District Centre. The proposed Structure Plan should not be supported as an approval would be contrary to the principles of orderly and proper planning. Not supporting the proposed Structure Plan will ensure that the proposed urban (residential, commercial/retail uses) expansion does not impact on the operation of the existing industrial area and its future expansion into the undeveloped industrial land on Lot 561.

Conclusion

The report has provided a detailed assessment of, and demonstrates justification for not supporting, the proposed Structure Plan. The Shire's commissioned Industrial Land Demand Assessment demonstrates that the light industry zoned land is a very valuable component of the Shire's long term economic prosperity, is very well located and is available for development with short notice. Light industrial land with these attributes is a scarce resource and there is no reasonable justification for the proposed loss of any light industrial land.

Officers have assessed the proposed Structure Plan in an 'orderly' way (being disciplined, methodical, logical and systematic, and which is not haphazard or capricious) and Council is required to exercise its discretion in recommending the 'proper' use of the land having regard to the State's Planning Framework.

Based on the principles of orderly and proper planning, Officers recommend that the proposed Structure Plan not be supported.

Statutory/Policy Environment**Planning and Development Act 2005*****Planning and Development (Local Planning Schemes) Regulations 2015***

- Part 4 – Structure Plans

“16. Preparation of structure plan

- (1) *A structure plan must —*
 - (a) *be prepared in a manner and form approved by the Commission; and*
 - (b) *include any maps, information or other material required by the Commission; and*
 - (c) *unless the Commission otherwise agrees, set out the following information —*
 - (i) *the key attributes and constraints of the area covered by the plan including the natural environment, landform and the topography of the area;*
 - (ii) *the planning context for the area covered by the plan and the neighbourhood and region within which the area is located;*
 - (iii) *any major land uses, zoning or reserves proposed by the plan;*
 - (iv) *estimates of the future number of lots in the area covered by the plan and the extent to which the plan provides for dwellings, retail floor space or other land uses;*
 - (v) *the population impacts that are expected to result from the implementation of the plan;*
 - (vi) *the extent to which the plan provides for the coordination of key transport and other infrastructure;*
 - (vii) *the proposed staging of the subdivision or development covered by the plan.*
- (2) *The local government may prepare a structure plan in the circumstances set out in clause 15.*
- (3) *A person may make an application to the local government for a structure plan prepared by the person in the circumstances set out in clause 15 to be assessed and advertised if the person is —*
 - (a) *a person who is the owner of any or all of the land in the area to which the plan relates; or*
 - (b) *an agent of a person referred to in paragraph (a).*

17. Action by local government on receipt of application

- (1) *On receipt of an application for a structure plan to be assessed and advertised, the local government —*
 - (a) *must consider the material provided by the applicant and advise the applicant in writing —*
 - (i) *if the structure plan complies with clause 16(1); or*
 - (ii) *if further information from the applicant is required before the structure plan can be accepted for assessment and advertising;**and*

- (3) *The local government —*
 - (a) *must make a structure plan advertised under subclause (2) and the material accompanying it available for public inspection during business hours at the offices of the local government; and*
 - (b) *may publish the structure plan and the material accompanying it on the website of the local government.*
- (4) *If a local government fails to advertise a structure plan in accordance with this clause, the Commission may take reasonable steps to ensure that the plan is advertised.*
- (5) *All costs incurred by the Commission in the exercise of the power conferred by subclause (4) may, with the approval of the Minister, be recovered from the local government as a debt due to the Commission.*

19. *Consideration of submissions*

- (1) *The local government —*
 - (a) *must consider all submissions made to the local government within the period specified in a notice advertising the structure plan; and*
 - (b) *may consider submissions made to the local government after that time; and*
 - (c) *may request further information from a person who prepared the structure plan; and*
 - (d) *may advertise any modifications proposed to the structure plan to address issues raised in submissions.*
- (2) *If a local government makes a decision under subclause (1)(d) the local government must take any steps the local government considers appropriate to advertise the proposed modification to the structure plan.*
- (3) *Modifications to a structure plan may not be advertised on more than one occasion without the approval of the Commission.*

20. *Local government report to Commission*

- (1) *The local government must prepare a report on the proposed structure plan and provide it to the Commission no later than 60 days after the day that is the latest of —*
 - (a) *the last day for making submissions specified in a notice given or published under clause 18(2); or*
 - (b) *the last day for making submissions after a proposed modification of the structure plan is advertised under clause 19(2); or*
 - (c) *a day agreed by the Commission.*
 - (2) *The report on the proposed structure plan must include the following —*
 - (a) *a list of the submissions considered by the local government, including, if relevant, any submissions received on a proposed modification to the structure plan advertised under clause 19(2);*
 - (b) *any comments by the local government in respect of those submissions;*
 - (c) *a schedule of any proposed modifications to address issues raised in the submissions;*
 - (d) *the local government's assessment of the proposal based on appropriate planning principles;*
-

- (e) *a recommendation by the local government on whether the proposed structure plan should be approved by the Commission, including a recommendation on any proposed modifications. “*

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.”*

Budget Implications

All costs associated with processing and advertising a Structure Plan is recouped from the Applicant.

The cost associated with the commissioned Industrial Land Demand Assessment can be absorbed by the existing Budget allocation for the Planning Scheme Review.

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 procedure identified in Part 4 of the Deemed Provisions is not followed. The risk is mitigated by officers following the identified procedures, resulting in LOW risk being present.

Voting Requirements

Recommendations 1 and 2 require a Simple Majority

Officer's Recommendation 1 of 2

That Council:

1. In accordance with Schedule 2, Clause 6.10(2) of the Shire's Standing Orders Local Law 2017, receives the Petition at ***Attachment 6*** supporting the proposed Structure Plan for Lot 561 Paris Road and a portion of the unconstructed Victoria Road, Australind; and
2. Advises the Petition organiser that the Petition supporting the proposed Structure Plan for Lot 561 Paris Road and a portion of the unconstructed Victoria Road, Australind:
 - a. contains 284 valid signatures in accordance with Clause 6.10(1) of the Shire's Standing Orders Local Law 2017; and
 - b. has been considered during the assessment and Council's deliberation of the proposed Structure Plan.

19/307. Moved: Cr. Bromham Seconded: Cr. Campbell

That Council:

- 1. In accordance with Schedule 2, Clause 6.10(2) of the Shire's Standing Orders Local Law 2017, receives the Petition at *Attachment 6* supporting the proposed Structure Plan for Lot 561 Paris Road and a portion of the unconstructed Victoria Road, Australind; and**
- 2. Advises the Petition organiser that the Petition supporting the proposed Structure Plan for Lot 561 Paris Road and a portion of the unconstructed Victoria Road, Australind:**
 - a. contains 284 valid signatures in accordance with Clause 6.10(1) of the Shire's Standing Orders Local Law 2017; and**
 - b. has been considered during the assessment and Council's deliberation of the proposed Structure Plan.**

CARRIED 12-0

Officer's Recommendation 2 of 2

That Council:

1. In accordance with Schedule 2, Clause 19(1) of the Planning and Development (Local Planning Schemes) Regulations 2015, considers:
 - a. the submissions received and endorses the Schedule of Submissions at ***Attachment 5*** on the proposed Structure Plan for Lot 561 Paris Road and a portion of the unconstructed Victoria Road, Australind in accordance with subclause (a);
 - b. no further information from the Applicant is required to address issues raised in the submissions, pursuant to subclause (c); and
 - c. no modifications are required to the proposed Structure Plan for Lot 561 Paris Road and a portion of the unconstructed Victoria Road, Australind to address issues raised in the submissions, pursuant to subclause (d).
2. Determines the proper use of Lot 561 Paris Road, Australind as being Light Industry;
3. Does not support the proposed Structure Plan for Lot 561 Paris Road and a portion of the unconstructed Victoria Road, Australind as it is contrary to the principles of orderly and proper planning for the following reasons:
 - a. would be a departure from the local planning framework for the site and surrounds;
 - b. would undermine the development of the approved Treendale District Centre which is currently only 30% developed;
 - c. is inconsistent with the objectives and requirements of:
 - i. Liveable Neighbourhoods 2009;
 - ii. South West Regional Planning and Infrastructure Framework 2015;
 - iii. Activity Centres for Greater Bunbury Policy 2012; and
 - iv. Greater Bunbury Strategy 2013;
 - d. the land is a very valuable component of the long term economic prosperity of the region as it is:

- i. very well located;
 - ii. available for development with short notice; and
 - iii. a scarce resource;
 - e. there is no merit for the loss of the planned light industrial use of the land
 - f. there is no justified need or demand for the proposed commercial/retail (including tavern/liquor store, medical centre/pharmacy) and residential (including retirement living/aged persons' dwellings);
 - g. the Bushfire Management Plan is inconsistent with the bushfire protection criteria acceptable solutions detailed in the Guidelines for Planning in Bushfire Prone Areas;
 - h. the 1.8m to 2.1m noise barriers identified in the Acoustic Report would negatively impact the streetscape and amenity of the area;
4. In accordance with Schedule 2, Clause 20 of the Planning and Development (Local Planning Schemes) Regulations 2015, refers the proposed Structure Plan for Lot 561 Paris Road and a portion of the unconstructed Victoria Road, Australind to the Western Australian Planning Commission with a recommendation that the proposal should not be approved pursuant to Schedule 2, Clause 22(1)(c) of the Planning and Development (Local Planning Schemes) Regulations 2015, as it is contrary to the principles of orderly and proper planning for the following reasons:
- a. would be a departure from the local planning framework for the site and surrounds;
 - b. would undermine the development of the approved Treendale District Centre which is currently only 30% developed;
 - c. is inconsistent with the objectives and requirements of:
 - i. Liveable Neighbourhoods 2009;
 - ii. South West Regional Planning and Infrastructure Framework 2015;
 - iii. Activity Centres for Greater Bunbury Policy 2012; and
 - iv. Greater Bunbury Strategy 2013;
 - d. the land is a very valuable component of the long term economic prosperity of the region as it is:
 - i. very well located;
 - ii. available for development with short notice; and
 - iii. a scarce resource;
 - e. there is no merit for the loss of the planned light industrial use of the land
 - f. there is no justified need or demand for the proposed commercial/retail (including tavern/liquor store, medical centre/pharmacy) and residential (including retirement living/aged persons' dwellings);
 - g. the Bushfire Management Plan is inconsistent with the bushfire protection criteria acceptable solutions detailed in the Guidelines for Planning in Bushfire Prone Areas;
-

-
- h. the 1.8m to 2.1m noise barriers identified in the Acoustic Report would negatively impact the streetscape and amenity of the area;

19/308. Moved: Cr. Adams Seconded: Cr. Lovitt

That Council:

- 1. In accordance with Schedule 2, Clause 19(1) of the Planning and Development (Local Planning Schemes) Regulations 2015, considers:**
 - a. the submissions received and endorses the Schedule of Submissions at Attachment 5 on the proposed Structure Plan for Lot 561 Paris Road and a portion of the unconstructed Victoria Road, Australind in accordance with subclause (a);**
 - b. no further information from the Applicant is required to address issues raised in the submissions, pursuant to subclause (c); and**
 - c. no modifications are required to the proposed Structure Plan for Lot 561 Paris Road and a portion of the unconstructed Victoria Road, Australind to address issues raised in the submissions, pursuant to subclause (d).**
 - 2. Determines the proper use of Lot 561 Paris Road, Australind as being Light Industry;**
 - 3. Does not support the proposed Structure Plan for Lot 561 Paris Road and a portion of the unconstructed Victoria Road, Australind as it is contrary to the principles of orderly and proper planning for the following reasons:**
 - a. would be a departure from the local planning framework for the site and surrounds;**
 - b. would undermine the development of the approved Treendale District Centre which is currently only 30% developed;**
 - c. is inconsistent with the objectives and requirements of:**
 - i. Liveable Neighbourhoods 2009;**
 - ii. South West Regional Planning and Infrastructure Framework 2015;**
 - iii. Activity Centres for Greater Bunbury Policy 2012; and**
 - iv. Greater Bunbury Strategy 2013;**
 - d. the land is a very valuable component of the long term economic prosperity of the region as it is:**
 - i. very well located;**
 - ii. available for development with short notice; and**
 - iii. a scare resource;**
 - e. there is no merit for the loss of the planned light industrial use of the land**
 - f. there is no justified need or demand for the proposed commercial/retail (including tavern/liquor store, medical centre/pharmacy) and residential (including retirement living/aged persons' dwellings);**
 - g. the Bushfire Management Plan is inconsistent with the bushfire protection criteria acceptable solutions detailed in the Guidelines for Planning in Bushfire Prone Areas;**
 - h. the 1.8m to 2.1m noise barriers identified in the Acoustic Report would negatively impact the streetscape and amenity of the area;**
 - 4. In accordance with Schedule 2, Clause 20 of the Planning and Development (Local Planning Schemes) Regulations 2015, refers the proposed Structure Plan for Lot 561 Paris Road and a portion of the unconstructed Victoria Road, Australind to the Western Australian Planning Commission with a recommendation that the proposal should not be approved pursuant to Schedule 2, Clause 22(1)(c) of the Planning and Development (Local Planning Schemes) Regulations 2015, as it is contrary to the principles of orderly and proper planning for the following reasons:**
 - a. would be a departure from the local planning framework for the site and surrounds;**
-

- b. would undermine the development of the approved Treendale District Centre which is currently only 30% developed;**
- c. is inconsistent with the objectives and requirements of:**
 - i. Liveable Neighbourhoods 2009;**
 - ii. South West Regional Planning and Infrastructure Framework 2015;**
 - iii. Activity Centres for Greater Bunbury Policy 2012; and**
 - iv. Greater Bunbury Strategy 2013;**
- d. the land is a very valuable component of the long term economic prosperity of the region as it is:**
 - i. very well located;**
 - ii. available for development with short notice; and**
 - iii. a scarce resource;**
- e. there is no merit for the loss of the planned light industrial use of the land**
- f. there is no justified need or demand for the proposed commercial/retail (including tavern/liquor store, medical centre/pharmacy) and residential (including retirement living/aged persons' dwellings);**
- g. the Bushfire Management Plan is inconsistent with the bushfire protection criteria acceptable solutions detailed in the Guidelines for Planning in Bushfire Prone Areas;**
- h. the 1.8m to 2.1m noise barriers identified in the Acoustic Report would negatively impact the streetscape and amenity of the area.**

CARRIED 12-0

Item No.	12.3.2
Subject:	Application for a “Use Not Listed” (Reception Centre with Camping Area)
Proponent:	A & D Boaden
Location:	Lot 4177 (No. 530) Niger Road, Mornington
Reporting Officer:	Planning Officer (IF)
File No.:	A004733
	Reg. 19/37966

Summary

An application for Development Approval has been received for a ‘Use Not Listed’ (Reception Centre with camping area) on Lot 4177 (No. 530) Niger Road, Mornington (refer **Attachment 1**). The application is referred to Council as Officers do not have delegation to determine that a ‘Use Not Listed’ may be consistent with the purpose and objectives of the General Farming zone.

It is recommended that Council determines the proposed ‘Use Not Listed’ may be consistent with the objectives of the zone and, upon receipt of additional information, advertises the proposal.

At the completion of advertising, should no adverse submissions be received, Officers have delegation to determine the application in accordance with Delegation 4.1.23.

Background

Site Description

Lot 4177 Niger Road is zoned ‘General Farming’ under the Shire’s District Planning Scheme No.1 (the Scheme) and zoned ‘Rural’ under the Greater Bunbury Region Scheme. The site is generally regular in shape with an area of approximately 65ha and is bound by State Forest on all sides other than a small freehold lot along the western boundary. The site contains native vegetation within the southern portion of the site and grassland/paddocks within the northern and eastern portions.

The principal access to the site is via State Forest with the nearest road intersection being Niger Road and Mornington Road.

Site History

In September 2005, the Applicant submitted an Application for Planning Consent for a four chalet development on the property. The application was approved in November 2005, subject to conditions (refer **Attachment 2**). Despite having approval to construct four chalets, the Applicant has only proceeded with the construction of one. In July 2019, the Applicant submitted an application for a Building Permit (refer **Attachment 3**) for a proposed outbuilding on the property which could not be determined due to the presence of unauthorised structures on the property. The Applicant then submitted another application for a Building Permit (refer **Attachment 4**) to obtain a retrospective Building Permit.

Assessment of that application warranted the need for Officers to undertake a site visit, the outcome of which confirmed retrospective applications for unauthorised works (between January 2017 and December 2018) were required. Aerial photography and the site visit determined that the following structures were constructed, modified or occupied without approval (refer **Attachment 5**):

1. Outbuilding approved as a Class 10a structure. It incorporates a bus that is used for habitation which is a Class 1 structure. Due to Building and Health requirements, this structure cannot be approved for habitation;
2. An unauthorised existing outbuilding;
3. Various 'additional infrastructure', such as a large hard stand area with in-built timber tables, seating areas and designated smoking areas has also been constructed and its use is unauthorised;
4. Previously approved chalet has a mezzanine floor, encompassing two additional bedrooms, which was contrary to the approved plans and do not comply with the BCA;
5. The proposed outbuilding, which was originally applied for in July 2019 as a Class 10a structure, and for which no approval has been granted, had been partially constructed and is intended to be used for a Reception Centre which is a Class 9 structure; and
6. The areas used for camping as part of the Reception Centre use.

The Applicant advised that the 'additional infrastructure' was for a family members' (daughter) wedding a number of years earlier. Further investigation by Officers revealed that in addition to the daughter's wedding, which did not require the need for Shire approval, the property has been used as a public venue for wedding receptions, operating under the trading name 'Mornington Springs.'

During the course of the site inspection Officers requested, on many occasions, clarification as to the intended use of the property and specific buildings. Unfortunately, the intended purposes were not acknowledged by the owner and based on Officer's concerns, the owner was subsequently advised that an Application for Development Approval for a 'Reception Centre' was required to be made within 14 days of receiving the notification. (refer confidential **Attachment 1**). The Applicant was also advised of the need to rectify non-compliance with the previously granted Building Permit for the chalet, as well as make retrospective application for all other structures.

Proposal

The application (refer **Attachment 6**) now proposes a Reception Centre with a camping area. The property is intended to be used for weddings, functions and events, including overnight stays in the camping area only when in conjunction with a wedding/event. The current reception area is in the centre of the property, on a large hard stand area with in-built timber tables. It is understood that clients hire the property and are then required to supply additional services such as:

- Marquees;
- Generators;
- Music;
- Bus Hire;
- Photographers and Videographers;
- Cool rooms;
- Self-Contained Toilets and Showers;
- Mobile Licenced Caterers;
- Stylists;
- Glamping Companies; and
- Skip Bin Hire.

Officers have been advised that typically hiring the venue includes 3-nights as follows:

- 1st Day – Arrival and setup
- 2nd Day – Wedding/event day
- 3rd Day – Pack up (clean up)

The Applicant had advised that rubbish removal has been a significant consideration in the operation of their business, with clients being required to have a skip bin delivered and removed from the property. Mornington Springs also promotes choosing suppliers and services local to the Harvey and surrounding South West region to be involved in weddings and events held at the property.

Mornington Springs advertises the venue for up to 180 guests, with the option of camping being included at an additional cost.

Comment

Land Use

The proposed use of “Reception Centre” is defined in the Scheme as:

“land and buildings used by parties for functions on formal or ceremonious occasions, but not for unhosted use for general entertainment purposes.”

While the proposed use is defined by the Scheme, it is not listed in the Zoning and Development Tables, and is therefore considered a ‘Use Not Listed’. Clause 4.2.4(b) makes provision for a ‘Use Not Listed’ to be considered and provides that Council can *“determine by absolute majority that the proposed use may be consistent with the objectives and purpose of the zone”*. The Policy Statement contained within Table 27 (General Farming) of the Scheme refers to encouraging *“these areas to continue to be used for viable large scale farming activity. Local government will encourage and promote good farming, animal husbandry and conservation. Some limited tourist and recreational activity may be permitted where no adverse effect to the primary agricultural purpose of the zone will result.”*

The proposed “Reception Centre” land use could be considered as a *“limited tourist and recreational activity”*. The scale of buildings involved and frequency of use of the reception centre is unlikely to have an adverse effect of the agricultural activities of the site and of the adjoining properties and therefore could be considered to be consistent with the objectives and purposes of the zone.

The proposed camping area is considered to be incidental to the proposed Reception Centre use.

Advertising

If Council determines that the proposed “Reception Centre, with camping area” use may be consistent with the objectives and purposes of the zone, pursuant to Clause 64 of the Planning and Development (Local Planning Schemes) Regulations 2015 (the Deemed Provisions), the application is required to be advertised for a period of at least 14 days for public comment.

In addition, pursuant to Clause 66 of the Planning and Development (Local Planning Schemes) Regulations 2015 (the Deemed Provisions), the application is required to be referred to relevant authorities for comments and recommendations.

If no objections are received during the advertising period, Officers have delegation to approve the application as per Delegation 4.1.23.

Additional Information Required

The proposed land use takes advantage of the site attributes and provides for a desired diversity of tourist activities within the Shire. Notwithstanding, Officers have concern that the property is located within a Bushfire Prone Area and is bound by State Forest. As the site is within a Bushfire Prone Area, the application is required to be assessed under State Planning Policy 3.7 - Planning in Bushfire Prone Areas (SPP). The proposed land use is considered to be a vulnerable land use which is "*where persons may be less able to respond in a bushfire emergency*" due to them being unaware of their surroundings. A vulnerable land use proposal must be supported by a Bushfire Management Plan (BMP) and Emergency Evacuation Plan (EEP). The BMP and EEP is required to be submitted as part of the application and therefore this is required to be submitted prior to advertising the proposal.

It is understood that the owner does not wish to operate during the peak bush fire season, however, this self imposed restriction needs to be identified within a BMP and EEP.

Other additional information required to be submitted prior to advertising the proposal includes:

- Proof of the access agreement with the Department of Biodiversity, Conservation and Attractions (DBCA) to utilise DBCA's land to access the property;
- Payment of an additional application fee of \$590 as a penalty for the application being retrospective. The Planning and Development Regulations 2009 provides the maximum planning fees and includes a penalty fee for applications where the development and/or use has already been commenced without approval. The penalty fee is double the application fee, in addition to the application fee;
- Details to demonstrate how the camping area will comply with the Caravan Parks and Camping Regulations 1997 with respect to the provision of essential services to cater for the needs of campers including toilets, showers and potable water; and
- Details to demonstrate compliance with the Building Code of Australia with respect to public buildings, including Volume 1, and the Disability (Access to Premises Buildings) Standards 2010.

Conclusion

It is considered that the proposed "Reception Centre with camping area" may be consistent with the objectives of the 'General Farming' zone. Additional information, generally relating to access and bush fire mitigation, is required to be submitted prior to advertising the proposal. Officers therefore recommend that Council determine the proposed 'Use Not Listed' may be consistent with the objectives of the zone and require the additional information to be submitted prior to advertising commencing.

At the completion of advertising, should no adverse submissions be received Officers have delegation to determine the application in accordance with Delegation 4.1.23.

Statutory/Policy Environment

State Planning Policy 3.7 (Planning in Bushfire Prone Areas)

The subject site has been identified as being within the Bushfire Prone Area and must be assessed under SPP 3.7 as a vulnerable or high-risk land use. The policy requires a Bushfire Management Plan and Emergency Evacuation Plan which needs to be jointly endorsed by the Shire and the Department of Fire and Emergency Services.

Planning and Development (Local Planning Schemes) Regulations 2015

Schedule 2 – Deemed Provisions, Section 64 – Advertising Applications:

- “(1) An application for development approval must be advertised under this clause if the proposed development —“*
- “(b) relates to a use if —*
- (i) the use is not specifically referred to in the zoning table for this Scheme in respect of the zone in which the development is located; and*
 - (ii) the local government determines that the use may be consistent with the objective of that zone and that notice of the application should be given;”*
- “(3) The local government may advertise, or require the applicant to advertise, an application for development approval in one or more of the following ways —*
- (a) by giving notice of the proposed use or development to owners and occupiers of properties in the vicinity of the development who, in the opinion of the local government, are likely to be affected by the granting of development approval, including a statement that submissions may be made to the local government by a specified day being a day not less than 14 days from the day on which the notice is given to the person;”*

Planning and Development Regulations 2009

Schedule 2 – Maximum fees for certain planning services:

Provides the schedule of fees which has been adopted and included in the Shire of Harvey's Fees and Charges Schedule. The Fee Schedule includes a penalty fee for applications where the development and/or use has already been commenced without approval. The penalty fee is double the application fee, in addition to the application fee.

Shire of Harvey District Planning Scheme No.1

Clause 4.2.4 Zoning and Development Tables

“If the use of land for a particular purpose is not specifically mentioned in the Zoning table and cannot reasonably be determined as falling within the interpretation of one of the land use categories then Council may: -

- (b) Determine by absolute majority that the proposed use may be consistent with the objectives and purpose of the zone and there after follow the advertising procedures of Clause 64 of the Deemed Provisions in considering an application for consent. In approving such and application, the local government may apply any conditions or development standards it deems necessary”*

Table 27 – Zoning and Development Standards for the General Farming Zone-

Policy Statement – *“Local government intends to encourage these areas to continue to be used for viable large scale farming activity. Local government will encourage and promote good farming, animal husbandry and soil conservation. Some limited tourist and recreational activity may be permitted where no adverse effect to the primary agricultural purpose of the zone will result.”*

Schedule 13 – Interpretations

“Reception Centre – Means land and buildings used by parties for functions on formal or ceremonious occasions, but not for unhosted use for general entertainment purposes.”

Shire of Harvey Delegations Register**Delegation 4.1.23**

“The Chief Executive Officer is delegated authority to approve an application for a ‘Use Not Listed’ that Council has determined ‘may be consistent with the purposes and objectives of the zone’ pursuant to Clause 4.2.4 (b) of the District Planning Scheme No.1, subject to no objections being received during advertising of the application.”

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.”*

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 an incorrect assessment of the land use occurs, insufficient community engagement occurs, an incorrect approval is given or a relevant condition missed. The Risk is mitigated by the report being thoroughly researched, peer reviewed and provided by a qualified Shire officer, resulting in LOW Risk being present.

Voting Requirements

Officer’s Recommendation 1 – Absolute Majority.
Officer’s Recommendation 2 – Simple Majority.

Officer's Recommendation 1 of 2

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 Lot 4177 (No. 530) Niger Road, Mornington may be considered as a "Reception Centre with camping area" which may be consistent with objectives and purposes of the 'General Farming' zone.

ABSOLUTE MAJORITY REQUIRED

19/309. Moved: Cr. Adams Seconded: Cr. Boylan

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 Lot 4177 (No. 530) Niger Road, Mornington may be considered as a "Reception Centre with camping area" which may be consistent with objectives and purposes of the 'General Farming' zone.

CARRIED BY ABSOLUTE MAJORITY 12-0

Officers Recommendation 2 of 2

That Council:

1. Requires the Applicant to provide the following additional information in order for the application to be advertised and appropriately assessed:
 - a. Bushfire Management Plan in accordance with State Planning Policy 3.7 and the Guidelines for Planning in Bushfire Prone Areas;
 - b. Emergency Evacuation Plan in accordance with State Planning Policy 3.7 and the Guidelines for Planning in Bushfire Prone Areas;
 - c. Proof of the access agreement with the Department of Biodiversity, Conservation and Attractions (DBCA) to utilise DBCA's land to access the property;
 - d. Payment of an additional application fee of \$590 as a penalty for the application being retrospective pursuant to Schedule 2 of the Planning and Development Regulations 2009;
 - e. Details to demonstrate how the camping area will comply with the Caravan Parks and Camping Grounds Regulations 1997 with respect to the provision of essential services to cater for the needs of campers including toilets, showers and potable water; and
 - f. Details to demonstrate compliance with the Volume 1 of the Building Code of Australia for a class 9 building, including, and the Disability (Access to Premises Buildings) Standards 2010.
 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 the proposed 'Use Not Listed' (Reception Centre) for Lot 4177 (No. 530) Niger Road, Mornington be advertised for public comment in accordance with Section 64(3) of the Planning and Development (Local Planning Schemes) Regulations 2015.
-

-
3. Acknowledges, if no objections are received during the advertising period, the Application for Development Approval for the proposed 'Use Not Listed' (Reception Centre) and short stay Camping Area for Lot 4177 (No. 530) Niger Road, Mornington will be determined pursuant to the Shire of Harvey's Delegation No. 4.1.23 and 4.1.3C.

19/310. Moved: Cr. Bromham Seconded: Cr. Campbell

That Council:

1. **Requires the Applicant to provide the following additional information in order for the application to be advertised and appropriately assessed:**
 - a. **Bushfire Management Plan in accordance with State Planning Policy 3.7 and the Guidelines for Planning in Bushfire Prone Areas;**
 - b. **Emergency Evacuation Plan in accordance with State Planning Policy 3.7 and the Guidelines for Planning in Bushfire Prone Areas;**
 - c. **Proof of the access agreement with the Department of Biodiversity, Conservation and Attractions (DBCA) to utilise DBCA's land to access the property;**
 - d. **Payment of an additional application fee of \$590 as a penalty for the application being retrospective pursuant to Schedule 2 of the Planning and Development Regulations 2009;**
 - e. **Details to demonstrate how the camping area will comply with the Caravan Parks and Camping Grounds Regulations 1997 with respect to the provision of essential services to cater for the needs of campers including toilets, showers and potable water; and**
 - f. **Details to demonstrate compliance with the Volume 1 of the Building Code of Australia for a class 9 building, including, and the Disability (Access to Premises Buildings) Standards 2010.**
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 the proposed 'Use Not Listed' (Reception Centre) for Lot 4177 (No. 530) Niger Road, Mornington be advertised for public comment in accordance with Section 64(3) of the Planning and Development (Local Planning Schemes) Regulations 2015.**
3. **Acknowledges, if no objections are received during the advertising period, the Application for Development Approval for the proposed 'Use Not Listed' (Reception Centre) and short stay Camping Area for Lot 4177 (No. 530) Niger Road, Mornington will be determined pursuant to the Shire of Harvey's Delegation No. 4.1.23 and 4.1.3C.**

CARRIED 12-0

Item No.	12.3.3
Subject:	Extension to Non-Conforming Use (Sawmill)
Proponent:	Mr Greg Esmond
Location:	Lot 341 (No. 425) Crampton Road, Uduc
Reporting Officer:	Planning Officer (ND)
File No.:	A002320
	Reg. 19/42424

Summary

An Application for Development Approval has been received for an open-sided roofed area extension to the existing sawmill on Lot 341 (No. 425) Crampton Road, Uduc. The existing sawmill was approved by Council on 16 December 2014 as a “Non-Conforming Use”. This application, albeit minor in nature, is an intensification of a Non-Conforming Use and is therefore referred to Council as Officers do not have delegation to determine an application relating to a “Non-Conforming Use”.

Officers recommend the application be approved, subject to appropriate conditions.

Background

Site Description

Lot 341 (No. 425) Crampton Road, Uduc is zoned “General Farming” under the Shire’s District Planning Scheme No. 1 (the Scheme) and is located approximately 10km north west of the Harvey town centre and 3.6kms north along Crampton Road from the intersection with Forestry Road (refer **Attachment 1**). It has an irregular shape, an area of 143 hectares and consists of pasture and areas of scrub (refer **Attachment 2**).

Site Development and Approval History

At its meeting on 16 December 2014, Council granted approval to the extension of “Non-Conforming Use” rights for the mobile sawmill at Lot 341 Crampton Road, Uduc.

On 9 January 2016, the Yarloop Fires occurred and a large portion of the site was badly affected with significant amounts of timber and buildings destroyed. At its meeting held on 18 September 2018, Council granted approval (retrospectively) for an open-sided roofed structure that the Applicant erected in May 2016 in a location different to that approved in December 2014, without approval (refer **Attachment 3**).

Bushfire Management

A Bushfire Management Plan (BMP) was approved as part of the 18 September 2018 Development Approval. Given the minor nature of the proposed extension and that it does not increase the intensity of the land use or the number of people employed, it is considered that the existing approved BMP is sufficient as required by Condition No. 3 imposed on the 18 September 2018 Development Approval.

Proposal

The proposal is described by the Applicant as a “roof” to cover a machine and working area to provide shelter for the operators of the mill from heat in the summer months and rain in the winter months.

The application proposes a roof covered area to extend eastwards from the existing domed roof building by 25m and have a width of 5.1m. The wall height is 3m with the ridgeline being 3.5m. Structurally, the extension is to consist of timber posts, beams and battens with concrete footings as per BCA requirements. The roof cladding is to be zincalume and there is no wall cladding. (refer **Attachment 4**).

Advertising

Based on the scale of the proposed development, Officers consider that the proposal will not adversely impact adjoining properties. No expansion of the use is proposed, and as such the application was not required to be advertised pursuant to the Scheme.

Comment

Clause 9.2 of the Scheme makes provision for Council to consider the extension of a building used in conjunction with a “Non-Conforming Use” and permits Council to require:

- “(a) compliance with the requirements applicable to any zone in which the non-conforming use is carried on;*
- (b) compliance with the requirements applicable to the zone in which the non-conforming use would, subject to compliance with the other provisions of the Scheme, be permitted;*
- (c) compliance with any requirements applicable to the use class in which the non-conforming use is comprised, in any zone in which that use class is permitted; or*
- (d) compliance with any other requirements which the local government may specify for the purpose of securing the amenity, health or convenience of the area. In this regard the local government may waive any of the requirements of (a), (b) and (c) above if, in its opinion, a better development, within the meaning of this sub Clause, will result;”*

Officers consider that subclause (d) is applicable in this instance to waive the requirements of subclauses (a) to (c) as the proposal will not adversely impact adjoining properties and will provided a better development in that the proposal will provide weather protection for the sawmill workers.

Conclusion

The proposal is considered to be very minor and will not adversely impact any adjoining properties. Officers therefore recommend the application be approved subject to appropriate conditions.

Statutory/Policy Environment

Planning and Development Act 2005

Part 11, Division 2, Section 172 –

“non-conforming use means a use of land which, though lawful immediately before the coming into operation of a planning scheme or amendment to a planning scheme, is not in conformity with a provision of that scheme which deals with a matter specified in Schedule 7 clause 6 or 7;”

Shire of Harvey District Planning Scheme No.1

PART IX – NON-CONFORMING USES (Applicable Provisions)

“9.1 NON-CONFORMING USE RIGHTS

No provision of the Scheme shall prevent: -

- (a) the continued use of any land or building for the purpose for which it was being lawfully used at the time of coming into force of the Scheme; or*
- (b) the carrying out of any development thereon for which, immediately prior to that time, a permit or permits, lawfully required to authorise the development to be carried out, were duly obtained and are current.*

9.2 EXTENSION OF NON-CONFORMING USE

A person shall not alter or extend a non-conforming use or erect alter or extend a building used in conjunction with a non-conforming use without first having applied for and obtained the development approval of the local government under the Scheme and unless in conformity with any other provisions and requirements contained in the Scheme, and the local government may require: -

- (a) compliance with the requirements applicable to any zone in which the non-conforming use is carried on;*
- (b) compliance with the requirements applicable to the zone in which the non-conforming use would, subject to compliance with the other provisions of the Scheme, be permitted;*
- (c) compliance with any requirements applicable to the use class in which the non-conforming use is comprised, in any zone in which that use class is permitted; or*
- (d) compliance with any other requirements which the local government may specify for the purpose of securing the amenity, health or convenience of the area. In this regard the local government may waive any of the requirements of (a), (b) and (c) above if, in its opinion, a better development, within the meaning of this sub Clause, will result;”*

- Schedule 11 – Interpretations

“Sawmill: Means land and buildings, including mobile sawmills, where logs or large pieces of timber are sawn but does not include a joinery works unless logs or large pieces of timber are shown therein.”

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.”*

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 Shire Officer, resulting in LOW Risk being present.

Voting Requirements

Simple Majority.

Officer's Recommendation

That Council:

1. Approves the Application for Development Approval for an extension of a “Non-Conforming Use” (Sawmill), for an open-sided roofed area on Lot 341 (No. 425) Crampton Road, Uduc (Ref: 19/14424), subject to the following conditions:
 - a. The development shall be 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; and
2. Advises the Applicant of the following Advice Notes:
 - a. In accordance with the *Building Act 2011*, a Building Permit is required to be obtained prior to the commencement of any works; and
 - b. The Sawmill's Development Approval approved by Council on 18 September 2018 and dated 27 September 2018 remains valid and ongoing compliance with the Conditions of the Approval is required.

19/311. Moved: Cr. Adams Seconded: Cr. Simpson

That Council:

- 1. Approves the Application for Development Approval for an extension of a “Non-Conforming Use” (Sawmill), for an open-sided roofed area on Lot 341 (No. 425) Crampton Road, Uduc (Ref: 19/14424), subject to the following conditions:**
 - a. The development shall be 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; and**
- 2. Advises the Applicant of the following Advice Notes:**
 - a. In accordance with the *Building Act 2011*, a Building Permit is required to be obtained prior to the commencement of any works; and**
 - b. The Sawmill’s Development Approval approved by Council on 18 September 2018 and dated 27 September 2018 remains valid and ongoing compliance with the Conditions of the Approval is required.**

CARRIED 12-0

Item No.	12.3.4
Subject:	Proposed Building Envelope Modification and Oversized Outbuilding
Proponent:	Jonathon and Jodi Read
Location:	Lot 123 (No. 6) Fletcher Court, Leschenault
Reporting Officer:	Planning Officer (AR)
File No.:	A009458
	Reg. 19/31032

Summary

An Application for Development Approval has been received to modify the existing Designated Building Envelope (DBE) and for an Oversized outbuilding on Lot 123, (No. 6) Fletcher Court, Leschenault. The application was referred to Council at its meeting held 8 October 2019, however, was withdrawn at the request of Officers due to a late submission from a nearby landowner.

In response to that submission, further amendments to the DBE has resulted in that component of the application being capable of approval under delegation. However, as individual components of an application cannot be determined separately it remains part of this report to Council. For consistency with Council Policy, Officers have requested the shed size be reduced to 120m², however, the owner still seeks Council approval for an oversized outbuilding with an area of 140m². As Officers do not have delegation to make a determination on an application to approve an Oversized Shed, this application is again referred to Council.

For reasons contained within this report it is recommended that the application be approved subject to appropriate conditions.

Background

Site Description

Lot 123 (No. 6) Fletcher Court, Leschenault is zoned "Special Residential – Area 9" under the Shire's District Planning Scheme No. 1 (the Scheme) and is included in 'Place of Landscape Value (L2)'. The site is regular in shape with an area of 4,356m², generally flat, with minimal vegetation associated with boundary screening (refer **Attachment 1**).

The topography of Fletcher Court provides for a moderate increase in Australian Height Datum (AHD) from west to east. Given this topography and the location of the proposed outbuilding, it is unlikely that it will cause undue overshadowing.

Site History

- Original Building Envelope Plan for Fletcher Court was approved by Council in 2000 (refer to with the building envelope for the subject land being approximately 1,800m² (refer **Attachment 2**);
- The existing dwelling was approved in 2007;
- Application for Family Day Care applied for and refused in 2008;
- The existing shed was approved in 2008;
- Application for Family Day Care applied for and approved in 2010, which is no longer operating;
- Property sold to new owners in 2016 (the current landowners);

- Application for Development Approval submitted for the proposed Building Envelope modification and oversized outbuilding in August 2019;
- Application withdrawn from 8 October 2019 agenda due to late objection from nearby landowner; and
- Application modified to address objections.

Amendments to the Proposal
Designated Building Envelope

The amended application now proposes to modify the current DBE to cater for the revised oversized outbuilding in a different location and to ensure the existing leach drains are within the DBE. The following table provides a comparison of the existing and recently amended DBE setbacks:

	Building Envelope	
	Current	Proposed
North	22m	22m
South	20m	15m
East	5m	5m
West	5m	8m

The proposed DBE modifications will not result in an increase in the size of the DBE and proposes setbacks for development consistent with the Scheme. Further the DBE will allow for the proposed outbuilding to be located further away from the existing dwelling (refer **Attachment 3**). As the proposed DBE will not be an increase in size to the existing DBE and not inconsistent with existing setbacks on adjoining properties, Officers support the amendments and reaffirm that such changes would ordinarily be determined under delegated authority.

Oversized Outbuilding

The Applicant acknowledges Council’s Policy preferring a maximum floor area of 120m² and is aware of the ability to attach a lean-to (not enclosed on three or more sides), which does not form part of the outbuilding floor area. However, they remain of the opinion that a ‘policy compliant’ outbuilding plus lean-to would result in a larger building footprint and not be as secure, tidy or appropriately enclosed for the storage of vehicles and possessions.

To this effect, the size of the outbuilding remains as originally proposed (140m²). As such the application is referred to Council as the proposed outbuilding remains oversized and has been designed to be 14m x 10m with a wall height of 3.6m and a ridge height of 4.94m, with a total area of 140m² (refer **Attachment 4** – Proposed Outbuilding Plans). Council Policy provides for a maximum floor area of 120m², wall height of 3m and ridge height of 4.5m

The Applicant has indicated that the existing outbuilding will be removed in conjunction with the development of the proposed new outbuilding.

The Applicant maintains that the proposed increase in ridge and wall height is to ensure there is enough room for the vehicles, equipment and items that are planned for storage within the outbuilding and also for the future opportunity to install a car hoist for personal use, given their interest in rebuilding cars.

Advertising

Pursuant to Clause 64(1)(b)(ii) of the Planning and Development Regulations 2015 (the Deemed Provisions), the original application was advertised to relevant neighbouring properties for a period of 14 days concluding on 25 September 2019. One (1) late submission was received objecting to the proposal resulting in the item being withdrawn from the October agenda. An updated copy of the Schedule of Submissions received is provided in **Attachment 5**.

Comment

Designated Building Envelope Modification

The objection received during the advertising period raised concern about visual amenity through the south-west view corridor of Lot 122 (No. 8) Fletcher Court, which may have been impacted if the proposed outbuilding was located at the proposed original 10m setback from the rear boundary. Following discussions with both the Applicant and the adjoining neighbour (objector), the Applicant agreed to relocate the proposed outbuilding further north, closer to the existing dwelling, therefore proposing a 15m rear setback. With the Applicant modifying the location of the proposed outbuilding further north, it is understood that the concerns of the neighbour regarding the south-west view corridor have been addressed.

As the proposed DBE will not be increased in size, addresses concerns of a nearby landowner and not inconsistent with existing setbacks on adjoining properties, Officers support the amendments and reaffirm that such changes would ordinarily be determined under delegated authority.

Oversized Outbuilding

Wall and Ridge Height

Local Planning Policy No. 4.2.6 (Variation to RCodes – Outbuildings) provides for a maximum floor space of 120m², with a maximum ridge height of 4.5m and a maximum wall height of 3m for outbuildings located within a Special Residential area.

The Policy also provides for an increase in the ridge and wall heights to a maximum of 5.1m and 3.6m respectively where the Applicant can demonstrate, to the satisfaction of Council, that:

- “a) The increase in height is warranted on the basis of a specific and demonstrated need; and*
- b) The increase in height will not impact on the residential amenity of adjacent properties, or cause undue overshadowing; and*
- c) The applicant has consulted with the adjoining landowners and no reasonable (in the opinion of Council) objections has been received.”*

Following consideration of the original proposal, the Applicant, Officers and nearby landowners have been in discussion resulting in the rear setback being increased and the proposed outbuilding being repositioned (refer revised DBE outcome). However, the Applicant maintains that the request for the increase in wall and ridge height is to accommodate storage requirements and their future intentions to install a car hoist for personal use.

The topography of Fletcher Court provides for a moderate increase in height from west to east. Given this rise in topography and the revised location of the proposed outbuilding, Officers consider it unlikely that the requested increase in wall and ridge height will result in a negative impact on the amenity of nearby landowners.

Floor Space

As evidenced above, Local Planning Policy No. 4.2.6 (Variation to RCodes – Outbuildings) provides for a maximum floor space of 120m². To date, the Shires application of this Policy has resulted in very few outbuildings greater than 120m² being approved. However, a Policy of Council is required to provide guidance on the exercise of discretion not replace it. To this effect, a refusal simply because it exceeds 120m² is not a ‘lawful’ application of Policy and unlikely to be defensible within a State Administrative Tribunal (SAT) review.

All proposals need to be considered on a ‘case by case’, merits based assessment and should such an assessment conclude that a departure from a Policy provision is warranted, then such a decision would represent an appropriate application of Policy. Notwithstanding, all discretionary decisions need to demonstrate that such a departure represents ‘proper and orderly planning’. Simply put, not all proposals for outbuildings greater than 120m² can/will be approved. Site attributes, the outbuilding design and the impact on the amenity of the locality must always be taken into account.

In this case the proposal seeks support for a 14m x 10m shed as opposed to a 12m x 10m shed. An increase in length of 2m is not a significant increase in bulk and scale and thus not considered unreasonable. Particularly given that a compliant shed of 12m x 10m plus the option for an additional lean to (likely to be 6m in length) will result in a larger development footprint with less secure or screened storage.

Conclusion

The minimal (2m) increase in the length of the outbuilding, a reduced footprint to that of a ‘compliant’ outbuilding and lean-to and as the outbuilding will be entirely enclosed and appropriately secured, Officers consider that this minor departure from the Policy is appropriate.

Given the established principle of applying a Policy on a case by case basis, not a blanket or rigid applicant divorced of considering site or amenity attributes, Officers conclude that such a departure represents ‘proper and orderly’ planning and one which is unlikely to establish an undesirable precedent for future applications.

Statutory/Policy Environment

Planning and Development (Local Planning Schemes) Regulations 2015

Schedule 2 – Deemed Provisions, Section 64 – Advertising Applications

(1) An application for development approval must be advertised under this clause if the proposed development – ‘

(b) does not comply with a requirement of this Scheme;

- (3) *The local government may advertise, or require the applicant to advertise, an application for development approval in one or more of the following ways – ‘*
- (a) *by giving notice of the proposed use or development to owners and occupiers of properties in the vicinity of the development who, in the opinion of the local government, are likely to be affected by the granting of development approval, including a statement that submissions may be made to the local government by a specified day being a day not less than 14 days from the day on which the notice is given to the person;’*

Shire of Harvey District Planning Scheme No.1

5.2 Special Residential Development Requirements

- 5.2.1 *Additional requirements or modifications specified in Schedule 3 apply to the areas zoned Special Residential described in that Schedule. Additional requirements specified in Planning Scheme No. 4 (Leschenault Parklands) apply to the area described in that Scheme.*
- 5.2.5 *Where a “Special Residential” zone has been approved subject to development being contained within designated building envelopes on each lot, no buildings or developments, including outbuildings shall be permitted to be erected outside the building envelope.*
- 5.2.6 *Notwithstanding the provisions of Clause 5.2.5, but subject to the provisions of Schedule 3, the local government 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.*

LPP 4.2.6 – Variation to RCodes – Outbuildings

Part 2 ‘Special Residential’ Zone

- 2.1) *Outbuildings may be permitted where:*
- a) *The aggregate floor area of all outbuildings not attached to the dwelling does not exceed a maximum floor space of 120m²*
 - b) *The ridge height does not exceed a maximum of 4.5m*
 - c) *The wall height does not exceed a maximum of 3m*
- 2.2) *Notwithstanding Policy provisions 2.1) (b) and 2.1) (c), an outbuilding may be permitted with a maximum ridge height of 5.1m and/or a maximum wall height of 3.6m where the applicant can demonstrate, to the satisfaction of Council that:*
- a) *The increase in height is warranted on the basis of a specific and demonstrated need; and*
 - b) *The increase in height will not impact on the residential amenity of adjacent properties, or cause undue overshadowing; and*
 - c) *The applicant has consulted with the adjoining landowners and no reasonable (in the opinion of Council) objection(s) has been received.*
- 2.3) *All framed construction outbuildings with a floor area exceeding 10m² are to have the wall cladding coloured in a factory applied earthy tone. Factory coloured metal surfaces of burnt copper, bronze, olive, doeskin and brown are considered acceptable.*

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.”*

Budget Implications

Nil.

Risk Management

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

Voting Requirements

Simple Majority.

Officer's Recommendation

That Council:

1. Approves the Application for Development Approval for a Building Envelope Modification and Oversized Outbuilding at Lot 123 (No. 6) Fletcher Court, Leschenault subject to the following conditions:
 - a. The development and/or use shall be 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 shall be contained within the modified Building Envelope as indicated on the approved plan to the satisfaction of the Shire;
 - d. No native vegetation shall be removed between the boundaries of the property and the modified Building Envelope;
 - e. The colour and type of external cladding shall comply with the Shire of Harvey's *Reflective Materials Within a Place of Landscape Value Policy* which precludes the use of zincalume, white or silver coloured materials, metallic coatings, galvanised or polished steel, aluminium, or highly reflective materials which have a solar absorption value of less than 50%;

-
- f. The existing outbuilding shall be removed prior to construction of the approved outbuilding the subject of this Development Approval;
 - g. The approved outbuilding shall not be used for habitation or commercial purposes unless approved by the Shire.
2. Advises the Applicant that:
 - 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.
 - ii. In accordance with the *Building Act 2011*, a Demolition Permit is required to be obtained prior to the demolition of the existing outbuilding on site.

19/312. Moved: Cr. Bromham Seconded: Cr. Dickinson

That Council:

1. **Approves the Application for Development Approval for a Building Envelope Modification and Oversized Outbuilding at Lot 123 (No. 6) Fletcher Court, Leschenault subject to the following conditions:**
 - a. **The development and/or use shall be 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 shall be contained within the modified Building Envelope as indicated on the approved plan to the satisfaction of the Shire;**
 - d. **No native vegetation shall be removed between the boundaries of the property and the modified Building Envelope;**
 - e. **The colour and type of external cladding shall comply with the Shire of Harvey's *Reflective Materials Within a Place of Landscape Value Policy* which precludes the use of zincalume, white or silver coloured materials, metallic coatings, galvanised or polished steel, aluminium, or highly reflective materials which have a solar absorption value of less than 50%;**
 - f. **The existing outbuilding shall be removed prior to construction of the approved outbuilding the subject of this Development Approval;**
 - g. **The approved outbuilding shall not be used for habitation or commercial purposes unless approved by the Shire.**
2. **Advises the Applicant that:**
 - 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.**
 - ii. **In accordance with the *Building Act 2011*, a Demolition Permit is required to be obtained prior to the demolition of the existing outbuilding on site.**

CARRIED 12-0

Item No.	12.3.5
Subject:	Amendment to Local Planning Policy 4.2.6 – Variation to R-Codes – Outbuildings
Proponent:	Shire of Harvey
Location:	Shire of Harvey
Reporting Officer:	Manager of Planning Services
File No.:	PS/P/003

Summary

Local Planning Policy 4.2.6 (LPP) provides for a range of development control requirements. Specifically, in regard to Clifton Park, it requires outbuildings in excess of 39m² to be constructed in masonry. This policy was adopted by Council on 24 March 1997, when building materials were more limited thereby seeking to mitigate any adverse visual impact.

An application for a Building Permit has been received for a 54m² colorbond outbuilding on Lot 477 (No. 41) Whatman Way, Australind. Based on the current policy, Officers should recommend refusal to the proposal. However, given the passage of time and the improvement in building materials, Officers can find no reasonable justification for retaining the policy provisions nor are there any restrictive covenants preventing the use of such materials.

All Policies of Council must be based on sound town planning principles, and in the absence of any statutory reasoning why such materials are to be precluded, Officers recommend that Policy provision 5.2 be deleted from the LPP.

By deleting this provision, Officers will have delegation to grant approval to the application for a Building Permit for a 54m² colorbond outbuilding on Lot 477 (No. 41) Whatman Way, Australind.

Background

Local Planning Policy 4.2.6 – Variation to R-Codes – Outbuildings (LPP) was adopted by Council on 24 March 1997 and has been reviewed and amended numerous times with the most recent amendment occurring in December 2017 (refer **Attachment 1**). The Policy varies the R-Codes by allowing for larger outbuildings.

Policy provision 5.2), relating specifically to the “Clifton Park” area, states:

“Outbuildings not attached to the dwelling with a floor area in excess of 39m² are to be constructed in masonry to be compatible with the existing dwelling.”

Landowners have always been advised that the above requirement originates from an historical covenant. Due to the landowner of Lot 477 Whatman Way challenging the requirement for their proposed outbuilding to be constructed in masonry, Officers have undertaken research to confirm the rationale for this requirement.

Comment

Research undertaken by Officers consisted of Certificate of Title searches of random properties within Clifton Park and reviewing previous Council Minutes for decisions relating to the LPP and outbuildings within Clifton Park.

Certificate of Title searches revealed there is no Restrictive Covenant registered on any properties in Clifton Park and therefore it can be confirmed the Policy was based on 'an historical covenant'.

Research of Council Minutes indicate that the LPP adopted on 24 March 1997 was amended on 3 June 1997 to include:

"Clifton Park

Outbuildings up to 39m² in floor area and for which the maximum height does not exceed 4.5m with a wall height of 3m may be constructed using Colorbond cladding.

Outbuildings in excess of 39m² shall be constructed in masonry compatible with the existing residence."

on the basis that it documented *"the status quo within the locality of Clifton Park based on past Council decisions."*

With respect to *"...past Council decisions."*, on 20 November 1996, the then Health, Building and Town Planning Committee recommended refusal of a Building Permit for a 68m² colorbond outbuilding on a property in Mayne Way on Officer's advice that:

"Historically, Council has required an outbuilding exceeding 39m² to be constructed in masonry within the Clifton Park locality."

The LPP previously required *"On lots zoned "Special Residential" in the locality of Leschenault, all sheds must be of brick or other finish, which in the opinion of Council, will complement and blend in with the environment of the area."* This provision was removed when the Policy was amended in December 2017. As a result, there is no other locality within the Shire that is subject to the requirement for outbuildings to be constructed in masonry.

LPPs cannot contain mandatory requirements as they are not a statutory mechanism and are used to assist in decision making and the use of discretion. The Development Assessment Panel's Practice Note on 'Making Good Planning Decisions' provides that, when making a determination, *"the local government must have regard to each relevant local planning policy to the extent that the policy is consistent with the Scheme."* It also states:

"It should be noted, however, that LPPs in some local government areas go far beyond guiding the exercise of discretion, and impose separate planning regimes by varying development standards and requirements as set out in the local planning scheme, or by imposing further restrictions on the design of buildings or the finishes to be used."

It is acknowledged that the Policy in 1997 reflected the contemporary approach to development control and since that time there has been very few applications which have sought to challenge those provisions. However, as evidenced above, such policies are no longer considered acceptable and have no sound basis in planning principle. To this effect, it is considered appropriate that this provision be deleted and that all applications be considered on merit.

Conclusion

The subject Policy provision is considered to be unjustified and unreasonable, is not relevant to another locality in the Shire and is not based on sound town planning principles. Therefore, it is recommended that Policy provision 5.2) be deleted from the LPP as indicated in **Attachment 2**. Furthermore, the amendment is considered minor and therefore does not require advertising.

Statutory/Policy Environment

Planning and Development Act 2005

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.*

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.”*

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 Financial, Reputational or Compliance if the Local Planning Policy is not based on sound town planning principles. The Risk is mitigated by the report being thoroughly researched, peer reviewed, provided by a qualified Shire Officer, and recommending that the Local Planning Policy be amended resulting in LOW Risk being present.

Voting Requirements

Simple Majority.

Officer's Recommendation

That Council:

1. Pursuant to Schedule 2, Clause 4(1) of the Planning and Development (Local Planning Schemes) Regulations 2015, adopts amended Local Planning Policy 4.2.6 – Variation to R-Codes – Outbuildings as detailed in **Attachment 2**;
2. Pursuant to Schedule 2, Clause 5(2) of the Planning and Development (Local Planning Schemes) Regulations 2015, determines that advertising of the amended Local Planning Policy for 14 days is required;
3. Subject to no objections being received, pursuant to Schedule 2, Clause 4(4) of the Planning and Development (Local Planning Schemes) Regulations 2015, publishes a notice of the amended Local Planning Policy in a newspaper circulating in the Scheme area; and
4. Acknowledges that the Building Permit application for a 54m² colorbond outbuilding on Lot 477 (No. 41) Whatman Way, Australind can now be approved under delegation.

19/313. Moved: Cr. Dickinson Seconded: Cr. Campbell

That Council:

1. Pursuant to Schedule 2, Clause 4(1) of the Planning and Development (Local Planning Schemes) Regulations 2015, adopts amended Local Planning Policy 4.2.6 – Variation to R-Codes – Outbuildings as detailed in **Attachment 2**;
2. Pursuant to Schedule 2, Clause 5(2) of the Planning and Development (Local Planning Schemes) Regulations 2015, determines that advertising of the amended Local Planning Policy for 14 days is required;
3. Subject to no objections being received, pursuant to Schedule 2, Clause 4(4) of the Planning and Development (Local Planning Schemes) Regulations 2015, publishes a notice of the amended Local Planning Policy in a newspaper circulating in the Scheme area; and
4. Acknowledges that the Building Permit application for a 54m² colorbond outbuilding on Lot 477 (No. 41) Whatman Way, Australind can now be approved under delegation.

CARRIED 12-0

Item No.	12.3.6
Subject:	Objection to Council Decision on Expression of Interest for Trading in Public Places for Food Vendors
Proponent:	Platinum Trust, trading as the Crazy Cow Group
Location:	Binningup Beach Carpark (Part Reserve 48823)
Reporting Officer:	Acting Principal Environmental Health Officer/Executive Manager Corporate Services
File No.:	LS/B/032

With consent of Council the Shire President agreed to defer item 12.3.6 until section 19 Matters Behind Closed Doors.

Item No.	12.3.7	
Subject:	Local Government Development Assessment Panel Member Nominations	
Proponent:	Government of Western Australia – Development Assessment Panels	
Location:	Shire of Harvey (and Local Governments within the jurisdiction of the South West Development Assessment Panel)	
Reporting Officer:	Manager Planning Services	
File No.:	PSL005(5)	Attachment Reg. No.19/39763

Summary

Council has been requested on behalf of the Director General (DG) of the Development Assessment Panels (DAP), to nominate four (4) elected members (two members and two alternate members) to be considered for appointment to the local Development Assessment Panel. Currently Councillors Jackson and Beech are the Shire's representatives, with Councillors Lovitt and Carbone as alternate members. The current representatives' term ends 26 January 2020 and current representatives are eligible to reapply. A copy of the request for nominations is contained within **Attachment 1**.

Background

Fifteen DAPs came into operation on 1 July 2012, to be an independent decision maker comprising of technical experts and elected local government representatives for proposals that meet certain threshold values. The Shire has referred nine (9) proposals to the DAP since its inception.

Local Governments have until 8 November 2019 (extended to 20 December 2019) to submit their nominations for new DAP members and alternates. Failure to provide nominations within this timeframe will result in the Director General nominating replacements from eligible voters within the district to which the DAP is established.

DAP members will be appointed until 26 January 2022 and will be required to undergo training before they can be appointed to a DAP and determine applications. Local Government representatives who have previously been appointed to a DAP and have received training are not required to attend further training. Local DAP members are entitled to be paid for their attendance at DAP training and at DAP meetings, unless they fall within a class of persons excluded from payment.

It is noted that the absence of training by DAP for new members has been an issue in recent times and this matter has been raised with DAP to avoid preclusion of elected members attending required meetings.

Comment

Council is required to nominate two Councillors as Local Government DAP members and two Councillors as alternate Local Government DAP members. In nominating DAP members and alternate DAP members, Council should consider members with a sound knowledge and understanding of town planning matters. DAP members will be appointed for a period of two years.

Councillors should be aware that if nominated, the period of appointment is for two years running from 26 January 2020, to 26 January 2022, not the three year terms as per previous appointments. It is understood the new appointment periods are to achieve greater alliance with the Local Government Election Cycle.

Statutory/Policy Environment

Section 26 of the Planning and Development (Development Assessment Panels) Regulations 2011 defines the process for nomination of four elected members from Council.

Strategic Framework

Within the Shire's Strategic Community Plan 2017 - 2027, Strategy 4.3.4 states:

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

Budget Implications

Nil.

Risk Management

The Risk Theme Profile identified as part of this report is **Failure to Fulfil Compliance Requirements (Statutory, Regulatory)**. The Consequence is Compliance should Council not nominate Councillors in accordance with section 26 of the Planning and Development (Development Assessment Panels) Regulations 2011. The consequence rating is Moderate (3) and the likelihood is Unlikely (2) resulting in a MODERATE risk being present.

Voting Requirements

Simple Majority.

Officer's Recommendation

That Council:

1. Nominates Councillors _____ and _____ as the Shire's local government members to the relevant Development Assessment Panel with jurisdiction over the Shire of Harvey's municipal boundaries, with Councillors _____ and _____ as the alternate members; and
2. Advises the Director General of the Development Assessments Panels of Council's decision prior to 20 December 2019.

19/314. Moved: Cr. Simpson Seconded: Cr. Lovitt

That Council:

1. **Nominates Councillors Jackson and Gillett as the Shire's local government members to the relevant Development Assessment Panel with jurisdiction over the Shire of Harvey's municipal boundaries, with Councillors Dickinson and Beech as the alternate members; and**
2. **Advises the Director General of the Development Assessments Panels of Council's decision prior to 20 December 2019.**

CARRIED 12-0

Corporate Services

Item No.	12.4.1
Subject:	Strategic Community Plan Report on Performance – 2018-2019
Proponent:	Shire of Harvey
Location:	Shire of Harvey
Reporting Officer:	Executive Manager Corporate Services
File No.:	B000157

Summary

This report recommends the endorsement the Shire's Strategic Community Plan for the period ending 30 June 2019 (refer **Attachment 1**).

Background

Council adopted its Strategic Community Plan 2017 – 2027 on 18 July 2017. The plan runs for a 10-year period consistent with the Shire's Long Term Financial Plan.

In accordance with the Department of Local Government guidelines for Integrated Planning and Reporting Council's Strategic Community Plan was Desktop reviewed together with a Report on Performance, in March 2019.

Comment

This report has been updated to align with the end of financial year reporting and the production of the Shire's Annual Report 2018-2019.

The Report on Performance 2018-2019 contains the Strategies and Actions adopted by Council with a specific column detailing comment on each Action. The Report concentrates at this "Action" level as this provided the most meaningful feedback and status on each of the items. The "Strategy" level is more broad and less able to be measured in a meaningful way.

Additionally, the Department of Local Government guidelines for Integrated Planning and Reporting recommends that Strategic Community Planning Performance reporting be undertaken on a quarterly basis. While not mandatory and not undertaken at this frequency prior, to achieve best industry practice, quarterly reporting on the Strategic Community Plan will be programmed to be introduced in the future.

Ideally in April 2020 the Shire's round of community meetings would be the platform to commence the development of ideas and initiatives to consider as part of the major 2021 Strategic Community Plan review and renewal process. The intent being that the review and renewal would be completed prior to and apply from the start of the 2021/2022 year.

The 2018-2019 Report on Performance is recommended to be endorsed by Council.

Statutory/Policy Environment

Local Government (Administration) Regulations 1996:

19C. Strategic community plans, requirements for (Acts. 5.56)

- (1) *A local government is to ensure that a strategic community plan is made for its district in accordance with this regulation in respect of each financial year after the financial year ending 30 June 2013.*
- (2) *A strategic community plan for a district is to cover the period specified in the plan, which is to be at least 10 financial years.*
- (3) *A strategic community plan for a district is to set out the vision, aspirations and objectives of the community in the district.*
- (4) *A local government is to review the current strategic community plan for its district at least once every 4 years.*
- (5) *In making or reviewing a strategic community plan, a local government is to have regard to —*
 - (a) *the capacity of its current resources and the anticipated capacity of its future resources; and*
 - (b) *strategic performance indicators and the ways of measuring its strategic performance by the application of those indicators; and*
 - (c) *demographic trends.*
- (6) *Subject to subregulation (9), a local government may modify its strategic community plan, including extending the period the plan is made in respect of.*
- (7) *A council is to consider a strategic community plan, or modifications of such a plan, submitted to it and is to determine* whether or not to adopt the plan or the modifications.*

**Absolute majority required.*
- (8) *If a strategic community plan is, or modifications of a strategic community plan are, adopted by the council, the plan or modified plan applies to the district for the period specified in the plan.*
- (9) *A local government is to ensure that the electors and ratepayers of its district are consulted during the development of a strategic community plan and when preparing modifications of a strategic community plan.*
- (10) *A strategic community plan for a district is to contain a description of the involvement of the electors and ratepayers of the district in the development of the plan or the preparation of modifications of the plan.*

Strategic Framework

Within the Shire's Strategic Community Plan 2017 – 2027, Strategy 4.1.1 states:

“Implement the Integrated Planning and Reporting Framework including the Long Term Financial Plan, Workforce Plan, Asset Management Plans and Corporate Business Plan.”

Risk Management

The Risk Theme Profile identified as part of this report is Inadequate Document Management Processes. The Consequences are considered to be “Financial Impact” and “Reputational” if the details in the document are incorrect reported and/or acted upon. The risk is mitigated by the document being an update of the March 2019 Report on Performance, being thoroughly researched, developed and checked in house. As such it is considered that a LOW risk is present.

Budget Implications

The preparation of the 2018-2019 Strategic Community Plan Report on Performance has been undertaken in house. No external budget implications are present.

Voting Requirements

Simple Majority.

Officer's Recommendation

That Council receives and endorses the Shire of Harvey's Strategic Community Plan Report on Performance 2018-2019 (refer **Attachment 1**).

19/315. Moved: Cr. Dickinson Seconded: Cr. Simpson

That Council receives and endorses the Shire of Harvey's Strategic Community Plan Report on Performance 2018-2019 (refer Attachment 1).

CARRIED 12-0

Item No.	12.4.2	
Subject:	Application for Exemption to Keep More than the Prescribed Number of Dogs	
Proponent:	Ms. Susan Joyce Pessotto	
Location:	40 Tributary Place Leschenault	
Reporting Officer:	Administrator Law & Safety Services	
File No.:	A008003	Attachment Reg. No.

Summary

An application for an exemption from the Shire of Harvey Dog Local Laws 2017, Clause 3.2 seeking the keeping of more than the prescribed number of dogs has been received from Ms. Susan Joyce Pessotto (the Applicant) of 40 Tributary Place, Leschenault. A copy of the application received is attached to this report (refer **Attachment 1**).

It is recommended that this application be refused for the reasons stated in this report.

Background

The Applicant currently has three (3) dogs registered with the Shire, which include a female Kelpie, black and white, named Pepper, aged two (2), Registration LTO4571, a female Kelpie, Border Collie cross, tan and white, named Molly, aged two (2) years, Registration LTO4597 and a female Beagle, tan and white, named Margo, aged three (3), Registration LTO1382.

The property at 40 Tributary Place Leschenault is jointly owned by the Applicant, zoned "Special Residential" and is 3,414m² in area.

The Applicant has advertised in the Harvey Reporter newspaper advising residents of the intention to seek approval to have three (3) dogs at 40 Tributary Place Leschenault. (Refer **Attachment 2**).

The surrounding property owners were also notified in writing by Officers of the application and two (2) objections were received (**Attachment 3**).

The objections raised were primarily in relation to the constant barking of the dogs and that neighbouring property owners have the right to live in a peaceful environment. It has been stated that the dogs rush at fence lines at times. It has also been stated by both objectors that they have spoken to the owners of the dogs regarding both issues several times and nothing has been done to abate the issues.

On 16 September 2019, a complaint was received from a neighbouring property owner concerning the constant barking of the dogs. A Ranger attended the property and spoke to the Applicant.

The Applicant then submitted an application to house three (3) dogs on the property.

One of the dogs was first registered on the 29 September 2016 and the other two (2) on 28 August 2019. The Applicant stated that the two (2) dogs registered in August 2019 were at the property for quite some time as she thought they had to be three (3) years old before they were required to be registered.

Once the Applicant realised that the dogs had to be registered after three (3) months she registered the two remaining dogs. The Applicant has stated that the reason for the third dog is that one was purchased for her son who was going to move out of the property, however he lost his job and had to remain in the family home. The Applicant does not wish to split the dogs up.

Provisions under the *Dog Act 1976* and the Shire's Dog Local Law 2017 stipulate that a person may only keep two (2) dogs over the age of three months and the young of those dogs under that age on Special Residential zoned properties unless Shire approval is obtained to keep more.

Comment

This application has been considered and reviewed in line with the general indicia established by the State Administrative Tribunal, *GADD V SHIRE OF HARVEY CC 1153 OF 2007*, and reinforced in *WILES-DAY V SHIRE OF HARVEY CC 357/2017 OF 2017* dealt with by Council in October 2016 and April 2017.

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

The Applicant currently has three (3) dogs registered with the Shire. The dogs are micro chipped and are sterilised.

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

The property at 40 Tributary Place, Leschenault is zoned "Special Residential" comprising of 3,414m² in area. The size of the property does provide sufficient area for three (3) dogs of the size and breed nominated.

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

An inspection of the property (refer **Attachment 4**) by Staff found:

- Provision of shade/water – adequate, sufficient food and water provided;
- Property fences - suitable fencing;
- General condition of dogs – the three (3) dogs are clean and well cared for; and
- Cleanliness of property - property is clean and tidy.

- **Other factors such as aggregation of dogs in the same area, the Applicant's experience in and methods of handling dogs and motivation in obtaining more than the prescribed number of dogs:**

There are two (2) dogs registered in properties surrounding the Applicant's residence and no other properties have approval for more than three (3) dogs.

Council has the full authority pursuant to the *Dog Act 1976* to approve or refuse the application. The Applicant does have a right to appeal to the State Administrative Tribunal should a refusal decision be made by Council.

Statutory/Policy Environment

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

Shire of Harvey Dog Local Law 2017 - Clause 3.2 limitations on the number of dogs permitted.

A refusal decision by the Shire is appealable to the State Administrative Tribunal.

Strategic Framework

Within the Shire's Strategic Community Plan 2017 - 2027, Strategy 3.1.3 states:

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

Risk Management

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

Budget Implications

Should an application for review be lodged to the State Administrative Tribunal, costs are likely to be incurred.

Voting Requirements

Simple Majority.

Officer's Recommendation

That Council:

1. Refuses the application from Ms. Susan Joyce Pessotto of 40 Tributary Place Leschenault for exemption to keep three (3) dogs based on the following:
 - a. The details contained in the objections received from two (2) nearby residents;
 - b. The impact on the amenity of the area due to dogs barking/noise if this application were approved; and
2. The third dog to be removed from the property within 21 days from the date of a Notice being served on the applicant or a person aged above eighteen years who resides at the property.

19/316. Moved: Cr. Adams Seconded: Cr. Bromham

That Council:

- 1. Refuses the application from Ms. Susan Joyce Pessotto of 40 Tributary Place Leschenault for exemption to keep three (3) dogs based on the following:
 - a. The details contained in the objections received from two (2) nearby residents;**
 - b. The impact on the amenity of the area due to dogs barking/noise if this application were approved; and****
- 2. The third dog to be removed from the property within 21 days from the date of a Notice being served on the applicant or a person aged above eighteen years who resides at the property.**

CARRIED 11-1

Item No.	12.4.3	
Subject	Listing of Accounts Paid – October 2019	
Proponent:	Shire of Harvey	
Location:	Shire of Harvey	
Reporting Officer:	Finance Manager	
File No.:	FMS006	ATTACHMENT

Summary

Presented by way of attachment is a listing of payments for goods and services for October 2019. It is recommended that Council note the attached payments.

Background

Pursuant to Section 5.42 of the *Local Government Act 1995* (Delegation of some powers and duties to CEO), Council has resolved to delegate to the CEO (Delegation No: 2.2.1) the exercise of its powers to make payments from the municipal and trust funds.

As a result of this delegation there is a requirement under the Local Government (Financial Management) Regulations 1996, Regulation 13(3) for a list of payments to be prepared and presented to Council.

Comment

The list of accounts paid for the period of October 2019 is presented as an attachment to this report, as summarised below.

<u>Voucher</u>	<u>Amount</u>
Schedule of Accounts	
Trust	
EFT 47392 - 47398	\$560.00
3231 - 3235	\$570.00
Municipal	
EFT 46923 - EFT 47403	\$3,379,683.24
116843 - 116867	\$27,623.37
DD19463.1 - DD19552.2	\$136,637.60
CBA Credit Card	\$5,502.96
Electronic Funds Submitted	\$1,094,640.62
Total	\$4,645,217.79

Statutory/Policy Environment

Local Government (Financial Management) Regulation 1996, Regulation 13 prescribes the reporting of payments to Council.

Strategic Framework

Within the Shire’s Strategic Community Plan 2017 – 2027, Strategy 4.3.4 states:

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

Risk Management

The Risk Theme Profile identified as part of this report is ***Providing Inaccurate Advice/Information***. There is no Consequence associated as Council is receiving financial information only with no recommendation on action or intervention.

Budget Implications

The payments listed above have been budgeted for in the Shire's 2019–2020 Budget.

Voting Requirement

Simple Majority.

Officer's Recommendation

That Council notes the above list of accounts paid for the period of October 2019 totalling \$4,645,217.79.

19/317. Moved: Cr. Simpson Seconded: Cr. Jackson

That Council notes the above list of accounts paid for the period of October 2019 totalling \$4,645,217.79.

CARRIED 12-0

Item No.	12.4.4
Subject:	Financial Statements as at 31 October 2019
Proponent:	Shire of Harvey
Location:	Shire of Harvey
Reporting Officer:	Finance Manager
File No.:	CC/C/062

Summary

Presented by way of attachment are the Financial Statements as at 31 October 2019.

The following key balances are provided to assist in reporting the Shire's financial performance.

	ACTUAL	BUDGET	VARIANCE
	31 October 2019	2019 - 2020	
Statement of Financial Performance			
Ordinary Revenue	\$32,842,441	\$36,124,398	\$3,281,957
Ordinary Expenditure	\$13,377,616	\$44,313,168	\$30,935,552
Capital Revenue	\$1,616,201	\$12,396,656	\$10,780,455
Capital Expenditure	\$2,967,989	\$17,526,329	\$14,558,340
End of Period Profit / (Loss)	\$21,180,236		
Statement of Financial Position			
Current Assets	\$63,247,847		
Net Assets	\$501,029,811		

It is recommended Council receive the Financial Statements (refer **Attachment 1**).

Background

In accordance with the provisions of Section 6.4 of the *Local Government Act 1995*, and Regulation 34(1) of the Local Government (Financial Management) Regulations 1996, a Local Government is to prepare each month a Statement of Financial Activity (refer **Attachment 1**) reporting on the revenue and expenditure as set out in the Annual Budget under Regulations 22 (1)(d) for the month.

Comment

Any material variances are highlighted in the Statement of Financial Performance and included by way of Notes to the Statement of Financial Performance (as attached).

Attached to the Agenda is a copy of:

- Statement of Financial Performance
- Statement of Financial Position
- Notes to the Statement of Financial Performance and Financial Position
- Total Municipal Revenue and Expenditure - graph
- Statement of Cash at Bank – Loans
- Statement of Cash at Bank – Reserves
- Statement of Cash at Bank – Bonds and Deposits

- Statement of Cash at Bank – Trust
- Current Ratio – graph
- Outstanding Rates – graph
- Aged Debtors Summary - graph
- Current Account Coverage – graph
- Statement of Investments

Statutory/Policy Environment

Section 6.4 of the *Local Government Act 1995*, requires financial reports to be prepared as prescribed.

Local Government (Financial Management) Regulation 1996, Regulation 34 prescribes the monthly financial reporting requirements of Council.

Strategic Framework

Within the Shire's Strategic Community Plan 2017 – 2027, Strategy 4.3.4 states:

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

Risk Management

The Risk Theme Profile identified as part of this report is ***Providing Inaccurate Advice/Information***. There is no Consequence associated as Council is receiving financial information only with no recommendation on action or intervention.

Budget Implications

Review of the monthly accounts aids in ensuring works and services are undertaken and the Shire operates within its adopted Budget.

Voting Requirement

Simple Majority.

Officer's Recommendation

That Council receives the Financial Statements as at 31 October 2019.

19/318. Moved: Cr. Dickinson Seconded: Cr. Bromham
That Council receives the Financial Statements as at 31 October 2019.

CARRIED 12-0

Community Development

Item No.	12.5.1
Subject:	Memorandum of Agreement for Brunswick Hall Meeting Room
Proponent:	Brunswick River Cottages (Inc.)
Location:	Brunswick Town Hall, Brunswick
Reporting Officer:	Manager of Community and Economic Development
File No.:	A004511
	Attachment Reg. No.

Summary

This report recommends that Council enters into a new Memorandum of Agreement (MOA) with Brunswick River Cottages Inc. (BRC) for the use of the Brunswick Town Hall Meeting Room for committee meetings and storage of records.

Background

BRC was formed to oversee the day to day operation of the Brunswick River Cottages and to further develop Lot 151 Clifton Road, Brunswick Junction, to accommodate persons over 55 years of age in affordable accommodation.

At its meeting held on 27 July 2010 Council resolved to establish a Memorandum of Understanding (MOU) that allowed the BRC to use the Brunswick Town Hall Meeting Room to conduct meetings and store files and other records.

The original MOU has expired and a new agreement has been requested by the BRC to continue the current arrangement. A new Memorandum of Agreement (MOA) has been prepared (refer **Attachment 1**) and is presented for Council's consideration and approval.

Comment

The new MOA is similar to the previous agreement with the main changes being that it allows other community groups to use the Meeting Room when not required by BRC, and the term of the Agreement is increased from 3 years to 5 years.

The original MOU provided exclusive use of the Meeting Room however given that the BRC only meet on 5-6 occasions each year, there is an opportunity for other community groups to use this venue when not required by the BRC.

The BRC is supportive of the Meeting Room being available for use by other community groups and endorsed the MOA at its meeting held on 28 November 2019.

Statutory Environment

Section 3.58 of the *Local Government Act, 1995* and Clause 30 (2)(b)(i)(ii) of the Local Government (Functions and General) Regulations 1996 state that the leasing of the land and subsequent building could be considered an exempt disposition due to the structure of the organisation the objects of which are of a charitable or benevolent nature and therefore not subject to the provisions of Section 3.58 of the *Act* in terms of the process for disposing of land; e.g. Statewide advertising.

Strategic Framework

Within the Shire's Strategic Community Plan 2017 – 2027, Strategy 3.1.3 states:

“Continue to provide facilities and services to support local community organisations”

Risk Management

The Risk Theme Profile identified as part of this report is **Business and Community Disruption**. The Consequences identified are Reputational and Property. The risks associated with the possible consequences are mitigated by having a Memorandum of Agreement that has been approved by both parties. The consequence rating associated with this matter is Moderate (3) and the Likelihood is Unlikely (2) giving a risk rating of MODERATE (6).

Budget Implications

Nil.

Voting Requirements

Simple Majority.

Officer's Recommendation:

That Council:

1. Enters into a Memorandum of Agreement that permits the Brunswick River Cottages Inc. to continue using the Brunswick Town Hall Meeting Room for a period of five (5) years.
2. Authorises the Chief Executive Officer to sign the Memorandum of Agreement.

19/319. Moved: Cr. Lovitt Seconded: Cr. Dickinson

That Council:

1. **Enters into a Memorandum of Agreement that permits the Brunswick River Cottages Inc. to continue using the Brunswick Town Hall Meeting Room for a period of five (5) years.**
2. **Authorises the Chief Executive Officer to sign the Memorandum of Agreement.**

CARRIED 12-0

Item No.	12.5.2
Subject:	Harvey Recreation and Cultural Centre – Technical Systems Upgrade to Function Room
Proponent:	Harvey Recreation and Cultural Centre
Location:	Harvey Recreation and Cultural Centre, Tom Latch Drive, Harvey
Reporting Officer:	Manager Community and Economic Development
File No.:	T142019
	Attachment Reg. No.

Summary

Tenders for the upgrade of technical systems at the Harvey Recreation and Cultural Centre (HRCC) Function Room closed on Thursday 28 November 2019 with one tender being received.

This report provides a summary of the tender process and recommends that Council accepts the tender as per the recommendation contained the confidential attachment (refer **Confidential Attachment 1**).

Background

The Function Room at the HRCC is the main space within the venue that is suitable for performing arts. This location provides the best space for these events and fulfils the basic requirements for a theatrical production, due to the absence of other viable venues for performing arts in the Shire. It is of a suitable space and size for the audiences that it attracts, but requires upgrades to the current technical systems and technical equipment to support the increasing demand in use and cultural activities.

With support from the Shire the HRCC was successful in receiving a grant of \$229,538 (ex GST) for the upgrade of technical systems at the Centre. This grant, together with Shire of Harvey contributions of \$139,500 allocated in the 2018-19 and 2019-20 Budgets, provides funding for the project.

In April 2019, the Shire appointed consulting firm Spirited Thinking Design to provide specialist services for the design and preparation of documentation for the upgrade of the Function Room facility.

The following assessment criteria and weightings were established and included in the Tender documents:

Criteria	Weighting
Relevant Experience/Track Record	40%
Tenderer’s Resources	10%
Demonstrated Understanding	20%
Price	30%

The Tender was advertised in The West Australian on Saturday, 9 November 2019 and the Bunbury Herald and Harvey Waroona Reporter on 12 November 2019.

A Tender Assessment Panel comprising the following members was formed to assess the tenders and to recommend the most advantageous tender:

- Manager Information Technology;
- Manager Harvey Recreation and Cultural Centre; and
- Mr Peter Jago, Spirited Thinking Design.

Comment

A number of contractors accessed the tender documents via the Shire's Tenderlink portal, however only one tender was received.

The tenderer submitted a compliant tender for the full scope of the specified works and an alternative tender for the full scope of works with some variations to the specified equipment.

Statutory/Policy Environment

Section 3.57 of the *Local Government Act 1995*, and Part 4 Local Government (Functions and General) Regulations 1996, provides a mechanism for the purchase of goods and services by Public Tender.

Regulation 18 of Local Government (Functions and General) Regulations 1996 – Choice of Tender provides Council with the option to accept or decline a tender.

The Shire of Harvey's Purchasing Policy, Delegation 2.2.11 Calling for Tenders, provides compliance with the *Local Government Act 1995*, and the Local Government (Functions and General) Regulations 1996 for the procurement of goods and service.

Strategic Framework

Within the Shire's Strategic Community Plan 2017 – 2027, Strategies 3.3.1, 3.3.2, 3.4.1 and 3.4.6 state:

- 3.3.1 *"Continue to provide facilities and support community groups, including arts, heritage and cultural groups."*
- 3.3.2 *"Continue to support community events and programs"*.
- 3.4.1 *"Continue to maintain and enhance the recreation centres to service a wide range of the community."*
- 3.4.6 *"Continue to monitor the needs of the community, to ensure access to appropriate services and facilities."*

Risk Management

The Risk Theme Profiles identified as part of this report are:

1. ***Failure to Fulfil Compliance Requirements.*** The Consequence could be 'Financial Impact / Reputational' if due process is not followed as a result of inadequate compliance framework, which may include the *Local Government Act 1995* and all other legislative based obligations for Local Government. The Risk Consequence is considered to be 'Moderate' (3) and the Likelihood 'Unlikely' (2), resulting in a MODERATE (6) Risk being present; and
2. ***Inadequate Supplier/Contract Management.*** The Consequence could be 'Financial Impact' if due process is not followed in terms of Council's Purchasing Policy and the *Local Government Act 1995*. The Risk Consequence is considered to be 'Moderate' (3) and the likelihood 'Unlikely' (2), resulting in a MODERATE (6) Risk being present.

Budget Implications

A capital budget allocation of \$369,038 has been provided in the Shire's 2019-2020 Budget to complete this project which includes a Regional Venues Grant of \$229,538. The recommended tender is within the budget allocation for the project.

Voting Requirement

Simple Majority.

Officer's Recommendation

That Council:

1. For tender T142019, Harvey Recreation and Cultural Centre – Technical Systems upgrade to Function Room, accepts the tender submitted as per **Confidential Attachment 1**; and
2. Authorises the Chief Executive Officer to sign the General Conditions of Contract between the Shire of Harvey and the successful tenderer as per **Confidential Attachment 1** for tender T142019 Harvey Recreation and Cultural Centre – Technical Systems Upgrade to Function Room.

19/320. Moved: Cr. Boylan Seconded: Cr. Adams

That Council:

1. For tender T142019, accepts the alternative tender submitted by Venue Technical Services for \$265,585 (exclusive of GST) for the Harvey Recreation and Cultural Centre – Technical Systems upgrade to Function Room including the deletion of the following items from the scope of works:

Item No.	Description
3.2	House lights controllers system installed
4.5	Optional House Curtain set – motorised track supplied and installed
4.10	Auditorium blackout solution kit
5.4	Stage lighting luminaires – reduce from 16 to 12
5.5	Stage lighting luminaires – reduce from 16 to 12
6.8	Wireless microphone system
6.9	Wired hand held vocal microphone kit
6.14	Optional sound mixing console No. 2 with interface
6.16	Optional digital stage boxes
7.2	Project Screen at Proscenium – reduce from 2 to 1
8.1	Digital signage in Uduc Road

2. Authorises the Chief Executive Officer to sign the General Conditions of Contract between the Shire of Harvey and Venue Technical Services for the Harvey Recreation and Cultural Centre – Technical Systems upgrade to Function Room.

CARRIED 12-0

13. Elected Members Motions of Which Previous Notice Has Been Given**19/321. Moved: Cr. Bromham Seconded: Cr. Adams****13.1 Notice of Motion: Cr John Bromham – Raymond Road / Ranson Rive Intersection, Roelands, Installation of a Streetlight*****Recommendation***

That Council approves by Absolute Majority, the unbudgeted expenditure of \$15,000, during the 2019/2020 Budget Review, to install a Solar Powered LED Light fitted on a 10m high pole at the intersection of Raymond Road and Ranson Drive, Roelands.

Reason

The motion is for a street light to be light be installed at the corner of Raymond Road and Ranson Drive as some community members from Meadow Landing have been requesting this for some time now.

It is considered that is the Shire's responsibility to listen to the safety concerns of its ratepayers and install a light at this location. I have looked at the location, seen the amount of traffic generated during the morning and afternoon shift changes at Worley and believe that there is a safety issue during the hours of darkness.

Administration Comments

Raymond Road is classified as a Primary Distributor road and is under the care, control and management of Main Roads WA (MRWA).

MRWA has advised that it is not responsible for flag lighting at Local Government Road/Main Roads intersections in accordance with their lighting policy document.

There is currently no lighting in this vicinity however as part of the Bunbury Outer Ring Road (BORR) project, Raymond Road will be upgraded and street lighting will be installed from the BORR to Forrest Highway.

In addition, the 5-year crash statistics at the intersection show that only one (1) crash was recorded over this period which occurred during daylight hours where vehicle damage was sustained.

Notwithstanding, should lighting be installed now, this would be sacrificial as Raymond Road will be widened and realigned as part of the BORR project and the lighting would be connected to the Western Power grid.

Since receiving the Notice of Motion, Shire Officers have discussed the proposal with MRWA and it is considered that the best way forward, should Council support the motion, is to install a Solar Powered LED Light fitted on a 10m high pole to the equivalent standard, in LED, to a 250 watt HPS or metal halide light fitting (for the standard of road).

The estimated cost to supply and install the LED streetlight is \$15,000

Prior to the BORR works, the light pole would be removed by the Shire and be available for reuse elsewhere.

Therefore, the Administration supports the proposed motion.

Amended Motion

That a street light be installed at the intersection of Raymond Road and Ranson Drive to make this intersection safer for road users, and that staff carry out an audit to identify other road junctions which would benefit from lighting from a safety perspective.

CARRIED 7-5

14. Notice of Motion for Following Meeting

Cr. Carbone requested that the following Notice of Motion be placed on the Ordinary Council Meeting Agenda of 28 January 2020.

That the Shire of Harvey representatives, through the appropriate regional bodies, lobby the Federal Government to promote and support the basing of a United States Strike Battle Group out of Bunbury, Western Australia.

15. Questions by Members of Which Due Notice Has Been Given

Nil.

16. Reports of Members

Cr Adams reported on his attendance at the following:

- Harvey Main Street Committee meeting
- Bunbury Harvey Regional Council meeting with Cr. Jackson. Cr. Adams put forward his congratulations to Cr. Jackson on her election as deputy chair.
- Harvey Annual Dinner

Cr Bromham reported on his attendance at the following:

- Christmas carols presented by Treendale Primary School. Cr. Bromham passed on appreciation to the Shire from Treendale Primary School for their ongoing support.

Cr Beech reported on his attendance at the following:

- Deputy Council Delegate at the Senior Citizens Centre Committee meeting
- Harvey Recreation and Cultural Centre Management Committee meeting
- Bunbury Geographe Sub Regional Strategy Steering Group
- Yarloop Community Centre opening
- Shire of Harvey Annual dinner. Cr. Beech put forward thanks to staff for the evening
- Brunswick River Cottages AGM
- Harvey Community Resource Centre meeting
- Southern Joint Development Assessment Panel
- Regional Road Group Committee meeting
- Harvey Community Radio Committee

Cr Dickinson reported on her attendance at the following:

- Harvey Visitor Centre Board meeting
- Opening of the Yarloop Community Centre
- Bunbury Harvey Regional Council
- Yarloop workshops Committee meeting
- Uduc hall 100th anniversary Christmas dance
- Bunbury Cathedral Grammar School speech and awards day
- Leschenault Catchment Council AGM

Cr Lovitt reported on her attendance at the following:

- Brunswick Community Resource Centre Thank a Volunteer Day
- Meeting as Department of Health Advisory Council chair with Minister for Health
- Constellation Drive community consultation

Cr Jackson reported on her attendance at the following:

- Southern Joint Development Assessment Panel
- Southern Sea Water AGM
- Bunbury Harvey Regional Council

Cr Coleman reported on her attendance at the following:

- Council inductions held by Shire staff
- Community Cabinet meeting at the Shire of Murray with the Premier and Cabinet Ministers

Cr Gillett reported on his attendance at the following: pending report from Gillett

- WALGA Conference– people and places at the City of Vincent
- Southwest Stakeholders – Infrastructure WA conference
- Bunbury Geographe Economic Alliance AGM
- Opening of the Yarloop Community Centre
- Shire of Harvey Annual Dinner
- Australind Senior High School Graduation Ceremony at Bunbury Regional Entertainment Centre
- Bunbury Catholic College Graduation Ceremony at Bunbury Regional Entertainment Centre
- Community Cabinet meeting at the Shire of Murray with the Premier and Cabinet Ministers
- Lunch with the Premier and Cabinet Ministers at the Old Coast Road Brewery
- Opening of the Bushfire Centre f Excellence in Pinjarra
- Leschenault Mens Shed dinner
- Yarloop Community Centre Story with GWN
- Shire of Harvey Local Emergency Management Committee meeting
- Shire of Harvey Gala night

17. Seal Register

Nil.

18. New Business of an Urgent Nature Introduced by Decision of Meeting

Nil.

19. Matters Behind Closed Doors

Moving Behind Closed Doors

19/322. Moved: Cr. Dickinson Seconded: Cr. Adams

That Council Moves Behind Closed Doors in accordance with Section 5.23 (2)(b)(d) of the *Local Government Act 1995* the personal affairs of any person; and legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting.

CARRIED 12-0

Council moved behind closed doors at 5.15pm.

Mrs. Edwards and Ms. Fry left the Chamber at 5.16pm.

Item No.	12.3.6
Subject:	Objection to Council Decision on Expression of Interest for Trading in Public Places for Food Vendors
Proponent:	Platinum Trust, trading as the Crazy Cow Group
Location:	Binningup Beach Carpark (Part Reserve 48823)
Reporting Officer:	Acting Principal Environmental Health Officer/Executive Manager Corporate Services
File No.:	LS/B/032

Summary

Council at its meeting of 19 November 2019 resolved not to consider an Expression of Interest (EOI) for the issue of a Trader’s Permit from the trustee for the Platinum Trust, trading as the Crazy Cow Group as presented at that time. The Crazy Cow Group has objected to the decision (refer **Attachment 1**) as it considers the decision to be against the established Policy of Council and overlooked the merits of the application.

Although Council did not formally determine the application, a deferral of a decision, does constitute a decision of which in this case is unfavourable to the applicant. Such an outcome does give rise to an appeal within the State Administrative Tribunal (SAT) under the *Local Government Act 1995*.

For reasons stated in this report and legal advice received (Confidential **Attachment 1**), it is recommended that Council accepts the EOI from trustee for the Platinum Trust, trading as the Crazy Cow Group and authorises the preparation and signing of the required contract between the Shire and the proponent for a Power to Licence.

Background

Policy 4.3.7 Trading in Public Places Policy for Food Vendors

At its meeting held 9 October 2018 Council resolved to the adopt the Policy following an extensive process involving a Council Workshop (late 2016) and Community Consultation (6 weeks, 5 June 2018 to 17 August 2018). Specifically, Council resolved as follows:

“That Council:

1. *Notes the submissions received during the six-week advertising period;*
2. *Approves the following five sites for the 'Power to License' for the purpose trading sites for food vendors:*

<i>Area</i>	<i>Designated location</i>	<i>Number(s) of site(s) permitted</i>	<i>Size</i>
<i>Australind</i>	<i>Eco-Museum (Reserve 25203)</i>	<i>1site</i>	<i>30m²</i>
<i>Australind</i>	<i>Christina Street (Lot 31) (Plan D027242)</i>	<i>1site</i>	<i>30m²</i>
<i>Australind</i>	<i>Ridley Place (Crown Reserve 25441)</i>	<i>2 sites</i>	<i>30m² per site</i>
<i>Binningup</i>	<i>Beach Carpark (Part Reserve 488239)</i>	<i>1site</i>	<i>30m²</i>

3. *Adopts the revised Draft Policy 4.3.7;*
4. *Undertakes the independent valuation of the sites accepted in Recommendation 1a to formulate a fee based on market values;*
5. *On completion of the independent valuation, calls for Expressions of Interest from interested parties for the operation of food vendor trading at the sites approved; and*
6. *Updates the Staff Delegations Register, "4.3.7 AUTHORISATION TO APPROVE TRADERS' PERMITS ONLY RELATING TO FOOD TRADING", to reflect the adoption of Policy 4.3.7."*

Independent Valuation of Designated Locations

Consistent with item 4 of the above resolution an independent valuation was completed on 5 February 2019 to determine the market rental/permit fee for trading at the above locations, allowing for calls for EOI from interested parties. Binningup Beach Carpark (Part Reserve 48823) was valued at \$520 per year.

Expressions of Interest

Officers presented a report to Council at its meeting of 19 November 2019 with the three (3) EOIs received from mobile food and beverage services operators to trade in the identified locations. Council resolved the following:

19/285 - That Council in relation to Expression of Interest LS/B/032:

1. *Accepts the Expressions of Interest from the mobile food and beverage services operators to trade in the identified locations as follows:*
 - a) *Bunsen's Burgers to trade at the Eco-Museum (Reserve 25203) in Australind, for the sum of \$1,500 per annum.*
 - b) *The Big Coffee Van to trade at Christina Street (Lot 31) (Plan D027242) in Australind, for the sum of \$2,000 per annum;*

2. *Authorises the Chief Executive Officer to sign a Contract for a Power to Licence Permit between the Shire of Harvey and the operators for trading at the chosen locations as described in the Officer's Recommendation 1, for a period of two (2) years.*
3. *That the application by the trustee for the Platinum Trust, trading as the Crazy Cow Group not be considered as presented at this time*

Reason: The change to the Officer's Recommendation was due to Council being of the view that Binningup does not have a large enough population to accommodate the existing facilities and the food van, and to remove the delegation to approve a Power to Licence at Power to Licence locations as Council wishes to be aware of these operations.

Objection

In response to item 3 of the above resolution, Platinum Trust, trading as the Crazy Cow Group has objected under section 9.5 of the *Local Government Act 1995*.

Comment

The EOI received from the Crazy Cow Group is compliant with the adopted Council Policy. The Policy makes provision for a Permit to be granted for up to 24 months, however the application received has requested to initially trade for a 12-month period only.

Statutory/Policy Environment

Local Government Act 1995:

9.6. Dealing with objection

- (1) *The objection is to be dealt with by the council of the local government or by a committee authorised by the council to deal with it.*
 - (2) *A committee cannot deal with an objection against a decision that it made or a decision that the council made.*
 - (3) *The person who made the objection is to be given a reasonable opportunity to make submissions on how to dispose of the objection.*
 - (4) *The objection may be disposed of by —*
 - (a) *dismissing the objection; or*
 - (b) *varying the decision objected to; or*
 - (c) *revoking the decision objected to, with or without —*
 - (i) *substituting for it another decision; or*
 - (ii) *referring the matter, with or without directions, for another decision by a committee or person whose function it is to make such a decision.*
 - (5) *The local government is to ensure that the person who made the objection is given notice in writing of how it has been decided to dispose of the objection and the reasons for disposing of it in that way.*
-

Objections and Review

The Head of Power in dealing with this application is the Shire of Harvey, Activities in Thoroughfares and Public Places and Trading Local Law 2017. When a local government makes a decision under Section 7.2 of this Local Law, whether to approve or refuse an application, the provisions of Division 1 of Part 9 of the *Local Government Act 1995* apply. A refusal decision (or an unfavourable outcome) by the local government is appealable to the State Administration Tribunal.

Strategic Framework

Within the Shire’s Strategic Community Plan 2017 – 2027, Strategies, 2.4.3, 2.4.4, 4.2.2 and 4.3.4 state:

- 2.4.3 *“Progress opportunities to increase accessibility and improve the range of amenities and infrastructure at the Leschenault Estuary.”*
- 2.4.4 *“Provide quality amenities and accessible public spaces for our community.”*
- 4.2.2 *“Maintain, review and ensure relevance of Council’s policies and local laws.”*
- 4.3.4 *“Monitor and ensure compliance with the regulatory Framework for Local Government Business.”*

Risk Management

Risk	Risk Consequence (Financial Impact and Reputational)	Risk Likelihood (with existing controls)	Risk Rating (Prior to Treatment or Control)	Risk Theme Profile	Risk Action Plan (Controls or Mitigation Treatment proposed)
That the applicant appeals a refusal or unfavorable decision to the SAT, potentially with a determination that is found in the applicant’s favour, with Council possibly bearing costs.	Moderate (3)	Possible (3)	Moderate (9)	Ineffective Management of Facilities/ Venues/ Events	Policy for Trading in Public Places in place, a compliant submission has been received, approval be given to operate

Budget Implications

An application for Review to the State Administrative Tribunal is likely to incur legal fees.

A licence issued will see income received of \$520.

Voting Requirements

Simple Majority.

Officer's Recommendation

That Council in response to the objection lodged by Platinum Trust, trading as the Crazy Cow Group, associated with Expression of Interest LS/B/032, varies item 3 of resolution 19/285, in accord with section 9.6(4)(b) of the *Local Government Act 1995* as follows:

1. Accepts the Expression of Interest from the trustee of The Platinum Trust, trading as the Crazy Cow Group to trade at the Beach Carpark (Part Reserve 488239) in Binningup, for the sum of \$520 per annum.
2. Authorises the Chief Executive Officer to sign a Contract for a Power to Licence Permit between the Shire of Harvey and the operator for trading at the chosen location as described in the Officer's Recommendation 1, for a period of 12 months.

Alternate Recommendation

19/323. Moved: Cr. Carbone Seconded: Cr. Coleman

That Council in respect to the Expression of Interest LS/B/032 from the trustee of The Platinum Trust, trading as the Crazy Cow Group to trade at the Beach Carpark (Part Reserve 488239), be refused as it is considered to have a detrimental economic effect on the town of Binningup and the hours submitted were unacceptable to Council.

CARRIED 7-5

Mr. Dandridge left the Chamber at 5.45pm

The following items were moved en bloc

19/324. Moved: Cr. Dickinson Seconded: Cr. Carbone

19.1 - Proposed Sale of Land (A009179)

That Council pursuant to Section 6.64(1)(b) of the *Local Government Act 1995* proceed to sell the Land, as per the assessment number A009179, by public auction to recover outstanding rates and charges.

19.2 - Proposed Sale of Land (A009844)

That Council pursuant to Section 6.64(1)(b) of the *Local Government Act 1995* proceed to sell the Land, as per the assessment number A009844, by public auction to recover outstanding rates and charges.

19.3 - Proposed Sale of Land (A013139)

That Council pursuant to Section 6.64(1)(b) of the *Local Government Act 1995* proceed to sell the Land, as per the assessment number A013139, by public auction to recover outstanding rates and charges.

CARRIED 11-1

Cr. Adams voted against the item and requested that this be noted in the minutes.

Returning from Behind Closed Doors

19/325. Moved: Cr. Lovitt Seconded: Cr. Carbone

That Council Returns from Behind Closed Doors.

CARRIED 12-0

Council returned from behind closed doors at 5.55pm.

20. Closure of Meeting

There being no further business to discuss, the meeting was declared closed at 6pm.

I, Cr. Paul Gillett certify that the aforesaid Minutes of the meeting held on Tuesday, 18 December 2019, are a true and correct record of that meeting on Tuesday, 18 December 2019.

Cr. Paul Gillett
Shire President