



SHIRE OF
HARVEY



Agenda Briefing Session **Agenda**

Australind Council Chamber

Tuesday, 19 March 2024

4PM

Shire of Harvey
Agenda Briefing Session

Dear Councillor,

Notice is hereby given that the next meeting of the Harvey Shire Council will be held in the Australind Council Chamber, Mulgara Street, Australind, on Tuesday, 19 March 2024 commencing at 4pm.

The business to be transacted is shown in the Agenda hereunder.

Yours faithfully,

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

Annie Riordan
Chief Executive Officer

15 March 2024

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1. Official Opening**Disclaimer**

Agenda Briefing Sessions are used to inform Councillors on the items of business to be presented and discussed at the forthcoming Ordinary Council meeting.

These meetings are open to members of the public who may request to present a deputation to Council relating to an item on the Agenda.

No decisions are made at these meetings, although Councillors can request additional information or alternative wording be provided, to allow for motions to be prepared for consideration at the forthcoming Ordinary Council meeting.

Any statement regarding any planning or development application made during an Agenda Briefing Session, is not to be taken as notice of approval. Anyone who has an application lodged with the Shire must obtain, and should only rely on, written confirmation of the outcome of the application and any conditions attached to the decision made by Council.

An audio and visual record will be made, by means of livestreaming, of these proceedings and uploaded to the Shire's YouTube page for viewing.

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 past, present and emerging.

2. Record of Apologies and Leave of Absence**3. Declarations of Members' and Officers' Personal Interest****4. Deputations**

5. Officer's Reports

5.1. Chief Executive Officer

Item No.:	5.1.1.
Subject:	Insurance – Brunswick River Cottages Incorporated
Proponent:	Brunswick River Cottages (Inc.)
Location:	Lot 151 on Deposited Plan 41809 and known as 1 Ridley Street, Brunswick
Reporting Officer:	Coordinator Governance and Risk
Authorising Officer:	Chief Executive Officer
File No.:	C/Z/046 and FM/L/0278
Attachments:	<ol style="list-style-type: none"> 1. Brunswick River Cottages Inc. Lease Expiry 2027 [5.1.1.1 - 10 pages] 2. Brunswick River Cottages (Inc) Loan Agreement [5.1.1.2 - 20 pages] 3. Draft Variation to Lease [5.1.1.3 - 2 pages] 4. Draft Variation to Loan [5.1.1.4 - 3 pages]

Summary

Lot 151 on Deposited Plan 41809 (Lot 151) is a freehold lot owned by the Shire of Harvey (the Shire). Brunswick River Cottages Incorporated (BRC) is responsible for the management of the premises located at 1 Ridley Street, Brunswick (Brunswick River Cottages).

BRC has requested the insurance conditions be varied to the existing Lease (refer **Attachment 1**) and Loan Agreement (refer **Attachment 2**) to be consistent. It is recommended that Council approves the variation to Lease and variation to Loan Agreement and authorises the Chief Executive Officer to execute both variations.

Background

At the Ordinary Council Meeting held on 23 October 2007, Council approved a lease (refer **Attachment 1**) with BRC for Lot 151 for the term 1 November 2007 to 31 October 2027 with an option for a further twenty years. The lease includes the following condition:

“4. The Shire acknowledges that it shall be responsible for:

- a) The insurance of the demised premises against loss or damage by fire of other associated or usual risks including coverage of the shire’s fixtures and fittings contained therein.”*

At the Ordinary Council Meeting held on 23 April 2019, Council approved a self-supporting loan (refer **Attachment 2**) with BRC for the purpose of construction of lease for life units for Stage 2 of the Brunswick River Cottages. The loan agreement includes the following condition:

“7.1 General undertakings

For so long as the Loan remains outstanding, the Borrower undertakes with the Lender to:

- e) maintain with insurers and on terms approved by the Lender (which may not unreasonably withhold its approval) in the name of the Borrower and noting the interest of the Lender:*
 - (i) public liability insurance for at least twenty million dollars (\$20,000,000.00);*

- (ii) insurance for all parts of the Property which are insurable for its full insurable and replacement value; and*
- (iii) other insurances which are required by law or which, in the Lender's reasonable opinion. A prudent owner would take out,*
in connection with the Property;
- f) give to the Lender evidence that it has complied with clause 7.1(e) when asked to do so; and*
- g) notify the Lender immediately if an insurance policy required by clause 7.1(e) is cancelled or an event occurs which may allow a claim or affect rights under an insurance policy in connection with the Property."*

Comment

BRC has raised enquiries in relation to the insurance conditions in the lease (refer **Attachment 1**) and loan agreement (refer **Attachment 2**) with the Shire to ensure their obligations and responsibilities are being maintained and with the purpose to ensure that the Brunswick River Cottages are adequately insured.

The lease (refer **Attachment 1**) allows for the Shire to maintain and pay the building insurance premium costs.

The loan agreement (refer **Attachment 2**) allows for BRC to maintain and pay the building insurance premium costs.

Enquiries have been made with the Shire insurer to confirm that there is adequate coverage for the current units built at the Brunswick River Cottages. Future units being built will be added to the Shire insurance policy upon completion and hand over.

The name Brunswick River Cottages Inc. on the lease (refer **Attachment 1**) has been amended on the variation to the lease to be consistent with the correct entity name of Brunswick River Cottages Incorporated.

The variation to Lease (refer **Attachment 3**) will vary the lease to include the reimbursement of the building insurance premium cost by BRC to the Shire.

The variation to Loan Agreement (refer **Attachment 4**) will alter the loan agreement to include the Shire to maintain the building insurance and BRC will reimburse the building insurance premium to the Shire.

Statutory/Policy Environment

Local Government Act 1995

- Section 3.58 – refers to the disposal of property, including leasing.

Local Government (Functions and General) Regulations 1996

- Clause 30 (2)(b) – refers to the property disposals that are exempt from 3.58 of the Act.

Council Policy 1.1.2 – Common Seal

- This Policy provides for the execution of legal documents that require the affixing of the Shire Common Seal.

Strategic Framework

The Shire's Strategic Community Plan 2021–2031, states:

- Goal 5: A representative leadership that is future thinking, transparent and accountable.*
- Objective 5.2 Build partnerships and work collaboratively to amplify the outcomes that can be achieved.*
- Objective 5.4 Sound governance, including financial, asset and risk management.*

Community Engagement

Community Participation Goal

Consult: To provide the public feedback on analysis, alternatives and/or decisions.

Involve: To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.

Promise to the Community

Consult: We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision. We will seek your feedback on drafts and proposals.

Involve: We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.

Risk Management

The Risk Theme Profile identified as part of this report is **Providing Inaccurate Advice/Information**. The Consequence could be **Compliance** or **Financial** if the variations are not completed. The risk is mitigated by communications with BRC and the variation to lease agreement and variation to loan agreement being executed by the parties resulting in a **Low** risk being present.

Budget Implications

Nil.

Authority/Discretion

Executive: The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.

Voting Requirements

Simple Majority

Officer's Recommendation

That Council:

1. Approves the variation to lease agreement to Brunswick River Cottages Incorporated as per ***Attachment 3***.
2. Approves the variation to loan agreement to Brunswick River Cottages Incorporated as per ***Attachment 4***.
3. Authorises the Chief Executive Officer and Shire President to execute the Variation to Lease and Variation to Loan Agreement.

Item No.:	5.1.2.
Subject:	Lease – Binningup Beach Christian Youth Camp Incorporated
Proponent:	Shire of Harvey
Location:	Lot 1358 on Plan 6522 and known as 2 Valentine Road, Binningup and Lot 164 on Plan 25187 and known as 9 Valentine Road, Binningup
Reporting Officer:	Coordinator Governance and Risk
Authorising Officer:	Chief Executive Officer
File No.:	C/Z/016
Attachments:	<ol style="list-style-type: none"> 1. Head Lease [5.1.2.1 - 21 pages] 2. Assignment of Lease [5.1.2.2 - 5 pages] 3. Deed of Extension Expiry 8 August 2024 [5.1.2.3 - 6 pages] 4. Lease Renewal Request [5.1.2.4 - 1 page] 5. Policy 1.1.13 - Community Lease Policy [5.1.2.5 - 13 pages] 6. Draft Lease [5.1.2.6 - 50 pages]

Summary

Lot 135 on Plan 6522 and Lot 164 on Diagram 25187 are both freehold lots owned by the Shire of Harvey (the Shire).

The Binningup Beach Christian Youth Camp Incorporated (BBCYC) is responsible for the management of the premises located at 2 Valentine Road, Binningup (Binningup Christian Youth Camp) and 9 Valentine Road, Binningup (Caretaker's Residence) and is known as Lot 135 on Plan 6522 and Lot 164 on Diagram 25187 (the premises).

The current lease agreement (refer **Attachment 1** and **2**) and deed of extension (refer **Attachment 3**) expires on 8 August 2024 and the BBCYC has requested (refer **Attachment 4**) a new lease agreement be established.

It is recommended that Council approves a new Lease for the Binningup Christian Youth Camp and the Caretaker's Residence to BBCYC and authorises the Chief Executive Officer to execute the Lease.

Background

The previous entity known as Harvey Christian Youth Camp gifted the land to the Shire on 26 September 1980. Harvey Christian Youth Centre – Binningup Camp (Inc) (HCYCBC) leased the property from the Shire from 10 August 1993 and assigned the lease to BBCYC on 7 October 2010.

BBCYC is a not-for-profit community group situated within the Shire. BBCYC has provided the community with a Christian Youth Camp service at 2 Valentine Way, Binningup. The premises includes the Caretaker's Residence at 9 Valentine Way, Binningup, since 2014.

In March 2019, Council resolved (19/069) to enter into a deed of extension (refer **Attachment 3**) for the premises with BBCYC for the period from 9 August 2019 to Thursday, 8 August 2024.

Comment

The Lease is required to incorporate the Shire's Community Lease Policy (Policy 1.1.13). On Tuesday, 18 April 2023, Council adopted the revised Community Lease Policy (refer **Attachment 5**) which includes the Shire's Property Management Framework, Appendix 1 – Schedule of Maintenance Obligations. The Lease (refer **Attachment 1**) being offered to the BBCYC has been drafted in accordance with the Policy and includes Appendix 1.

Shire Officers will complete an inspection of the premises prior to the execution of the Lease and are not aware of any outstanding matters.

The current lease allows for rent payable to be a peppercorn and it is considered that this should remain and that aside from updating minor technical terms the terms and conditions are to remain unchanged.

Statutory/Policy Environment

Local Government Act 1995

- Section 3.58 – refers to the disposal of property, including leasing.

Local Government (Functions and General) Regulations 1996

- Clause 30 (2)(b) – refers to the property disposals that are exempt from 3.58 of the Act.

Council Policy 1.1.13 – Community Lease Policy

- This Policy provides an outline of standard lease provisions and guiding principles for the lease of Reserves or facilities vested in the Shire of Harvey to bodies exempt from the requirements of Section 3.58 of the *Local Government Act 1995*.

Council Policy 1.1.2 – Common Seal

- This Policy provides for the execution of legal documents that require the affixing of the Shire Common Seal.

The Department of Local Government, Sport and Cultural Industries (DLGSC) is currently undertaking Local Government Reform to ensure good record keeping and public visibility within local governments. As part of the reform, it is intended that leases will be provided to the public in the form of an online register with the change due to be enacted in 2024.

Strategic Framework

The Shire's Strategic Community Plan 2021–2031, states:

<i>Goal 2:</i>	<i>A safe, accessible and connected community where everyone has the opportunity to contribute and belong.</i>
<i>Objective 2.1</i>	<i>To support people through all stages of life.</i>
<i>Objective 2.2</i>	<i>Create a community where people are safe.</i>
<i>Objective 2.3</i>	<i>Active and resilient community groups and volunteers.</i>
<i>Goal 5:</i>	<i>A representative leadership that is future thinking, transparent and accountable.</i>
<i>Objective 5.1</i>	<i>Effective communication and engagement with the community.</i>
<i>Objective 5.4</i>	<i>Sound governance, including financial, asset and risk management.</i>

Community Engagement

Community Participation Goal

Consult: To provide the public feedback on analysis, alternatives and/or decisions.

Involve: To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.

Promise to the Community

Consult: We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision. We will seek your feedback on drafts and proposals.

Involve: We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.

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 are mitigated by having a lease agreement drafted in alignment with the Shire of Harvey Policy 1.1.13 – Community Lease Policy and discussions with BBCYC. The Risk Consequence rating associated with this matter is **Moderate** and the Likelihood is **Unlikely**, resulting in a **Moderate** risk being present.

Budget Implications

Nil.

Authority/Discretion

Executive: The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.

Voting Requirements

Simple Majority

Officer's Recommendation

That Council:

1. Approves the granting of a new lease agreement to Binningup Beach Christian Youth Camp Incorporated for the management of the Binningup Christian Youth Camp and Caretaker's Residence located at 2 Valentine Road Binningup and 9 Valentine Road Binningup and known as Lot 135 on Plan 6522 and Plan 164 on Diagram 25187 for a period of five years, commencing 9 August 2024 and expiring 8 August 2029 with a lease extension option term for a period of five years commencing 9 August 2029 and expiring on 8 August 2034 as per **Attachment 6**.
2. Notes that the Lease conditions in Attachment 3 are in accordance with Community Lease Policy – 1.1.13 including Appendix 1 in **Attachment 4**.
3. Authorises the Chief Executive Officer to request, obtain and retain a key for the Binningup Christian Youth Camp and Caretaker's Residence premises from the Binningup Christian Youth Camp Incorporated prior to execution of the Lease.
4. Authorises the Chief Executive Officer to complete an inspection of 2 Valentine Road, Binningup and 9 Valentine Road, Binningup and 9 Valentine Road, Binningup known as Lot 135 on Plan 6522 and Plan 164 on Diagram 25187 prior to execution of the Lease.
5. Authorises the Chief Executive Officer to negotiate minor lease terms consistent with Community Lease Policy – 1.1.13 including Appendix 1 in **Attachment 4**.

6. Authorises the Chief Executive Officer and Shire President to execute the Lease Agreement and to sign and affix the common seal.

Item No.:	5.1.3.
Subject:	Local Government Reforms: Standardised Meeting Procedures
Proponent:	Shire of Harvey
Location:	Shire of Harvey
Reporting Officer:	Governance Compliance Officer
Authorising Officer:	Chief Executive Officer
File No.:	F/40/09220
Attachments:	<ol style="list-style-type: none"> 1. DLGSC Standardised Meeting Procedure [5.1.3.1 - 14 pages] 2. DLGSC Standardised Meeting Submission Responses [5.1.3.2 - 11 pages]

Summary

The State Government is introducing reforms to the *Local Government Act 1995* (the *Act*) with the aim to enhance transparency and accountability in local government. As part of these reforms, standardising council and committee procedures has been proposed. A consistent approach to all local government council and committee meetings will be established, making it easier and simpler for people to participate and observe council meetings, regardless of the location of the meeting.

The Department of Local Government Sport and Cultural Industries (DLGSC) is requesting feedback from local governments, council members, Chief Executive Officers (CEOs), employees, groups, associations, and community members on its proposals.

This report seeks Council endorsement to lodge the Shire of Harvey's (the Shire) feedback submission, as per **Attachment 2**, to the DLGSC by Wednesday, 29 May 2024.

Background

In November 2021 proposed reforms to the *Act* were released; the reform represents the most significant changes to local government since 1995. Standardisation of council and committee procedures is part of these reforms.

Establishing a Standard is expected to simplify and improve training for council members and local government officers as well as strengthen the enforcement of breaches of meeting procedures.

Comment

Local governments commonly establish local laws and policies to regulate council meetings, however, this can lead to variations in how members of the public can participate in council meetings.

The *Local Government Amendment Act 2023* (the *Amendment Act*) inserts section 5.33A, which allows standardised meeting procedures for all local governments to be made in the form of Regulations or model provisions. The State Government, under this section, intends to make Regulations that apply to all local governments and an order of the Governor under section 3.17 of the *Amendment Act* to repeal all existing local government meeting procedures, standing orders or council meeting local laws.

It is proposed that the standardised meeting procedures (standing orders) apply to all council and committee meetings held by the local government and that the Regulations will contain consistent rules for how these meetings are held. It is anticipated that relevant components of Parts 2 and 3 of the Local Government (Administration) Regulations 1996 (the Regulations) will be incorporated into the standardised meeting procedures.

The aim of this consultation is for the DLGSC to better understand how the reforms should be structured to improve transparency and public involvement, simplify how meetings are conducted and promote uniformity throughout the sector. The DLGSC has provided specific questions (refer

Attachment 1) on certain meeting procedure topics and Shire Officers have provided responses in the prescribed format (yes/no) to accompany these for Council endorsement (refer **Attachment 2**).

The amendments to the Regulations are summarised below.

Calling meetings

Amendments are proposed to add new requirements for the oversight of special council meetings that are held at short notice and prevent any meeting from being held at an unreasonable time of day.

Regulations are proposed to require:

- A minimum of 24 hours' notice to convene a special council meeting
- That notice to convene a special council meeting may be done with less than 24 hours' notice if an absolute majority of council members call the meeting
- That a meeting cannot commence any earlier than 8am or later than 8pm.

These proposed provisions are already practiced within the Shire, therefore no alternatives were suggested by Officers.

Agendas and order of business

It is proposed that the general order of meetings be outlined in the Regulations for consistency across the local government sector however a council or committee may decide to consider business in a different order.

Regulations are proposed to outline the following order of business:

- Opening (local government will still be able to continue their own practice for opening meetings, such as making acknowledgements, opening statements etc.)
- Recording attendance
- Public question time
- Public presentations and petitions
- Members' question time
- Confirmation of previous minutes
- Reports from committees and the CEO
- Motions from members
- Urgent business
- Matter for which the meeting may be closed
- Closure.

Officers did not have an alternative to the suggested order of business.

Urgent business

Regulations are proposed to allow the CEO to introduce an item without notice in cases of urgency if:

- An absolute majority of the council resolve to hear the matter at the meeting
- The item is clearly marked as urgent business.

It is proposed that DLGSC must be notified each time this occurs, within 7 calendar days, to ensure this process is only used in exceptional circumstances.

Urgent business may only be heard after public question time.

Officers considered these proposed requirements suitable.

Quorum

Amendments are proposed to provide for the following where a quorum is lost or not present:

- If no quorum is present within 30 minutes of the time set for the meeting, the meeting lapses
- Where quorum is lost during a meeting:
 - The meeting proceeds to the next item of business if it is due to members leaving because of a financial or proximity interest.
 - The meeting is adjourned for 15 minutes for any other reason and if quorum cannot be reformed, the meeting is closed.
- Where quorum is lost, the names of the members then present are to be recorded in the minutes.

Officers agree with the proposed requirements when a quorum is not present or lost.

Adjourning a meeting

Regulations are proposed to provide that:

- Council may decide to adjourn a meeting to another day, time and place to resume from the point it adjourned
- A presiding member may adjourn a meeting for 15 minutes to regain order of a meeting that has been disrupted
- If a meeting is adjourned for a second time due to disruption, a presiding member must adjourn the meeting to another day, time or place (not on the same day), with notice being published on the local government's website.

It is also proposed that if a meeting is continuing and it reaches 10:45pm:

- The council or committee may decide to either extend the meeting for a further 15 minutes to allow for any remaining business to be concluded or determine to adjourn the meeting
- If any business remains at 11pm, the meeting must adjourn to a day and time which is at least 10 hours later to deal with any outstanding agenda items and a notice must be published on the local government's website listing when the meeting will resume.

The administration, in conjunction with the CEO and Presiding Member, historically have made accommodations to ensure a timely finish to all Council and Committee meetings Officers therefore agree with the proposed regulations.

Public question time

New standardised requirements are proposed to expand the existing Regulations to require that:

- A member of the public only needs to provide their name and suburb/locality (and not any other information) before asking a question
- A person is not required to lodge a question in writing in advance of a meeting (although a person may choose to do so, for instance if they have a very specific or technical question)
- A local government may still require a person, or their personal representative, to attend a meeting to ask a question lodged in writing in advance of the meeting for it to be addressed at that meeting
- Questions must not take more than two minutes to ask, including a relevant preamble, unless the presiding member grants an extension of time
- If other people are waiting to ask questions, the presiding member will seek to provide equal opportunity for people to ask questions (for instance, by moving to the next person waiting after someone has asked three questions, and returning to the first person if time allows)
- Any questions are to be answered by the presiding member, or a relevant member (nominated by the presiding member), the CEO, or an employee nominated by the CEO
- If a question, or a question of a similar nature, was asked and answered in the previous six months, the presiding member may direct the member of the public to the minutes of the meeting that contains the question and answer
- No debate of a question or answer is to take place
- Questions may be taken on notice by the person who is answering the question
- When a question is taken on notice, a response is to be given to the member of the public in writing and a copy of the answer is to be included in the agenda of the next ordinary meeting
- The presiding member may reject questions that contain offensive language or reflect adversely on others but must provide opportunities for the question to be rephrased.

Whilst Officers agreed with these requirements, a suggestion was made that all public questions are to relate to an item on the Agenda unless otherwise decided by the Presiding Member.

Presentations at council

It is proposed that local governments will continue to have discretion to choose whether and when to hear presentations.

To allow for a decision to be made in advance of the meeting, it is proposed that either the presiding member or CEO will make the decision on whether a presentation is heard at a meeting, based on any policy established by the council.

Accordingly, it is proposed that a council may establish a policy that determines:

- The types of meetings at which presentations may be heard
- Whether the responsibility for making decisions on presentation requests sits with either the presiding member or CEO
- Any other matters to guide the presiding member or CEO's decision making towards requests.

New Regulations are also proposed to:

- Allow a person, or group of people, to lodge a request in accordance with the council's policy to provide a presentation at least 48 hours before the meeting
- Require the presiding member or CEO to decide and provide a response to the person requesting the presentation by 12 noon the day of the meeting
- Provide that if the presiding member or CEO refuses an application, they are to provide their reasons to the applicant and advise of the refusal at the meeting
- Limit presentations to five minutes (not including questions) unless there is a resolution to extend the time limit
- Allow council and committee members to ask questions of presenters.

Currently the Presiding Member prioritises presentations which are relevant to an item on the Agenda for that meeting and will make provisions for other presentations should there be sufficient time. Historically the Presiding Member has been lenient on the time allocated for presentations on the proviso that the presentation remains relevant. Officers therefore recommended that no standard time limit be set for public presentations and that instead this be at the discretion of the Presiding Member. Should a time limit be set, Officers agree that five minutes is sufficient.

Petitions

Regulations are proposed to:

- Enable any person to petition a local government by lodging a petition to the council on any matter, including petitions which may be critical of actions or decisions of the local government
- Require the lead petitioner to provide their contact details
- Require any person signing a petition to state their suburb/town, and declare whether they are residents and/or electors of the district
- Require the petitioner to tally the number of signatories
- Limit rejection of a petition to only when it is not in the prescribed form
- Require that the council is to consider each petition and must determine how it is to respond, such as by seeking a report from the CEO
- Allow local governments to establish an electronic petitioning system if they wish
- Require all petitions received and outcomes from petitions to be summarised in a report to the annual meeting of electors.

Officers agree that the proposed regulations provide an effective system to manage petitions.

Orderly conduct of meetings

New Regulations are proposed to create a duty for all people present at a meeting to:

- Ensure that the business of the meeting is attended to efficiently and without delay
- Conduct themselves courteously at all times
- Allow opinions to be heard within the requirements of the meetings procedures.

It is also proposed that the Regulations:

- Allow members to raise points of order to bring the presiding member's attention to a departure from procedure
- Provide that it is a minor breach for a presiding member to preside in a manner which is unreasonable or contravenes the requirements of the *Act* or Regulations
- Empower the presiding member to call a person to order and:
 - Should a member not comply with a third call to order, the presiding member may direct them to speak no further (but they may continue to cast their vote) for the remainder of the meeting, with failure to adhere to the direction being a minor breach
 - If any other person does not comply with one call to order, the presiding member may direct them to leave the meeting, with failure to do so being an offence.
- Provide that a council may vote to rescind a direction made by a presiding member for a member to not speak further during a meeting
- Provide that a member who has had a direction made against them to not speak further cannot move or second a motion that attempts to rescind the decision.

This framework is deemed suitable to maintain order in meetings.

Motions and amendments

Regulations are proposed to require council members to provide written notice of motions at least one calendar week before the council meeting commences. This would generally allow those motions to be included in the meeting agenda, which must be published 72 hours before the commencement of the meeting.

It is proposed that council members will still be able to move amendments and alternative motions during debate on agenda items without providing written notice in advance of the meeting. This provides for members to be able to consider all options and suggestions for an item included in the agenda of a meeting.

It is proposed that reasons for notices of motion, amendments and other decisions that are changed at a meeting would still be required.

Officers agree that these provisions would be appropriate.

Debate on a motion

Regulations are proposed to provide for the following rules for formal debate on a motion or amendment:

- Any motion must be seconded before it may be debated (or carried without debate)
- A motion is carried without debate if no member is opposed to the motion
- If a member is opposed, the mover and seconder may speak and are followed by alternating speakers against and for the motion, with a final right of reply for the mover
- Speeches must be relevant to the motion under debate and no member must speak twice – except for the mover's right of reply, or if the council decides to allow further debate
- No member can speak for longer than five minutes without the approval of the meeting.

Officers support this standard for a formal debate on a motion or amendment and agree that five minutes is a suitable maximum speaking time.

Questions by members

Regulations are proposed to provide that:

- Council members can ask the CEO questions related to any item on an agenda by providing the question in writing by 12 noon the day before the meeting
- Council member questions are to be answered during the "questions from council members" agenda item
- Council members must seek permission from the presiding member to ask the CEO clarifying questions during debate.

Officers agree with these provisions and deem one day's notice sufficient time for a question from a council member.

Procedural motions

Regulations are proposed to provide for the following procedural motions to be put without debate:

- A motion to vary the order of business (e.g. to move a report in the order of business so it is considered earlier)
- A motion to adjourn debate to another time
- A motion to adjourn the meeting
- A motion to put the question (close debate)
- A motion to extend a member's speaking time
- A motion to extend public question time
- A motion to extend the time for a public presentation

- A motion to refer a motion to a committee or for the CEO to provide a new or updated report to a future meeting
- A motion of dissent in the presiding member's ruling (for example, to overturn the presiding member's direction that a member does not speak further)
- A motion to close a meeting to the public in accordance with the *Act*.

Officers provided additional feedback in relation to procedural motions. Currently the Presiding Member has the discretion to allow additional member's speaking time, to extend public question time as well as public presentation time. Officers suggest that the Presiding Member should continue to have this discretion as it is more time effective than a procedural motion to be put and voted on. In addition, Officers suggested that a motion "that the member be no longer heard" be included in the proposed regulations as this will provide an avenue to avoid disruptive behaviour.

Adverse reflection

Regulations are proposed to provide that:

- A person, including a member, cannot reflect adversely on the character of members, employees or other persons – if they do so they must withdraw their remark
- Members cannot adversely reflect on the decisions of the council, except in making a motion to revoke or change a decision
- Failure to withdraw adverse reflection is to be dealt with as disorderly conduct (including as a potential minor breach)
- A member who is concerned about a remark that may be an adverse reflection may raise a point of order with the presiding member.

Agree, relevant policies and procedures have been created providing a framework around complaints and grievances.

Meeting minutes and confirmation

It is proposed to amend the Regulations to provide a clear process for correcting minutes by:

- Allowing a member who identifies errors with unconfirmed minutes to provide a CEO with any proposed corrections by 12 noon the day before a meeting at which the minutes are to be confirmed
- Requiring any proposed corrections to the minutes to be presented to council for a decision with a recommendation from the CEO
- Requiring DLGSC to be notified if a local government fails to adopt or defers confirmation of the minutes of a meeting.

Shire Officers agreed that this notice period is sufficient.

Electronic meetings and attendance

In 2020, Regulations were introduced in response to the COVID-19 pandemic to enable councils to hold meetings electronically and for council members to attend using electronic means. On 9 November 2022, the Local Government (Administration) Amendment Regulations 2022 took effect, meaning local governments could conduct council and committee meetings electronically outside of

emergency situations and that council and committee members could attend in-person meetings using electronic means, such as videoconferencing.

The State Government committed to a public consultation process to gain feedback on the effect of these changes following 12 months of operation.

Shire Officers deemed that these changes have been beneficial to council meetings, elected members and Shire employees and did not have any suggested changes to provide the DLGSC.

Council committees

It is proposed that provisions for committees be similar to requirements for council meetings. Committees may need to provide a more flexible meeting environment, in terms of time limitations and procedure, to facilitate the consideration of issues in detail. This is reflected in meeting procedures across the State.

Regulations are proposed to provide that:

- A committee meeting is to be called when requested by the presiding member of the committee, the mayor or president, or a third of the committee's members
- Certain meeting procedures such as the order of debate, speaking twice and time limits do not apply to a committee
- A committee is answerable to the council and must provide at least 1 report to council on its activities each year.

Officers agreed to these provisions and did not have any other modifications.

Meetings of electors

The Act establishes that the mayor or president is to preside at electors' meetings, and any resolutions passed by an electors' meeting are considered at a following council meeting.

As electors' meetings are quite different to council meetings, comment is sought about whether parts of the proposed standard should apply for electors' meetings.

Officers do not think that parts of the Electors' meeting should be standardised as these meetings are different to council meetings and believe that they should be led by the Electors of the district guided by the Presiding Member.

Any other matters

Feedback is welcome on any other element of local government meetings for consideration in the further development of the new Regulations.

Officers had nothing further to add to the submission.

Statutory/Policy Environment

Local Government Act 1995

- Part 5 – Division 2 – Subdivision 1 – Council Meetings
- Part 5 – Division 2 – Subdivision 2 – Committees and their meetings

- Part 5 – Division 2 – Subdivision 3 – Matters affecting council and committee meetings
- Part 5 – Division 2 – Subdivision 4 – Electors' meetings

Standing Orders Local Law 2017

Local Government (Administration) Regulations 1995

- Part 2 – Council and committee meetings
- Part 3 – Electors' meetings

Strategic Framework

The Shire's Strategic Community Plan 2021–2031, states:

Goal 5: A representative leadership that is future thinking, transparent and accountable.
Objective 5.4 Sound governance, including financial, asset and risk management.

Community Engagement

Community Participation Goal

Inform: To provide the public with balanced and objective information to assist them in understanding the problems, alternatives and/or solutions.

Promise to the Community

Inform: We will keep you informed.

Risk Management

The Risk Theme Profile identified as part of this report is **Providing Inaccurate Advice/Information**. The Consequence could be **Reputational** if Council does not endorse the Shire's feedback submissions. The risk is mitigated by providing this report to Council for formal decision resulting in a **Low** risk being present.

Budget Implications

Nil.

Authority/Discretion

Executive: The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.

Voting Requirements

Simple Majority

Officer's Recommendation

That Council:

1. Endorses the Shire of Harvey's feedback submission as detailed in **Attachment 2**.

2. Authorises the Chief Executive Officer to lodge the Shire of Harvey's feedback submission to the Department Local Government Sport and Cultural Industries.

Item No.:	5.1.4.
Subject:	Annual Electors' Meeting Notice of Motions
Proponent:	Shire of Harvey
Location:	Shire of Harvey
Reporting Officer:	Governance Compliance Officer
Authorising Officer:	Chief Executive Officer
File No.:	C073/00019
Attachments:	1. Potential Playground Location - Harvey [5.1.4.1 - 1 page]

Summary

As a requirement of the *Local Government Act 1995* (the *Act*) section 5.33 all decisions made at an Annual General Meeting of Electors (Electors' Meeting) are to be considered at the next practicable Ordinary Council Meeting.

Background

In accordance with Section 5.27 of the *Act* an Electors' Meeting of a district is to be held once every financial year. The matters to be discussed at the Electors' Meetings are to be those prescribed under the *Act* and associated Regulations.

Should a Notice of Motion be carried, it is not to be taken as notice of approval. All decisions made at the Electors' Meeting is to be considered at the next practicable Ordinary Council Meeting where a formal decision of Council will be made.

The Shire of Harvey (the Shire) held their Electors' Meeting for the Financial Year 2023–2024 on Tuesday, 27 February 2024 at 2.30pm in the Harvey Council Chamber. Two motions were provided for consideration and carried unanimously.

Comment

Harvey Accessibility Playground

Ms. Ester Italiano presented the following motion:

"We propose that provisions be made in the upcoming budget of 2024–2025 for the Harvey Accessibility Playground as detailed in submissions to the Shire, received by councillors on Tuesday, 9 February 2024."

Officer Comment:

Currently within the Harvey Townsite there is one playground (Apex Park) situated on the corner of Anthony Street and Uduc Road.

At its Ordinary Meeting held on 23 October 2012, Council considered a report on a proposal to investigate the feasibility of developing a new playground in the Harvey Town Centre where it was resolved that *"Staff continue to liaise with key stakeholders and present a further report on the proposal once additional information is available."*

At its Ordinary Meeting Held on 7 May 2013, Council considered allocating funding in the 2013–2014 draft Budget for the development of a concept plan for a Playground at Snell's Park in Harvey.

Funding for the development of a concept plan for a Playground at Snell's Park including some contributory funding (subject to grant funding from Lottery West) for the construction of a playground was allocated in 2013–2014. However, while this funding was carried forward in subsequent Budgets

it was not carried forward beyond the 2020–2021 Budget as the availability of Grant funding was still pending and it was considered that Snell's Park may not be the most appropriate location for a playground given that the land is owned by the Public Transport Authority.

The Shire currently has 37 Play Spaces (Playgrounds) and at its Ordinary Meeting held on 25 May 2021 Council adopted the Play Space Strategy 2021–2026 which would *“provide direction in terms of the sustainable provision and management of accessible, diverse, creative, high quality and fun Play Spaces that contribute to the developmental and recreational needs of children and their families.”*

At its Ordinary Meeting held on Tuesday, 18 April 2023 Council adopted a 15-year Playground Replacement Program and a 10 year playground maintenance program. No new playgrounds were included in this program.

As mentioned above, Council in 2012, considered a proposal to investigate the feasibility of developing a new playground in the Harvey Town Site however this did not come to fruition.

As there is now a renewed interest in a new Harvey Playground, it is considered that the intent of the motion adopted at the Annual General Meeting of Electors held on Tuesday, 27 February 2024 be supported as per the following recommendation:

- Supports the creation of an accessible playground in the Harvey Townsite.
- Considers that the most appropriate location for this facility is Meriden Park as shown conceptually in **Attachment 1**.
- Develops a concept playground design, and estimated cost, that includes a number of appropriate play elements as requested by the community.
- In liaison with community members explores grant funding opportunities and funding partner organisations to progress the potential creation of an accessible playground in the Harvey Townsite.
- Considers allocating an appropriate contributory funding amount for consideration in the 2024–2025 draft Budget towards the development of an accessible playground.
- Receives progress reports on the proposal as required.

Cyclist Shoulder

Mr. Laurence Willson presented the following motion:

“I propose that the Shire of Harvey investigate the establishment of a designated road cyclist shoulder, between 1-2 metres in our community for the safety and well-being of cyclists and motorists alike. This would be in both directions along Old Coast Road, from Estuary Drive at Hamilton Road roundabout to the Paris Road roundabout. This would also mean working with the City of Bunbury to ensure that it is equally funded and the arrangement cohesive.”

Officer Comment:

Old Coast Road north of the Collie River Bridge within the Shire of Harvey comprises a District Distributor Road in accordance with the Functional Road Hierarchy. The road is currently under the care, control and management of the Shire of Harvey.

Currently the section of Old Coast Road from the Collie River Bridge to Paris Road comprises a 7.0m wide carriageway with sealed shoulders of varying width of between 0.3m to 1.20m or less in some locations. On road designated cycle lanes have been provided where intersections along Old Coast Road have been reconfigured.

Old Coast Road qualifies for Regional Road Group funding for both Expansion and Preservation on a 2/3 State and 1/3 local government funding scenario. The Shire has received regular annual funding (based on annual funding submissions) predominantly for preservation i.e. resurfacing and minor shoulder widenings. Expansion funding allows for major intersection improvements i.e. installation of a roundabout or construction of a second carriageway or extension of an existing road i.e. The Promenade extension project.

In 2019 a 2.50m wide Shared path was constructed from the Collie River Bridge to Ridley Place. This project was funded by the Shire, Department of Transport and the South West Development Commission with construction costs in the order of \$700,000. This path was a priority project (project 15) in accordance with the Bunbury Wellington 2050 Cycling Strategy.

Implementing a designated 'on road' cyclist shoulder, between 1.0m to 2.0m on both sides of Old Coast Road, as suggested, is currently not included in the Shire's Forward Capital Works Plan nor is it a project identified in the Bunbury Wellington 2050 Cycling Strategy.

Old Coast Road from the Collie River Bridge to Paris Road is approximately 3.7m in length. To implement a 1.0m to 2.0m wide sealed shoulder along this section of road, on both sides would be an expensive exercise especially along the section between Paris Road and Elizabeth Street where there are existing crossovers, kerbed sections, paths and drainage infrastructure.

South of Elizabeth Street the sealed shoulder varies in width and widening to 2.0m would be problematic in some locations due to the proximity to the Estuary and general topography. A 1.0m to 1.2m wide sealed shoulder may be more achievable as there is already a shoulder of varying widths along lengthy sections of the road.

While the specific widening of Old Coast Road is not considered to be a funding priority for the Shire isolated widening could be incorporated into any future rehabilitation works planned of the road as funding becomes available to achieve a minimum width sealed shoulder wherever possible.

Statutory/Policy Environment

Local Government Act 1995

- Section 5.27 – Electors' General Meetings
- Section 5.33 – Decisions made at electors' meetings

Strategic Framework

The Shire's Strategic Community Plan 2021–2031, states:

<i>Goal 2:</i>	<i>A safe, accessible and connected community where everyone has the opportunity to contribute and belong.</i>
<i>Objective 2.7</i>	<i>An active and healthy community.</i>
<i>Goal 4:</i>	<i>A liveable, sustainable and well-designed built environment that is accessible to all.</i>
<i>Objective 4.1</i>	<i>Playgrounds and parks are vibrant, accessible and well maintained.</i>
<i>Goal 5:</i>	<i>A representative leadership that is future thinking, transparent and accountable.</i>
<i>Objective 5.1</i>	<i>Effective communication and engagement with the community.</i>

Objective 5.2 Build partnerships and work collaboratively to amplify the outcomes that can be achieved.

Community Engagement

Community Participation Goal

Involve: To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.

Collaborate: To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.

Promise to the Community

Involve: We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.

Collaborate: We will work together with you to formulate solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible.

Risk Management

The Risk Theme Profile identified as part of this report is **Providing Inaccurate Advice/information**. The consequence could be **Financial**, **Reputational** or **Compliance** if measures to improve safety and accessibility for the public are not considered. The risk is mitigated by implementing appropriate improvements to protect the amenity of the community resulting in **Low** risk being present.

Budget Implications

Harvey Accessibility Playground

Should Council support the above recommendations, the previously adopted Playground Replacement Program may need to be reviewed to allow funding for a potential new Harvey Playground facility. However, given the age and condition of some of the existing playgrounds the preference would be to maintain the existing playground replacement funding.

The estimated cost of a new playground at Meriden Park including ground works, potential relocation of the existing parking area and associated landscaping as shown conceptually in **Attachment 1** could cost in the order of \$750,000. If a toilet facility were also included this would require an additional \$150,000 to \$200,000 which could increase the funding required to around \$950,000.

The toilet facility at the Meriden Park location would not only benefit Playground users but also Skatepark and Park users.

Potential funding options would need to be explored including but not limited to available State and Commonwealth, grant funding opportunities, partner organisations contributions, proceeds from the potential sale of land on the corner of Anthony Street and Uduc Road (Apex Park) including Municipal funding.

Cyclist Shoulder

To implement what has been requested along the entire length of Old Coast Road between the Collie River Bridge and Paris Road could cost in the order of \$3.0M (subject to detailed designs being undertaken and costed). It is considered that shoulder widenings be incorporated into future planned

rehabilitation works where required, as funding is made available, to achieve a minimum 1.0m wide sealed shoulder wherever possible.

Authority/Discretion

Executive: The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.

Voting Requirements

Officers Recommendation 1 of 2 – Simple Majority

Officers Recommendation 2 of 2 – Simple Majority

Officer's Recommendation 1 of 2 – Harvey Accessibility Playground

That Council:

1. Supports the establishment of an Accessible Playground in the Harvey Townsite.
2. Considers that the most appropriate location for this facility is Meriden Park as shown conceptually in **Attachment 1**.
3. Develops a concept Playground design, and estimated cost, that includes a number of appropriate play elements as requested by the community.
4. In liaison with community members explores grant funding opportunities and funding partner organisations to progress the potential establishment of an accessible Playground in the Harvey Townsite.
5. Considers allocating an appropriate contributory funding amount for consideration in the 2024–2025 draft Budget towards the development of an accessible playground.
6. Receives further progress reports on the proposal as required.

Officer's Recommendation 2 of 2 – Cyclist Shoulder

That Council:

1. Notes that in 2019–2020, \$700,000 was expended installing a 2.50m wide Shared Path from the Collie River Bridge to Ridley Place with the project funded by the Shire of Harvey Department of Transport and the South West Development Commission in alignment with the Bunbury Wellington 2050 Cycling Strategy.
2. Notes that several sections of Old Coast Road currently have a sealed road shoulder of up to 1.0m in width.
3. Considers incorporating shoulder widenings into all future planned rehabilitation works along Old Coast Road where required, as funding is made available, to achieve a minimum 1.0m wide sealed shoulder wherever possible, to improve safety for cyclists and other road users.

5.2. Infrastructure Services

Nil.

5.3. Sustainable Development

Item No.:	5.3.1.
Subject:	Use Not Listed – Specialist Disability Accommodation – Lot 96 (No. 7) Indus Way, Australind
Proponent:	WA Country Buildings (on behalf of Illuminated Way Trust)
Location:	Lot 96 (No. 7) Indus Way, Australind
Reporting Officer:	Manager Planning Services
Authorising Officer:	Director Sustainable Development
File No.:	P415/23, C291/00347, A017073
Attachments:	<ol style="list-style-type: none"> 1. Application Plans [5.3.1.1 - 4 pages] 2. Location Plan [5.3.1.2 - 1 page] 3. Schedule of Submissions [5.3.1.3 - 3 pages] 4. Location Plan of current applications [5.3.1.4 - 1 page]

Summary

An application for Development Approval has been received for a 'Use Not Listed' (Specialist Disability Accommodation) on Lot 96 (No. 7) Indus Way, Australind (refer **Attachment 1**). The application is referred to Council as Officers do not have delegation to determine a 'Use Not Listed' that has received objections during advertising.

It is recommended that Council approves the application, subject to appropriate conditions.

Background

Site Description

Lot 96 (No. 7) Indus Way, Australind is zoned "Residential Development" under the Shire's District Planning Scheme No. 1 (the Scheme) and is located within the Treendale Estate. The site is of a regular shape with an area of 544m² (refer **Attachment 2**).

Site History

The site has recently been created and is therefore vacant.

Proposal

The application proposes to develop the site for a Specialist Disability Accommodation (SDA) dwelling. The dwelling is designed to cater for disabled tenants, with facilities for an overnight carer. The proposed dwelling has a total floor area of 211.78m² and incorporates the following:

- Three-bedrooms (including a carer's room), with each bedroom having an ensuite bathroom and kitchenette
- One bathroom, which also serves as a semi-ensuite for the carer's room
- Main kitchen, dining and living area with a rear alfresco
- Double garage.

Comment

Land Use

The National Disability Insurance Scheme (NDIS) website describes SDA dwellings “as *housing designed for people with extreme functional impairment or very high support needs*.” The dwellings “*have accessible features to help residents live more independently and allow other supports to be delivered better or more safely*.”

Officers initially considered the proposal as a ‘Community Home’. A similar proposal was recently considered by Council at its Ordinary Meeting on Tuesday, 27 February 2024. Council determined at this Meeting that SDA dwellings are more appropriately classified as ‘Specialist Disability Accommodation’ as a ‘Use Not Listed’.

Clause 4.2.4(b) of the Scheme 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*”. Clause 5.6.1 of the Scheme provides that the intention of the “Residential Development” zone is to “*be progressively developed for residential purposes, and for commercial and other uses normally associated with residential development*.”

Advertising

If Council determines that a proposed ‘Use Not Listed’ may be consistent with the objectives and purposes of the zone, pursuant to Clause 64 of the Planning and Development (Local Planning Schemes) Regulation 2015 (the Deemed Provisions), the application is required to be advertised for a period of at least 28 days for public comment. For the purpose of reducing assessment timeframes, the application has been advertised pursuant to Clause 64 of the Deemed Provisions, in the following manner:

- Letters to landowners and occupiers within 200m of the development site
- Sign advertising the proposal was placed on the development site
- Advertised on the Shire’s website
- Advertised between Wednesday, 10 January 2024 and Wednesday, 7 February 2024, being a period of 28 days.

At the conclusion of the advertising period, a total of 12 submissions were received with five supporting the proposal, one providing conditional support and six objecting to the proposal. All submissions have been summarised and provided in **Attachment 3**.

The main topics of the objections received are:

Issue	Officer Comment
Concentration of disability accommodation in one area.	In addition to this proposal, there are nine other proposals within the vicinity (refer Attachment 4). This stage of the estate will contain 121 lots, so the proposed SDA dwellings collectively represent 8% of the lots. The area immediately surrounding the proposed SDA dwellings (south of Lunar Avenue) will contain 38 lots, collectively representing 26% of the lots in this area.

	There is no criteria, guidance, policy or legislative framework that specifies or discusses locational requirements. Consistent with the principles of orderly and proper planning, each application is required to be assessed on its merits.
Impact on safety of the community.	<p>In any assessment, a distinction must be drawn between what people perceive the impacts of a proposal will be, and the reality of those impacts. Whilst it is perfectly reasonable for the community to hold the fears that they do, a decision maker must be satisfied that there is a factual or realistic basis to those fears in order for it to conclude that this use will result in the amenity impacts alleged by the community.</p> <p>Research undertaken by Officers has failed to establish factual evidence that the presence of the proposed SDA dwelling will have a detrimental impact on the safety of the community.</p>

Discussion

Given Council has determined a similar proposal, at its Ordinary Meeting on Tuesday, 27 February 2024, as being more appropriately classified as 'Specialist Disability Accommodation' as a 'Use Not Listed', the use classification of this proposal does not need to be determined again.

The dwelling design has been assessed against the Residential Design Codes (RCodes) and is compliant with the 'deemed-to-comply' requirements. Officers consider there is no requirement for specific conditions relating to the management of intended occupants.

The proposed SDA dwelling will be managed by GR8 Property, which is a NDIS home and housing provider. GR8 has provided the following information regarding an identified need for SDA housing within an area encompassing Australind, Wellesley and Binningup:

- NDIS participant expenditure between March 2022 – February 2023 was \$5,320,000 – \$5,330,000 for daily living support in shared accommodation. This expenditure is forecast to increase to \$12,576,900 for 2025. This expenditure indicates that many participants are living in non-compliant accommodation.
- The number of NDIS participants between March 2022 – February 2023 was 391 – 400 and this number is forecast to increase to 549 participants for 2025.
- Based on the number of participants currently in the area, 6% generally require SDA housing and therefore approximately 32 participants are likely to require SDA housing for 2025.

Conclusion

Officers consider the most appropriate use classification for the proposal is a 'Use Not Listed' as 'Specialist Disability Accommodation', which may be consistent with the objectives and purpose of the "Residential" zone. The proposal is compliant with the RCodes and is therefore recommended for approval, subject to appropriate conditions.

Statutory/Policy Environment

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Regulations 2015

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

(1) *“The local government – “*

- (a) must advertise a complex application for development approval in accordance with subclause (3); and*
- (b) must advertise an application for development approval in accordance with subclause (4) if the application is not a complex application –*
 - i. relates to development that is a class A use in relation to the zone in which the development is located; or*
 - ii. relates to the extension of a non-conforming use; or*
 - iii. relates to development that does not comply with the requirements of this Scheme; or*
 - iv. relates to development of which the local government requires a heritage assessment to be carried out under clause 11(1); or*
 - v. is of a kind identified elsewhere in this Scheme as an application is this required to be advertised; and*
- (c) may advertise any other application for development approval in accordance with subclause (4).*

(2) Subclause (1)(b)(iii) does not apply if the local government is satisfied that the non-compliance with the requirements of this Scheme is of a minor nature.”

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 the Council May: -

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

- Table 4 – Zoning and Development Standards (Residential Development)

Strategic Framework

The Shire’s Strategic Community Plan 2021–2031, states:

- | | |
|----------------------|---|
| <i>Goal 1:</i> | <i>A diversified and thriving economy that offers a wide range of business and work opportunities as well as consumer choice.</i> |
| <i>Objective 1.3</i> | <i>Sustainable urban, rural and industrial development.</i> |
| <i>Goal 2:</i> | <i>A safe, accessible and connected community where everyone has the opportunity to contribute and belong.</i> |
| <i>Objective 2.1</i> | <i>To support people through all stages of life.</i> |

Community Engagement

Community Participation Goal

Inform: To provide the public with balanced and objective information to assist them in understanding the problems, alternatives and/or solutions.

Promise to the Community

Inform: We will keep you informed.

Risk Management

The Risk Theme Profile identified as part of this report is **Providing Inaccurate Advice/Information**. The Consequences could be **Environmental, Financial, Reputational or Compliance** if an incorrect assessment of the land use occurs or insufficient community engagement occurs. The risk is considered **Minor** and the likelihood **Unlikely**, given that the report has been thoroughly researched, peer reviewed and provided by a qualified Shire Officer with a recommendation for the proposal to be advertised. This results in a **Low** risk being present.

Budget Implications

Nil.

Authority/Discretion

Quasi-Judicial: When Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include development applications, building permits, applications for other permits/licenses (e.g., under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.

Voting Requirements

Simple Majority

Officer's Recommendation

That Council:

1. Acknowledges that the proposed 'Use Not Listed' detailed in the Application for a Development Approval for Lot 96 (No. 7) Indus Way, Australind is comparable to an application considered by Council at its Ordinary Meeting of Tuesday, 27 February 2024 and is therefore considered as "Specialist Disability Accommodation".
2. In accordance with Schedule 2, Clause 67(2)(y) of the Planning and Development (Local Planning Schemes) Regulations 2015, considers the submission received and endorses the Schedule of Submissions at **Attachment 3** on the Application for Development Approval for a 'Use Not Listed' – Specialist Disability Accommodation on Lot 96 (No. 7) Indus Way, Australind.

3. Approves the Application for Development Approval for a 'Use Not Listed' – Specialist Disability Accommodation on Lot 96 (No. 7) Indus Way, Australind, 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 years. If the development is not substantially commenced within this period, a new approval must be obtained before commencing or continuing development.
 - c) Prior to a Building Permit being issued, detailed plans and specifications shall be submitted to, and approved by the Shire. The plans and specifications shall demonstrate that all stormwater will be contained and disposed of on-site and shall identify proposed invert levels, cover levels, pipe sizes and grade. For sandy soils, 1m³ of storage capacity for every 65m² of impermeable surface should be provided.
 - d) Prior to occupation of the approved development, all landscaping shown on the approved plan shall be installed, and thereafter maintained, to the satisfaction of the Shire of Harvey.
 - e) Prior to occupation of the approved development, the vehicle crossover shall be constructed, and thereafter maintained, in accordance with *Policy 17.5 Crossovers – Subsidy* to the satisfaction of the Shire.
 - f) Prior to occupation of the approved development, uniform fencing of 1.8m in height shall be installed along the side and rear boundaries of the development site to the satisfaction of the Shire. Any fences/walls within the front setback area of the property shall comply with the provisions of the Residential Design Codes.
 - g) Prior to occupation of the approved development, all landscaping shown on the approved Landscaping Plan shall be installed, and thereafter maintained, to the satisfaction of the Shire.
4. Advises the Applicant of the following that are not included as conditions:
 - a) In accordance with the *Building Act 2011*, a Building Permit, reflecting the use of the dwelling as a Class 3 building, is required to be obtained prior to the commencement of any works on the site.
 - b) The development is required to comply with the Building Regulations 2012, Building Code of Australia, and the Disability (Access to Premises Building) Standards 2010 and AS 1428.1 Design for Access and Mobility.

Item No.:	5.3.2.
Subject:	Use Not Listed – Specialist Disability Accommodation – Lot 108 (No. 76) Chamaeleon Way, Australind
Proponent:	WA Country Buildings (on behalf of Piglet and Chip Family)
Location:	Lot 108 (No. 76) Chamaeleon Way, Australind
Reporting Officer:	Manager Planning Services
Authorising Officer:	Director Sustainable Development
File No.:	P416/23, C291/00349, A017085
Attachments:	<ol style="list-style-type: none"> 1. Application Plans [5.3.2.1 - 4 pages] 2. Location Plan [5.3.2.2 - 1 page] 3. Approved Local Development Plan [5.3.2.3 - 1 page] 4. Schedule of Submissions [5.3.2.4 - 3 pages] 5. Location Plan of current applications [5.3.2.5 - 1 page]

Summary

An application for Development Approval has been received for a 'Use Not Listed' (Specialist Disability Accommodation) on Lot 108 (No. 76) Chamaeleon Way, Australind (refer **Attachment 1**). The application is referred to Council as Officers do not have delegation to determine a 'Use Not Listed' that has received objections during advertising.

It is recommended that Council approves the application, subject to appropriate conditions.

Background

Site Description

Lot 108 (No. 76) Chamaeleon Way, Australind is zoned "Residential Development" under the Shire's District Planning Scheme No. 1 (the Scheme) and is located within the Treendale Estate. The site is of a regular shape with an area of 589m² (refer **Attachment 2**).

Site History

The site has recently been created and is therefore vacant. Given the site's proximity to Forrest Highway, it is subject to a Local Development Plan (LDP) (refer **Attachment 3**) requiring the dwelling to be constructed in accordance with the 'Quiet House Design' requirements to reduce impacts from traffic noise.

Proposal

The application proposes to develop the site for a Specialist Disability Accommodation (SDA) dwelling. The dwelling is designed to cater for disabled tenants, with facilities for an overnight carer. The proposed dwelling has a total floor area of 216.45m² and incorporates the following:

- Three-bedrooms (including a carer's room), with each bedroom having an ensuite bathroom and kitchenette
- One bathroom, which also serves as a semi-ensuite for the carer's room
- Main kitchen, dining and living area with a rear alfresco
- Double garage.

Comment

Land Use

The National Disability Insurance Scheme (NDIS) website describes SDA dwellings “as *housing designed for people with extreme functional impairment or very high support needs*.” The dwellings “*have accessible features to help residents live more independently and allow other supports to be delivered better or more safely*.”

Officers initially considered the proposal as a ‘Community Home’. A similar proposal was recently considered by Council at its Ordinary Meeting on Tuesday, 27 February 2024. Council determined at this Meeting that SDA dwellings are more appropriately classified as ‘Specialist Disability Accommodation’ as a ‘Use Not Listed’.

Clause 4.2.4(b) of the Scheme 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*”. Clause 5.6.1 of the Scheme provides that the intention of the “Residential Development” zone is to “*be progressively developed for residential purposes, and for commercial and other uses normally associated with residential development*.”

Advertising

If Council determines that a proposed ‘Use Not Listed’ may be consistent with the objectives and purposes of the zone, pursuant to Clause 64 of the Planning and Development (Local Planning Schemes) Regulation 2015 (the Deemed Provisions), the application is required to be advertised for a period of at least 28 days for public comment. For the purpose of reducing assessment timeframes, the application has been advertised pursuant to Clause 64 of the Deemed Provisions, in the following manner:

- Letters to landowners and occupiers within 200m of the development site
- Sign advertising the proposal was placed on the development site
- Advertised on the Shire’s website
- Advertised between Wednesday, 10 January 2024 and Wednesday, 7 February 2024, being a period of 28 days.

At the conclusion of the advertising period, a total of 12 submissions were received with six supporting the proposal and six objecting to the proposal. All submissions have been summarised and provided in **Attachment 3**.

The main topics of the objections received are:

Issue	Officer Comment
Concentration of disability accommodation in one area.	In addition to this proposal, there are nine other proposals within the vicinity (refer Attachment 4). This stage of the estate will contain 121 lots, so the proposed SDA dwellings collectively represent 8% of the lots. The area immediately surrounding the proposed SDA dwellings (south of Lunar Avenue) will contain 38 lots, collectively representing 26% of the lots in this area.

	There is no criteria, guidance, policy or legislative framework that specifies or discusses locational requirements. Consistent with the principles of orderly and proper planning, each application is required to be assessed on its merits.
Impact on safety of the community.	<p>In any assessment, a distinction must be drawn between what people perceive the impacts of a proposal will be, and the reality of those impacts. Whilst it is perfectly reasonable for the community to hold the fears that they do, a decision maker must be satisfied that there is a factual or realistic basis to those fears in order for it to conclude that this use will result in the amenity impacts alleged by the community.</p> <p>Research undertaken by Officers has failed to establish factual evidence that the presence of the proposed SDA dwelling will have a detrimental impact on the safety of the community.</p>

Discussion

Given Council has determined a similar proposal, at its Ordinary Meeting on Tuesday, 27 February 2024, as being more appropriately classified as 'Specialist Disability Accommodation' as a 'Use Not Listed', the use classification of this proposal does not need to be determined again.

The dwelling design has been assessed against the Residential Design Codes (RCodes) and is compliant with the 'deemed-to-comply' requirements. Officers consider there is no requirement for specific conditions relating to the management of intended occupants.

The proposed SDA dwelling will be managed by GR8 Property, which is a NDIS home and housing provider. GR8 has provided the following information regarding an identified need for SDA housing within an area encompassing Australind, Wellesley and Binningup:

- NDIS participant expenditure between March 2022 – February 2023 was \$5,320,000 – \$5,330,000 for daily living support in shared accommodation. This expenditure is forecast to increase to \$12,576,900 for 2025. This expenditure indicates that many participants are living in non-compliant accommodation.
- The number of NDIS participants between March 2022 – February 2023 was 391 – 400 and this number is forecast to increase to 549 participants for 2025.
- Based on the number of participants currently in the area, 6% generally require SDA housing and therefore approximately 32 participants are likely to require SDA housing for 2025.

Conclusion

Officers consider the most appropriate use classification for the proposal is a 'Use Not Listed' as 'Specialist Disability Accommodation', which may be consistent with the objectives and purpose of the "Residential" zone. The proposal is compliant with the RCodes and is therefore recommended for approval, subject to appropriate conditions.

Statutory/Policy Environment

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Regulations 2015

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

(1) *“The local government – “*

- (a) must advertise a complex application for development approval in accordance with subclause (3); and*
- (b) must advertise an application for development approval in accordance with subclause (4) if the application is not a complex application –*
 - i. relates to development that is a class A use in relation to the zone in which the development is located; or*
 - ii. relates to the extension of a non-conforming use; or*
 - iii. relates to development that does not comply with the requirements of this Scheme; or*
 - iv. relates to development of which the local government requires a heritage assessment to be carried out under clause 11(1); or*
 - v. is of a kind identified elsewhere in this Scheme as an application is this required to be advertised; and*
- (c) may advertise any other application for development approval in accordance with subclause (4).*

(2) Subclause (1)(b)(iii) does not apply if the local government is satisfied that the non-compliance with the requirements of this Scheme is of a minor nature.”

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 the Council May: -

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

- Table 4 – Zoning and Development Standards (Residential Development)

Strategic Framework

The Shire’s Strategic Community Plan 2021–2031, states:

- | | |
|----------------------|---|
| <i>Goal 1:</i> | <i>A diversified and thriving economy that offers a wide range of business and work opportunities as well as consumer choice.</i> |
| <i>Objective 1.3</i> | <i>Sustainable urban, rural and industrial development.</i> |
| <i>Goal 2:</i> | <i>A safe, accessible and connected community where everyone has the opportunity to contribute and belong.</i> |
| <i>Objective 2.1</i> | <i>To support people through all stages of life.</i> |

Community Engagement

Community Participation Goal

Inform: To provide the public with balanced and objective information to assist them in understanding the problems, alternatives and/or solutions.

Promise to the Community

Inform: We will keep you informed.

Risk Management

The Risk Theme Profile identified as part of this report is **Providing Inaccurate Advice/Information**. The Consequences could be **Environmental, Financial, Reputational or Compliance** if an incorrect assessment of the land use occurs or insufficient community engagement occurs. The risk is considered **Minor** and the likelihood **Unlikely**, given that the report has been thoroughly researched, peer reviewed and provided by a qualified Shire Officer with a recommendation for the proposal to be advertised. This results in a **Low** risk being present.

Budget Implications

Nil.

Authority/Discretion

Quasi-Judicial: When Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include development applications, building permits, applications for other permits/licenses (e.g., under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.

Voting Requirements

Simple Majority

Officer's Recommendation

That Council:

1. Acknowledges that the proposed 'Use Not Listed' detailed in the Application for a Development Approval for Lot 108 (No. 76) Chamaeleon Way, Australind is comparable to an application considered by Council at its Ordinary Meeting of Tuesday, 27 February 2024 and is therefore considered as "Specialist Disability Accommodation".
2. In accordance with Schedule 2, Clause 67(2)(y) of the Planning and Development (Local Planning Schemes) Regulations 2015, considers the submission received and endorses the Schedule of Submissions at **Attachment 3** on the Application for Development Approval for a 'Use Not Listed' – Specialist Disability Accommodation on Lot 108 (No. 76) Chamaeleon Way, Australind.
3. Approves the Application for Development Approval for a 'Use Not Listed' – Specialist Disability Accommodation on Lot 108 (No. 76) Chamaeleon Way, Australind, 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 years. If the development is not substantially commenced within this period, a new approval must be obtained before commencing or continuing development.
 - c) Prior to a Building Permit being issued, detailed plans and specifications shall be submitted to, and approved by the Shire. The plans and specifications shall demonstrate that all stormwater will be contained and disposed of on-site and shall identify proposed invert levels, cover levels, pipe sizes and grade. For sandy soils, 1m³ of storage capacity for every 65m² of impermeable surface should be provided.
 - d) Plans submitted with the application for a Building Permit shall demonstrate compliance with the 'Quiet House Design' construction standards for 'Package A' in accordance with the approved Landscape Development Plan dated 27/04/2018 (Plan No. 17-000285P-MP-02), to the satisfaction of the Shire.
 - e) Prior to occupation of the approved development, all landscaping shown on the approved plan shall be installed, and thereafter maintained, to the satisfaction of the Shire of Harvey.
 - f) Prior to occupation of the approved development, the vehicle crossover shall be constructed, and thereafter maintained, in accordance with *Policy 17.5 Crossovers – Subsidy* to the satisfaction of the Shire.
 - g) Prior to occupation of the approved development, uniform fencing of 1.8m in height shall be installed along the side and rear boundaries of the development site to the satisfaction of the Shire. Any fences/walls within the front setback area of the property shall comply with the provisions of the Residential Design Codes.
 - h) Prior to occupation of the approved development, all landscaping shown on the approved Landscaping Plan shall be installed, and thereafter maintained, to the satisfaction of the Shire.
4. Advises the Applicant of the following that are not included as conditions:
- a) In accordance with the *Building Act 2011*, a Building Permit, reflecting the use of the dwelling as a Class 3 building, is required to be obtained prior to the commencement of any works on the site.
 - b) The development is required to comply with the Building Regulations 2012, Building Code of Australia, and the Disability (Access to Premises Building) Standards 2010 and AS 1428.1 Design for Access and Mobility.

Item No.:	5.3.3.
Subject:	Use Not Listed – Specialist Disability Accommodation – Lot 85 (No. 44) Lunar Avenue, Australind
Proponent:	WA Country Buildings (on behalf of AWHH Discretionary Trust)
Location:	Lot 85 (No. 44) Lunar Avenue, Australind
Reporting Officer:	Manager Planning Services
Authorising Officer:	Director Sustainable Development
File No.:	P417/23, C291/00350, A017069
Attachments:	<ol style="list-style-type: none"> 1. Application Plans [5.3.3.1 - 4 pages] 2. Location Plan [5.3.3.2 - 1 page] 3. Schedule of Submissions [5.3.3.3 - 3 pages] 4. Location Plan of current applications [5.3.3.4 - 1 page]

Summary

An application for Development Approval has been received for a 'Use Not Listed' (Specialist Disability Accommodation) on Lot 85 (No. 44) Lunar Avenue, Australind (refer **Attachment 1**). The application is referred to Council as Officers do not have delegation to determine a 'Use Not Listed' that has received objections during advertising.

It is recommended that Council approves the application, subject to appropriate conditions.

Background

Site Description

Lot 85 (No. 44) Lunar Avenue, Australind is zoned "Residential Development" under the Shire's District Planning Scheme No. 1 (the Scheme) and is located within the Treendale Estate. The site is of a regular shape with an area of 589m² (refer **Attachment 2**).

Site History

The site has recently been created and is therefore vacant.

Proposal

The application proposes to develop the site for a Specialist Disability Accommodation (SDA) dwelling. The dwelling is designed to cater for disabled tenants, with facilities for an overnight carer. The proposed dwelling has a total floor area of 211.78m² and incorporates the following:

- Three-bedrooms (including a carer's room), with each bedroom having an ensuite bathroom and kitchenette
- One bathroom, which also serves as a semi-ensuite for the carer's room
- Main kitchen, dining and living area with a rear alfresco
- Double garage.

Comment

Land Use

The National Disability Insurance Scheme (NDIS) website describes SDA dwellings "*as housing designed for people with extreme functional impairment or very high support needs.*" The dwellings

“have accessible features to help residents live more independently and allow other supports to be delivered better or more safely.”

Officers initially considered the proposal as a ‘Community Home’. A similar proposal was recently considered by Council at its Ordinary Meeting on Tuesday, 27 February 2024. Council determined at this Meeting that SDA dwellings are more appropriately classified as ‘Specialist Disability Accommodation’ as a ‘Use Not Listed’.

Clause 4.2.4(b) of the Scheme 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”*. Clause 5.6.1 of the Scheme provides that the intention of the “Residential Development” zone is to *“be progressively developed for residential purposes, and for commercial and other uses normally associated with residential development.”*

Advertising

If Council determines that a proposed ‘Use Not Listed’ may be consistent with the objectives and purposes of the zone, pursuant to Clause 64 of the Planning and Development (Local Planning Schemes) Regulation 2015 (the Deemed Provisions), the application is required to be advertised for a period of at least 28 days for public comment. For the purpose of reducing assessment timeframes, the application has been advertised pursuant to Clause 64 of the Deemed Provisions, in the following manner:

- Letters to landowners and occupiers within 200m of the development site
- Sign advertising the proposal was placed on the development site
- Advertised on the Shire’s website
- Advertised between Wednesday, 10 January 2024 and Wednesday, 7 February 2024, being a period of 28 days.

At the conclusion of the advertising period, a total of 12 submissions were received with five supporting the proposal, one providing conditional support and six objecting to the proposal. All submissions have been summarised and provided in **Attachment 3**.

The main topics of the objections received are:

Issue	Officer Comment
Concentration of disability accommodation in one area.	<p>In addition to this proposal, there are nine other proposals within the vicinity (refer Attachment 4). This stage of the estate will contain 121 lots, so the proposed SDA dwellings collectively represent 8% of the lots. The area immediately surrounding the proposed SDA dwellings (south of Lunar Avenue) will contain 38 lots, collectively representing 26% of the lots in this area.</p> <p>There is no criteria, guidance, policy or legislative framework that specifies or discusses locational requirements. Consistent with the principles of orderly and proper planning, each application is required to be assessed on its merits.</p>
Impact on safety of the community.	In any assessment, a distinction must be drawn between what people perceive the impacts of a proposal will be, and the reality of those impacts. Whilst it is perfectly reasonable for the community to hold the fears that they do, a decision maker must be satisfied that there is a factual or realistic basis to those fears in order for it

	<p>to conclude that this use will result in the amenity impacts alleged by the community.</p> <p>Research undertaken by Officers has failed to establish factual evidence that the presence of the proposed SDA dwelling will have a detrimental impact on the safety of the community.</p>
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Discussion

Given Council has determined a similar proposal, at its Ordinary Meeting on Tuesday, 27 February 2024, as being more appropriately classified as 'Specialist Disability Accommodation' as a 'Use Not Listed', the use classification of this proposal does not need to be determined again.

The dwelling design has been assessed against the Residential Design Codes (RCodes) and is compliant with the 'deemed-to-comply' requirements. Officers consider there is no requirement for specific conditions relating to the management of intended occupants.

The proposed SDA dwelling will be managed by GR8 Property, which is a NDIS home and housing provider. GR8 has provided the following information regarding an identified need for SDA housing within an area encompassing Australind, Wellesley and Binningup:

- NDIS participant expenditure between March 2022 – February 2023 was \$5,320,000 – \$5,330,000 for daily living support in shared accommodation. This expenditure is forecast to increase to \$12,576,900 for 2025. This expenditure indicates that many participants are living in non-compliant accommodation.
- The number of NDIS participants between March 2022 – February 2023 was 391 – 400 and this number is forecast to increase to 549 participants for 2025.
- Based on the number of participants currently in the area, 6% generally require SDA housing and therefore approximately 32 participants are likely to require SDA housing for 2025.

Conclusion

Officers consider the most appropriate use classification for the proposal is a 'Use Not Listed' as 'Specialist Disability Accommodation', which may be consistent with the objectives and purpose of the "Residential" zone. The proposal is compliant with the RCodes and is therefore recommended for approval, subject to appropriate conditions.

Statutory/Policy Environment

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Regulations 2015

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

(1) *"The local government – "*

(a) *must advertise a complex application for development approval in accordance with subclause (3); and*

(b) *must advertise an application for development approval in accordance with subclause (4) if the application is not a complex application –*

i. *relates to development that is a class A use in relation to the zone in which the development is located; or*

- ii. *relates to the extension of a non-conforming use; or*
- iii. *relates to development that does not comply with the requirements of this Scheme; or*
- iv. *relates to development of which the local government requires a heritage assessment to be carried out under clause 11(1); or*
- v. *is of a kind identified elsewhere in this Scheme as an application is this required to be advertised; and*

(c) *may advertise any other application for development approval in accordance with subclause (4).*

(2) *Subclause (1)(b)(iii) does not apply if the local government is satisfied that the non-compliance with the requirements of this Scheme is of a minor nature."*

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 the Council May: -

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

- Table 4 – Zoning and Development Standards (Residential Development)

Strategic Framework

The Shire's Strategic Community Plan 2021–2031, states:

- | | |
|---------------|---|
| Goal 1: | <i>A diversified and thriving economy that offers a wide range of business and work opportunities as well as consumer choice.</i> |
| Objective 1.3 | <i>Sustainable urban, rural and industrial development.</i> |
| Goal 2: | <i>A safe, accessible and connected community where everyone has the opportunity to contribute and belong.</i> |
| Objective 2.1 | <i>To support people through all stages of life.</i> |

Community Engagement

Community Participation Goal

Inform: To provide the public with balanced and objective information to assist them in understanding the problems, alternatives and/or solutions.

Promise to the Community

Inform: We will keep you informed.

Risk Management

The Risk Theme Profile identified as part of this report is **Providing Inaccurate Advice/Information**. The Consequences could be **Environmental, Financial, Reputational or Compliance** if an incorrect assessment of the land use occurs or insufficient community engagement occurs. The risk is considered **Minor** and the likelihood **Unlikely**, given that the report has been thoroughly researched, peer reviewed and provided by a qualified Shire Officer with a recommendation for the proposal to be advertised. This results in a **Low** risk being present.

Budget Implications

Nil.

Authority/Discretion

Quasi-Judicial: When Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include development applications, building permits, applications for other permits/licenses (e.g., under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.

Voting Requirements

Simple Majority

Officer's Recommendation

That Council:

1. Acknowledges that the proposed 'Use Not Listed' detailed in the Application for a Development Approval for Lot 96 (No. 7) Indus Way, Australind is comparable to an application considered by Council at its Ordinary Meeting of Tuesday, 27 February 2024 and is therefore considered as "Specialist Disability Accommodation".
2. In accordance with Schedule 2, Clause 67(2)(y) of the Planning and Development (Local Planning Schemes) Regulations 2015, considers the submission received and endorses the Schedule of Submissions at **Attachment 3** on the Application for Development Approval for a 'Use Not Listed' – Specialist Disability Accommodation on Lot 85 (No. 44) Lunar Avenue, Australind.
3. Approves the Application for Development Approval for a 'Use Not Listed' – Specialist Disability Accommodation on Lot 85 (No. 44) Lunar Avenue, Australind, 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 years. If the development is not substantially commenced within this period, a new approval must be obtained before commencing or continuing development.
 - c) Prior to a Building Permit being issued, detailed plans and specifications shall be submitted to, and approved by the Shire. The plans and specifications shall demonstrate that all stormwater will be contained and disposed of on-site and shall identify proposed invert levels, cover levels, pipe sizes and grade. For sandy soils, 1m³ of storage capacity for every 65m² of impermeable surface should be provided.

- d) Prior to occupation of the approved development, all landscaping shown on the approved plan shall be installed, and thereafter maintained, to the satisfaction of the Shire of Harvey.
 - e) Prior to occupation of the approved development, the vehicle crossover shall be constructed, and thereafter maintained, in accordance with *Policy 17.5 Crossovers – Subsidy* to the satisfaction of the Shire.
 - f) Prior to occupation of the approved development, uniform fencing of 1.8m in height shall be installed along the side and rear boundaries of the development site to the satisfaction of the Shire. Any fences/walls within the front setback area of the property shall comply with the provisions of the Residential Design Codes.
 - g) Prior to occupation of the approved development, all landscaping shown on the approved Landscaping Plan shall be installed, and thereafter maintained, to the satisfaction of the Shire.
4. Advises the Applicant of the following that are not included as conditions:
- a) In accordance with the *Building Act 2011*, a Building Permit, reflecting the use of the dwelling as a Class 3 building, is required to be obtained prior to the commencement of any works on the site.
 - b) The development is required to comply with the Building Regulations 2012, Building Code of Australia, and the Disability (Access to Premises Building) Standards 2010 and AS 1428.1 Design for Access and Mobility.

Item No.:	5.3.4.
Subject:	Use Not Listed – Specialist Disability Accommodation – Lot 120 (No. 79) Chamaeleon Approach, Australind
Proponent:	WA Country Buildings (on behalf of Boom Villa Trust)
Location:	Lot 120 (No. 79) Chamaeleon Approach, Australind
Reporting Officer:	Manager Planning Services
Authorising Officer:	Director Sustainable Development
File No.:	P422/23, C291/00352, A017097
Attachments:	<ol style="list-style-type: none"> 1. Application Plans [5.3.4.1 - 4 pages] 2. Location Plan [5.3.4.2 - 1 page] 3. Approved Local Development Plan [5.3.4.3 - 1 page] 4. Schedule of Submissions [5.3.4.4 - 3 pages] 5. Location Plan of current applications [5.3.4.5 - 1 page]

Summary

An application for Development Approval has been received for a 'Use Not Listed' (Specialist Disability Accommodation) on Lot 120 (No. 79) Chamaeleon Approach, Australind (refer **Attachment 1**). The application is referred to Council as Officers do not have delegation to determine a 'Use Not Listed' that has received objections during advertising.

It is recommended that Council approves the application, subject to appropriate conditions.

Background

Site Description

Lot 120 (No. 79) Chamaeleon Approach, Australind is zoned "Residential Development" under the Shire's District Planning Scheme No. 1 (the Scheme) and is located within the Treendale Estate. The site is of a regular shape with an area of 592m² (refer **Attachment 2**).

Site History

The site has recently been created and is therefore vacant. Given the site's proximity to Forrest Highway, it is subject to a Local Development Plan (LDP) (refer **Attachment 3**) requiring the dwelling to be constructed in accordance with the 'Quiet House Design' requirements to reduce impacts from traffic noise.

Proposal

The application proposes to develop the site for a Specialist Disability Accommodation (SDA) dwelling. The dwelling is designed to cater for disabled tenants, with facilities for an overnight carer. The proposed dwelling has a total floor area of 211.84m² and incorporates the following:

- Three-bedrooms (including a carer's room), with each bedroom having an ensuite bathroom and kitchenette
- One bathroom, which also serves as a semi-ensuite for the carer's room
- Main kitchen, dining and living area with a rear alfresco
- Double garage.

Comment

Land Use

The National Disability Insurance Scheme (NDIS) website describes SDA dwellings “as *housing designed for people with extreme functional impairment or very high support needs*.” The dwellings “*have accessible features to help residents live more independently and allow other supports to be delivered better or more safely*.”

Officers initially considered the proposal as a ‘Community Home’. A similar proposal was recently considered by Council at its Ordinary Meeting on Tuesday, 27 February 2024. Council determined at this Meeting that SDA dwellings are more appropriately classified as ‘Specialist Disability Accommodation’ as a ‘Use Not Listed’.

Clause 4.2.4(b) of the Scheme 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*”. Clause 5.6.1 of the Scheme provides that the intention of the “Residential Development” zone is to “*be progressively developed for residential purposes, and for commercial and other uses normally associated with residential development*.”

Advertising

If Council determines that a proposed ‘Use Not Listed’ may be consistent with the objectives and purposes of the zone, pursuant to Clause 64 of the Planning and Development (Local Planning Schemes) Regulation 2015 (the Deemed Provisions), the application is required to be advertised for a period of at least 28 days for public comment. For the purpose of reducing assessment timeframes, the application has been advertised pursuant to Clause 64 of the Deemed Provisions, in the following manner:

- Letters to landowners and occupiers within 200m of the development site
- Sign advertising the proposal was placed on the development site
- Advertised on the Shire’s website
- Advertised between Wednesday, 10 January 2024 and Wednesday, 7 February 2024, being a period of 28 days.

At the conclusion of the advertising period, a total of 12 submissions were received with six supporting the proposal and six objecting to the proposal. All submissions have been summarised and provided in **Attachment 4**.

The main topics of the objections received are:

Issue	Officer Comment
Concentration of disability accommodation in one area.	In addition to this proposal, there are nine other proposals within the vicinity (refer Attachment 5). This stage of the estate will contain 121 lots, so the proposed SDA dwellings collectively represent 8% of the lots. The area immediately surrounding the proposed SDA dwellings (south of Lunar Avenue) will contain 38 lots, collectively representing 26% of the lots in this area.

	There is no criteria, guidance, policy or legislative framework that specifies or discusses locational requirements. Consistent with the principles of orderly and proper planning, each application is required to be assessed on its merits.
Impact on safety of the community.	<p>In any assessment, a distinction must be drawn between what people perceive the impacts of a proposal will be, and the reality of those impacts. Whilst it is perfectly reasonable for the community to hold the fears that they do, a decision maker must be satisfied that there is a factual or realistic basis to those fears in order for it to conclude that this use will result in the amenity impacts alleged by the community.</p> <p>Research undertaken by Officers has failed to establish factual evidence that the presence of the proposed SDA dwelling will have a detrimental impact on the safety of the community.</p>

Discussion

Given Council has determined a similar proposal, at its Ordinary Meeting on Tuesday, 27 February 2024, as being more appropriately classified as 'Specialist Disability Accommodation' as a 'Use Not Listed', the use classification of this proposal does not need to be determined again.

The dwelling design has been assessed against the Residential Design Codes (RCodes) and is compliant with the 'deemed-to-comply' requirements. Officers consider there is no requirement for specific conditions relating to the management of intended occupants.

The proposed SDA dwelling will be managed by GR8 Property, which is a NDIS home and housing provider. GR8 has provided the following information regarding an identified need for SDA housing within an area encompassing Australind, Wellesley and Binningup:

- NDIS participant expenditure between March 2022 – February 2023 was \$5,320,000 – \$5,330,000 for daily living support in shared accommodation. This expenditure is forecast to increase to \$12,576,900 for 2025. This expenditure indicates that many participants are living in non-compliant accommodation.
- The number of NDIS participants between March 2022 – February 2023 was 391 – 400 and this number is forecast to increase to 549 participants for 2025.
- Based on the number of participants currently in the area, 6% generally require SDA housing and therefore approximately 32 participants are likely to require SDA housing for 2025.

Conclusion

Officers consider the most appropriate use classification for the proposal is a 'Use Not Listed' as 'Specialist Disability Accommodation', which may be consistent with the objectives and purpose of the "Residential" zone. The proposal is compliant with the RCodes and is therefore recommended for approval, subject to appropriate conditions.

Statutory/Policy Environment

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Regulations 2015

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

(1) *“The local government – “*

- (a) must advertise a complex application for development approval in accordance with subclause (3); and*
- (b) must advertise an application for development approval in accordance with subclause (4) if the application is not a complex application –*
 - i. relates to development that is a class A use in relation to the zone in which the development is located; or*
 - ii. relates to the extension of a non-conforming use; or*
 - iii. relates to development that does not comply with the requirements of this Scheme; or*
 - iv. relates to development of which the local government requires a heritage assessment to be carried out under clause 11(1); or*
 - v. is of a kind identified elsewhere in this Scheme as an application is this required to be advertised; and*
- (c) may advertise any other application for development approval in accordance with subclause (4).*

(2) Subclause (1)(b)(iii) does not apply if the local government is satisfied that the non-compliance with the requirements of this Scheme is of a minor nature.”

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 the Council May: -

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

- Table 4 – Zoning and Development Standards (Residential Development)

Strategic Framework

The Shire’s Strategic Community Plan 2021–2031, states:

- | | |
|----------------------|---|
| <i>Goal 1:</i> | <i>A diversified and thriving economy that offers a wide range of business and work opportunities as well as consumer choice.</i> |
| <i>Objective 1.3</i> | <i>Sustainable urban, rural and industrial development.</i> |
| <i>Goal 2:</i> | <i>A safe, accessible and connected community where everyone has the opportunity to contribute and belong.</i> |
| <i>Objective 2.1</i> | <i>To support people through all stages of life.</i> |

Community Engagement

Community Participation Goal

Inform: To provide the public with balanced and objective information to assist them in understanding the problems, alternatives and/or solutions.

Promise to the Community

Inform: We will keep you informed.

Risk Management

The Risk Theme Profile identified as part of this report is **Providing Inaccurate Advice/Information**. The Consequences could be **Environmental, Financial, Reputational or Compliance** if an incorrect assessment of the land use occurs or insufficient community engagement occurs. The risk is considered **Minor** and the likelihood **Unlikely**, given that the report has been thoroughly researched, peer reviewed and provided by a qualified Shire Officer with a recommendation for the proposal to be advertised. This results in a **Low** risk being present.

Budget Implications

Nil.

Authority/Discretion

Quasi-Judicial: When Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include development applications, building permits, applications for other permits/licenses (e.g., under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.

Voting Requirements

Simple Majority

Officer's Recommendation

That Council:

1. Acknowledges that the proposed 'Use Not Listed' detailed in the Application for a Development Approval for Lot 120 (No. 79) Chamaeleon Approach, Australind is comparable to an application considered by Council at its Ordinary Meeting of Tuesday, 27 February 2024 and is therefore considered as "Specialist Disability Accommodation".
2. In accordance with Schedule 2, Clause 67(2)(y) of the Planning and Development (Local Planning Schemes) Regulations 2015, considers the submission received and endorses the Schedule of Submissions at **Attachment 4** on the Application for Development Approval for a 'Use Not Listed' – Specialist Disability Accommodation on Lot 120 (No. 79) Chamaeleon Approach, Australind.

3. Approves the Application for Development Approval for a 'Use Not Listed' – Specialist Disability Accommodation on Lot 120 (No. 79) Chamaeleon Approach, Australind, 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 years. If the development is not substantially commenced within this period, a new approval must be obtained before commencing or continuing development.
 - c) Prior to a Building Permit being issued, detailed plans and specifications shall be submitted to, and approved by the Shire. The plans and specifications shall demonstrate that all stormwater will be contained and disposed of on-site and shall identify proposed invert levels, cover levels, pipe sizes and grade. For sandy soils, 1m³ of storage capacity for every 65m² of impermeable surface should be provided.
 - d) Plans submitted with the application for a Building Permit shall demonstrate compliance with the 'Quiet House Design' construction standards for 'Package A' in accordance with the approved Landscape Development Plan dated 27/04/2018 (Plan No. 17-000285P-MP-02), to the satisfaction of the Shire.
 - e) Prior to occupation of the approved development, all landscaping shown on the approved plan shall be installed, and thereafter maintained, to the satisfaction of the Shire of Harvey.
 - f) Prior to occupation of the approved development, the vehicle crossover shall be constructed, and thereafter maintained, in accordance with *Policy 17.5 Crossovers – Subsidy* to the satisfaction of the Shire.
 - g) Prior to occupation of the approved development, uniform fencing of 1.8m in height shall be installed along the side and rear boundaries of the development site to the satisfaction of the Shire. Any fences/walls within the front setback area of the property shall comply with the provisions of the Residential Design Codes.
 - h) Prior to occupation of the approved development, all landscaping shown on the approved Landscaping Plan shall be installed, and thereafter maintained, to the satisfaction of the Shire.
4. Advises the Applicant of the following that are not included as conditions:
 - a) In accordance with the *Building Act 2011*, a Building Permit, reflecting the use of the dwelling as a Class 3 building, is required to be obtained prior to the commencement of any works on the site.
 - b) The development is required to comply with the Building Regulations 2012, Building Code of Australia, and the Disability (Access to Premises Building) Standards 2010 and AS 1428.1 Design for Access and Mobility.

Item No.:	5.3.5.
Subject:	Use Not Listed – Specialist Disability Accommodation – Lot 114 (No. 96) Chamaeleon Approach, Australind
Proponent:	WA Country Buildings (on behalf of Chicken Doggy Enterprises Pty Ltd)
Location:	Lot 114 (No. 96) Chamaeleon Approach, Australind
Reporting Officer:	Manager Planning Services
Authorising Officer:	Director Sustainable Development
File No.:	P436/23, C291/00367, A017091
Attachments:	<ol style="list-style-type: none"> 1. Application Plans [5.3.5.1 - 4 pages] 2. Location Plan [5.3.5.2 - 1 page] 3. Schedule of Submissions [5.3.5.3 - 3 pages] 4. Location Plan of current applications [5.3.5.4 - 1 page]

Summary

An application for Development Approval has been received for a 'Use Not Listed' (Specialist Disability Accommodation) on Lot 114 (No. 96) Chamaeleon Approach, Australind (refer **Attachment 1**). The application is referred to Council as Officers do not have delegation to determine a 'Use Not Listed' that has received objections during advertising.

It is recommended that Council approves the application, subject to appropriate conditions.

Background

Site Description

Lot 114 (No. 96) Chamaeleon Approach, Australind is zoned "Residential Development" under the Shire's District Planning Scheme No. 1 (the Scheme) and is located within the Treendale Estate. The site is of a regular shape with an area of 549m² (refer **Attachment 2**).

Site History

The site has recently been created and is therefore vacant.

Proposal

The application proposes to develop the site for a Specialist Disability Accommodation (SDA) dwelling. The dwelling is designed to cater for disabled tenants, with facilities for an overnight carer. The proposed dwelling has a total floor area of 211.78m² and incorporates the following:

- Three-bedrooms (including a carer's room), with each bedroom having an ensuite bathroom and kitchenette
- One bathroom, which also serves as a semi-ensuite for the carer's room
- Main kitchen, dining and living area with a rear alfresco
- Double garage.

Comment

Land Use

The National Disability Insurance Scheme (NDIS) website describes SDA dwellings “as *housing designed for people with extreme functional impairment or very high support needs*.” The dwellings “*have accessible features to help residents live more independently and allow other supports to be delivered better or more safely*.”

Officers initially considered the proposal as a ‘Community Home’. A similar proposal was recently considered by Council at its Ordinary Meeting on Tuesday, 27 February 2024. Council determined at this Meeting that SDA dwellings are more appropriately classified as ‘Specialist Disability Accommodation’ as a ‘Use Not Listed’.

Clause 4.2.4(b) of the Scheme 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*”. Clause 5.6.1 of the Scheme provides that the intention of the “Residential Development” zone is to “*be progressively developed for residential purposes, and for commercial and other uses normally associated with residential development*.”

Advertising

If Council determines that a proposed ‘Use Not Listed’ may be consistent with the objectives and purposes of the zone, pursuant to Clause 64 of the Planning and Development (Local Planning Schemes) Regulation 2015 (the Deemed Provisions), the application is required to be advertised for a period of at least 28 days for public comment. For the purpose of reducing assessment timeframes, the application has been advertised pursuant to Clause 64 of the Deemed Provisions, in the following manner:

- Letters to landowners and occupiers within 200m of the development site
- Sign advertising the proposal was placed on the development site
- Advertised on the Shire’s website
- Advertised between Wednesday, 10 January 2024 and Wednesday, 7 February 2024, being a period of 28 days.

At the conclusion of the advertising period, a total of 12 submissions were received with seven supporting the proposal and five objecting to the proposal. All submissions have been summarised and provided in **Attachment 3**.

The main topics of the objections received are:

Issue	Officer Comment
Concentration of disability accommodation in one area.	In addition to this proposal, there are nine other proposals within the vicinity (refer Attachment 4). This stage of the estate will contain 121 lots, so the proposed SDA dwellings collectively represent 8% of the lots. The area immediately surrounding the proposed SDA dwellings (south of Lunar Avenue) will contain 38 lots, collectively representing 26% of the lots in this area.

	There is no criteria, guidance, policy or legislative framework that specifies or discusses locational requirements. Consistent with the principles of orderly and proper planning, each application is required to be assessed on its merits.
Impact on safety of the community.	<p>In any assessment, a distinction must be drawn between what people perceive the impacts of a proposal will be, and the reality of those impacts. Whilst it is perfectly reasonable for the community to hold the fears that they do, a decision maker must be satisfied that there is a factual or realistic basis to those fears in order for it to conclude that this use will result in the amenity impacts alleged by the community.</p> <p>Research undertaken by Officers has failed to establish factual evidence that the presence of the proposed SDA dwelling will have a detrimental impact on the safety of the community.</p>

Discussion

Given Council has determined a similar proposal, at its Ordinary Meeting on Tuesday, 27 February 2024, as being more appropriately classified as 'Specialist Disability Accommodation' as a 'Use Not Listed', the use classification of this proposal does not need to be determined again.

The dwelling design has been assessed against the Residential Design Codes (RCodes) and is compliant with the 'deemed-to-comply' requirements. Officers consider there is no requirement for specific conditions relating to the management of intended occupants.

The proposed SDA dwelling will be managed by GR8 Property, which is a NDIS home and housing provider. GR8 has provided the following information regarding an identified need for SDA housing within an area encompassing Australind, Wellesley and Binningup:

- NDIS participant expenditure between March 2022 – February 2023 was \$5,320,000 – \$5,330,000 for daily living support in shared accommodation. This expenditure is forecast to increase to \$12,576,900 for 2025. This expenditure indicates that many participants are living in non-compliant accommodation.
- The number of NDIS participants between March 2022 – February 2023 was 391 – 400 and this number is forecast to increase to 549 participants for 2025.
- Based on the number of participants currently in the area, 6% generally require SDA housing and therefore approximately 32 participants are likely to require SDA housing for 2025.

Conclusion

Officers consider the most appropriate use classification for the proposal is a 'Use Not Listed' as 'Specialist Disability Accommodation', which may be consistent with the objectives and purpose of the "Residential" zone. The proposal is compliant with the RCodes and is therefore recommended for approval, subject to appropriate conditions.

Statutory/Policy Environment

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Regulations 2015

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

(1) *“The local government – “*

- (a) must advertise a complex application for development approval in accordance with subclause (3); and*
- (b) must advertise an application for development approval in accordance with subclause (4) if the application is not a complex application –*
 - i. relates to development that is a class A use in relation to the zone in which the development is located; or*
 - ii. relates to the extension of a non-conforming use; or*
 - iii. relates to development that does not comply with the requirements of this Scheme; or*
 - iv. relates to development of which the local government requires a heritage assessment to be carried out under clause 11(1); or*
 - v. is of a kind identified elsewhere in this Scheme as an application is this required to be advertised; and*
- (c) may advertise any other application for development approval in accordance with subclause (4).*

(2) Subclause (1)(b)(iii) does not apply if the local government is satisfied that the non-compliance with the requirements of this Scheme is of a minor nature.”

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 the Council May: -

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

- Table 4 – Zoning and Development Standards (Residential Development)

Strategic Framework

The Shire’s Strategic Community Plan 2021–2031, states:

Goal 1:	<i>A diversified and thriving economy that offers a wide range of business and work opportunities as well as consumer choice.</i>
Objective 1.3	<i>Sustainable urban, rural and industrial development.</i>
Goal 2:	<i>A safe, accessible and connected community where everyone has the opportunity to contribute and belong.</i>
Objective 2.1	<i>To support people through all stages of life.</i>

Community Engagement

Community Participation Goal

Inform: To provide the public with balanced and objective information to assist them in understanding the problems, alternatives and/or solutions.

Promise to the Community

Inform: We will keep you informed.

Risk Management

The Risk Theme Profile identified as part of this report is **Providing Inaccurate Advice/Information**. The Consequences could be **Environmental, Financial, Reputational or Compliance** if an incorrect assessment of the land use occurs or insufficient community engagement occurs. The risk is considered **Minor** and the likelihood **Unlikely**, given that the report has been thoroughly researched, peer reviewed and provided by a qualified Shire Officer with a recommendation for the proposal to be advertised. This results in a **Low** risk being present.

Budget Implications

Nil.

Authority/Discretion

Quasi-Judicial: When Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include development applications, building permits, applications for other permits/licenses (e.g., under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.

Voting Requirements

Simple Majority

Officer's Recommendation

That Council:

1. Acknowledges that the proposed 'Use Not Listed' detailed in the Application for a Development Approval for Lot 114 (No. 96) Chamaeleon Approach, Australind is comparable to an application considered by Council at its Ordinary Meeting of Tuesday, 27 February 2024 and is therefore considered as "Specialist Disability Accommodation".
2. In accordance with Schedule 2, Clause 67(2)(y) of the Planning and Development (Local Planning Schemes) Regulations 2015, considers the submission received and endorses the Schedule of Submissions at **Attachment 3** on the Application for Development Approval for a 'Use Not Listed' – Specialist Disability Accommodation on Lot 114 (No. 96) Chamaeleon Approach, Australind.

-
3. Approves the Application for Development Approval for a 'Use Not Listed' – Specialist Disability Accommodation on Lot 114 (No. 96) Chamaeleon Approach, Australind, 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 years. If the development is not substantially commenced within this period, a new approval must be obtained before commencing or continuing development.
 - c) Prior to a Building Permit being issued, detailed plans and specifications shall be submitted to, and approved by the Shire. The plans and specifications shall demonstrate that all stormwater will be contained and disposed of on-site and shall identify proposed invert levels, cover levels, pipe sizes and grade. For sandy soils, 1m³ of storage capacity for every 65m² of impermeable surface should be provided.
 - d) Prior to occupation of the approved development, all landscaping shown on the approved plan shall be installed, and thereafter maintained, to the satisfaction of the Shire of Harvey.
 - e) Prior to occupation of the approved development, the vehicle crossover shall be constructed, and thereafter maintained, in accordance with *Policy 17.5 Crossovers – Subsidy* to the satisfaction of the Shire.
 - f) Prior to occupation of the approved development, uniform fencing of 1.8m in height shall be installed along the side and rear boundaries of the development site to the satisfaction of the Shire. Any fences/walls within the front setback area of the property shall comply with the provisions of the Residential Design Codes.
 - g) Prior to occupation of the approved development, all landscaping shown on the approved Landscaping Plan shall be installed, and thereafter maintained, to the satisfaction of the Shire.
4. Advises the Applicant of the following that are not included as conditions:
- a) In accordance with the *Building Act 2011*, a Building Permit, reflecting the use of the dwelling as a Class 3 building, is required to be obtained prior to the commencement of any works on the site.
 - b) The development is required to comply with the Building Regulations 2012, Building Code of Australia, and the Disability (Access to Premises Building) Standards 2010 and AS 1428.1 Design for Access and Mobility.

Item No.:	5.3.6.
Subject:	Use Not Listed – Specialist Disability Accommodation – Lot 84 (No. 42) Lunar Avenue, Australind
Proponent:	WA Country Buildings (on behalf of D P Kaegi)
Location:	Lot 84 (No. 42) Lunar Avenue, Australind
Reporting Officer:	Manager Planning Services
Authorising Officer:	Director Sustainable Development
File No.:	P437/23, C291/00368, A017068
Attachments:	<ol style="list-style-type: none"> 1. Application Plans [5.3.6.1 - 4 pages] 2. Location Plan [5.3.6.2 - 1 page] 3. Schedule of Submissions [5.3.6.3 - 3 pages] 4. Location Plan of current applications [5.3.6.4 - 1 page]

Summary

An application for Development Approval has been received for a 'Use Not Listed' (Specialist Disability Accommodation) on Lot 84 (No. 42) Lunar Avenue, Australind (refer **Attachment 1**). The application is referred to Council as Officers do not have delegation to determine a 'Use Not Listed' that has received objections during advertising.

It is recommended that Council approves the application, subject to appropriate conditions.

Background

Site Description

Lot 84 (No. 42) Lunar Avenue, Australind is zoned "Residential Development" under the Shire's District Planning Scheme No. 1 (the Scheme) and is located within the Treendale Estate. The site is of a regular shape with an area of 544m² (refer **Attachment 2**).

Site History

The site has recently been created and is therefore vacant.

Proposal

The application proposes to develop the site for a Specialist Disability Accommodation (SDA) dwelling. The dwelling is designed to cater for disabled tenants, with facilities for an overnight carer. The proposed dwelling has a total floor area of 211.78m² and incorporates the following:

- Three-bedrooms (including a carer's room), with each bedroom having an ensuite bathroom and kitchenette
- One bathroom, which also serves as a semi-ensuite for the carer's room
- Main kitchen, dining and living area with a rear alfresco
- Double garage.

Comment

Land Use

The National Disability Insurance Scheme (NDIS) website describes SDA dwellings "*as housing designed for people with extreme functional impairment or very high support needs.*" The dwellings

“have accessible features to help residents live more independently and allow other supports to be delivered better or more safely.”

Officers initially considered the proposal as a ‘Community Home’. A similar proposal was recently considered by Council at its Ordinary Meeting on Tuesday, 27 February 2024. Council determined at this Meeting that SDA dwellings are more appropriately classified as ‘Specialist Disability Accommodation’ as a ‘Use Not Listed’.

Clause 4.2.4(b) of the Scheme 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”*. Clause 5.6.1 of the Scheme provides that the intention of the “Residential Development” zone is to *“be progressively developed for residential purposes, and for commercial and other uses normally associated with residential development.”*

Advertising

If Council determines that a proposed ‘Use Not Listed’ may be consistent with the objectives and purposes of the zone, pursuant to Clause 64 of the Planning and Development (Local Planning Schemes) Regulation 2015 (the Deemed Provisions), the application is required to be advertised for a period of at least 28 days for public comment. For the purpose of reducing assessment timeframes, the application has been advertised pursuant to Clause 64 of the Deemed Provisions, in the following manner:

- Letters to landowners and occupiers within 200m of the development site
- Sign advertising the proposal was placed on the development site
- Advertised on the Shire’s website
- Advertised between Wednesday, 10 January 2024 and Wednesday, 7 February 2024, being a period of 28 days.

At the conclusion of the advertising period, a total of 12 submissions were received with five supporting the proposal, one providing conditional support and six objecting to the proposal. All submissions have been summarised and provided in **Attachment 3**.

The main topics of the objections received are:

Issue	Officer Comment
Concentration of disability accommodation in one area.	<p>In addition to this proposal, there are nine other proposals within the vicinity (refer Attachment 4). This stage of the estate will contain 121 lots, so the proposed SDA dwellings collectively represent 8% of the lots. The area immediately surrounding the proposed SDA dwellings (south of Lunar Avenue) will contain 38 lots, collectively representing 26% of the lots in this area.</p> <p>There is no criteria, guidance, policy or legislative framework that specifies or discusses locational requirements. Consistent with the principles of orderly and proper planning, each application is required to be assessed on its merits.</p>
Impact on safety of the community.	In any assessment, a distinction must be drawn between what people perceive the impacts of a proposal will be, and the reality of those impacts. Whilst it is perfectly reasonable for the community to hold the fears that they do, a decision maker must be satisfied that there is a factual or realistic basis to those fears in order for it

	<p>to conclude that this use will result in the amenity impacts alleged by the community.</p> <p>Research undertaken by Officers has failed to establish factual evidence that the presence of the proposed SDA dwelling will have a detrimental impact on the safety of the community.</p>
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Discussion

Given Council has determined a similar proposal, at its Ordinary Meeting on Tuesday, 27 February 2024, as being more appropriately classified as 'Specialist Disability Accommodation' as a 'Use Not Listed', the use classification of this proposal does not need to be determined again.

The dwelling design has been assessed against the Residential Design Codes (RCodes) and is compliant with the 'deemed-to-comply' requirements. Officers consider there is no requirement for specific conditions relating to the management of intended occupants.

The proposed SDA dwelling will be managed by GR8 Property, which is a NDIS home and housing provider. GR8 has provided the following information regarding an identified need for SDA housing within an area encompassing Australind, Wellesley and Binningup:

- NDIS participant expenditure between March 2022 – February 2023 was \$5,320,000 – \$5,330,000 for daily living support in shared accommodation. This expenditure is forecast to increase to \$12,576,900 for 2025. This expenditure indicates that many participants are living in non-compliant accommodation.
- The number of NDIS participants between March 2022 – February 2023 was 391 – 400 and this number is forecast to increase to 549 participants for 2025.
- Based on the number of participants currently in the area, 6% generally require SDA housing and therefore approximately 32 participants are likely to require SDA housing for 2025.

Conclusion

Officers consider the most appropriate use classification for the proposal is a 'Use Not Listed' as 'Specialist Disability Accommodation', which may be consistent with the objectives and purpose of the "Residential" zone. The proposal is compliant with the RCodes and is therefore recommended for approval, subject to appropriate conditions.

Statutory/Policy Environment

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Regulations 2015

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

(1) "The local government – "

(a) must advertise a complex application for development approval in accordance with subclause (3); and

(b) must advertise an application for development approval in accordance with subclause (4) if the application is not a complex application –

- i. *relates to development that is a class A use in relation to the zone in which the development is located; or*
- ii. *relates to the extension of a non-conforming use; or*
- iii. *relates to development that does not comply with the requirements of this Scheme; or*
- iv. *relates to development of which the local government requires a heritage assessment to be carried out under clause 11(1); or*
- v. *is of a kind identified elsewhere in this Scheme as an application is this required to be advertised; and*

(c) *may advertise any other application for development approval in accordance with subclause (4).*

(2) *Subclause (1)(b)(iii) does not apply if the local government is satisfied that the non-compliance with the requirements of this Scheme is of a minor nature.”*

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 the Council May: -

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

- Table 4 – Zoning and Development Standards (Residential Development)

Strategic Framework

The Shire’s Strategic Community Plan 2021–2031, states:

- Goal 1: *A diversified and thriving economy that offers a wide range of business and work opportunities as well as consumer choice.*
- Objective 1.3 *Sustainable urban, rural and industrial development.*
- Goal 2: *A safe, accessible and connected community where everyone has the opportunity to contribute and belong.*
- Objective 2.1 *To support people through all stages of life.*

Community Engagement

Community Participation Goal

Inform: To provide the public with balanced and objective information to assist them in understanding the problems, alternatives and/or solutions.

Promise to the Community

Inform: We will keep you informed.

Risk Management

The Risk Theme Profile identified as part of this report is **Providing Inaccurate Advice/Information**. The Consequences could be **Environmental, Financial, Reputational or Compliance** if an incorrect assessment of the land use occurs or insufficient community engagement occurs. The risk is considered **Minor** and the likelihood **Unlikely**, given that the report has been thoroughly researched, peer reviewed and provided by a qualified Shire Officer with a recommendation for the proposal to be advertised. This results in a **Low** risk being present.

Budget Implications

Nil.

Authority/Discretion

Quasi-Judicial: When Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include development applications, building permits, applications for other permits/licenses (e.g., under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.

Voting Requirements

Simple Majority

Officer's Recommendation

That Council:

1. Acknowledges that the proposed 'Use Not Listed' detailed in the Application for a Development Approval for Lot 84 (No. 42) Lunar Avenue, Australind is comparable to an application considered by Council at its Ordinary Meeting of Tuesday, 27 February 2024 and is therefore considered as "Specialist Disability Accommodation".
2. In accordance with Schedule 2, Clause 67(2)(y) of the Planning and Development (Local Planning Schemes) Regulations 2015, considers the submission received and endorses the Schedule of Submissions at **Attachment 3** on the Application for Development Approval for a 'Use Not Listed' – Specialist Disability Accommodation on Lot 84 (No. 42) Lunar Avenue, Australind.
3. Approves the Application for Development Approval for a 'Use Not Listed' – Specialist Disability Accommodation on Lot 84 (No. 42) Lunar Avenue, Australind, 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 years. If the development is not substantially commenced within this period, a new approval must be obtained before commencing or continuing development.

- c) Prior to a Building Permit being issued, detailed plans and specifications shall be submitted to, and approved by the Shire. The plans and specifications shall demonstrate that all stormwater will be contained and disposed of on-site and shall identify proposed invert levels, cover levels, pipe sizes and grade. For sandy soils, 1m³ of storage capacity for every 65m² of impermeable surface should be provided.
 - d) Prior to occupation of the approved development, all landscaping shown on the approved plan shall be installed, and thereafter maintained, to the satisfaction of the Shire of Harvey.
 - e) Prior to occupation of the approved development, the vehicle crossover shall be constructed, and thereafter maintained, in accordance with *Policy 17.5 Crossovers – Subsidy* to the satisfaction of the Shire.
 - f) Prior to occupation of the approved development, uniform fencing of 1.8m in height shall be installed along the side and rear boundaries of the development site to the satisfaction of the Shire. Any fences/walls within the front setback area of the property shall comply with the provisions of the Residential Design Codes.
 - g) Prior to occupation of the approved development, all landscaping shown on the approved Landscaping Plan shall be installed, and thereafter maintained, to the satisfaction of the Shire.
4. Advises the Applicant of the following that are not included as conditions:
- a) In accordance with the *Building Act 2011*, a Building Permit, reflecting the use of the dwelling as a Class 3 building, is required to be obtained prior to the commencement of any works on the site.
 - b) The development is required to comply with the Building Regulations 2012, Building Code of Australia, and the Disability (Access to Premises Building) Standards 2010 and AS 1428.1 Design for Access and Mobility.

Item No.:	5.3.7.
Subject:	Use Not Listed – Specialist Disability Accommodation – Lot 121 (No. 77) Chamaeleon Approach, Australind
Proponent:	WA Country Buildings (on behalf of Safe Group Investments Pty Ltd)
Location:	Lot 121 (No. 77) Chamaeleon Approach, Australind
Reporting Officer:	Manager Planning Services
Authorising Officer:	Director Sustainable Development
File No.:	P438/23, C291/00370, A017098
Attachments:	<ol style="list-style-type: none"> 1. Application Plans [5.3.7.1 - 4 pages] 2. Location Plan [5.3.7.2 - 1 page] 3. Approved Local Development Plan [5.3.7.3 - 1 page] 4. Location Plan of current applications [5.3.7.4 - 1 page] 5. Schedule of Submissions [5.3.7.5 - 3 pages]

Summary

An application for Development Approval has been received for a 'Use Not Listed' (Specialist Disability Accommodation) on Lot 121 (No. 77) Chamaeleon Approach, Australind (refer **Attachment 1**). The application is referred to Council as Officers do not have delegation to determine a 'Use Not Listed' that has received objections during advertising.

It is recommended that Council approves the application, subject to appropriate conditions.

Background

Site Description

Lot 121 (No. 77) Chamaeleon Approach, Australind is zoned "Residential Development" under the Shire's District Planning Scheme No. 1 (the Scheme) and is located within the Treendale Estate. The site is of a regular shape with an area of 603m² (refer **Attachment 2**).

Site History

The site has recently been created and is therefore vacant. Given the site's proximity to Forrest Highway, it is subject to a Local Development Plan (LDP) (refer **Attachment 3**) requiring the dwelling to be constructed in accordance with the 'Quiet House Design' requirements to reduce impacts from traffic noise.

Proposal

The application proposes to develop the site for a Specialist Disability Accommodation (SDA) dwelling. The dwelling is designed to cater for disabled tenants, with facilities for an overnight carer. The proposed dwelling has a total floor area of 211.84m² and incorporates the following:

- Three-bedrooms (including a carer's room), with each bedroom having an ensuite bathroom and kitchenette
- One bathroom, which also serves as a semi-ensuite for the carer's room
- Main kitchen, dining and living area with a rear alfresco
- Double garage.

Comment

Land Use

The National Disability Insurance Scheme (NDIS) website describes SDA dwellings “as *housing designed for people with extreme functional impairment or very high support needs*.” The dwellings “*have accessible features to help residents live more independently and allow other supports to be delivered better or more safely*.”

Officers initially considered the proposal as a ‘Community Home’. A similar proposal was recently considered by Council at its Ordinary Meeting on Tuesday, 27 February 2024. Council determined at this Meeting that SDA dwellings are more appropriately classified as ‘Specialist Disability Accommodation’ as a ‘Use Not Listed’.

Clause 4.2.4(b) of the Scheme 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*”. Clause 5.6.1 of the Scheme provides that the intention of the “Residential Development” zone is to “*be progressively developed for residential purposes, and for commercial and other uses normally associated with residential development*.”

Advertising

If Council determines that a proposed ‘Use Not Listed’ may be consistent with the objectives and purposes of the zone, pursuant to Clause 64 of the Planning and Development (Local Planning Schemes) Regulation 2015 (the Deemed Provisions), the application is required to be advertised for a period of at least 28 days for public comment. For the purpose of reducing assessment timeframes, the application has been advertised pursuant to Clause 64 of the Deemed Provisions, in the following manner:

- Letters to landowners and occupiers within 200m of the development site
- Sign advertising the proposal was placed on the development site
- Advertised on the Shire’s website
- Advertised between Wednesday, 10 January 2024 and Wednesday, 7 February 2024, being a period of 28 days.

At the conclusion of the advertising period, a total of 12 submissions were received with six supporting the proposal and six objecting to the proposal. All submissions have been summarised and provided in **Attachment 4**.

The main topics of the objections received are:

Issue	Officer Comment
Concentration of disability accommodation in one area.	In addition to this proposal, there are nine other proposals within the vicinity (refer Attachment 5). This stage of the estate will contain 121 lots, so the proposed SDA dwellings collectively represent 8% of the lots. The area immediately surrounding the proposed SDA dwellings (south of Lunar Avenue) will contain 38 lots, collectively representing 26% of the lots in this area.

	There is no criteria, guidance, policy or legislative framework that specifies or discusses locational requirements. Consistent with the principles of orderly and proper planning, each application is required to be assessed on its merits.
Impact on safety of the community.	<p>In any assessment, a distinction must be drawn between what people perceive the impacts of a proposal will be, and the reality of those impacts. Whilst it is perfectly reasonable for the community to hold the fears that they do, a decision maker must be satisfied that there is a factual or realistic basis to those fears in order for it to conclude that this use will result in the amenity impacts alleged by the community.</p> <p>Research undertaken by Officers has failed to establish factual evidence that the presence of the proposed SDA dwelling will have a detrimental impact on the safety of the community.</p>

Discussion

Given Council has determined a similar proposal, at its Ordinary Meeting on Tuesday, 27 February 2024, as being more appropriately classified as 'Specialist Disability Accommodation' as a 'Use Not Listed', the use classification of this proposal does not need to be determined again.

The dwelling design has been assessed against the Residential Design Codes (RCodes) and is compliant with the 'deemed-to-comply' requirements. Officers consider there is no requirement for specific conditions relating to the management of intended occupants.

The proposed SDA dwelling will be managed by GR8 Property, which is a NDIS home and housing provider. GR8 has provided the following information regarding an identified need for SDA housing within an area encompassing Australind, Wellesley and Binningup:

- NDIS participant expenditure between March 2022 – February 2023 was \$5,320,000 – \$5,330,000 for daily living support in shared accommodation. This expenditure is forecast to increase to \$12,576,900 for 2025. This expenditure indicates that many participants are living in non-compliant accommodation.
- The number of NDIS participants between March 2022 – February 2023 was 391 – 400 and this number is forecast to increase to 549 participants for 2025.
- Based on the number of participants currently in the area, 6% generally require SDA housing and therefore approximately 32 participants are likely to require SDA housing for 2025.

Conclusion

Officers consider the most appropriate use classification for the proposal is a 'Use Not Listed' as 'Specialist Disability Accommodation', which may be consistent with the objectives and purpose of the "Residential" zone. The proposal is compliant with the RCodes and is therefore recommended for approval, subject to appropriate conditions.

Statutory/Policy Environment

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Regulations 2015

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

(1) *“The local government – “*

- (a) must advertise a complex application for development approval in accordance with subclause (3); and*
- (b) must advertise an application for development approval in accordance with subclause (4) if the application is not a complex application –*
 - i. relates to development that is a class A use in relation to the zone in which the development is located; or*
 - ii. relates to the extension of a non-conforming use; or*
 - iii. relates to development that does not comply with the requirements of this Scheme; or*
 - iv. relates to development of which the local government requires a heritage assessment to be carried out under clause 11(1); or*
 - v. is of a kind identified elsewhere in this Scheme as an application is this required to be advertised; and*
- (c) may advertise any other application for development approval in accordance with subclause (4).*

(2) Subclause (1)(b)(iii) does not apply if the local government is satisfied that the non-compliance with the requirements of this Scheme is of a minor nature.”

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 the Council May: -

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

- Table 4 – Zoning and Development Standards (Residential Development)

Strategic Framework

The Shire’s Strategic Community Plan 2021–2031, states:

- | | |
|----------------------|---|
| <i>Goal 1:</i> | <i>A diversified and thriving economy that offers a wide range of business and work opportunities as well as consumer choice.</i> |
| <i>Objective 1.3</i> | <i>Sustainable urban, rural and industrial development.</i> |
| <i>Goal 2:</i> | <i>A safe, accessible and connected community where everyone has the opportunity to contribute and belong.</i> |
| <i>Objective 2.1</i> | <i>To support people through all stages of life.</i> |

Community Engagement

Community Participation Goal

Inform: To provide the public with balanced and objective information to assist them in understanding the problems, alternatives and/or solutions.

Promise to the Community

Inform: We will keep you informed.

Risk Management

The Risk Theme Profile identified as part of this report is **Providing Inaccurate Advice/Information**. The Consequences could be **Environmental, Financial, Reputational or Compliance** if an incorrect assessment of the land use occurs or insufficient community engagement occurs. The risk is considered **Minor** and the likelihood **Unlikely**, given that the report has been thoroughly researched, peer reviewed and provided by a qualified Shire Officer with a recommendation for the proposal to be advertised. This results in a **Low** risk being present.

Budget Implications

Nil.

Authority/Discretion

Quasi-Judicial: When Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include development applications, building permits, applications for other permits/licenses (e.g., under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.

Voting Requirements

Simple Majority

Officer's Recommendation

That Council:

1. Acknowledges that the proposed 'Use Not Listed' detailed in the Application for a Development Approval for Lot 121 (No. 77) Chamaeleon Approach, Australind is comparable to an application considered by Council at its Ordinary Meeting of Tuesday, 27 February 2024 and is therefore considered as "Specialist Disability Accommodation".
2. In accordance with Schedule 2, Clause 67(2)(y) of the Planning and Development (Local Planning Schemes) Regulations 2015, considers the submission received and endorses the Schedule of Submissions at **Attachment 4** on the Application for Development Approval for a 'Use Not Listed' – Specialist Disability Accommodation on Lot 121 (No. 77) Chamaeleon Approach, Australind.

3. Approves the Application for Development Approval for a 'Use Not Listed' – Specialist Disability Accommodation on Lot 121 (No. 77) Chamaeleon Approach, Australind, 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 years. If the development is not substantially commenced within this period, a new approval must be obtained before commencing or continuing development.
 - c) Prior to a Building Permit being issued, detailed plans and specifications shall be submitted to, and approved by the Shire. The plans and specifications shall demonstrate that all stormwater will be contained and disposed of on-site and shall identify proposed invert levels, cover levels, pipe sizes and grade. For sandy soils, 1m³ of storage capacity for every 65m² of impermeable surface should be provided.
 - d) Plans submitted with the application for a Building Permit shall demonstrate compliance with the 'Quiet House Design' construction standards for 'Package A' in accordance with the approved Landscape Development Plan dated 27/04/2018 (Plan No. 17-000285P-MP-02), to the satisfaction of the Shire.
 - e) Prior to occupation of the approved development, all landscaping shown on the approved plan shall be installed, and thereafter maintained, to the satisfaction of the Shire of Harvey.
 - f) Prior to occupation of the approved development, the vehicle crossover shall be constructed, and thereafter maintained, in accordance with *Policy 17.5 Crossovers – Subsidy* to the satisfaction of the Shire.
 - g) Prior to occupation of the approved development, uniform fencing of 1.8m in height shall be installed along the side and rear boundaries of the development site to the satisfaction of the Shire. Any fences/walls within the front setback area of the property shall comply with the provisions of the Residential Design Codes.
 - h) Prior to occupation of the approved development, all landscaping shown on the approved Landscaping Plan shall be installed, and thereafter maintained, to the satisfaction of the Shire.
4. Advises the Applicant of the following that are not included as conditions:
 - a) In accordance with the *Building Act 2011*, a Building Permit, reflecting the use of the dwelling as a Class 3 building, is required to be obtained prior to the commencement of any works on the site.
 - b) The development is required to comply with the Building Regulations 2012, Building Code of Australia, and the Disability (Access to Premises Building) Standards 2010 and AS 1428.1 Design for Access and Mobility.

Item No.:	5.3.8.
Subject:	Use Not Listed – Specialist Disability Accommodation – Lot 102 (No. 6) Indus Way, Australind
Proponent:	WA Country Buildings (on behalf of Bevan Family Trust)
Location:	Lot 102 (No. 6) Indus Way, Australind
Reporting Officer:	Manager Planning Services
Authorising Officer:	Director Sustainable Development
File No.:	P443/23, C291/00376, A017079
Attachments:	<ol style="list-style-type: none"> 1. Application Plans [5.3.8.1 - 4 pages] 2. Location Plan [5.3.8.2 - 1 page] 3. Schedule of Submissions [5.3.8.3 - 3 pages] 4. Location Plan of current applications [5.3.8.4 - 1 page]

Summary

An application for Development Approval has been received for a 'Use Not Listed' (Specialist Disability Accommodation) on Lot 102 (No. 6) Indus Way, Australind (refer **Attachment 1**). The application is referred to Council as Officers do not have delegation to determine a 'Use Not Listed' that has received objections during advertising.

It is recommended that Council approves the application, subject to appropriate conditions.

Background

Site Description

Lot 102 (No. 6) Indus Way, Australind is zoned "Residential Development" under the Shire's District Planning Scheme No. 1 (the Scheme) and is located within the Treendale Estate. The site is of a regular shape with an area of 510m² (refer **Attachment 2**).

Site History

The site has recently been created and is therefore vacant.

Proposal

The application proposes to develop the site for a Specialist Disability Accommodation (SDA) dwelling. The dwelling is designed to cater for disabled tenants, with facilities for an overnight carer. The proposed dwelling has a total floor area of 211.78m² and incorporates the following:

- Three-bedrooms (including a carer's room), with each bedroom having an ensuite bathroom and kitchenette
- One bathroom, which also serves as a semi-ensuite for the carer's room
- Main kitchen, dining and living area with a rear alfresco
- Double garage.

Comment

Land Use

The National Disability Insurance Scheme (NDIS) website describes SDA dwellings "*as housing designed for people with extreme functional impairment or very high support needs.*" The dwellings

“have accessible features to help residents live more independently and allow other supports to be delivered better or more safely.”

Officers initially considered the proposal as a ‘Community Home’. A similar proposal was recently considered by Council at its Ordinary Meeting on Tuesday, 27 February 2024. Council determined at this Meeting that SDA dwellings are more appropriately classified as ‘Specialist Disability Accommodation’ as a ‘Use Not Listed’.

Clause 4.2.4(b) of the Scheme 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”*. Clause 5.6.1 of the Scheme provides that the intention of the “Residential Development” zone is to *“be progressively developed for residential purposes, and for commercial and other uses normally associated with residential development.”*

Advertising

If Council determines that a proposed ‘Use Not Listed’ may be consistent with the objectives and purposes of the zone, pursuant to Clause 64 of the Planning and Development (Local Planning Schemes) Regulation 2015 (the Deemed Provisions), the application is required to be advertised for a period of at least 28 days for public comment. For the purpose of reducing assessment timeframes, the application has been advertised pursuant to Clause 64 of the Deemed Provisions, in the following manner:

- Letters to landowners and occupiers within 200m of the development site
- Sign advertising the proposal was placed on the development site
- Advertised on the Shire’s website
- Advertised between Wednesday, 10 January 2024 and Wednesday, 7 February 2024, being a period of 28 days.

At the conclusion of the advertising period, a total of 12 submissions were received with five supporting the proposal, one providing conditional support and six objecting to the proposal. All submissions have been summarised and provided in **Attachment 3**.

The main topics of the objections received are:

Issue	Officer Comment
Concentration of disability accommodation in one area.	<p>In addition to this proposal, there are nine other proposals within the vicinity (refer Attachment 4). This stage of the estate will contain 121 lots, so the proposed SDA dwellings collectively represent 8% of the lots. The area immediately surrounding the proposed SDA dwellings (south of Lunar Avenue) will contain 38 lots, collectively representing 26% of the lots in this area.</p> <p>There is no criteria, guidance, policy or legislative framework that specifies or discusses locational requirements. Consistent with the principles of orderly and proper planning, each application is required to be assessed on its merits.</p>
Impact on safety of the community.	In any assessment, a distinction must be drawn between what people perceive the impacts of a proposal will be, and the reality of those impacts. Whilst it is perfectly reasonable for the community to hold the fears that they do, a decision maker must be satisfied that there is a factual or realistic basis to those fears in order for it

	<p>to conclude that this use will result in the amenity impacts alleged by the community.</p> <p>Research undertaken by Officers has failed to establish factual evidence that the presence of the proposed SDA dwelling will have a detrimental impact on the safety of the community.</p>
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Discussion

Given Council has determined a similar proposal, at its Ordinary Meeting on Tuesday, 27 February 2024, as being more appropriately classified as 'Specialist Disability Accommodation' as a 'Use Not Listed', the use classification of this proposal does not need to be determined again.

The dwelling design has been assessed against the Residential Design Codes (RCodes) and is compliant with the 'deemed-to-comply' requirements. Officers consider there is no requirement for specific conditions relating to the management of intended occupants.

The proposed SDA dwelling will be managed by GR8 Property, which is a NDIS home and housing provider. GR8 has provided the following information regarding an identified need for SDA housing within an area encompassing Australind, Wellesley and Binningup:

- NDIS participant expenditure between March 2022 – February 2023 was \$5,320,000 – \$5,330,000 for daily living support in shared accommodation. This expenditure is forecast to increase to \$12,576,900 for 2025. This expenditure indicates that many participants are living in non-compliant accommodation.
- The number of NDIS participants between March 2022 – February 2023 was 391 – 400 and this number is forecast to increase to 549 participants for 2025.
- Based on the number of participants currently in the area, 6% generally require SDA housing and therefore approximately 32 participants are likely to require SDA housing for 2025.

Conclusion

Officers consider the most appropriate use classification for the proposal is a 'Use Not Listed' as 'Specialist Disability Accommodation', which may be consistent with the objectives and purpose of the "Residential" zone. The proposal is compliant with the RCodes and is therefore recommended for approval, subject to appropriate conditions.

Statutory/Policy Environment

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Regulations 2015

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

(1) "The local government – "

(a) must advertise a complex application for development approval in accordance with subclause (3); and

(b) must advertise an application for development approval in accordance with subclause (4) if the application is not a complex application –

- i. *relates to development that is a class A use in relation to the zone in which the development is located; or*
 - ii. *relates to the extension of a non-conforming use; or*
 - iii. *relates to development that does not comply with the requirements of this Scheme; or*
 - iv. *relates to development of which the local government requires a heritage assessment to be carried out under clause 11(1); or*
 - v. *is of a kind identified elsewhere in this Scheme as an application is this required to be advertised; and*
- (c) *may advertise any other application for development approval in accordance with subclause (4).*
- (2) *Subclause (1)(b)(iii) does not apply if the local government is satisfied that the non-compliance with the requirements of this Scheme is of a minor nature.”*

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 the Council May: -

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

- Table 4 – Zoning and Development Standards (Residential Development)

Strategic Framework

The Shire’s Strategic Community Plan 2021–2031, states:

- | | |
|---------------|---|
| Goal 1: | <i>A diversified and thriving economy that offers a wide range of business and work opportunities as well as consumer choice.</i> |
| Objective 1.3 | <i>Sustainable urban, rural and industrial development.</i> |
| Goal 2: | <i>A safe, accessible and connected community where everyone has the opportunity to contribute and belong.</i> |
| Objective 2.1 | <i>To support people through all stages of life.</i> |

Community Engagement

Community Participation Goal

Inform: To provide the public with balanced and objective information to assist them in understanding the problems, alternatives and/or solutions.

Promise to the Community

Inform: We will keep you informed.

Risk Management

The Risk Theme Profile identified as part of this report is **Providing Inaccurate Advice/Information**. The Consequences could be **Environmental, Financial, Reputational or Compliance** if an incorrect assessment of the land use occurs or insufficient community engagement occurs. The risk is considered **Minor** and the likelihood **Unlikely**, given that the report has been thoroughly researched, peer reviewed and provided by a qualified Shire Officer with a recommendation for the proposal to be advertised. This results in a **Low** risk being present.

Budget Implications

Nil.

Authority/Discretion

Quasi-Judicial: When Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include development applications, building permits, applications for other permits/licenses (e.g., under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.

Voting Requirements

Simple Majority

Officer's Recommendation

That Council:

1. Acknowledges that the proposed 'Use Not Listed' detailed in the Application for a Development Approval for Lot 102 (No. 6) Indus Way, Australind is comparable to an application considered by Council at its Ordinary Meeting of Tuesday, 27 February 2024 and is therefore considered as "Specialist Disability Accommodation".
2. In accordance with Schedule 2, Clause 67(2)(y) of the Planning and Development (Local Planning Schemes) Regulations 2015, considers the submission received and endorses the Schedule of Submissions at **Attachment 3** on the Application for Development Approval for a 'Use Not Listed' – Specialist Disability Accommodation on Lot 102 (No. 6) Indus Way, Australind.
3. Approves the Application for Development Approval for a 'Use Not Listed' – Specialist Disability Accommodation on Lot 102 (No. 6) Indus Way, Australind, 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 years. If the development is not substantially commenced within this period, a new approval must be obtained before commencing or continuing development.

- c) Prior to a Building Permit being issued, detailed plans and specifications shall be submitted to, and approved by the Shire. The plans and specifications shall demonstrate that all stormwater will be contained and disposed of on-site and shall identify proposed invert levels, cover levels, pipe sizes and grade. For sandy soils, 1m³ of storage capacity for every 65m² of impermeable surface should be provided.
 - d) Prior to occupation of the approved development, all landscaping shown on the approved plan shall be installed, and thereafter maintained, to the satisfaction of the Shire of Harvey.
 - e) Prior to occupation of the approved development, the vehicle crossover shall be constructed, and thereafter maintained, in accordance with *Policy 17.5 Crossovers – Subsidy* to the satisfaction of the Shire
 - f) Prior to occupation of the approved development, uniform fencing of 1.8m in height shall be installed along the side and rear boundaries of the development site to the satisfaction of the Shire. Any fences/walls within the front setback area of the property shall comply with the provisions of the Residential Design Codes.
 - g) Prior to occupation of the approved development, all landscaping shown on the approved Landscaping Plan shall be installed, and thereafter maintained, to the satisfaction of the Shire.
4. Advises the Applicant of the following that are not included as conditions:
- a) In accordance with the *Building Act 2011*, a Building Permit, reflecting the use of the dwelling as a Class 3 building, is required to be obtained prior to the commencement of any works on the site.
 - b) The development is required to comply with the Building Regulations 2012, Building Code of Australia, and the Disability (Access to Premises Building) Standards 2010 and AS 1428.1 Design for Access and Mobility.

Item No.:	5.3.9.
Subject:	Use Not Listed – Specialist Disability Accommodation – Lot 101 (No. 108) Chamaeleon Approach, Australind
Proponent:	WA Country Buildings (on behalf of S M Cribb)
Location:	Lot 101 (No. 108) Chamaeleon Approach, Australind
Reporting Officer:	Manager Planning Services
Authorising Officer:	Director Sustainable Development
File No.:	P451/23, C291/00388, A017078
Attachments:	<ol style="list-style-type: none"> 1. Application Plans [5.3.9.1 - 4 pages] 2. Location Plan [5.3.9.2 - 1 page] 3. Schedule of Submissions [5.3.9.3 - 3 pages] 4. Location Plan of current applications [5.3.9.4 - 1 page]

Summary

An application for Development Approval has been received for a 'Use Not Listed' (Specialist Disability Accommodation) on Lot 101 (No. 108) Chamaeleon Approach, Australind (refer **Attachment 1**). The application is referred to Council as Officers do not have delegation to determine a 'Use Not Listed' that has received objections during advertising.

It is recommended that Council approves the application, subject to appropriate conditions.

Background

Site Description

Lot 101 (No. 108) Chamaeleon Approach, Australind is zoned "Residential Development" under the Shire's District Planning Scheme No. 1 (the Scheme) and is located within the Treendale Estate. The site is of a regular shape with an area of 551m² (refer **Attachment 2**).

Site History

The site has recently been created and is therefore vacant.

Proposal

The application proposes to develop the site for a Specialist Disability Accommodation (SDA) dwelling. The dwelling is designed to cater for disabled tenants, with facilities for an overnight carer. The proposed dwelling has a total floor area of 216.45m² and incorporates the following:

- Three-bedrooms (including a carer's room), with each bedroom having an ensuite bathroom and kitchenette
- One bathroom, which also serves as a semi-ensuite for the carer's room
- Main kitchen, dining and living area with a rear alfresco
- Double garage.

Comment

Land Use

The National Disability Insurance Scheme (NDIS) website describes SDA dwellings "*as housing designed for people with extreme functional impairment or very high support needs.*" The dwellings

“have accessible features to help residents live more independently and allow other supports to be delivered better or more safely.”

Officers initially considered the proposal as a ‘Community Home’. A similar proposal was recently considered by Council at its Ordinary Meeting on Tuesday, 27 February 2024. Council determined at this Meeting that SDA dwellings are more appropriately classified as ‘Specialist Disability Accommodation’ as a ‘Use Not Listed’.

Clause 4.2.4(b) of the Scheme 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”*. Clause 5.6.1 of the Scheme provides that the intention of the “Residential Development” zone is to *“be progressively developed for residential purposes, and for commercial and other uses normally associated with residential development.”*

Advertising

If Council determines that a proposed ‘Use Not Listed’ may be consistent with the objectives and purposes of the zone, pursuant to Clause 64 of the Planning and Development (Local Planning Schemes) Regulation 2015 (the Deemed Provisions), the application is required to be advertised for a period of at least 28 days for public comment. For the purpose of reducing assessment timeframes, the application has been advertised pursuant to Clause 64 of the Deemed Provisions, in the following manner:

- Letters to landowners and occupiers within 200m of the development site
- Sign advertising the proposal was placed on the development site
- Advertised on the Shire’s website
- Advertised between Wednesday, 10 January 2024 and Wednesday, 7 February 2024, being a period of 28 days.

At the conclusion of the advertising period, a total of 12 submissions were received with six supporting the proposal and six objecting to the proposal. All submissions have been summarised and provided in **Attachment 3**.

The main topics of the objections received are:

Issue	Officer Comment
Concentration of disability accommodation in one area.	<p>In addition to this proposal, there are nine other proposals within the vicinity (refer Attachment 4). This stage of the estate will contain 121 lots, so the proposed SDA dwellings collectively represent 8% of the lots. The area immediately surrounding the proposed SDA dwellings (south of Lunar Avenue) will contain 38 lots, collectively representing 26% of the lots in this area.</p> <p>There is no criteria, guidance, policy or legislative framework that specifies or discusses locational requirements. Consistent with the principles of orderly and proper planning, each application is required to be assessed on its merits.</p>
Impact on safety of the community.	In any assessment, a distinction must be drawn between what people perceive the impacts of a proposal will be, and the reality of those impacts. Whilst it is perfectly reasonable for the community to hold the fears that they do, a decision maker must be satisfied that there is a factual or realistic basis to those fears in order for it

	<p>to conclude that this use will result in the amenity impacts alleged by the community.</p> <p>Research undertaken by Officers has failed to establish factual evidence that the presence of the proposed SDA dwelling will have a detrimental impact on the safety of the community.</p>
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Discussion

Given Council has determined a similar proposal, at its Ordinary Meeting on Tuesday, 27 February 2024, as being more appropriately classified as 'Specialist Disability Accommodation' as a 'Use Not Listed', the use classification of this proposal does not need to be determined again.

The dwelling design has been assessed against the Residential Design Codes (RCodes) and is compliant with the 'deemed-to-comply' requirements. Officers consider there is no requirement for specific conditions relating to the management of intended occupants.

The proposed SDA dwelling will be managed by GR8 Property, which is a NDIS home and housing provider. GR8 has provided the following information regarding an identified need for SDA housing within an area encompassing Australind, Wellesley and Binningup:

- NDIS participant expenditure between March 2022 – February 2023 was \$5,320,000 – \$5,330,000 for daily living support in shared accommodation. This expenditure is forecast to increase to \$12,576,900 for 2025. This expenditure indicates that many participants are living in non-compliant accommodation.
- The number of NDIS participants between March 2022 – February 2023 was 391 – 400 and this number is forecast to increase to 549 participants for 2025.
- Based on the number of participants currently in the area, 6% generally require SDA housing and therefore approximately 32 participants are likely to require SDA housing for 2025.

Conclusion

Officers consider the most appropriate use classification for the proposal is a 'Use Not Listed' as 'Specialist Disability Accommodation', which may be consistent with the objectives and purpose of the "Residential" zone. The proposal is compliant with the RCodes and is therefore recommended for approval, subject to appropriate conditions.

Statutory/Policy Environment

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Regulations 2015

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

(1) "The local government – "

(a) must advertise a complex application for development approval in accordance with subclause (3); and

(b) must advertise an application for development approval in accordance with subclause (4) if the application is not a complex application –

- i. *relates to development that is a class A use in relation to the zone in which the development is located; or*
 - ii. *relates to the extension of a non-conforming use; or*
 - iii. *relates to development that does not comply with the requirements of this Scheme; or*
 - iv. *relates to development of which the local government requires a heritage assessment to be carried out under clause 11(1); or*
 - v. *is of a kind identified elsewhere in this Scheme as an application is this required to be advertised; and*
- (c) *may advertise any other application for development approval in accordance with subclause (4).*
- (2) *Subclause (1)(b)(iii) does not apply if the local government is satisfied that the non-compliance with the requirements of this Scheme is of a minor nature.”*

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 the Council May: -

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

- Table 4 – Zoning and Development Standards (Residential Development)

Strategic Framework

The Shire’s Strategic Community Plan 2021–2031, states:

- | | |
|---------------|---|
| Goal 1: | <i>A diversified and thriving economy that offers a wide range of business and work opportunities as well as consumer choice.</i> |
| Objective 1.3 | <i>Sustainable urban, rural and industrial development.</i> |
| Goal 2: | <i>A safe, accessible and connected community where everyone has the opportunity to contribute and belong.</i> |
| Objective 2.1 | <i>To support people through all stages of life.</i> |

Community Engagement

Community Participation Goal

Inform: To provide the public with balanced and objective information to assist them in understanding the problems, alternatives and/or solutions.

Promise to the Community

Inform: We will keep you informed.

Risk Management

The Risk Theme Profile identified as part of this report is **Providing Inaccurate Advice/Information**. The Consequences could be **Environmental, Financial, Reputational or Compliance** if an incorrect assessment of the land use occurs or insufficient community engagement occurs. The risk is considered **Minor** and the likelihood **Unlikely**, given that the report has been thoroughly researched, peer reviewed and provided by a qualified Shire Officer with a recommendation for the proposal to be advertised. This results in a **Low** risk being present.

Budget Implications

Nil.

Authority/Discretion

Quasi-Judicial: When Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include development applications, building permits, applications for other permits/licenses (e.g., under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.

Voting Requirements

Simple Majority

Officer's Recommendation

That Council:

1. Acknowledges that the proposed 'Use Not Listed' detailed in the Application for a Development Approval for Lot 101 (No. 108) Chamaeleon Approach, Australind is comparable to an application considered by Council at its Ordinary Meeting of Tuesday, 27 February 2024 and is therefore considered as "Specialist Disability Accommodation".
2. In accordance with Schedule 2, Clause 67(2)(y) of the Planning and Development (Local Planning Schemes) Regulations 2015, considers the submission received and endorses the Schedule of Submissions at **Attachment 3** on the Application for Development Approval for a 'Use Not Listed' – Specialist Disability Accommodation on Lot 101 (No. 108) Chamaeleon Approach, Australind.
3. Approves the Application for Development Approval for a 'Use Not Listed' – Specialist Disability Accommodation on Lot 101 (No. 108) Chamaeleon Approach, Australind, 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 years. If the development is not substantially commenced within this period, a new approval must be obtained before commencing or continuing development.

- c) Prior to a Building Permit being issued, detailed plans and specifications shall be submitted to, and approved by the Shire. The plans and specifications shall demonstrate that all stormwater will be contained and disposed of on-site and shall identify proposed invert levels, cover levels, pipe sizes and grade. For sandy soils, 1m³ of storage capacity for every 65m² of impermeable surface should be provided.
 - d) Prior to occupation of the approved development, all landscaping shown on the approved plan shall be installed, and thereafter maintained, to the satisfaction of the Shire of Harvey.
 - e) Prior to occupation of the approved development, the vehicle crossover shall be constructed, and thereafter maintained, in accordance with *Policy 17.5 Crossovers – Subsidy* to the satisfaction of the Shire.
 - f) Prior to occupation of the approved development, uniform fencing of 1.8m in height shall be installed along the side and rear boundaries of the development site to the satisfaction of the Shire. Any fences/walls within the front setback area of the property shall comply with the provisions of the Residential Design Codes.
 - g) Prior to occupation of the approved development, all landscaping shown on the approved Landscaping Plan shall be installed, and thereafter maintained, to the satisfaction of the Shire.
4. Advises the Applicant of the following that are not included as conditions:
- a) In accordance with the *Building Act 2011*, a Building Permit, reflecting the use of the dwelling as a Class 3 building, is required to be obtained prior to the commencement of any works on the site.
 - b) The development is required to comply with the Building Regulations 2012, Building Code of Australia, and the Disability (Access to Premises Building) Standards 2010 and AS 1428.1 Design for Access and Mobility.

Item No.:	5.3.10.
Subject:	Use Not Listed – Specialist Disability Accommodation – Lot 105 (No. 12) Indus Way, Australind
Proponent:	WA Country Buildings (on behalf of K K P Gopireddy)
Location:	Lot 105 (No. 12) Indus Way, Australind
Reporting Officer:	Manager Planning Services
Authorising Officer:	Director Sustainable Development
File No.:	P453/23, C291/00389, A017082
Attachments:	<ol style="list-style-type: none"> 1. Application Plans [5.3.10.1 - 4 pages] 2. Location Plan [5.3.10.2 - 1 page] 3. Schedule of Submissions [5.3.10.3 - 3 pages] 4. Location Plan of current applications [5.3.10.4 - 1 page]

Summary

An application for Development Approval has been received for a 'Use Not Listed' (Specialist Disability Accommodation) on Lot 105 (No. 12) Indus Way, Australind (refer **Attachment 1**). The application is referred to Council as Officers do not have delegation to determine a 'Use Not Listed' that has received objections during advertising.

It is recommended that Council approves the application, subject to appropriate conditions.

Background

Site Description

Lot 105 (No. 12) Indus Way, Australind is zoned "Residential Development" under the Shire's District Planning Scheme No. 1 (the Scheme) and is located within the Treendale Estate. The site is of a regular shape with an area of 510m² (refer **Attachment 2**).

Site History

The site has recently been created and is therefore vacant.

Proposal

The application proposes to develop the site for a Specialist Disability Accommodation (SDA) dwelling. The dwelling is designed to cater for disabled tenants, with facilities for an overnight carer. The proposed dwelling has a total floor area of 211.78m² and incorporates the following:

- Three-bedrooms (including a carer's room), with each bedroom having an ensuite bathroom and kitchenette
- One bathroom, which also serves as a semi-ensuite for the carer's room
- Main kitchen, dining and living area with a rear alfresco

Double garage.

Comment

Land Use

The National Disability Insurance Scheme (NDIS) website describes SDA dwellings "as housing designed for people with extreme functional impairment or very high support needs." The dwellings

“have accessible features to help residents live more independently and allow other supports to be delivered better or more safely.”

Officers initially considered the proposal as a ‘Community Home’. A similar proposal was recently considered by Council at its Ordinary Meeting on Tuesday, 27 February 2024. Council determined at this Meeting that SDA dwellings are more appropriately classified as ‘Specialist Disability Accommodation’ as a ‘Use Not Listed’.

Clause 4.2.4(b) of the Scheme 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”*. Clause 5.6.1 of the Scheme provides that the intention of the “Residential Development” zone is to *“be progressively developed for residential purposes, and for commercial and other uses normally associated with residential development.”*

Advertising

If Council determines that a proposed ‘Use Not Listed’ may be consistent with the objectives and purposes of the zone, pursuant to Clause 64 of the Planning and Development (Local Planning Schemes) Regulation 2015 (the Deemed Provisions), the application is required to be advertised for a period of at least 28 days for public comment. For the purpose of reducing assessment timeframes, the application has been advertised pursuant to Clause 64 of the Deemed Provisions, in the following manner:

- Letters to landowners and occupiers within 200m of the development site
- Sign advertising the proposal was placed on the development site
- Advertised on the Shire’s website
- Advertised between Wednesday, 10 January 2024 and Wednesday, 7 February 2024, being a period of 28 days.

At the conclusion of the advertising period, a total of 12 submissions were received with six supporting the proposal, one providing conditional support and five objecting to the proposal. All submissions have been summarised and provided in **Attachment 3**.

The main topics of the objections received are:

Issue	Officer Comment
Concentration of disability accommodation in one area.	<p>In addition to this proposal, there are nine other proposals within the vicinity (refer Attachment 4). This stage of the estate will contain 121 lots, so the proposed SDA dwellings collectively represent 8% of the lots. The area immediately surrounding the proposed SDA dwellings (south of Lunar Avenue) will contain 38 lots, collectively representing 26% of the lots in this area.</p> <p>There is no criteria, guidance, policy or legislative framework that specifies or discusses locational requirements. Consistent with the principles of orderly and proper planning, each application is required to be assessed on its merits.</p>
Impact on safety of the community.	In any assessment, a distinction must be drawn between what people perceive the impacts of a proposal will be, and the reality of those impacts. Whilst it is perfectly reasonable for the community to hold the fears that they do, a decision maker must be satisfied that there is a factual or realistic basis to those fears in order for it

	<p>to conclude that this use will result in the amenity impacts alleged by the community.</p> <p>Research undertaken by Officers has failed to establish factual evidence that the presence of the proposed SDA dwelling will have a detrimental impact on the safety of the community.</p>
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Discussion

Given Council has determined a similar proposal, at its Ordinary Meeting on Tuesday, 27 February 2024, as being more appropriately classified as 'Specialist Disability Accommodation' as a 'Use Not Listed', the use classification of this proposal does not need to be determined again.

The dwelling design has been assessed against the Residential Design Codes (RCodes) and is compliant with the 'deemed-to-comply' requirements. Officers consider there is no requirement for specific conditions relating to the management of intended occupants.

The proposed SDA dwelling will be managed by GR8 Property, which is a NDIS home and housing provider. GR8 has provided the following information regarding an identified need for SDA housing within an area encompassing Australind, Wellesley and Binningup:

- NDIS participant expenditure between March 2022 – February 2023 was \$5,320,000 – \$5,330,000 for daily living support in shared accommodation. This expenditure is forecast to increase to \$12,576,900 for 2025. This expenditure indicates that many participants are living in non-compliant accommodation.
- The number of NDIS participants between March 2022 – February 2023 was 391 – 400 and this number is forecast to increase to 549 participants for 2025.
- Based on the number of participants currently in the area, 6% generally require SDA housing and therefore approximately 32 participants are likely to require SDA housing for 2025.

Conclusion

Officers consider the most appropriate use classification for the proposal is a 'Use Not Listed' as 'Specialist Disability Accommodation', which may be consistent with the objectives and purpose of the "Residential" zone. The proposal is compliant with the RCodes and is therefore recommended for approval, subject to appropriate conditions.

Statutory/Policy Environment

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Regulations 2015

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

(1) "The local government – "

(a) must advertise a complex application for development approval in accordance with subclause (3); and

(b) must advertise an application for development approval in accordance with subclause (4) if the application is not a complex application –

- i. *relates to development that is a class A use in relation to the zone in which the development is located; or*
 - ii. *relates to the extension of a non-conforming use; or*
 - iii. *relates to development that does not comply with the requirements of this Scheme; or*
 - iv. *relates to development of which the local government requires a heritage assessment to be carried out under clause 11(1); or*
 - v. *is of a kind identified elsewhere in this Scheme as an application is this required to be advertised; and*
- (c) *may advertise any other application for development approval in accordance with subclause (4).*
- (2) *Subclause (1)(b)(iii) does not apply if the local government is satisfied that the non-compliance with the requirements of this Scheme is of a minor nature."*

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 the Council May: -

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

- Table 4 – Zoning and Development Standards (Residential Development)

Strategic Framework

The Shire's Strategic Community Plan 2021–2031, states:

- | | |
|---------------|---|
| Goal 1: | <i>A diversified and thriving economy that offers a wide range of business and work opportunities as well as consumer choice.</i> |
| Objective 1.3 | <i>Sustainable urban, rural and industrial development.</i> |
| Goal 2: | <i>A safe, accessible and connected community where everyone has the opportunity to contribute and belong.</i> |
| Objective 2.1 | <i>To support people through all stages of life.</i> |

Community Engagement

Community Participation Goal

Inform: To provide the public with balanced and objective information to assist them in understanding the problems, alternatives and/or solutions.

Promise to the Community

Inform: We will keep you informed.

Risk Management

The Risk Theme Profile identified as part of this report is **Providing Inaccurate Advice/Information**. The Consequences could be **Environmental, Financial, Reputational or Compliance** if an incorrect assessment of the land use occurs or insufficient community engagement occurs. The risk is considered **Minor** and the likelihood **Unlikely**, given that the report has been thoroughly researched, peer reviewed and provided by a qualified Shire Officer with a recommendation for the proposal to be advertised. This results in a **Low** risk being present.

Budget Implications

Nil.

Authority/Discretion

Quasi-Judicial: When Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include development applications, building permits, applications for other permits/licenses (e.g., under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.

Voting Requirements

Simple Majority

Officer's Recommendation

That Council:

1. Acknowledges that the proposed 'Use Not Listed' detailed in the Application for a Development Approval for Lot 105 (No. 12) Indus Way, Australind is comparable to an application considered by Council at its Ordinary Meeting of Tuesday, 27 February 2024 and is therefore considered as "Specialist Disability Accommodation".
2. In accordance with Schedule 2, Clause 67(2)(y) of the Planning and Development (Local Planning Schemes) Regulations 2015, considers the submission received and endorses the Schedule of Submissions at **Attachment 3** on the Application for Development Approval for a 'Use Not Listed' – Specialist Disability Accommodation on Lot 105 (No. 12) Indus Way, Australind.
3. Approves the Application for Development Approval for a 'Use Not Listed' – Specialist Disability Accommodation on Lot 105 (No. 12) Indus Way, Australind, 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 years. If the development is not substantially commenced within this period, a new approval must be obtained before commencing or continuing development.

- c) Prior to a Building Permit being issued, detailed plans and specifications shall be submitted to, and approved by the Shire. The plans and specifications shall demonstrate that all stormwater will be contained and disposed of on-site and shall identify proposed invert levels, cover levels, pipe sizes and grade. For sandy soils, 1m³ of storage capacity for every 65m² of impermeable surface should be provided.
 - d) Prior to occupation of the approved development, all landscaping shown on the approved plan shall be installed, and thereafter maintained, to the satisfaction of the Shire of Harvey.
 - e) Prior to occupation of the approved development, the vehicle crossover shall be constructed, and thereafter maintained, in accordance with *Policy 17.5 Crossovers – Subsidy* to the satisfaction of the Shire.
 - f) Prior to occupation of the approved development, uniform fencing of 1.8m in height shall be installed along the side and rear boundaries of the development site to the satisfaction of the Shire. Any fences/walls within the front setback area of the property shall comply with the provisions of the Residential Design Codes.
 - g) Prior to occupation of the approved development, all landscaping shown on the approved Landscaping Plan shall be installed, and thereafter maintained, to the satisfaction of the Shire.
4. Advises the Applicant of the following that are not included as conditions:
- a) In accordance with the *Building Act 2011*, a Building Permit, reflecting the use of the dwelling as a Class 3 building, is required to be obtained prior to the commencement of any works on the site.
 - b) The development is required to comply with the Building Regulations 2012, Building Code of Australia, and the Disability (Access to Premises Building) Standards 2010 and AS 1428.1 Design for Access and Mobility.

Item No.:	5.3.11.
Subject:	Proposed Structure Plan (Treendale East) – Endorsement
Proponent:	CDP Town Planning and Urban Design
Location:	Lots 151, 152 and 50 Raymond Road, Roelands
Reporting Officer:	Manager Planning Services
Authorising Officer:	Director Sustainable Development
File No.:	P369/23, C299/00004
Attachments:	<ol style="list-style-type: none"> 1. Treendale East Structure Plan - Part One & Part Two [5.3.11.1 - 102 pages] 2. Location Plan [5.3.11.2 - 1 page] 3. Treendale East Structure Plan - Technical Appendices [5.3.11.3 - 797 pages] 4. Summary of Submissions [5.3.11.4 - 16 pages] 5. Schedule of Modifications [5.3.11.5 - 2 pages]

Summary

A proposed Structure Plan for the area currently known as ‘Treendale East’, encompassing Lots 151, 152 and 50 Raymond Road, Roelands (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).

The Structure Plan has been advertised for public comment and it is recommended that Council supports the proposed Structure Plan, subject to modifications to address matters raised by Officers and agency submissions.

Background

Site Description

Lots 151, 152 and 50 Raymond Road, Roelands (refer **Attachment 2**) are zoned “General Farming” and Intensive Farming” under the Shire’s District Planning Scheme No. 1 (the Scheme) and are proposed to be zoned “Rural” and “Priority Agriculture” under the Shire’s new Local Planning Scheme No. 2. The site has recently been rezoned under the Greater Bunbury Region Scheme to “Urban Deferred”.

The land is bounded by Raymond Road to the south, Forrest Highway to the west and the Bunbury Outer Ring Road (BORR) to the north and east.

The land is comprised of open ground covered with short grass with isolated clusters of tall trees, mostly near drainage channels and at the intersection of the three lots. The north-west corner of Lot 151 is covered with dense trees and bushes. A mix of shallow hills and flat, level areas make up the southern half of the site on Lots 152 and 50, while Lot 151 is generally flat. Natural and manmade drainage channels run through isolated sections of each lot. Stockpiled materials from some of the man-made drainage channels form large windrows that run parallel to the channel.

Site History

The site has generally been used for grazing. Lot 50 contains an outbuilding and Lot 151 contains two derelict corrugated iron outbuildings.

Proposal

The proposed Structure Plan provides an overarching planning framework to guide and facilitate the development of 188.5ha and provides for an integrated and coordinated approach to the provision of

an appropriate mix of residential land uses, supporting commercial and community purposes development, and infrastructure to create a strong and vibrant new community.

The vision for Treendale East is to develop a future-ready contemporary and sustainable residential community that has a distinctive identity and sense of place in response to its physical and social context. The Treendale East development will provide a well-treed, pedestrian and cycle-friendly environment for residents and visitors, with the regenerated Treendale Gully as a visual and activity focal point for passive recreation and interpretation of Wardandi cultural heritage. Engagement with Wardandi elders will inform the detailed design of the waterway and foreshore remediation.

The Structure Plan vision and preliminary design concept has been prepared following the proponent's engagement with multiple subject matter experts and service delivery agencies (including the Shire), to understand how genuinely sustainable buildings and public realm can be implemented. The proponent has acknowledged that ongoing engagement, goodwill, and cooperation between the developer and stakeholders will be required to achieve the genuinely innovative and successful outcomes sought.

The Structure Plan states that the *“approach to design has involved a rigorous multidisciplinary process with continuous reflection upon the purpose of the Structure Plan and improving sustainability outcomes.”*

The Structure Plan incorporates the following three distinct precincts:

- Neighbourhood Centre

With a maximum of 4,000m² net lettable area, and proposed density of R80 for residential dwellings, the following objectives are proposed:

- To provide a diverse range of land uses to meet the daily and weekly needs of residents and to promote tourism/in-transit activity.
- To provide street block and lot sizes which support the future role, character, and purpose.
- To provide buildings and structures that respond to neighbourhood character and scale to promote a genuine sense of place and contribute to a safe, inclusive, and pedestrian friendly environment.

- Mixed Use (Village)

With a proposed density of R30 – R80 for residential development, the following objectives are proposed:

- To provide a diverse range of land uses to meet resident and tourism needs and activities.
- To provide street block, lot sizes and road cross-sections which support the future role, character, and purpose.
- To provide buildings and structures that respond to neighbourhood character and scale to promote a genuine sense of place and contribute to a safe, inclusive, and pedestrian friendly environment.

- Residential (Domain)

The Structure Plan aims to achieve a density of approximately 15 dwellings per gross urban

area (or 22 dwellings per site ha) via a proposed density of R25 – R60 (in addition to the density of R30 – R80 for the Village), resulting in an estimated dwelling yield of 2,200.

With respect to reserved land, the Structure Plan proposes the following:

Reserve	Description
Public Open Space	Provisional area of 46.476ha with the following functions: <ul style="list-style-type: none"> • Conservation values • Local open space • Neighbourhood open space • District open space • Drainage
Foreshore	Two riparian corridors within a 15.16ha total land area.
Primary School	One site of 3.5ha co-located with a District Public Open Space (playing fields).
Public Purpose	Two Water Corporation pump station sites comprising 1,000m ² each.

With a target of approximately 1,500 dwellings within the 'Domain' residential precinct, the Structure Plan also envisages approximately 700 dwellings within a survey strata 'Village' precinct; this being a combination of permanent and short term (tourism) related dwellings of varying land use and tenure. A Neighbourhood Centre Precinct and a Primary School with co-located Senior Playing Field will support the residential component. The development will focus on high quality public realm and a public open space system linked to the significant landscape feature of Treendale Gully, a tributary of the Collie River and a registered Aboriginal Heritage site.

Part Two of the Structure Plan document provides the background information for the proposed Structure Plan. Section 4 (pages 33 to 70) details the objectives and design intentions of the Structure Plan and have therefore not been repeated in this Report.

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

- Bushfire Management Plan (refer to Appendix 1 in **Attachment 3**).
- Transport Impact Assessment (refer to Appendix 2 in **Attachment 3**).
- Environmental Assessment & Management Strategy (refer to Appendix 3 in **Attachment 3**).
- Water Management Strategy (refer to Appendix 4 in **Attachment 3**).
- Landscape & Irrigation Strategy (refer to Appendix 5 in **Attachment 3**).
- Engineering Servicing Report (refer to Appendix 6 in **Attachment 3**).
- Geotechnical Investigation (refer to Appendix 7 in **Attachment 3**).
- Acoustic Assessment (refer to Appendix 8 in **Attachment 3**).
- Retail & Market Sustainability Assessment (refer to Appendix 9 in **Attachment 3**).

Implementation of the Structure Plan will involve the submission and approval of the following additional plans and management plans at either subdivision or development stage:

Plan/Management Plan	Stage likely to be required
Density Code Plan	With subdivision application
Public Open Space Schedule	With subdivision application
Detailed Noise Management Plan	With subdivision application or as a condition
Bushfire Management Plan	With subdivision application or development application
BAL Assessment	With development application
Urban Water Management Plan	Condition of subdivision or development
Foreshore Management Plan	Condition of subdivision or development
Local Development Plan	Condition of subdivision or development
Green Street and Quiet Street Strategy	Condition of subdivision or development
Gas Pipeline Risk Management Plan	Condition of subdivision or development (if required)

Advertising

Pursuant to Clause 64 of the Planning and Development (Local Planning Schemes) Regulations 2015 (the Deemed Provisions), the proposed Structure Plan was advertised for a period of 42 days for public comment (plus an additional seven days for the excluded Christmas/New Year holiday period). The proposed Structure Plan was advertised between Thursday, 21 December 2023 and Thursday, 8 February 2024 in the following manner:

- Letters to surrounding landowners.
- Notification provided to be included on the Meadow Landing, Roelands community Facebook page.
- Advertised on the Shire's website.
- Referred to the following government agencies and referral authorities:
 - Department of Primary Industries and Regional Development.
 - Department of Fire and Emergency Services.
 - Department of Health.
 - Department of Education.
 - Department of Biodiversity, Conservation and Attractions.
 - Department of Water and Environmental Regulation.
 - Main Roads WA.
 - Water Corporation.
 - Harvey Water.

Submissions were received from government agencies and referral authorities and a summary of these submissions is provided in **Attachment 4**.

Comment

Proposal

Relevant Shire Business Units reviewed the proposed Structure Plan and, whilst there were a range of comments more applicable to future planning stages, the following are applicable at the structure planning stage:

Business Unit	Comments
Infrastructure	<ul style="list-style-type: none"> The Transport Impact Assessment (TIA) (Appendix 2) doesn't consider public transport services/routes. The TIA should be amended to include consideration for future public transport infrastructure such as bus bays. The Water Management Strategy (Appendix 4) requires amendment to consider previous comments provided by the Shire and Department of Water and Environmental Regulation. The Engineering Servicing Report (Appendix 6) does not include the proposed left in/left out intersection onto Raymond Road, however, is included in the TIA.
Parks	<ul style="list-style-type: none"> If Harvey Water is to provide water to the development, this water supply for irrigation would only be accepted via a head works system where pumps could be connected to the irrigation system, or the water is distributed into storage tanks. The Landscape & Irrigation Strategy (Appendix 5) should reference: <ul style="list-style-type: none"> The development of playgrounds being consistent with the Shire's Playspace Strategy. The provision of shade sails to assist with providing shade. All vegetation retained within public spaces requires an Arborist Report and an Asset Management Plan, including intervention and inspection frequency requirements. Any furniture within public spaces should comply with the Shire's Signage and Infrastructure Style Guide.
Environmental Health	<ul style="list-style-type: none"> A Mosquito Management Plan should include management of midges. A Dust Management Plan is required for earthworks.

The Applicant has provided a detailed assessment against the applicable planning framework (refer Part Two, Section 1.3 of **Attachment 1**). Officers concur with the Applicant's assessment.

If the objectives and design intentions of the Structure Plan are realised, Officers envisage Treendale East will be leading example of a contemporary and sustainable development and community.

Conclusion

It is recommended the proposed Structure Plan be supported, subject to several modifications as identified within this Report, the Summary of Submissions (refer **Attachment 4**) and the Schedule of Modifications at **Attachment 5**.

Statutory/Policy Environment

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Regulations 2015

- Schedule 2 – Structure Plans

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

The Shire's Strategic Community Plan 2021–2031, states:

Goal 1:	<i>A diversified and thriving economy that offers a wide range of business and work opportunities as well as consumer choice.</i>
Objective 1.1	<i>The Shire is a tourist destination of choice.</i>
Objective 1.3	<i>Sustainable urban, rural and industrial development.</i>
Objective 1.4	<i>Appropriate infrastructure is in place to support economic growth.</i>
Objective 1.5	<i>Enhanced education and training opportunities.</i>
Goal 2:	<i>A safe, accessible and connected community where everyone has the opportunity to contribute and belong.</i>
Objective 2.1	<i>To support people through all stages of life.</i>
Objective 2.2	<i>Create a community where people are safe.</i>
Goal 3:	<i>A natural environment that is highly valued, protected and enjoyed.</i>
Objective 3.1	<i>Adopt and encourage sustainable development practices.</i>
Objective 3.2	<i>Manage and protect natural habitats, ecosystems and reserves.</i>
Objective 3.4	<i>Healthy waterways and coastal zones.</i>
Goal 4:	<i>A liveable, sustainable and well-designed built environment that is accessible to all.</i>
Objective 4.2	<i>A connected and well maintained network of local roads, footpaths, cycle ways and trails.</i>
Objective 4.3	<i>Shopping precincts and residential areas are well presented and accessible, with development enhancing their character.</i>

Community Engagement

Community Participation Goal

Inform: To provide the public with balanced and objective information to assist them in understanding the problems, alternatives and/or solutions.

Promise to the Community

Inform: We will keep you informed.

Risk Management

The Risk Theme Profile identified as part of this report is **Failure to Fulfil Compliance Requirements and Inadequate Engagement Practices**. The Consequence could be **Environmental, Financial, Reputational or Compliance** if the procedure identified in Part 2 of the Deemed Provisions is not followed or if an incorrect assessment of the proposal occurs. The risk is considered **Minor** and the likelihood **Unlikely**, given that Council Officers have followed the identified procedures and the report has been thoroughly researched, peer reviewed and provided by a qualified Shire Officer. This results in a **Low** risk being present.

Budget Implications

All costs associated with processing and advertising a Structure Plan is reimbursed by the Applicant.

Authority/Discretion

Quasi-Judicial: When Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town development applications, building permits, applications for other permits/licenses (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.

Voting Requirements

Simple Majority

Officer's Recommendation

That Council:

1. In accordance with Schedule 2, Clause 19(1) of the Planning and Development (Local Planning Schemes) Regulations 2015, considers the submissions received and endorses the Schedule of Submissions at **Attachment 4** on the proposed Structure Plan for Lots 151, 152 and 50 Raymond Road, Roelands in accordance with subclause (a).
2. In accordance with Schedule 2, Clause 20 of the Planning and Development (Local Planning Schemes) Regulations 2015, refers the proposed Structure Plan for Lots 151, 152 and 50 Raymond Road, Roelands to the Western Australian Planning Commission with a recommendation that the proposal be approved pursuant to Schedule 2, Clause 22(1)(c) of the Planning and Development (Local Planning Schemes) Regulations 2015, subject to the modifications at **Attachment 5**.

Item No.:	5.3.12.
Subject:	Proposed Use Not Listed – Telecommunications Infrastructure – Wokalup
Proponent:	Tecon Australia (on behalf of M and R Cooper)
Location:	Lot 61 (No. 546) Mitchell Road, Wokalup
Reporting Officer:	Planning Officer
Authorising Officer:	Director Sustainable Development
File No.:	P251/23, C291/00210, A16038
Attachments:	<ol style="list-style-type: none"> 1. Tower Plans [5.3.12.1 - 12 pages] 2. Location Plan [5.3.12.2 - 1 page] 3. Summary of Submissions [5.3.12.3 - 4 pages] 4. Support Letter from Community [5.3.12.4 - 2 pages]

Summary

An Application for Development Approval has been received for a 'Use Not Listed' (Telecommunications Infrastructure) on Lot 61 (No. 546) Mitchell Road, Wokalup, (refer **Attachment 1**). The application has been advertised for public comment and is referred to Council to determine if the proposed 'Use Not Listed' may be consistent with the purpose and objectives of the zone and to determine the application as Officers do not have delegation given objections were received.

Council considered this application at its Ordinary Meeting on Tuesday, 22 November 2023. At this Meeting, a Deputation by a representative of an adjoining landowner identified inconsistencies with a number of aspects of the proposal and as such, Council deferred determining the application following clarification of the technical components of the telecommunications infrastructure and further engagement with adjoining landowners. The application is now referred back to Council for determination.

It is recommended that Council determines the proposed 'Use Not Listed' may be consistent with the objectives of the zone and approves the application subject to appropriate conditions.

Background

Site Description

Lot 61 (No. 546) Mitchell Road, Wokalup is zoned "General Farming" under the Shire's District Planning Scheme No. 1 (the Scheme) and is located within 9.5kms of the Harvey townsite. The site is of irregular shape with an area of 40ha and is mostly flat pasture with scattered vegetation in the north-western portion of the lot.

Site History

The site contains a residence and associated outbuildings, all of which are located in the south-eastern portion of the lot, adjacent to the intersection of Mitchell and Pindjarup Roads.

Proposal

The application proposes a 40.6m high guyed mast, telecommunications tower. Subsequent to deferral of determining the application in November 2023, updated and corrected plans were provided (refer **Attachment 2**). The location of the tower is shown as 30m from the north-west boundary and 157m directly east of the eastern boundary (along Pindjarup Road). As evident on pages 2 and 3 of the updated plans (refer **Attachment 1**), this location will be less visual than the previous location to the south due to existing adjacent and surrounding vegetation. There is also a proposed solar array (12m x 4m), 80m from the peak of the northern boundary and 40m directly west of the Pindjarup Road boundary. Road boundary.

The Applicant has provided the following with respect to the proposed site:

"In relation to the context for location, approaches were made to three separate sites in the Wokalup area and the landowners at 546 Mitchell Road were agreeable to the site acquisition. Their land provides Swoop with a good anchor point for line of site to Harvey to the east and Leschenault and Binningup to the west. A site survey confirmed that that the site was suitable, with dark sand suitable for building the tower. Further, it was noted that there is minimal housing in the area."

Advertising

For the purpose of reducing assessment timeframes, the application was initially advertised pursuant to Clause 64 of the Planning and Development (Local Planning Schemes) Regulations 2015 (the Deemed Provisions). The application was advertised to nearby landowners for a period of 28 days concluding on Wednesday, 13 September 2023. Two objections were received, as summarised in **Attachment 3**.

In response to Council deferring a determination in November 2023, the landowner obtained signatures of support from 19 properties in the vicinity of the proposed tower (refer **Attachment 4**) to demonstrate local support for the proposal on the basis that the infrastructure will provide a fast broadband service to the community allowing them to be able to run their businesses and have a stable connection for their personal needs.

Comment

Land Use

The proposed use of "Telecommunications Infrastructure" is defined in the Schemes as:

"premises used to accommodate the infrastructure used by or in conjunction with a telecommunications network including any line, equipment, apparatus, tower, antenna, tunnel, duct, hole, pit or other structures related to the network"

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 Scheme does not provide much guidance on the objectives of the General Farming zone, however the Policy Statement contained within Table 27 (General Farming zone) of the Scheme refers to:

"Local Government intends to encourage these areas to be continued to be use 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."

Advertising

Objections were received from two adjacent/nearby landowners, with the most significant points being summarised as follows:

- Objection to the location being in the 'middle' of a farm rather than in industrial land or where there is already an existing tower such as at the Dampier to Bunbury Gas Pipeline Tower or a hill that is bushland, not open pasture.
- A neighbour has indicated an intention to live near where the tower site is proposed.

- The chosen location is close to the neighbour's property.
- Reduces the enjoyment of the adjoining farms with the visual proximity of the tower.
- Impacts where a dwelling can be built as it is undesirable to build close to the location of the tower on a neighbouring property.

Council Deferral and Further Investigations

A deputation to Council at its Ordinary Meeting on Tuesday, 22 November 2023 identified a number of inaccuracies in the information and plans provided with the Officer's report, resulting in Council deferring a determination of the application.

The Applicant has since had discussions with the adjoining landowner, however these discussions did not result in altering their objections. The design of the proposed tower was re-evaluated to ensure any alternate locations were valid and supported the overall footprint they need and have the line of sight to their other towers in the area. Alternative sites were investigated that would still be viable to Swoop in terms of connection to the overall network, and the Applicant has advised of the following:

- Co-locating on the Gas Tower (Australian Gas Infrastructure Group / Dampier Bunbury Pipeline). This option was re-investigated by Swoop. This option has now been rejected by Swoop due to:
 - length of time to work with DBP to establish capacity and compatibility of our equipment.
 - design implications due to linked sites and changes needed.
 - ongoing costs are significant and well above budgeted Opex (more than \$150K over five years, excluding one-time set up costs).
- The only other area available as suitable (location, terrain) was on a main road, opposite the home of the objector. As such, Swoop have not entertained pursuing this option with the relevant landowner as it is a much more visible tower location and Swoop has no doubts will be subject to the same or increased number of objections.

Discussion

State Planning Policy 5.2 – Telecommunications Infrastructure (SPP 5.2) is a Policy to be given due regard when assessing and determining the application. Clause 5.1 of SPP 5.2 discusses the visual impacts of telecommunications infrastructure. In this regard, it provides the following:

"For telecommunications infrastructure to be effective, structures are generally located prominently, at high points in the landscape or on top of buildings, where they are more likely to be visible to the public."

The planning authority may exercise discretion in addressing the visual impacts of telecommunications infrastructure. Visual impacts of an infrastructure development proposal should be assessed by applying the following set of policy measures to guide the location, siting and design of the structure."

Clause 5.1.1 then provides a number of measures with respect to balancing the benefit of improved telecommunications services against the visual impact on the surround area. These measures include:

- Assessment of the visual impact of proposals being made on a case-by-case basis.

- Be sited and designed to minimise visual impact and whenever possible:
 - be located where it will not be prominently visible from significant viewing locations such as scenic routes, lookouts and recreation sites.
 - be located to avoid detracting from a significant view of a heritage item or place, a landmark, a streetscape, vista or a panorama, whether viewed from public or private land.
 - not be located on sites where environmental, cultural heritage, social and visual landscape values maybe compromised.
- Be located where it will facilitate continuous network coverage and/or improved telecommunications services to the community.

Having considered the visual amenity impacts on adjoining properties against the community benefits of the proposal, Officers consider that the community benefits of significantly improved telecommunications services outweigh any impacts to the visual amenity of adjoining properties.

Conclusion

The location of the proposed tower is confirmed as being sited adjacent to existing vegetation towards the north-west corner of Lot 61, in comparison to the more exposed south-western corner as shown on the previous plan. The confirmed location is considered by Officers to result in reduced amenity impacts due to surrounding and adjacent vegetation. In addition, Officers consider the community benefits of significantly improved telecommunications services outweigh any impacts to the visual amenity of adjoining properties. Therefore, Officers recommend the application be approved, subject to conditions.

Statutory/Policy Environment

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Regulations 2015

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

(1) *“The local government – “*

(a) must advertise a complex application for development approval in accordance with subclause (3); and

(b) must advertise an application for development approval in accordance with subclause (4) if the application is not a complex application –

i. relates to development that is a class A use in relation to the zone in which the development is located; or

ii. relates to the extension of a non-conforming use; or

iii. relates to development that does not comply with the requirements of this Scheme; or

iv. relates to development of which the local government requires a heritage assessment to be carried out under clause 11(1); or

v. *is of a kind identified elsewhere in this Scheme as an application is this required to be advertised; and*

(c) *may advertise any other application for development approval in accordance with subclause (4).*

(2) *Subclause (1)(b)(iii) does not apply if the local government is satisfied that the non-compliance with the requirements of this Scheme is of a minor nature.”*

State Planning Policy 5.2 – Telecommunications Infrastructure:

This Policy provides guidance for the assessment of telecommunications infrastructure in relation to:

- Appearance/visual character
- Siting, location, and design
- Electromagnetic Emissions.

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 the Council May: -

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

- Tables 27 – 29 – Zoning and Development Standards (General Farming)

Strategic Framework

The Shire’s Strategic Community Plan 2021–2031, states:

<i>Goal 1:</i>	<i>A diversified and thriving economy that offers a wide range of business and work opportunities as well as consumer choice.</i>
<i>Objective 1.3</i>	<i>Sustainable urban, rural and industrial development.</i>
<i>Objective 1.4</i>	<i>Appropriate infrastructure is in place to support economic growth.</i>

Community Engagement

Community Participation Goal

Inform: To provide the public with balanced and objective information to assist them in understanding the problems, alternatives and/or solutions.

Promise to the Community

Inform: We will keep you informed.

Risk Management

The Risk Theme Profile identified as part of this report is **Providing Inaccurate Advice/Information**. The Consequences could be **Environmental, Financial, Reputational or Compliance** if an incorrect assessment of the land use occurs or insufficient community engagement occurs. The risk is considered **Minor** and the likelihood **Unlikely**, given that the report has been thoroughly researched, peer reviewed and provided by a qualified Shire Officer with a recommendation for the proposal to be advertised. This results in a **Low** risk being present.

Budget Implications

Nil.

Authority/Discretion

Quasi-Judicial: When Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include development applications, building permits, applications for other permits/licenses (e.g., under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.

Voting Requirements

Recommendation 1 of 2 – Absolute Majority

Recommendation 2 of 2 – Simple Majority

Officer's Recommendation 1 of 2

That Council, pursuant to Clause 4.2.5(b) 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 61 (No. 546) Mitchell Road, Wokalup can be considered as "Telecommunications Infrastructure" which may be consistent with the objectives and purposes of the General Farming zone.

BY ABSOLUTE MAJORITY

Officer's Recommendation 2 of 2

That Council:

1. Approves the Application for Development Approval for a 'Use Not Listed' (Telecommunications Infrastructure) on Lot 61 (No. 546) Mitchell Road, Wokalup, 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 years. If the development is not substantially commenced within this period, a new approval must be obtained before commencing or continuing development.

2. Advises the Applicant of the following advice notes that are not included as conditions of the Development Approval:
 - a) The development the subject of this approval is also regulated by the Building Code of Australia and a separate building permit must be granted before the development commences.

5.4. Corporate Services

Item No.	5.4.1.
Subject:	Payments February 2024
Proponent:	Shire of Harvey
Location:	Shire of Harvey
Reporting Officer:	Manager Finance
Authorising Officer:	Director Corporate Services
File No.:	FM/S/006
Attachments:	1. Payments February 2024 [5.4.1.1 - 22 pages]

Summary

A listing of payments for goods and services for February 2024 is provided as **Attachment 1**. It is recommended that Council notes the attached payments.

Background

Pursuant to Section 5.42 of the *Local Government Act 1995* (Delegation of some powers and duties to the Chief Executive Officer), Council has resolved to delegate to the Chief Executive Officer (Delegation No: 2.2.1) the exercise of its powers to make payments from 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. With the inclusion of Clause 13A in the Local Government (Financial Management) Regulations 1996, a list of payments using the purchasing cards (fuel and store) has also been included.

Comment

The list of accounts paid for February 2024 is presented as an **Attachment 1**, as summarised below.

<u>Voucher</u>		<u>Amount</u>
Schedule of Accounts		
Municipal	EFT 70047 – EFT 70589	\$ 3,218,216.07
	117574 – 117584	\$ 57,701.14
	DD26641.1 – DD26705.9	\$ 190,293.26
CBA Credit Cards		\$ 8,541.67
Electronic Funds Submitted		\$ 15,679.25
Total		<u>\$ 3,490,431.39</u>

Prepaid Cards Payments included in the Municipal payments above

AMPOL Fuel Card	\$ 1,079.93
BP Fuel Card	\$ 5,699.49
Puma Fuel Card	\$ 1,354.32
Coles Card	\$ 1,904.02
Total	<u>\$ 10,037.76</u>

Statutory/Policy Environment

Local Government Act 1995

- Section 5.42

Local Government (Financial Management) Regulation 1996

- Regulation 13
- Regulation 13A

Strategic Framework

The Shire's Strategic Community Plan 2021–2031, states:

- Goal 5: A representative leadership that is future thinking, transparent and accountable.*
Objective 5.3 Accountable leadership supported by a professional and skilled administration.
Objective 5.4 Sound governance, including financial, asset and risk management.

Community Engagement

Community Participation Goal

Inform: To provide the public with balanced and objective information to assist them in understanding the problems, alternatives and/or solutions.

Promise to the Community

Inform: We will keep you informed.

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 2023–2024 Budget.

Authority/Discretion

Executive: The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.

Voting Requirements

Simple Majority

Officer's Recommendation

That Council notes the list of accounts paid at **Attachment 1** for the period of February 2024 totalling \$3,490,431.39.

Item No.	5.4.2.
Subject:	Financial Statements as at 29 February 2024
Proponent:	Shire of Harvey
Location:	Shire of Harvey
Reporting Officer:	Manager Finance
Authorising Officer:	Director Corporate Services
File No.:	FM/S/006
Attachments:	1. Financial Statements as at 29 Feb 2024 [5.4.2.1 - 11 pages]

Summary

The Financial Statements as of 29 February 2024 are provided at **Attachment 1**.

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

	ACTUAL 29 February 2024	BUDGET 2023–2024	VARIANCE
Statement of Financial Performance			
Ordinary Revenue	\$38,233,784	\$39,931,013	\$ 1,697,229
Ordinary Expenditure	\$32,012,074	\$47,439,708	\$15,427,634
Capital Revenue	\$ 1,823,816	\$62,348,478	\$60,524,662
Capital Expenditure	\$ 5,097,866	\$82,128,516	\$77,030,650
End of Period Profit/(Loss)			\$14,497,049
Statement of Financial Position			
Current Assets			\$ 49,461,897
Net Assets			\$827,877,564

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

Rates Revenue

Rates revenue of \$27.44 million and rubbish rates of \$11.79 million including the waste levy were raised in August 2023. The due date for rates payment was 29 September 2023. Approximately 85% of the rates were collected by Thursday, 29 February 2024 compared to 89% for the previous year.

Cash Flow and Interest Earnings

The Shire holds by way of cash and term deposit \$14.75 million in Municipal funds and \$28.52 million in restricted Trust and Reserve funds. The average interest rate on these funds is 4.85%. New term deposits are attracting an interest rate for 90 days of approximately 4.80%.

Operating Grants and Subsidies

The Shire received \$4.03 million as advance payment for Financial Assistance Grants 2023–2024 in the last quarter of the 2022–2023 financial year. The third instalment of FAGS quarterly grant was also

received in February 2024.

Employee Costs

Although these accounts only reflect the first eight months of the financial year, it is anticipated employee costs will remain in line with the Workforce and Diversity Plan and Budget 2023–2024.

Material, Contracts, Utilities and Other Expenses

Although these accounts only reflect the first eight months of the financial year, it is anticipated the Shire will operate within its means and in line with the Shire's adopted Budget for the 2023–2024 financial year.

Capital Expenditure

The Shire budgeted to spend \$82.13 million on capital projects throughout the Shire in 2023–2024. Major capital work projects budgeted for the financial year 2023–2024 are yet to commence. Expenditure totalling \$5,097,866 on capital works has been reported at the end of February 2024. As major projects are completed, and as the Shire is invoiced for these works the level of reported expenditure will increase.

Attachment 1 provides the Financial Report for the reporting period which includes the following:

- Statement of Financial Performance by Directorates
- Statement of Financial Performance by Nature
- Statement of Financial Position
- Notes to the Statement of Financial Performance
- 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.

The Notes to the Statement of Financial Performance, include additional information reported by Nature identifying reasons for variances between budgets and actuals.

Statutory/Policy Environment

Local Government Act 1995

- Section 6.4

Local Government (Financial Management) Regulation 1996

- Regulation 34

Strategic Framework

The Shire's Strategic Community Plan 2021–2031, states:

Goal 5: A representative leadership that is future thinking, transparent and accountable.

Objective 5.3 Accountable leadership supported by a professional and skilled administration.

Objective 5.4 Sound governance, including financial, asset and risk management.

Community Engagement

Community Participation Goal

Inform: To provide the public with balanced and objective information to assist them in understanding the problems, alternatives and/or solutions.

Promise to the Community

Inform: We will keep you informed.

Risk Management

The Risk Theme Profile identified as part of this report is **Providing Inaccurate Advice/Information**. The Consequence could be **Financial**, **Reputation** or **Compliance** if the financial statements are not reported accurately, timely or in the required format. The risk is considered **Minor** and the Likelihood **Unlikely**. The risk is mitigated by Council receiving financial statements on a monthly basis and in a form that is in accordance with the *Local Government Act 1995* and associated Regulations, resulting in a **Low** Risk being present.

Budget Implications

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

Authority/Discretion

Executive: The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.

Voting Requirements

Simple Majority

Officer's Recommendation

That Council receives the Financial Statements as of 29 February 2024 at ***Attachment 1***.

5.5. Community and Lifestyle

Item No.:	5.5.1.
Subject:	Sport and Recreation Plan 2033
Proponent:	Shire of Harvey
Location:	Shire of Harvey
Reporting Officer:	Community Development Officer
Authorising Officer:	Chief Executive Officer
File No.:	Director Community and Lifestyle
Attachments:	F/37/0098
	<ol style="list-style-type: none"> 1. Sport and Recreation Plan Part A 2023 [5.5.1.1 - 35 pages] 2. Sport and Recreation Plan Part B 2023 [5.5.1.2 - 168 pages] 3. 21 day Consultation Report 2023 [5.5.1.3 - 49 pages] 4. Stakeholders Consultation Report 2024 [5.5.1.4 - 53 pages] 5. Consultation Report [5.5.1.5 - 241 pages] 6. Aquatic Needs Assessment [5.5.1.6 - 135 pages] 7. Aquatic Needs Assessment Concepts – Leschenault Leisure Centre [5.5.1.7 - 13 pages] 8. Leschenault Leisure Centre Feasibility Study [5.5.1.8 - 147 pages] 9. Aquatic Needs Assessment Concepts - Harvey [5.5.1.9 - 13 pages] 10. Harvey Pool Feasibility Study [5.5.1.10 - 150 pages] 11. Binningup Townsite Needs Analysis Final [5.5.1.11 - 74 pages] 12. Binningup Townsite Concept Plans [5.5.1.12 - 10 pages] 13. Brunswick Recreation Ground Needs Analysis [5.5.1.13 - 84 pages] 14. Brunswick Recreation Ground Concept Plans [5.5.1.14 - 10 pages] 15. Harvey Recreation Ground and Harvey Recreation and Cultural Centre Needs Analysis [5.5.1.15 - 89 pages] 16. Harvey Recreation and Cultural Centre and Recreation Ground Concept Plans [5.5.1.16 - 18 pages] 17. Leschenault Recreation Park Needs Analysis [5.5.1.17 - 99 pages] 18. Leschenault Recreation Park Concept Plans [5.5.1.18 - 19 pages] 19. Financial Summary - Escalated [5.5.1.19 - 2 pages]

Summary

The Sport and Recreation Plan 2033 (SRP) is the first sport and recreation strategy for the Shire of Harvey (the Shire). Its aim is to provide a framework for and guidance on, facility renewal and replacement requirements and priorities into the future.

The SRP provides the community and its sporting stakeholders with a detailed assessment and analysis of the Shire's sporting facility landscape, providing strategic direction and recommendations for each of the Shire's venues, as well as identifying future venue planning and development priorities for the next 10 years and beyond.

This report presents the Sport and Recreation Plan 2033 (refer **Attachment 1**) to be endorsed by Council.

Background

At the Ordinary Council Meeting held on Tuesday, 26 September 2023, Council resolved the following:

“That Council:

- 1. Defers the adoption to allow further consultation with Sport and Recreation Stakeholders.*
- 2. Requests that the Sport and Recreation Plan 2033 be workshopped with the Sport and Recreation Advisory Group and brought back to Council within the first three months of 2024.”*

Following that Resolution, Shire Officers consulted with stakeholders including advisory group members, recreation user groups and Council for the opportunity to review and provide feedback on the SRP. The following meetings were held:

- Sport and Recreation Advisory Group, Thursday, 30 November, 2023
- Harvey Recreation and Cultural Centre (HRCC) Advisory Group, Thursday, 7 December, 2023
- Harvey Recreation Ground (HRG) User Group, Thursday, 18 January, 2024
- Leschenault Recreation Park (LRP) User Group, Tuesday, 13 February, 2024.

The findings are documented in the Stakeholder Consultation Report 2024 shown at **Attachment 4**. This report presents the final Sport and Recreation Plan Part A 2033 (refer **Attachment 1**) and supporting information for Council endorsement.

Comment

In 2022, the Shire recognised the need to develop a Sport and Recreation Plan. In the preceding five years, the Shire has completed the following Sport and Recreation Studies:

- LRP, Needs Assessment & Master Plan, ABV Consulting 2019
- HRG Needs Assessment, ABV Consulting 2020 and Master Plan 2021
- Brunswick Recreation Ground, Needs Assessment, Feasibility Study and Concept Master Plan, ABV Consulting 2021
- Needs Assessment, Feasibility Study and Concept Plan – LLC Court Expansion, Dave Lanfear Consulting, 2021.

The Shire identified a gap in the above documentation and the need for a coordinated and planned approach to prioritise sport and recreation facility renewal or replacement, as well to provide support to sporting clubs and associations with the Shire.

Both the 21-Day Consultation Report (refer **Attachment 3**) and the Stakeholder Engagement Report 2024 (refer **Attachment 4**) include submissions from stakeholders and user groups and both consultations provided consistent feedback on the Draft SRP.

Sport and Recreation Advisory Group

The Shire has 41 clubs of which 24 are represented on the Sport and Recreation Advisory Group (SRAG). The SRAG has been meeting since the beginning of the development of the SRP. The SRAG has been guiding and advising the Shire on the development of the SRP and working with the Shire to

resolve challenges the clubs face in conducting their operations. Furthermore, the Shire recognises the commitment and strength of this group in prioritising sporting infrastructure projects in an environment where funding opportunities are oversubscribed.

Sport and Recreation Plan 2033

The Shire's inaugural SRP is presented in two parts. **Attachment 1**, Part A, is a publication that identifies priority projects and planning to support project implementation. With a focus on facilities, the SRP offers a comprehensive assessment of sporting facilities across the six districts within the Shire. The SRP aims to provide a framework for and guidance on facility development, prioritising projects for the next decade and beyond in alignment with community need.

Part B of the SRP as shown in **Attachment 2**, provides the research and supporting information used to develop and drive projects and actions. There has been a significant level of community consultation including:

- Stakeholder engagement over an 18-month period (refer **Attachment 5**).
- 21-days of public comment (refer **Attachment 3**) prior to being presented at the Ordinary Council Meeting in September 2023.
- Further six months of consultation, in line with Council's September 2023 resolution (refer **Attachment 4**).

Attachments 6–18 provide the detailed analysis including needs and feasibility assessments and concept plans that support the SRP. The financial summary is shown at **Attachment 19** and Shire Officers are working to integrate this summary into the Forward Capital Works Plan (FCWP) and Shire budgets, noting that there may be some required adjustment through these processes.

Insights into the current and future needs of stakeholders were provided through the completion of needs assessments for key Shire facilities including the Leschenault Leisure Centre (LLC), LRP, Brunswick Recreation Ground (BRG), Binningup Townsite, HRCC, HRG and Shire Aquatic Facilities at Australind and Harvey.

The SRP supports the Shire's Strategic Community Plan as well as the Corporate Business Plan Objective 2.7 – an active and healthy community.

The SRP has been created with five priority areas:

- Priority Area 1: Facility and capacity development
- Priority Area 2: Club and association capacity
- Priority Area 3: Build partnerships
- Priority Area 4: Service provision
- Priority Area 5: Tourism, culture and events.

Each priority has been assessed against the following criteria:

- Accessibility
- Basic provision

- Impact on capacity
- Multi-use
- Facility sustainability.

The above criteria is supported by the development of a robust yet evolving financial model needed to resource the SRP. With a rigorous prioritisation matrix over 10 years of the SRP lifecycle, external funding will be paramount for some projects to proceed. The SRP alongside the Financial Model (refer **Attachment 19**) should be used as a guide to support the ongoing prioritisation of projects as well as the development of Shire budgets and the FCWP.

The SRP also identifies industry trends in sport and recreation for planning, participation and facility usage with consideration for the provision of regional, district, neighbourhood or local rated facilities. Opportunities to work across local government boundaries for the provision of facilities and services for the community are also recommended in the plan.

These trends include:

- **Recreation Facility Planning and Provision:** planning for multi-use facilities rather than single use facilities with opportunities for commercial enterprise including cafes or allied health provision outside of primary visitation hours. Consideration for shared facilities e.g. school facilities providing clubs access outside of school hours.
- **Aquatic Facility Planning and Provision:** contemporary aquatic facility design is expanding to include wet and dry options. This looks like indoor/ outdoor water play, free form pools, fitness and education opportunities for clubs and schools and provision for hospitality such as program rooms, meeting and social facilities such as cafes.
- **Lifecycle and Maintenance Planning:** local governments are increasingly required to invest in aging facilities. Government funding includes requirements for business plans inclusive of sinking funds or capital renewal. The State of Aquatic Facility Infrastructure report by Royal Life Saving Australia 2022 identifies that up to \$8 billion is required nationally to replace or upgrade Australia's aging public pools by 2030 with a further \$3 billion needed by 2035.
- **Increases in Female Participation:** for sports such as football and soccer, which has created additional demand for changerooms and oval space.
- **Seasonal Creep and Carrying Capacity Initiatives:** extension of seasons and overlaps of winter/ summer sports lead to consideration for reconfiguration of sports spaces and implementation of dedicated maintenance periods.
- **Sustainability:** which includes financial, social and environmentally sustainable design.
- **Health and Fitness Trends:** gradual aging population, employment structure, flexibility of access, increased expectation for quality facilities and an emergence of non-traditional sports.

The SRP aims to educate and unite key stakeholders on the complex and diverse projects across the Shire, guiding future investment in facilities by the Shire and key partners including federal and state government, industry, developers and associations.

Key Milestones

While the SRP has been in development, significant recent milestones in the Sport and Recreation space have been achieved;

- Harvey Skatepark Concept, Design and Construct to officially open April 2024
- LLC Court Expansion Final Detailed Design
- Brunswick Recreation Ground Power and Lights project commenced
- Community Sport and Recreation Facility Funding (CSRFF) announcements for and projects commenced:
 - Brunswick Tennis Courts and Bowling Club resurfacing
 - Harvey Bowling Club hard shade.

During the development of the SRP, issues and concerns raised have been considered and debated in partnership with the user groups. There are some projects that were put on hold until the SRP could be finalised.

There are projects within the SRP, which potentially require future strategic decisions of Council and are listed below:

- LLC, Court Expansion
- LRP, Oval 6 Turf Wicket
- LRP Oval maintenance program
- LLC Aquatic, HVAC and Insulation
- HRG Drainage
- HRG optimisation of playing fields and relocation of Harvey Hawks to HRG
- Aquatic maintenance and future planning.

Leschenault Leisure Centre, Court Expansion

The LLC Court Expansion Project is identified in the SRP under Priority Area 1, item 1.15. In the current economic environment, the detailed design of the LLC Court Expansion is valued at twice the estimated cost, increasing from \$15 million in the 2021 feasibility study to an estimated \$35 million in 2024. As a result of feedback from potential funding partners, Shire Officers are critically reviewing the existing design for a solution and will present a report to Council when options are completed.

Leschenault Recreation Park – Oval 6 Turf Wicket

The LRP Oval 6 Turf Wicket is identified in the SRP under Priority Area 1, item 1.35. The installation of a new turf wicket on Oval 6 at the LRP, is a project with confirmed funding that has been on hold until the finalisation of the SRP. Consultation with user groups (refer **Attachment 5**) and detailed analysis (refer **Attachments 17** and **18**) has been completed. LRP user group engagement has been ongoing.

The Oval 6 Turf wicket chronology has been summarised below:

2019 – Turf wicket identified in the LRP masterplan. Shire Officers wrote a letter to support the project, requesting the Leschenault Cricket Club (LCC) gain support from other user groups.

2020 – LCC granted \$100,000 State Government funding towards a \$203,000 project which included:

- Oval 6 turf wicket block
- Oval 3 training turf wicket block and block nets
- Irrigation – completed by the Shire in 2023
- A second turf wicket roller
- Sight screens – in progress by LCC – expected completion in 2024
- All sports electronic scoreboard.

2021 – LCC is successful in an application for a Shire Community Grant of \$50,000 towards the project.

2022 – User group mediation facilitated by the Shire. The outcome recommended the Shire commence working towards the SRP. Consultation commenced with user groups and key stakeholders towards the SRP.

2023 – SRP endorsement deferred at the September 2023 Ordinary Council meeting. Project has continued to remain on hold.

2024 – User group ongoing engagement, concerns with displacing user groups with no alternative play space at LRP. User group engagement has been ongoing with stakeholders kept informed.

Shire Officers intend to present a report to Council at the June 2024 Ordinary Council meeting with recommendations for an implementation plan to install a turf wicket block in Oval 6.

Leschenault Recreation Park Oval maintenance program

Item 1.30 in the SRP identifies “*Undertake planned maintenance and renovation works to the Shire’s sports ovals.*”

The expansion of sporting groups in the Shire is intensifying the use of sport fields, which is particularly noticeable at LRP, causing increased wear and maintenance challenges. Officers are concerned that the current management practices and resources do not sustain healthy, safe playing surfaces and deprive the turf of necessary rest periods.

LRP’s ovals, especially Oval 4 and Oval 6, lack organic matter, hindering turf resilience and repair capabilities.

The implementation plan may look like:

- Reseeding Oval 2 (2024–2025 Financial Year)
- Lighting on Oval 1 (2025–2026 Financial Year)
- Installation of Turf Wicket on Oval 6
- Planning for Ovals 7 and 8.

Shire Officers propose to present a report to Council by May 2024 for the restoration and maintenance the ovals at LRP, supporting a plan that implements the turf wicket on Oval 6.

Leschenault Leisure Centre Aquatic, Heating, Ventilation and Air Conditioning (HVAC) and Insulation

The HVAC at LLC is 24 years old and past its service life.

Issues include:

- Temperature and humidity control which is creating a corrosive environment making the facility uncomfortable for staff, users and visitors
- System inefficiency and increased costs to operate.

This project has is included in the Forward Capital Works Plan both in 2023–2024 and 2024–2025 financial years however additional funding may be required to achieve a suitable outcome.

Shire Officers will present a report to Council in May 2024 in relation to funding for the necessary works.

Harvey Recreation Ground Drainage and Optimisation of Playing Feilds

Item 1.2 in the SRP identifies reviewing the Shire's playing fields at the HRG including any drainage works. Funding within the FCWP is provided to complete the drainage investigation and works to resolve the drainage issues that currently prevent playing field optimisation at the HRG. Consultants have been engaged to undertake the initial investigative works.

The Stakeholder Engagement Report 2024 (refer **Attachment 4**) supports resolving any drainage issues at HRG as the priority at the HRG prior to works to separate ovals.

Item 1.2 identifies reviewing the Shire's playing fields including any drainage works as well as conducting an annual optimisation plan for all playing fields.

During sport season transition, recreation infrastructure faces "season creep," with cricket and AFL ovals overlapping. The cricket community is concerned with historical suggestions of moving the turf wicket 40m northeast. Whilst this would accommodate the separation of ovals it would take club supporters too far from the Boundary and changerooms.

Separation of ovals at HRG is shown in the SRP Priority Area 1, item 1.37 *"to provide separate AFL and Cricket Ovals at the HRG and allow soccer to relocate from Meriden Park to the HRG. Works to include the installation of a new turf wicket block"*.

HRG's turf wicket, which is nearing the end of its life, will need replacement and the Harvey Hawks Soccer Club seeks to utilise HRG's facilities. Recognising the increasing season lengths and overlap, Shire Officers may propose solutions including replacing current goal posts with sleeved posts to allow options for the co-location of sports.

Additionally, there has been a consistent request from a user group for an additional wicket to be located at the southern end of playing field at the HRG. The assessment of needs and feasibility does support this request.

There is some debate between the resident clubs as to the ultimate delineation and design of the reserve. Officers believe that a decision regarding the delineation and design should be deferred until a solution to the drainage issues is found.

Aging Aquatic Facilities

Ongoing maintenance for the future sustainability of the Shire of Harvey Pools are projects of concern.

Significant consultation with primary user groups (refer **Attachment 5**) together with detailed analysis

(refer **Attachment 6, 9 and 10**) outlined a feasible path for the future that will provide a sound decision making framework and a series of actions for the Shire to follow to ensure future success in this area.

Conclusion

The SRP has undergone two detailed consultation periods. As with any plan that involves competing groups with different priorities, there are some areas of conflict.

Council and community can expect ongoing consultation for the prioritisation of projects to move projects to next steps including the development of business cases and designs.

Shire Officers will continue to build partnerships and advocate for Shire facilities and continue to seek funding for major projects.

The SRP will support ongoing community partnership, reflecting the community's vision and its aspirations, enabling the Shire to facilitate an active and healthy community who can participate for life.

Statutory/Policy Environment

Local Government Act 1995

- Section 5.56(1) – Planning for the future

“A local government is to plan for the future of the district.”

Strategic Framework

The Shire’s Strategic Community Plan 2021–2031, states:

Goal 1:	<i>A diversified and thriving economy that offers a wide range of business and work opportunities as well as consumer choice.</i>
Objective 1.5	<i>Enhanced education and training opportunities.</i>
Goal 2:	<i>A safe, accessible and connected community where everyone has the opportunity to contribute and belong.</i>
Objective 2.1	<i>To support people through all stages of life.</i>
Objective 2.3	<i>Active and resilient community groups and volunteers.</i>
Objective 2.7	<i>An active and healthy community.</i>
Goal 3:	<i>A natural environment that is highly valued, protected and enjoyed.</i>
Objective 3.3	<i>Sustainable resource use and waste management.</i>
Goal 4:	<i>A liveable, sustainable and well-designed built environment that is accessible to all.</i>
Objective 4.1	<i>Playgrounds and parks are vibrant, accessible and well maintained.</i>
Objective 4.5	<i>Shire buildings, gardens and grounds are fit for purpose and well maintained.</i>
Goal 5:	<i>A representative leadership that is future thinking, transparent and accountable.</i>
Objective 5.1	<i>Effective communication and engagement with the community.</i>
Objective 5.2	<i>Build partnerships and work collaboratively to amplify the outcomes that can be achieved.</i>
Objective 5.6	<i>A customer centred approach to everything we do.</i>

Community Engagement

Community Participation Goal

Involve: To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.

Promise to the Community

Consult: We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision. We will seek your feedback on drafts and proposals.

Risk Management

The Risk Theme Profile as identified as part of this report is **Inadequate Engagement Practices**. The Consequence could be **Reputation** if the Shire does not adequately involve and engage with the community and stakeholders. The Consequence is considered **Minor** and the Likelihood **Possible** resulting in a **Medium** Risk being present. This risk is mitigated by a representative membership of the SRP Working Group and the thorough consultation process undertaken to develop the SRP.

Budget Implications

The SRP alongside the Financial Model (refer **Attachment 19**) should be used as a guide to support the ongoing reprioritisation of projects as well as the development of Shire budgets and the FCWP.

Authority/Discretion

Executive: The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.

Voting Requirements

Simple Majority

Officer's Recommendation

That Council:

1. Endorses the Sport and Recreation Plan 2033 as at **Attachment 1** to be utilised to support implementation and planning for the future.
2. Notes the following specific outcomes that relate to the Sport and Recreation Plan 2033:
 - a) That the plans for the redevelopment of the Leschenault Leisure Centre are being critically reviewed to be attractive to potential funding partners.
 - b) That the previous decisions of Council to support the creation of a turf wicket on Oval 6 at the Leschenault Recreation Park, will require an implementation plan to ensure minimal impact to current users of the Leschenault Recreation Park. A report will be presented to Council by May 2024.
 - c) That a maintenance plan to rejuvenate Ovals 4 and Oval 6 at the Leschenault Recreation Park, and to reseed Oval 2 at the Leschenault Recreation Park will be presented in the future draft budgets to Council, with a report presented to Council by May 2024.

- d) That a report will be presented to Council by May 2024 on the need to replace the heating, ventilation and air conditioning at the Leschenault Leisure Centre.
- e) That funds have been provided in the Forward Capital Works Plan for a drainage solution for the Harvey Recreation Ground, and that the works need completion prior to a decision on playing field optimisation at the Harvey Recreation Ground.

6. Notice of Motion for Following Meeting

7. Matters Behind Closed Doors

8. Closure of Meeting